

OREGON PUBLIC EMPLOYEES RETIREMENT BOARD

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

**PERS
11410 SW 68th Parkway
Tigard, OR**

	Item	Presenter
A. Contested Case Hearings – 11:30 A.M.		
1.	Contested Case Hearings for Katharine English and Barbara Pinkerton	RODEMAN / KUTLER
2.	Contested Case Hearing for Jan Karius	
3.	Status of Pending Contested Cases	
Break		
B. Administration – 1:00 P.M.		
1.	January 12, 2007 Board Meeting Minutes	CLEARY
2.	Director's Report	
	a. Forward-Looking Calendar	
	b. OIC Investment Report	
	c. HB2020 Report	
	d. Budget Report	
	e. Retiree Health Insurance Program Contract Renewals	
C. Consent Action and Information Items		
1.	Action on Contested Cases	RODEMAN
2.	Notice of OPSRP Disability Benefit Rules	
3.	Notice of Tier 1 / Tier 2 Withdrawal of Contributions Rules	
4.	Postponement of OPSRP Withdrawals Rules	
5.	Adoption of Power of Attorney Rules	
6.	Notice and Adoption of Temporary Direct Rollover Rules	
D. Action and Discussion Items		
1.	Preliminary 2006 Earnings Crediting and Reserving	ORR / RODEMAN DELANEY
2.	Legislative Update	
E. Executive Session Pursuant to ORS 192.660(2)(f), (h), and/or ORS 40.225		
1.	Litigation Update	LEGAL COUNSEL

An Audit Committee meeting will be held immediately following the Board Meeting.

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

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

Level 1 - Public

SL1

PUBLIC EMPLOYEES RETIREMENT BOARD

PERS Board Meeting
 1:00 P.M.
 January 12, 2007
 Tigard, Oregon

DRAFT

MINUTES

Board Members:

Mike Pittman, Chair
 Brenda Rocklin, Vice-chair
 Eva Kripalani
 Phone: Thomas Grimsley
 Excused: James Dalton

Staff:

Paul Cleary, Director
 Steve Delaney
 Donna Allen
 Steve Rodeman
 Dale Lucht

David Crosley
 Jeanette Zang
 Dale Orr
 Gay Lynn Bath
 Jason Stanley
 Sally Boyd

Others:

Dallas Weyand	Keith Kutler	Kevin Nordhill	Chris Warner
Deborah Tremblay	Mindy Harris	Maria Keltner	P. Peg
Bill Hallmark	Bob Davis	Linda Ely	Steve Manton
Karla Alderman	Bruce Adams	Bob Andrews	Greg Hartman

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

ADMINISTRATION

B.1. BOARD MEETING MINUTES OF NOVEMBER 17, 2006

Brenda Rocklin moved and Tom Grimsley seconded to approve the minutes of the November 17, 2006 Board meeting. The motion passed unanimously.

B.2. DIRECTOR'S REPORT

Director Paul Cleary presented the Forward-Looking Calendar and said that the primary focus for the February and March Board meetings will be 2006 earnings crediting and reserving. Cleary noted that staff is preparing the 2007 budget and legislative presentations and conducting individual meetings with legislators to discuss PERS issues that will be addressed by the Legislature. Cleary announced that PERS would be presenting an agency overview to the Ways and Means Subcommittee on January 24, 2007 that will focus on operational improvements. Cleary provided the Oregon Investment Council (OIC) report that indicated a 13.64% regular account return through November 30, 2006. Cleary reported ongoing improvement in employer reporting and noted that accounts receivable show continuing improvement with \$260 thousand in collectibles down from \$2.1 million in delinquent accounts in 2005. Cleary presented the budget report and said that the agency has used accrued savings to staff the *Strunk/Eugene* project and support RIMS Conversion Project (RCP) expenses. Cleary said the agency will request DAS to reschedule approximately \$1 million of the \$4.4 million in 05-07 budget limitation that had been previously unscheduled, and will use it to cover RCP data migration activities and additional actuarial services through the end of the biennium.

CONSENT ACTION AND INFORMATION ITEMS

C.1. ACTION ON CONTESTED CASE HEARINGS

Vice-chair Brenda Rocklin presented the staff recommendations as detailed below in the contested case hearings of Kathleen Jones, Linda Adams, and Jan Karius.

It was moved by Brenda Rocklin and seconded by Tom Grimsley to approve the staff recommendations. The motion passed unanimously.

Under that motion, the Board acted on each contested case item and directed staff as follows:

ITEM A.1. CONTESTED CASE HEARING FOR KATHLEEN JONES

Adopted the draft final order as presented in the contested case hearing of Kathleen Jones.

ITEM A.2. CONTESTED CASE HEARING FOR LINDA ADAMS

Adopted the draft final order as presented in the contested case hearing of Linda Adams.

ITEM A.3. CONTESTED CASE HEARING FOR JAN KARIUS

Postponed consideration in the contested case hearing of Jan Karius to the February 2007 Board meeting.

C.2. SECOND READING OF OPSRP AND IAP WITHDRAWALS RULES

Steve Rodeman, Policy, Planning, and Legislative Analysis Division (PPLAD) administrator, presented the second reading of proposed rules regarding OPSRP program withdrawals. Rodeman said staff had received various employer and member comments that triggered multiple revisions to the proposed rules. Rodeman said that the public comment period has been reopened through January 26th, 2007.

C.3. ADOPTION OF OREGON SAVINGS GROWTH PLAN (OSGP) RULES

Rodeman presented the proposed adoption of the deferred compensation program rules regarding advisory committee appointments; trading restrictions; catch-up programs; loan program and emergency withdrawals. Rodeman noted that the rules would improve administration, better protect participant interests, and provide additional options to encourage increased member participation in the supplemental retirement savings program. Rodeman reported that there was one comment regarding trading restrictions and one comment regarding the loan program rules.

It was moved by Tom Grimsley and seconded by Brenda Rocklin to adopt the proposed rules as presented. The motion passed unanimously.

C.4. ADOPTION OF OAR 459-011-0050, VOLUNTARY REDEPOSIT

Rodeman presented the proposed adoption of rules to factor post-reform "break in service" statutory provisions into restoration of previously withdrawn Tier One/Tier Two member accounts and related service credits. Rodeman said there were no public comments received on the proposed rules.

It was moved by Brenda Rocklin and seconded by Tom Grimsley to adopt the proposed rules as presented. The motion passed unanimously.

C.5. ADOPTION OF EARNINGS CREDITING RULES

Rodeman presented the proposed adoption of rules to clarify crediting of earnings on lump sum payments and Police and Fire (P&F) unit accounts. Rodeman said there were no public comments received on the proposed rules.

It was moved by Brenda Rocklin and seconded by Tom Grimsley to adopt the proposed rules as presented. The motion passed unanimously.

ACTION AND DISCUSSION ITEMS

D.1. STRUNK / EUGENE IMPLEMENTATION PROJECT UPDATE

Rodeman provided a Strunk/Eugene project update reviewing the progress of the project and the statistics on benefit adjustments completed to date. Rodeman reported that for the 1,141 benefit adjustments completed in December using the actuarial recovery method (ARM), the impact on the monthly benefits ranged from a 9.23% reduction to a 4.9% increase, with the overall average being a 1.62% reduction. Rodeman said that overpayments recovered ranged from just over \$50 to over \$40,600, with an average of \$4,527. Rodeman noted that production is being normalized for the annuity adjustments and starting for the lump-sum recoveries. Rodeman also reported that the project is still on budget, with no changes expected in the specific phase end dates.

Chair Pittman adjourned the meeting at 1:45 P.M.

Respectfully submitted,



Paul R. Cleary
Executive Director

Prepared by Donna R. Allen, Executive Assistant

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

PERS Board Meeting Forward-Looking Calendar

March 2007

1:00 P.M. March 30, 2007

Contested Case Hearing of Colleen Walker Postponement to May 18, 2007
Notice of Judge Member Rules
First Reading for Tier 1 / Tier 2 Withdrawal of Contributions Rules
Adoption of OPSRP Disability Benefit Rules
Tier One Rate Guarantee Reserve Analysis
Final 2006 Earnings Crediting

April 2007

9:00 A.M. April 25, 2007 (Tentative)

Joint PERS Board – OIC Asset / Liability Study Stage II

May 2007

1:00 P.M. May 18, 2007

Consideration of Final Order for the Contested Case Hearing of Colleen Walker
Adoption of Tier 1 / Tier 2 Withdrawal of Contributions Rules (Subject to Change)
First Reading for Judge Member Rules
Audit Committee Meeting

June 2007

1:00 P.M. June 15, 2007

Returns for periods ending 12/31/06

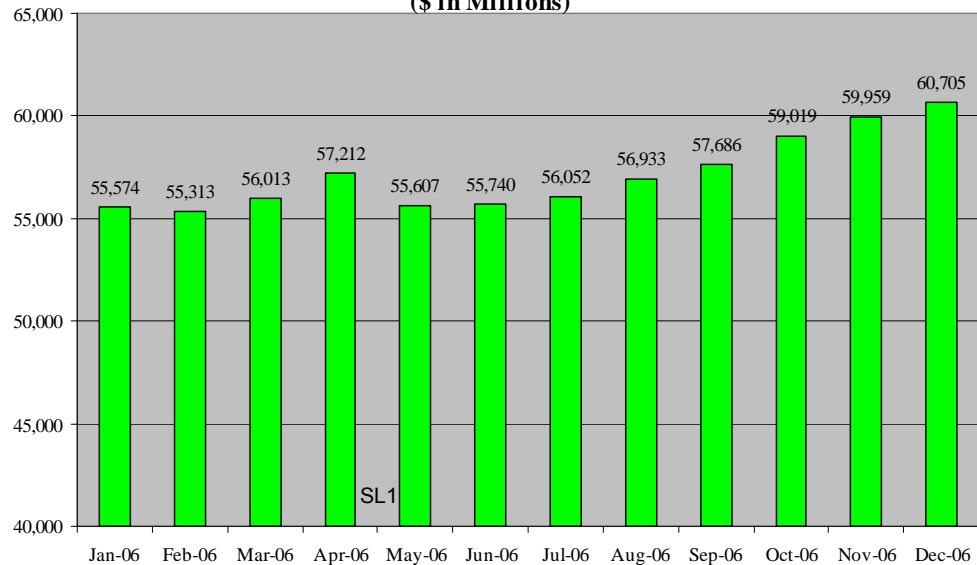
Oregon Public Employees Retirement Fund

OPERF	Regular Account				Historical Performance					
	Policy ¹	Target ¹	\$ Thousands ²	Actual	Year-To-Date	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS
Domestic Equity	30-40%	35%	\$ 20,293,405	34.4%	13.94	13.94	10.84	11.53	16.49	7.62
International Equity	15-25%	20%	12,563,834	21.3%	26.89	26.89	22.75	22.31	26.81	17.41
Alternative Equity	7-13%	10%	5,792,798	9.8%	15.73	15.73	29.14	28.29	20.44	14.55
Total Equity	60-70%	65%	38,650,037	65.6%						
Opportunity Portfolio			29,800	0.1%						
Total Fixed	22-32%	27%	16,274,666	27.6%	5.84	5.84	4.75	5.22	6.28	6.80
Real Estate	5-11%	8%	4,001,307	6.8%	27.30	27.30	29.95	26.93	24.36	20.86
Cash	0-3%	0%	-	0.0%	5.05	5.05	4.09	3.20	2.73	2.60
TOTAL OPERF Regular Account	100%		\$ 58,955,810	100.0%	15.30	15.30	14.24	14.32	16.35	11.04
OPERF Policy Benchmark					14.89	14.89	12.31	12.46	15.25	9.90
Value Added					0.41	0.41	1.93	1.86	1.10	1.14

Asset Class Benchmarks:

Russell 3000 Index	15.72	15.72	10.81	11.19	15.86	7.17
MSCI ACWI Free Ex US	27.16	27.16	22.03	21.81	26.44	16.84
Russell 3000 Index + 300 bps--Quarter Lagged	13.31	13.31	15.80	17.02	20.49	12.94
LB Universal--Custom FI Benchmark	4.79	4.79	3.90	4.26	4.55	5.53
NCREIF Property Index--Quarter Lagged	17.62	17.62	18.40	16.37	14.17	12.42
91 Day T-Bill	4.85	4.85	3.96	3.07	2.59	2.43

TOTAL OPERF NAV
 (includes variable fund assets)
 One year ending December 2006
 (\$ in Millions)



¹OIC Policy 4.01.18

²Includes impact of cash overlay management.



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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February 16, 2007

TO: Members of the PERS Board
FROM: Paul R. Cleary, Executive Director
SUBJECT: Update on HB2020 Employer Reporting
and Accounts Receivable Programs

MEETING	02-16-07
DATE	
AGENDA	
ITEM	B.2.c. HB2020 Update

PERS is working with 871 employer-reporting units to process outstanding 2006 and 2007 employer reports and to collect outstanding employer invoices. Updates on each are provided below.

EMPLOYER REPORTING

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

	Calendar Year 2006	Calendar Year 2007
Reports due (estimated):		
▪ Number	12,957	268
▪ Percent received	97.8 %	92.9%
Outstanding reports	278	19
Reports fully posted at 100%:		
▪ Number	11,530	204
▪ Percent received	88.9 %	76.1%
Records due (estimated)	3,096,934	114,156
Records not posted	27,682	5,509
Contributions posted	\$ 424,671,283	\$14,690,843
Contributions not posted	\$ 1,364,915	\$179,529

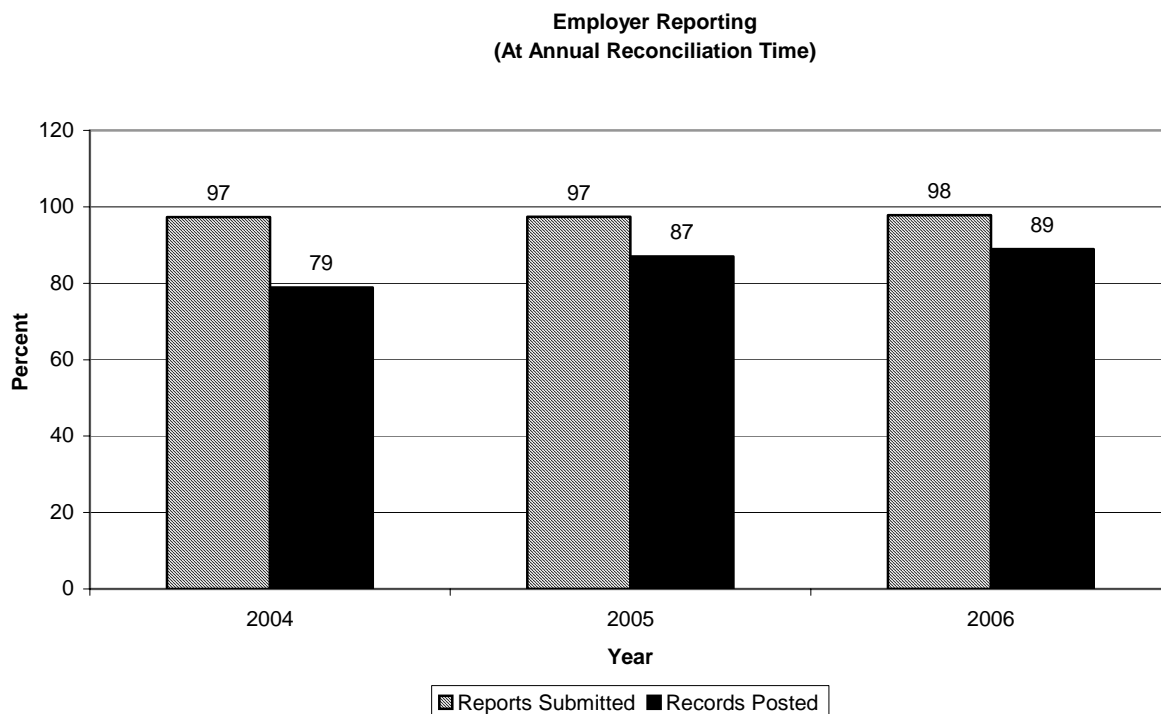
Currently, employers are concentrating their efforts on:

1. Completing their 2006 reports and records so PERS can complete the 2006 Annual Reconciliation; and
2. Submitting prior year data for compliance with HB2189.

As of January 26, 2007, employers have submitted 97.8 % and 92.9% of the reports due for 2006 and 2007, respectively. Of those reports submitted, 88.9 % for 2006 and 76.1 % for 2007 are 100% posted. In comparison to 2006 statistics, reporting performance for 2007 appears to be down. This downward trend is typical and anticipated at this time of year since employers are focusing on prior year data clean up for the 2006 Annual Reconciliation. We anticipate that by the

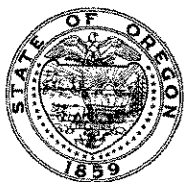
end of the second quarter of 2007 the reporting statistics will bounce back and improve from prior years.

Employers have made major strides in improving their year-over-year reporting performance as well as in improving the quality of the data they report. Below is a chart showing the year-to-year improvements since the inception of electronic reporting. Since 2004, there has been a 1% increase in the number of reports submitted, and a 10% increase in the number of records posted. This 10% increase in posted records shows employers have increased the quality of the data they are submitting. This quality improvement increase will ultimately translate into process efficiencies for PERS and its members.



ACCOUNTS RECEIVABLE PLAN

Besides assisting employers with overdue reports and electronic payment, in 2006 PERS implemented an accounts receivable plan to proactively collect receivable balances that are more than 30 days overdue. As of January 2007, we have 223 outstanding invoices (14 employers) with an aggregate balance of less than \$260,000. This is a significant improvement since the inception of the accounts receivable plan when PERS had 82 employers with outstanding invoices that totaled in excess of \$2.1 million. We have cut the delinquent invoice amount by 88%, but our goal is to collect all outstanding invoices that exceed 30 days by following up with these employers by phone and letters each month.



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February 16, 2007

TO: Members of the PERS Board

FROM: Dave Tyler, Fiscal Services Division Administrator

SUBJECT: 2005-2007 Budget Update

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

Attached is the PERS budget report for the period ending December 30, 2006.

2005-2007 ACTUAL EXPENDITURES AND PROJECTIONS

Operating expenditures for the month of December 2006 totaled \$2,880,434, down considerably from November's expenditures of \$4,270,331. Through 18 months (75%) of the biennium, the Agency has expended a total of \$51,598,757, or 68.78%, of our Operations budget. We continue to project increasing expenditure levels over the remainder of the biennium.

BUDGET VARIANCES

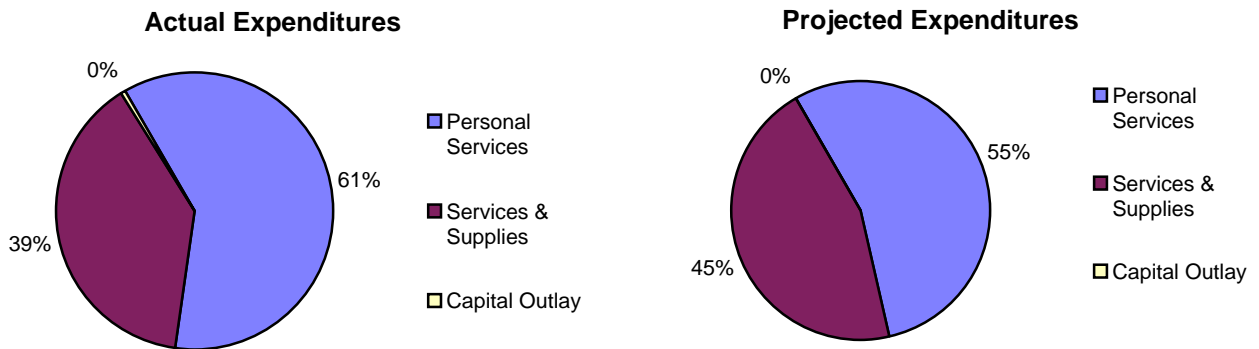
Accumulated limitation savings for the biennium approximate \$181,000, down from \$305,000 at November 30, 2006. Reduction of projected savings levels is attributable to increasing activity on our priority projects, primarily *Strunk and Eugene* and the RIMS Conversion Project (RCP). Expenditures on RCP declined in December, but with the upcoming release (Stage 1C—Member Demographics, etc.) scheduled for implementation in May 2007, project activity and associated expenditures are projected to increase significantly for the remaining six months of this biennium.

Earlier in the biennium, PERS worked with DAS to unschedule approximately \$4.4 million of the RCP Conversion Project budget based upon projections that indicated these funds would not be required prior to June 30, 2007. Because work on the House Bill 2020 project was not completed prior to June 30, 2005, approximately \$1,050,000 (thus far) has been charged against this biennium's limitation. DAS has approved our request and rescheduled this amount for current use. There is no change to the total RCP project budget of \$27.5 million. The rescheduled limitation is reflected in the attached schedules and will be used to fund RCP data migration activities and additional actuarial services we anticipate will be required during the remainder of the biennium.

2005-07 Agency-wide Operations - Budget Execution Summary Budget Analysis For the Month of: December 2006

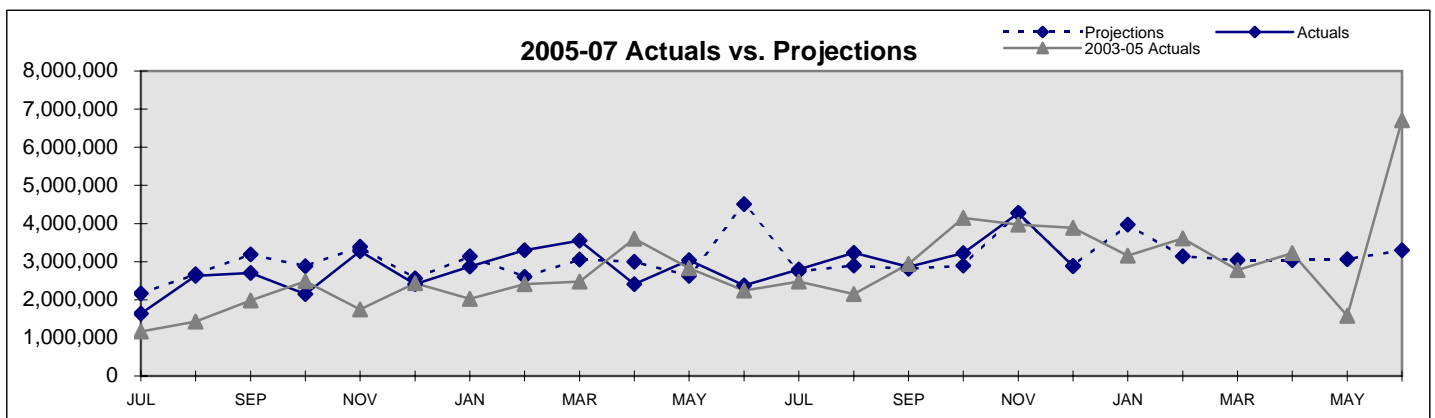
Biennial Summary

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2005-07 LAB	Variance
Personal Services	31,202,389	12,723,676	43,926,065	46,875,869	2,949,804
Services & Supplies	20,160,288	10,511,582	30,671,870	27,794,941	(2,876,929)
Capital Outlay	236,080		236,080	344,618	108,538
Special Payments					
Total	51,598,757	23,235,257	74,834,014	75,015,428	181,414



Monthly Summary

Category	Actual Exp.	Projections	Variance	Avg. Monthly Actual Exp.	Avg. Projected Expenditures
Personal Services	1,903,374	2,085,949	182,574	1,733,466	2,120,613
Services & Supplies	1,051,860	797,645	(254,214)	1,120,016	1,751,930
Capital Outlay	(74,800)		74,800	13,116	
Special Payments					
Total	2,880,434	2,883,594	3,160	2,866,598	3,872,543



2005-07 Agency-wide Operations - Budget Execution

Spending Plan - Actual and Estimated Expenditures

2005-07 Summary as of December 31, 2006

	1st QTR	2nd QTR	3rd QTR	4th QTR	5th QTR	6th QTR	7th QTR	8th QTR	ACTUAL EXPEND. TO DATE	EST. EXPEND.	ENC. & PRE-ENC.	TOTAL ESTIMATED EXPEND.	05-07 LAB BUDGET	VARIANCE	
Personal Services															
3110 Salaries & Wages	3,102,084	3,128,099	3,252,118	3,275,416	3,362,077	3,477,280	4,018,018	4,066,692	19,597,075	8,084,710		27,681,784	29,846,673	2,164,889	
3160 Temporary Appointments	40,406	43,071	29,041	36,809	42,700	39,823	39,020	25,137	231,849	64,157		296,006	156,922	(139,084)	
3170 Overtime	33,466	71,029	79,550	66,890	66,858	57,134	45,005	33,238	364,927	78,243		443,170	540,505	97,335	
3180 Shift Differential	1,326	1,615	2,139	1,878	1,820	1,527	375	375	10,305	750		11,055	1,980	(9,075)	
3190 All Other Differential	34,599	54,556	65,171	63,587	73,959	71,712	17,563	17,563	363,585	35,125		398,710	209,350	(189,360)	
3210 ERB Assessment	1,289	1,311	1,341	1,352	1,340	1,386	1,979	1,979	8,019	3,959		11,977	12,700	723	
3215 Wokers' Comp. Insurance (SA															
3220 PERS	449,000	451,927	439,938	427,041	444,369	456,753	597,044	602,444	2,669,028	1,199,488		3,868,516	4,481,716	613,200	
3221 Pension Bond Contribution	207,759	205,184	207,139	201,975	208,270	215,059	249,117	252,135	1,245,386	501,252		1,746,638	1,756,591	9,953	
3230 Social Security Taxes	243,827	249,974	261,324	262,386	269,096	276,196	315,178	316,940	1,562,804	632,118		2,194,922	2,356,099	161,177	
3240 Unemployment Comp.		16,576		4,077					20,654			20,654	37,388	16,734	
3250 Workers' Comp. Assess.	2,484	2,335	2,370	2,358	2,266	2,266	3,593	3,593	14,079	7,186		21,265	26,833	5,568	
3260 Mass Transit Tax	19,249	19,844	20,556	20,687	21,389	21,912	24,108	24,400	123,637	48,508		172,145	185,833	13,688	
3270 Flexible Benefits	756,424	772,987	849,681	861,809	858,832	891,308	1,034,090	1,034,090	4,991,041	2,068,179		7,059,220	7,308,467	249,247	
3455 Vacancy Savings													(155,537)	(155,537)	
3465 Reconciliation Adj.													188,451	188,451	
Unscheduled P.S.													(78,102)	(78,102)	
Total Personal Services	4,891,915	5,018,508	5,210,367	5,216,265	5,352,978	5,512,356	6,345,091	6,378,585	31,202,389	12,723,676		43,926,065	46,875,869	2,949,804	
		<i>actual</i>					<i>estimated</i>								
Services & Supplies															
4100 Instate Travel	12,995	24,326	14,906	19,723	11,981	19,651	13,475	18,550	103,583	32,025		135,608	116,894	(18,714)	
4125 Out-of-state Travel			40	11,252	339	(111)	300	300	11,520	600		12,120	31,127	19,007	
4150 Employee Training	30,385	44,332	39,369	36,044	60,420	58,219	41,965	43,815	268,770	85,780		354,550	488,069	133,519	
4175 Office Expenses	91,727	121,888	283,010	200,313	240,166	181,982	204,790	207,449	1,119,086	412,238		1,531,324	2,063,722	532,398	
4200 Telecommunications	25,713	69,518	65,443	62,725	58,881	51,692	68,249	68,249	333,972	136,499		470,470	537,685	67,215	
4225 St. Gov. Svc. Chg.	595,854	135,567	109,154	43,618	574,579	194,313	72,100	54,000	1,658,184	121,000		1,779,184	1,504,171	(275,013)	
4250 Data Processing	266,701	506,983	426,702	317,110	474,884	875,768	845,000	825,000	2,868,148	1,670,000		4,538,148	5,256,990	718,842	
4275 Publicity/Publications	7,318	6,251	18,487	27,825	17,017	10,125	12,100	20,000	87,025	32,100		119,125	292,704	173,579	
4300 Professional Services	545,896	1,213,796	1,640,303	695,945	815,605	684,518	911,649	1,023,812	5,596,063	1,935,461		7,531,524	3,282,534	(4,248,990)	
4315 IT Professional Services		360,233	1,343,483	795,597	842,976	2,156,491	1,195,000	290,000	5,498,780	1,485,000	3,690,424	10,674,204	14,532,868	3,858,664	
4325 Attorney General	48,913	72,187	113,494	96,841	105,384	84,347	141,000	146,500	521,167	287,500		808,667	947,681	139,014	
4350 Dispute Res. Svc.	957	3,910	16,510	13,525	7,157	3,843	6,200	10,000	45,902	16,200		62,102	73,736	11,634	
4375 Empl. Recruit./Devel.	8,863	24,770	12,469	16,325	7,315	12,515	15,000	15,000	82,257	30,000		112,257	58,036	(54,221)	
4400 Dues & Subscriptions	4,943	10,106	5,799	5,388	3,871	9,282	2,175	2,275	39,390	4,450		43,840	50,702	6,862	
4425 Facility Rental	104,691	95,696	96,140	96,223	96,166	99,904	99,018	99,018	588,821	198,036		786,857	703,597	(83,260)	
4450 Fuels/Utilities	23,497	25,490	30,773	27,089	30,229	27,233	27,000	36,000	164,311	63,000		227,311	121,063	(106,248)	
4475 Facility Maint.	47,868	43,335	47,231	86,504	113,561	97,841	76,251	101,668	436,340	177,919		614,259	724,698	110,439	
4575 Agency/Program S & S															
4625 Other COP Costs		371	1,090	765	1,511	573			4,310			4,310	6,500	2,190	
4650 Other S & S	1,095	8,915	(3,237)	5,246	13,493	(2,730)			22,782			22,782	2,700	(20,082)	
4700 Expendable Property	72,658	19,094	16,087	16,353	33,318	45,467	2,850	6,500	202,976	9,350		212,326	193,465	(18,861)	
4715 IT Expendable Property		23,267	35,037	161,673	82,198	204,727	64,000	60,000	506,902	124,000		630,902	450,300	(180,602)	
Unscheduled S & S													(3,644,301)	(3,644,301)	
Total Services & Supplies	1,890,074	2,810,037	4,312,289	2,736,087	3,591,051	4,815,649	3,798,122	3,028,136	20,160,288	6,821,158	3,690,424	30,671,870	27,794,941	(2,876,929)	
Capital Outlay															
5100 Office Furn./Fixture													30,868	30,868	
5150 Telecomm. Equip.													5,589	5,589	
5200 Technical Equipment													57,161	57,161	
5550 Data Proc.-Software			197,783	(129,701)	(73,034)	15,749			10,797			10,797	147,000	136,203	
5600 Data Proc.-Hardware	181,877				16,516	26,890			225,283			225,283	104,000	(121,283)	
5700 Building & Structure															
Total Capital Outlay	181,877		197,783	(129,701)	(56,518)	42,639			236,080			236,080	344,618	108,538	
Special Payments															
Total Special Payments															
Total Expenditures	6,963,866	7,828,545	9,720,439	7,822,652	8,887,511	10,370,645	10,143,212	9,406,721	51,598,757	19,544,833	3,690,424	74,834,014	75,015,428	181,414	

Percent of 2005-07 LAB Expended:	68.78%
Percent of Biennium Expired:	75.00%



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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February 16, 2007

TO: Members of the PERS Board
FROM: Gloria English, Retiree Insurance Program Manager
Kyle Knoll, Contracts & Procurement Manager
SUBJECT: Retiree Insurance Program Contracts for Third Party
Administrative Services and Insurance Program Consultant Services –
Revised Contract Renewal Provisions

MEETING DATE	2/16/07
AGENDA ITEM	B.2.e. Ret. Insurance

BACKGROUND

The current PERS Retiree Insurance Program Third Party Administration (TPA) contract with BenefitHelp Solutions expires June 30, 2007. This contract was awarded as a result of a competitive solicitation conducted in 2001. The contract with the specialized consultant for the Insurance Program (B.W. Reed Benefits, LLC) expires December 31, 2007. This contract was awarded as a result of a competitive solicitation conducted in 1999.

Staff's intent to renew both contracts for five years was presented to the PERS Board at its October 2006 meeting. Board members raised questions at that meeting about the proposed length of the contract renewals (five years) and whether the contract language would allow PERS' to opt out of the contracts should the agency desire to do so. The Board also asked about provisions for successful transference of duties to a successor contractor and for staff to return at a later date with further information on the renewal terms and conditions.

CONTRACT RENEWAL TERMS AND CONDITIONS

In response to the Board's concerns, PERS staff now intends to renew both contracts for three years rather than five years. The three year renewals will allow the agency to successfully transition a new Retiree Insurance Program Manager following this summer's scheduled retirement of Gloria English. The contracts can then be re-bid using competitive solicitation in 2010. Staff will also revise the contract provisions as follows:

1. Contract termination terms will provide for:
 - Termination for convenience by Agency, with 90 days written notice.
 - Termination by Agency, immediately or on designated date, due to funding restrictions, or changes in federal and/or state regulations.
 - Termination for cause by Agency, immediately or on designated date, due to contractor insolvency, failure to comply with licensing requirements, or breach of contract.

- Termination for cause by contractor, due to Agency's failure to pay, or breach of contract, with 90 days written notice.
- 2. Additional terms controlling contractor transition including a description of the contractor's responsibilities and timeframes for both knowledge and records transfer will be developed in consultation with the Department of Justice.
- 3. Annual contract rate increases will be limited to the cost of living, and/or commensurate with additional assigned duties, based on federal or state requirements.

CONCLUSION

Unless otherwise directed by the Board, staff will pursue three year renewals of the BenefitHelp Solutions and B.W. Reed Benefits, LLC contracts with revised contract conditions described above.



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February 16, 2007

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

MEETING DATE	2/16/07
AGENDA ITEM	C.1. Contested Cases

OVERVIEW

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

1. Adopt the Draft Final Order as presented in the contested case of Jan Karius.
2. Adopt a motion to delay consideration of the proposed orders in the contested cases of Katharine English and Barbara Pinkerton.

BOARD OPTIONS

The Board may:

1. Adopt the staff recommendations as presented above.
2. Adopt one of the alternative directions specified in the memos related to each of these contested cases.
3. Take no action. The proposed orders would become final as their deadlines are passed.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

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



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February 16, 2007

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Administrator, PPLAD
SUBJECT: Notice of Rulemaking for Non-Substantive Changes to
OAR 459-076-0001, 459-076-0020, 459-076-0050 and
459-076-0060

MEETING DATE	2/16/07
AGENDA ITEM	C.2. OPSRP Disability

OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Update OPSRP Pension Program disability rules to reflect consistent use of terminology.
- Subject: Division 76 OPSRP Disability rules.
- Policy Issue: No policy issues have been identified at this time.

BACKGROUND

These rules currently use the terms “allowance,” “disability allowance,” “disability retirement allowance,” and “disability retirement benefit” when referring to an OPSRP Pension Program disability benefit. These terms are being changed for accuracy and consistency in terminology within the Division 76 rules.

LEGAL REVIEW

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

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on February 27, 2007 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on March 23, 2007 at 5:00 p.m.

IMPACT

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

Impact: Consistent use of terms will benefit members and staff.

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

RULEMAKING TIMELINE

January 12, 2007 Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.

Notice – OPSRP Disability Benefit Rules

2/16/2007

Page 2 of 2

February 1, 2007	<i>Oregon Bulletin</i> published the Notice.
February 16, 2007	PERS Board notified that staff began the rulemaking process.
February 27, 2007	Rulemaking hearing to be held at 2:00 p.m. in Tigard.
March 23, 2007	Public comment period ends at 5:00 p.m.
March 30, 2007	Staff proposes adopting the permanent rule modifications, including any amendments warranted by public comment or further research.

NEXT STEPS

A hearing will be held on February 27, 2007. The rule is scheduled to be brought before the PERS Board for adoption at the March 30, 2007 meeting.

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 076 – DISABILITY BENEFIT**

1 **459-076-0001**

2 **Definitions**

3 The words and phrases used in this Division have the same meaning given them in
4 ORS Chapter 238A and OAR 459-070-0001. Additional terms are defined as follows
5 unless the context requires otherwise.

6 (1) Any work for which qualified: A job, not necessarily the last or usual job, which
7 the applicant for disability benefits:

8 (a) Is physically and psychologically capable of performing; and

9 (b) Has, or may obtain with reasonable training, the knowledge, skills and abilities,
10 to perform the job.

11 (2) Certified vocational consultant: A person who satisfies the criteria set forth under
12 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 Insurance Rehabilitation Specialist
19 (CIRS) by the Certified Insurance Rehabilitation Specialists Commission; or a Certified
20 Vocational Evaluation Specialist (CVE) or a Certified Work Adjustment Specialist
21 (CWA) by the Commission on Certification of Work Adjustment and Vocational
22 Evaluation specialists.

1 (3) Confidential information: Information of a personal nature such that disclosure
2 would constitute an unreasonable invasion of privacy as defined by state law.

3 (4) Date of disability: The day an active member ceased to work because of injury or
4 disease.

5 (5) Effective date of disability benefit: The first of the month following the later of:

6 (a) The last day the member worked for a participating employer;

7 (b) The last day the member was on paid leave; or

8 (c) The last day the member received any salary or paid leave benefits from a

9 participating employer, exclusive of the cash pay-off for accrued vacation or

10 compensatory time, as long as that payment is made within the 31 days after the member

11 separates from PERS covered employment.

12 (6) Extended duration: A period of not less than 90 consecutive calendar days unless
13 the disability is expected to result in the death of the disabled member in less than 90
14 days.

15 (7) Independent medical exam: An exam or exams conducted by a physician chosen
16 by PERS for purposes other than for treatment which results in the issuance of a report or
17 reports based on those exams, giving an opinion regarding the claimed injury or disease.

18 (8) Material contributing cause: The efficient, dominant, and proximate cause of the
19 disability, without which the member would not be disabled.

20 (9) Monthly salary: Salary as defined in ORS 238A.005(16) that is earned in the last
21 full calendar month of employment.

1 (a) Retroactive payments or payments made due to clerical errors, paid in accordance
2 with ORS 238A.005(16)(b)(E), are allocated to the period the salary was earned or
3 should have been earned.

4 (b) Payments of salary paid within 31 days of separation are allocated to the period
5 the salary was earned and should be considered as paid on the last date of employment.

6 (10) Monthly salary received: The salary paid, as defined in section (9) of this rule,
7 for the last full calendar month of employment prior to date of disability.

8 (11) Normal retirement age: The age at which a member can retire without a reduced
9 benefit as set forth under ORS 238A.160.

10 (12) Other income: Includes, but is not limited to:

11 (a) Salary or wages received as an employee;

12 (b) Self-employment income from:

13 (A) Services industry;

14 (B) Sales;

15 (C) Assembly or manufacturing;

16 (D) Consulting;

17 (E) Property management;

18 (F) Hobby income; or

19 (G) Book advances.

20 (c) "Other income" does not include:

21 (A) Investment income;

22 (B) Rent; and

23 (C) Royalties.

1 (13) Physician: A medical doctor, a doctor of osteopathy, a doctor of oral surgery, a
2 chiropractic doctor, a naturopathic doctor, or a doctor of psychology practicing only
3 within the purview of their license issued by the designated authority of a state.

4 (14) Periodic review: A review of a member receiving a disability benefit
5 *[retirement allowance]* to determine whether or not a continued *[allowance]* benefit is
6 warranted.

7 (15) Performance of duty: Mental or physical incapacitation arising out of and in the
8 course of duty and is not intentionally self-inflicted. The injury or disease must be
9 initially caused, aggravated or accelerated to cause incapacitation by the performance of
10 the member's duties in the employment of a participating public employer. The job must
11 be the material contributing cause of the injury or disease. Performance of duty includes
12 whatever an employee may be directed, required or reasonably expected to do in
13 connection with his or her employment, and not solely the duties peculiar to his or her
14 position.

15 (16) Pre-existing condition: A condition that was not sustained in actual performance
16 of duty with the current employer.

17 (17) Protected health information: Health information created or received by a health
18 care provider, health plan, or health care clearinghouse, where an individual has a
19 reasonable belief that the information can identify the individual, which relates to:

20 (a) The past, present, or future physical or mental health of an individual;

21 (b) The provision of health care to an individual; or

22 (c) The past, present, or future payment for the provision of health care to an
23 individual.

1 (18) Qualifying position: One or more positions with a participating employer, in a
2 participating class, which requires performance of 600 or more hours in a calendar year.

3 (19) Separation from all service: The date a member terminates from employment
4 such that an employee/employer relationship no longer exists; the last day worked
5 (physically on the job), the last day of paid leave, or the last day of an official leave of
6 absence, whichever is the later.

7 (20) Similar in compensation: Salary or income, excluding overtime, equaling at
8 least 80 percent of the monthly salary, as defined in section (9) of this rule.

9 (21) Similar location: A position in the same general area of the applicant's residence
10 or last employment location.

11 (22) Vocational evaluation: An evaluation conducted by a certified vocational
12 consultant, to determine the ability of an applicant to perform any work for which they
13 are qualified.

14 (23) Work related stress: Conditions or disabilities resulting from, but not limited to:

15 (a) Change of employment duties;

16 (b) Conflicts with supervisors;

17 (c) Actual or perceived threat of loss of a job, demotion, or disciplinary action;

18 (d) Relationships with supervisors, coworkers, or the public;

19 (e) Specific or general job dissatisfaction;

20 (f) Work load pressures;

21 (g) Subjective perceptions of employment conditions or environment;

22 (h) Loss of job or demotion for whatever reason;

23 (i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;

1 (j) Objective or subjective stresses of employment; or

2 (k) Personnel decisions.

3 Stat. Auth.: ORS 238A.450

4 Stats. Implemented: ORS 238A.235

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 076 – DISABILITY BENEFIT**

1 **459-076-0020**

2 **Application Required**

3 (1) No disability benefit will be paid unless the member files a timely and complete
4 application with PERS.

5 (a) An inactive member who was disabled due to injury or disease while the
6 applicant was an active member and is not separated from membership, must file an
7 application for a disability benefit [retirement allowance] within five calendar years of
8 the last day worked; even though the member may continue on a paid leave or on an
9 official leave of absence without pay. The disabling condition must have arisen while the
10 applicant was an active member and be continuous from the date the member last worked
11 to the date the application is filed.

12 (b) Members who become disabled due to injury or disease after the date of
13 separation from all service entitling the member to active membership in the system, are
14 not eligible for a disability benefit under ORS Chapter 238A.

15 (2) Applications will be made on forms prescribed by PERS. PERS may require the
16 member to provide any information that PERS considers necessary to determine the
17 applicant's eligibility for a disability benefit.

18 (3) Application must be made by a member or the member's authorized
19 representative. A representative must submit to PERS written proof of the
20 representative's authority; such as, a power of attorney, guardianship or conservatorship
21 appointment.

1 (4) A member may make application immediately after the last day worked even
2 though the member is on a paid leave or on an official leave of absence without pay. No
3 application will be accepted that predates the last day the member was actually on the
4 job.

5 (5) In determining the effective date of a disability benefit PERS may allow up to 60
6 months of benefits retroactive from the date the application is filed with PERS, but in no
7 case earlier than the first day of the month following the date of termination.

8 (6) Upon the filing of an application for a disability *[retirement]* benefit, PERS will
9 notify the applicant's current or most recent employer of the filing. Additionally, PERS
10 may request of an employer information pertaining to current or previous employment.

11 (7) When making application for a PERS disability benefit, PERS will request the
12 applicant authorize any physician, health practitioner, hospital, clinic, pharmacy,
13 employer, employment agency, or government agency to release and disclose to PERS,
14 or independent physicians and vocational consultants retained by PERS, any information
15 within their records or knowledge, including that information otherwise protected under
16 federal or state law, regarding the applicant's health and employment which PERS
17 determines relates to the applicant's claim of disability and inability to perform any work
18 for which qualified.

19 (8) When filing an application for disability benefit, if the applicant wishes to
20 authorize release and disclosure of protected health information, as defined in OAR 459-
21 015-0001(17), the applicant must complete and sign a consent form which specifically
22 authorizes the release and disclosure of such information.

1 (a) This authorization is voluntary. Because PERS is not a covered entity as defined
2 in 45 C[.]F[.]R[.] Parts 160 and 164, the protected health information is not subject to
3 federal and state health information privacy laws, but is protected under Oregon State
4 Public Record disclosure laws.

5 (b) This authorization may be revoked in writing at any time, except to the extent the
6 entities named on the authorization form(s) have taken action in reliance of the
7 authorization.

8 (c) If the applicant refuses to give or revokes authorization to disclose to PERS
9 medical information that PERS determines it needs to evaluate the application, eligibility
10 for a disability benefit *[retirement allowance]* may be affected.

11 Stat. Auth.: ORS 238A.450 & 45 CFR Parts 160 & 164

12 Stats. Implemented: ORS 238A.235

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 076 – DISABILITY BENEFIT**

1 **459-076-0050**

2 **Periodic Reviews**

3 (1) Members receiving a disability benefit are subject to periodic reviews of their
4 disabled status until the member reaches normal retirement age or staff determines that
5 periodic reviews are no longer warranted.

6 (2) Periodic reviews will be used to determine that continued disability benefits
7 *[retirement allowances]* are warranted. In recommending the continuance or
8 discontinuance of a disability benefit *[retirement allowance]*, for the original approved
9 disability or a new medical condition, PERS will follow the criteria established under
10 OAR 459-076-0010.

11 (3) For a duty disability, the periodic review will not revisit the original
12 determination that the injury or disease was duty caused, unless there is evidence of
13 misrepresentation or fraud.

14 (4) PERS will establish review dates for each member subject to a periodic review
15 depending on type of disability, extent of disability, and medical reports unique to each
16 individual case.

17 (a) The reviews may be medical or vocational in nature, or both.

18 (b) Upon review, PERS may accept or require:

19 (A) New treating or consulting physician or specialist reports;

20 (B) Updated physician or specialist reports;

21 (C) Independent medical or vocational examinations; or

1 (D) Employment and wage information, including but not limited to, tax returns or
2 information from the State Employment Department.

3 (c) PERS may immediately discontinue the disability benefit of any person who
4 refuses to provide current medical evidence or refuses to submit to an examination.

5 (A) If the disability claim is discontinued, the staff shall issue an Intent to
6 Discontinue letter by regular and certified mail, return receipt requested. The
7 discontinuation letter shall advise the applicant that additional information to substantiate
8 the claim, or a request for an extension of 30 days to present additional information, may
9 be submitted to the staff in writing within 30 days of the date of the Intent to Discontinue
10 letter.

11 (B) Following the issuance of an Intent to Discontinue letter, staff will review any
12 additional information which is submitted within 30 days.

13 (i) If the additional information results in a recommendation to approve the
14 application, staff shall resubmit the application to the Director, or the Director's designee,
15 with the recommendation.

16 (ii) If the additional information does not result in a recommendation to approve the
17 application, PERS will issue a final discontinuation letter by regular and certified mail,
18 return receipt requested.

19 (C) If no additional information is received within 30 days, PERS will issue a final
20 discontinuation letter by regular and certified mail, return receipt requested.

21 (D) The final discontinuation letter will provide the applicant with notification of the
22 right to request a contested case hearing as provided for in OAR 459-015-0030 and 459-
23 001-0035.

1 (5) The member has the burden to prove continuing eligibility for a disability
2 benefit.

3 (6) In recommending the continuance or discontinuance of a disability benefit, PERS
4 shall follow the criteria established under OAR 459-076-0010.

5 (7) The Director, or Director's designee, is hereby authorized to approve or deny the
6 continuance of a disability benefit.

7 Stat. Auth.: ORS 238A.450

8 Stats. Implemented: ORS 23[A]8A.235

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 076 – DISABILITY BENEFIT**

1 **459-076-0060**

2 **Reduction Due to Workers' Compensation Payment**

3 (1) The total payments received by an OPSRP member receiving both OPSRP
 4 disability benefits and payments from Workers' Compensation may not exceed 75 percent
 5 of the member's monthly salary as of the date the member becomes disabled. Other
 6 disability-related income, such as Social Security and/or private disability insurance plan
 7 payments will not affect the amount of OPSRP disability benefits.

8 (2) A member's disability benefit will be offset by any gross monthly workers'
 9 compensation payment paid in a calendar month on account of temporary total disability
 10 or permanent total disability under the provisions of ORS Chapter 656; regardless of
 11 whether the condition on which the workers' compensation claim is based is related to the
 12 condition on which the OPSRP disability benefit claim is based.

13 (a) A monthly workers' compensation payment includes:

14 (A) Weekly gross payments;

15 (B) Semi-monthly gross payments;

16 (C) Monthly gross payments; and

17 (D) That portion of a lump sum payment of a workers' compensation disability claim
 18 that is expressly designated as compensation for temporary total disability or permanent
 19 total disability.

20 (b) A monthly workers' compensation payment does not include:

21 (A) Payments for medical services;

22 (B) Payments for vocational training;

1 (C) Reemployment assistance payments; and

2 (D) Any payment based on an employee's waiver of all rights to, and includes no
3 payment for, a temporary total disability or a permanent total disability claim.

4 (c) The workers' compensation payment will be considered paid on the date that
5 payment is issued, and will not be allocated to any period other than the month payment
6 is issued.

7 (3) In the event a member is eligible to receive an OPSRP disability benefit, PERS
8 will request of the Workers' Compensation Division, or any other public or private
9 workers' compensation insurance company, documentation of the portion of a lump sum
10 settlement that is made on account of a temporary total disability or a permanent total
11 disability.

12 (4) The disability benefit [*allowance*] of a member will be reduced by the amount
13 by which the combined monthly benefits payable from both PERS and any monthly
14 workers' compensation payment on account of temporary total disability or permanent
15 total disability exceed 75 percent of the monthly salary of the member on the date of
16 disability.

17 (5) In determining whether the combined monthly benefits exceed 75 percent of the
18 monthly salary of the member on the date of disability, cost-of-living adjustments will
19 not be considered.

20 (6) A member who is eligible to receive a disability benefit must report immediately
21 to PERS the receipt or the award of any monthly workers' compensation payment as
22 described in section (2)(a) of this rule.

1 (7) In the event a member receives one or more monthly workers' compensation
2 payment(s) while also receiving a disability benefit as described in OAR 459-076-0015,
3 but PERS is not notified of the workers' compensation payment until after making one or
4 more disability benefit payments:

5 (a) PERS will recalculate the disability benefit, taking the monthly workers'
6 compensation payments into account; and

7 (b) PERS will invoice the member for, or recover under ORS 238.715, any
8 overpayment of OPSRP disability benefits.

9 Stat. Auth.: ORS 238.715 & 238A.450

10 Stats. Implemented: ORS 238A.235



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February 16, 2007

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Administrator, PPLAD
SUBJECT: Notice of Rulemaking for Tier 1 / Tier 2 *Withdrawal of Contributions*, OAR 459-010-0055

MEETING DATE	2/16/07
AGENDA ITEM	C.3. Withdrawal of Contributions

OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: To update the rule and provide for consistent administration of withdrawals in PERS programs.
- Subject: Withdrawal of PERS Chapter 238 Program Tier 1 / Tier 2 member account.
- Policy Issue: Should the withdrawal process for the PERS Chapter 238 Program generally parallel the withdrawal processes for the OPSRP programs?

BACKGROUND

A PERS Chapter 238 Program member may withdraw the amount credited to the member account pursuant to ORS 238.265. Administration of withdrawals was a relatively independent process and fully established at the time the OPSRP programs were created. The OPSRP Pension Program and the Individual Account Program both provide for withdrawal under certain conditions. For consistency of administration, proposed administrative rules for the OPSRP programs generally parallel the administration of withdrawals in the PERS Chapter 238 Program. In that OPSRP rulemaking, public comment supported a significant shift in the administration of mandatory re-deposits (when a member returns to PERS-covered employment without a bona fide separation).

Staff is commencing the rulemaking process for the PERS Chapter 238 Program withdrawal rule so that these changes can be incorporated therein, as well as any other changes needed to parallel administration of the withdrawal process across all programs.

POLICY ISSUE

Should the withdrawal process for the PERS Chapter 238 Program generally parallel the withdrawal processes for the OPSRP programs?

As discussed in the current OPSRP withdrawal rulemaking, consistent and parallel administration of withdrawals in all PERS programs is operationally efficient and more predictable and understandable for staff, employers, and members. To the extent permitted by the implemented statutes, withdrawal rules should reflect this parallelism. The proposed modifications to this rule would align the provisions regarding

reemployment of a former member prior to the time required to establish a bona fide separation with the provisions of the draft OPSRP withdrawal rules.

Specifically, obligations placed upon the employer to remedy this reemployment scenario were eliminated. The repayment obligation was appropriately placed upon the employee. The remedy established for non-payment was the use of ORS 238.618, which permits PERS to deny membership to an employee to protect the qualified status of the plan. Modification of this rule in this manner was requested in public comment received in the OPSRP withdrawals rulemaking.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on March 27, 2007 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on April 7, 2007 at 5:00 p.m.

SUMMARY OF MODIFICATIONS TO RULE

The following modifications have been made to the rule.

Subsection (2)(c) was edited to clarify that the requirement of absence from employment extends to controlled groups as well as participating employers. The word “one” was substituted for “a” for clarity and consistency.

Section (4) was deleted, as it became obsolete on June 30, 2006. Under certain conditions a member may have received an additional 50% of their member account balance with a withdrawal. To be eligible for the additional amount, the effective date of the withdrawal must have been before June 30, 2006.

Subsequent sections were renumbered and the following references are to the new numbers.

Section (4) was edited to reflect the proper verb tense and cite the authority for the prohibition against restoration.

Section (6) was edited to clarify the forfeiture of membership and service rights associated with termination of membership in language consistent with the language of the draft OPSRP withdrawal rules.

Section (7) was extensively edited. First, employment with a controlled group also violates the bona fide separation requirement, so that clarification was added. Second, more descriptive language consistent with the language in the draft OPSRP withdrawal rules was substituted for the existing text describing separation. Third, the obligation of employers to terminate the employee or repay the withdrawal amount was deleted. Lastly, the obligation to repay is placed upon the employee and the effect of repayment within 30 days following reemployment is outlined, consistent with the language of the draft OPSRP withdrawal rules.

In Section (8), provisions on collection and denial of membership were added. The effect of repayment later than 30 days following reemployment is outlined, consistent with the language of the draft OPSRP withdrawal rules. The “failure to notify/hold harmless” text was deleted, as it was not relevant to the rule. Participating employers are required to

report employment. The obligation to establish a bona fide separation and to repay the withdrawal if a bona fide separation is not established is placed upon the employee and is not affected by the employer's obligation to report employment. Unless the employee repays the required amount, no participation in the system is permitted.

LEGAL REVIEW

The attached draft has been 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: No, the Board need not adopt the rule.

Impact: Clarification of procedures and consistency in withdrawal administration will benefit members, employers, and staff.

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

RULEMAKING TIMELINE

February 15, 2007	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
February 16, 2007	PERS Board notified that staff began the rulemaking process.
March 1, 2007	<i>Oregon Bulletin</i> publishes the Notice.
March 27, 2007	Rulemaking hearing to be held at 2:00 p.m. in Tigard.
March 30, 2007	First reading of the rule.
April 6, 2007	Public comment period ends at 5:00 p.m.
May 18, 2007	Staff proposes adopting the permanent rule, including any amendments warranted by public comment or further research. <i>[NOTE: This adoption date may be delayed pending the status of legislative efforts on statutes related to withdrawals.]</i>

NEXT STEPS

A hearing is scheduled for March 27, 2007. The rule is scheduled to be brought before the PERS Board for adoption at the May 18, 2007 meeting. Adoption may be postponed pending final legislative action on HB 2281, regarding withdrawal from PERS programs.

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

1 **459-010-0055**

2 **Withdrawal of Contributions**

3 (1) Definition. A "controlled group" is a group of employers treated as a single
4 employer for purposes of maintaining qualified status under federal law.

5 (2) An inactive member may withdraw the member account balance under ORS
6 238.265 if:

7 (a) The member has separated from employment with all participating employers
8 and all employers in a controlled group with a participating employer, and

9 (b) PERS receives the member's request for withdrawal of the member account
10 before the member reaches earliest service retirement age; and

11 (c) The member has been absent from service with all participating employers and
12 all employers in a controlled group with a participating employer for at least *[a]* one
13 full calendar month following the month of separation.

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

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

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

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

22 *(c) Membership has not terminated under ORS 238.095 or 238.265; and*

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

3 ~~(4)~~*[(5) If a] A* member who withdrew *[withdraws]* the member account and
4 received ~~d~~*[s]* an additional 50 percent of the member account pursuant to section 2,
5 chapter 276, Oregon Laws 2003 *[under section (3) of this rule, the member]* may not
6 subsequently restore the creditable service forfeited by the withdrawal under ORS
7 238.105 or 238.115.

8 ~~(5)~~*[(6)]* The member may revoke the request for withdrawal of the member account
9 if PERS receives a written request to revoke prior to the earlier of:

10 (a) The date of distribution; or

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

13 ~~(6)~~*[(7)]* If a member withdraws the member account under this rule, membership
14 shall be terminated as of the effective date of withdrawal. Membership rights accrued
15 under ORS chapter 238 prior to the effective date of the withdrawal, including any
16 service rights attributable to employment prior to the effective date of withdrawal,
17 are forfeited.

18 ~~(7)~~*[(8)]* If a member who has withdrawn the member account under this rule returns
19 to employment with any participating employer or an employer in a controlled group
20 with a participating employer prior to the first day of the second calendar month
21 following the month of the separation required under subsection (2)(a) of this rule *[in*
22 *which the member had previously separated from a qualifying position],* the former
23 member must repay to PERS in a single payment the full amount of the lump sum

1 payment attributable to the withdrawal within 30 days following the effective date
2 of employment. Upon receipt by PERS of repayment under this section, the
3 withdrawal of the former member is cancelled. Membership and service rights
4 forfeited under section (6) of this rule are revived as of the effective date of
5 withdrawal. The repayment amount will be credited pro rata to the accounts from
6 which the withdrawal amount was derived. *[PERS shall notify the employer that the*
7 *employer shall be obligated to the Fund for the full amount of the member's withdrawal*
8 *not repaid, unless:*

9 *(a) The participating employer immediately terminates the employment upon*
10 *discovering or being notified of the member's failure to repay the withdrawn*
11 *contributions, and does not reemploy the member until the requirements of section (2) of*
12 *this rule are satisfied;*

13 *(b) The member repays the withdrawn amount in full within 30 days following the*
14 *effective date of such employment; or*

15 *(c) The full amount of the withdrawal is repaid by the participating employer from*
16 *payroll deductions from the member's monthly salary. Such payroll deductions shall be in*
17 *amounts necessary to effect the repayment within one calendar year, unless a longer*
18 *period is required so that monthly payroll deductions for this purpose do not exceed 25*
19 *percent of the member's net salary.]*

20 (8)[(9)] If the former member fails to repay as provided in section (7), PERS
21 shall take all reasonable steps to recover the repayment amount due. Until a single
22 payment for the repayment amount due is received by PERS, the former member
23 will be excluded from participation in the system pursuant to ORS 238.618. Upon

1 receipt by PERS of repayment under this section, the withdrawal of the former
2 member is cancelled. Membership and service rights forfeited under section (6) of
3 this rule are restored effective the first day of the month following the date of the
4 repayment. The repayment amount will be credited pro rata to the accounts from
5 which the withdrawal amount was derived effective the first day of the month
6 following the date of the repayment. *[If a participating employer employs a member*
7 *after the member's effective date of withdrawal and fails to notify the system of the*
8 *employment the employer shall hold PERS harmless for any actual or perceived loss of*
9 *benefits as a result of the withdrawal.]*

10 Stat. Auth.: ORS 238.650

11 Stats. Implemented: ORS 238.265 & OL 2003 Ch. 276 | 2



Oregon

Theodore R. Kulongoski, Governor

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February 16, 2007

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Administrator, PPLAD
SUBJECT: OAR 459-075-0020, *Withdrawal from OPSRP Pension Program* and OAR 459-080-0020, *Withdrawal of Individual Accounts*

MEETING DATE	2/16/07
AGENDA ITEM	C.4. OPSRP Withdrawals

Originally, these rules were to be presented for adoption at this meeting. Staff's intention in developing these rules was to parallel where possible the withdrawal rule from the PERS Chapter 238 Program. That existing rule is being noticed for rulemaking to align it with the provisions of these OPSRP-related rules. Public comment has supported making the withdrawal processes as parallel as possible.

Also, the PERS Board put forward a legislative concept that has become HB 2281, which requires a member who withdraws from one program to withdraw from them all. Again, the goal in that legislation is parallel treatment across all programs.

With the ultimate goal of having these administrative rules coordinate with the legislative changes and also parallel each other, staff is recommending that final consideration of the OPSRP Pension and IAP withdrawal rules be postponed until the legislative process is completed on HB 2281 and the coordinating changes can be simultaneously made on the PERS Chapter 238 Program rule that is just now entering rulemaking.

Staff will return with rule provisions and modifications once the legislative process is complete and after giving due consideration to any changes to the statutes that affect these rules. At this point, we would expect to return in late summer with proposed adoption of withdrawal related rules across all three programs.



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February 16, 2007

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Administrator, PPLAD
SUBJECT: Adoption of Power of Attorney Rule Modifications
OAR 459-005-0100, *Definitions--Power of Attorney*
OAR 459-005-0110, *Designation of Power of Attorney*
OAR 459-005-0120, *Effective Date of Power of Attorney (Repealed)*
OAR 459-005-0130, *Revocation of Power of Attorney*
OAR 459-005-0140, *Permissible Actions Under A Power of Attorney*
OAR 459-005-0150, *Effective Date of Power of Attorney Rules*

MEETING DATE	2/16/07
AGENDA ITEM	C.5. Powers of Attorney

OVERVIEW

- Action: Adopt permanent rule modifications to Division 5 Power of Attorney rules.
- Reasons:
 1. Expand Power of Attorney rules to explicitly cover other types of fiduciaries appointed to act on behalf of members, such as guardians and conservators; and
 2. Streamline and simplify the associated processes for stakeholders.
- Subject: Rules governing PERS' interaction with a member's fiduciary.
- Policy Issues: Should the agency accept non-notarized documents to support a person's authority to act as a member's fiduciary?

SUMMARY OF RULES AND POLICY ISSUE

OAR 459-005-0100 starts a series of rules regarding powers of attorney and how a member's attorney-in-fact conducts business on behalf of a PERS member. In this context, "member" is defined broadly to also include alternate payees and beneficiaries.

Generally, the proposed modifications expand the rules to explicitly cover other types of fiduciaries appointed to act on behalf of members, such as guardians and conservators. Some changes would also eliminate prior provisions of the rules to streamline these transactions, such as removing the requirement that a power of attorney be notarized. There have been no modifications to the proposed rules since notice.

The most significant change from current practices that these rule modifications would adopt is removing the requirement that the power of attorney be notarized. Oregon law does not impose this requirement for powers of attorney generally. Expanding this rule to cover other types of fiduciaries makes requiring a notary problematic, as those roles usually arise from court orders, which don't assume or facilitate a notary. ORS 127.035 limits the liability of a person who reasonably relies on a power of attorney, so adding

the notary requirement does not add much protection to the agency's decision. Lastly, and most importantly, requiring these fiduciary documents to be notarized has added significant confusion and complication to the process for members, especially since we are adding a step that is not required by law, so standard forms and procedures for adding a fiduciary are not sufficient under our current rules.

Staff does recognize that requiring a notary may, in normal circumstances, bolster the probable authenticity of the signers to the document. If someone were to perpetrate a fraud on PERS, however, adding a fraudulent notary stamp is not a significant impediment. On balance, therefore, staff recommends deleting the requirement that fiduciary documents be notarized to better meet member expectations and facilitate their transactions, given the limited protection that added process provides.

LEGAL REVIEW

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

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking was held on November 28, 2006 at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended on December 22, 2006 at 5:00 p.m. and no public comment was received.

IMPACT

Mandatory: No, but the modifications are within the authority granted by statute.

Impact: The modifications conform to state law and do not have a material fiscal or economic impact.

Cost: There are no perceived costs to members, employers, stakeholders or the Fund as a result of the adoption of these rules.

RULEMAKING TIMELINE

- | | |
|-------------------|---|
| October 13, 2006 | Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State. |
| October 20, 2006 | PERS Board notified that staff began the rulemaking process. |
| November 1, 2006 | <i>Oregon Bulletin</i> published the Notice. |
| November 28, 2006 | Rulemaking hearing held at 2:00 p.m. in Tigard. |
| December 22, 2006 | Public comment period ended at 5:00 p.m. |
| February 16, 2007 | Board may adopt the permanent rule modifications, including any amendments warranted by public comment or further research. |

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt permanent rule modifications to OAR 459-005-0100 through 459-005-0150, as presented.”
2. Take no action and direct staff to make changes to the rules or take other action.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reasons:
 1. Expand Power of Attorney rules to explicitly cover other types of fiduciaries appointed to act on behalf of members, such as guardians and conservators; and
 2. Streamline these transactions and simplify the process for stakeholders.

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

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 5 – ADMINISTRATION**

1 **459-005-0100**

2 **Definitions -- *[Power of Attorney]* Member's Fiduciary**

3 *[The words and phrases used in OAR 459-005-0100 to 459-005-0160, shall have the*
4 *same meaning given them in ORS Chapter 238. Specific and additional terms are defined*
5 *as follows unless context requires otherwise:*

6 *(1) "PERS" shall have the same meaning as the Public Employees Retirement System*
7 *in ORS 238.600.]*

8 **(1) "Fiduciary Document" means the court order appointing a person as the**
9 **member's fiduciary or the signed power of attorney by the member appointing the**
10 **member's fiduciary as their attorney-in-fact.**

11 (2) For the purposes of OAR 459-005-0100 to 459-005-0160, the term "member"
12 means a PERS member as defined in ORS 238.005(7), the beneficiary of a PERS
13 member, an alternate payee as defined in 238.465, or the beneficiary of an alternate
14 payee.

15 **(3) "Member's Fiduciary" means a guardian or conservator appointed under**
16 **Oregon law, any person acting as an attorney-in-fact for a member under a power**
17 **of attorney, or any other person appointed by a court to assume financial**
18 **responsibility with respect to a member.**

19 *[(3) "Power of Attorney Document" means a document creating and expressly*
20 *granting certain powers of attorney from a member to another named individual(s) or*
21 *agent(s) such that under the terms and conditions set forth in the document, the named*
22 *individual(s) or agent(s) may act on behalf of and in the name of the member.*

1 *(4) "Attorney-in-Fact" means one or more named individuals appointed by a*
2 *member in a Power of Attorney Document to act on behalf of and in the name of the*
3 *member under the terms and conditions set forth in the Power of Attorney Document. If*
4 *more than one individual is appointed Attorney-in-Fact, the document shall stipulate*
5 *whether the individuals must act collectively or may act separately.*

6 *(5) "Alternate Attorney-in-Fact" means a named individual appointed by a member*
7 *to serve as an Attorney-in-Fact, under certain terms and conditions set forth in the Power*
8 *of Attorney Document, in the event another individual also appointed by the member is*
9 *unable or unwilling to perform as Attorney-in-Fact in the first instance.*

10 *(6) "Substitute Attorney-in-Fact" means a named individual appointed by an*
11 *Attorney-in-Fact under authority contained in the Power of Attorney Document to serve*
12 *in place of the Attorney-in-Fact.*

13 *(7) "Agent" means a person or entity entrusted with another's business and acting*
14 *under a power of attorney.]*

15 Stat. Auth.: ORS 238.650

16 Stats. Implemented: ORS 238.005 - ORS 238.715

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 5 – ADMINISTRATION**

1 **459-005-0110**

2 ***[Designation of Power of Attorney]* Fiduciary Document Requirements**

3 (1) No person may act as *[an Attorney-in-Fact, or an agent by a power of attorney,*
4 *for a member of PERS]* **a member's fiduciary** with respect to PERS matters unless the
5 *[Power of Attorney]* **Fiduciary** Document **naming or** appointing such person(s) *[or*
6 *agent(s)]* meets the requirements set forth in this rule.

7 (2) The *[Power of Attorney]* **Fiduciary** Document shall be in written form and may
8 be either on forms furnished by PERS or in a format approved by PERS. The *[Power of*
9 *Attorney]* **Fiduciary** Document shall contain express language **appointing the**
10 **member's fiduciary as guardian or conservator or otherwise to act on behalf of the**
11 **member either**:

12 *(a) Granting the member's power of attorney]* with respect to the member's financial
13 matters generally *[to a named individual(s) or agent(s);]* or

14 *[(b) Granting the member's power of attorney]* with respect to the member's PERS
15 benefits *[to a named individual(s) or agents(s)]* **specifically**.

16 **(3) At a minimum, the Fiduciary Document must contain:**

17 **(a) The signature of the member or other authority appointing or designating**
18 **the member's fiduciary.**

19 **(b) The signature and address of the member's fiduciary. This requirement can**
20 **also be satisfied if the Fiduciary Document is accompanied by another document**
21 **containing the signature and address of the member's fiduciary.**

1 (4) A Fiduciary Document must be received by PERS before the member's
2 fiduciary will be allowed to conduct any transactions on behalf of the member and
3 must otherwise meet the requirements set forth in OAR 459-005-0110 or 459-005-
4 0130, as applicable.

5 (5) If a Fiduciary Document was executed by the member over ten years prior
6 to the date such document is filed with PERS, and there is a request to take any
7 action by the member's fiduciary, the document will be effective with respect to
8 PERS only if the member's fiduciary certifies to PERS, in a form which PERS in its
9 sole discretion deems satisfactory, the continued validity of the fiduciary document.

10 (6) If more than one individual is named or appointed in a Fiduciary Document
11 as the member's fiduciary, the document must stipulate whether the individuals
12 must act together or may act separately.

13 *[(3) Every document granting a power of attorney shall contain:*

14 *(a) The member's notarized signature:*

15 *(A) Notary information must appear on the same page as the member's signature; or*

16 *(B) Notary information is clearly an integral part of the document granting power of*
17 *attorney.*

18 *(b) The signature and address of the Attorney-in-Fact and the Alternate Attorney-in-*
19 *Fact, if any, or an agent. The requirement of this subsection will also be satisfied if the*
20 *document is accompanied by an example signature and address of the Attorney-in-Fact,*
21 *and any Alternate Attorney-in-Fact, or an agent.*

22 *(4) A photocopy of a complete Power of Attorney Document may be filed with PERS,*
23 *if the applicable notary information is clearly legible. PERS may accept original*

1 *documents, and shall not be responsible for the safekeeping or return of any original*
2 *document.*

3 *(5) A member of PERS may designate an Alternate Attorney-in-Fact in the Power of*
4 *Attorney Document. The individual(s) who is to serve as Alternate Attorney-in-Fact must*
5 *be expressly named in the document and the circumstances under which the Alternate*
6 *Attorney-in-Fact may act must be expressly stated. PERS may rely upon an affidavit*
7 *submitted by an Alternate Attorney-in-Fact as conclusive proof of the existence of the*
8 *circumstance that authorizes the Alternate Attorney-in-Fact to act.*

9 *(6) PERS shall not accept a Power of Attorney Document that has a specific*
10 *expiration date. To be acceptable, the Power of Attorney Document must be for an*
11 *indefinite duration.]*

12 Stat. Auth.: ORS 238.650

13 Stats. Implemented: ORS 238.005 - ORS 238.715

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 5 – ADMINISTRATION**

1 ***[459-005-0120***

2 ***Effective Date of Power of Attorney***

3 *(1) A document that grants or revokes a power of attorney will be effective as to*
4 *PERS matters upon receipt by PERS, if the document meets the requirements set forth in*
5 *OAR 459-005-0110 or 459-005-0130, as applicable.*

6 *(2) If the document does not meet the requirements of OAR 459-005-0110 or 459-*
7 *005-0130, as applicable, PERS will attempt to notify a member or Attorney-in-Fact*
8 *within 30 days after receipt of a document that grants or revokes a power of attorney. If*
9 *PERS fails to notify the member that the document does not meet such requirements*
10 *within the period of time set forth in this section, the document shall nevertheless be*
11 *inoperative as to PERS matters.*

12 *(3) If a Power of Attorney Document was executed over ten years prior to the date*
13 *such document is filed with PERS, and there is a request to take any action by the*
14 *Attorney-in-Fact named or provided for in such document, the document will be effective*
15 *with respect to PERS only if the Attorney-in-Fact files an affidavit with PERS, in a form*
16 *which PERS in its sole discretion deems satisfactory, affirming the continued validity of*
17 *the Power of Attorney Document.*

18 *(4) For the purpose of this rule, the term Attorney-in-Fact includes any Alternate or*
19 *Substitute Attorney-in-Fact.*

20 *Stat. Auth.: ORS 238.650*

21 *Stats. Implemented: ORS 238.005 - ORS 238.715]*

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 5 – ADMINISTRATION

1 459-005-0130

2 *[Revocation of Power of Attorney]* Termination of Member’s Fiduciary

3 *[A Power of Attorney Document filed with PERS shall be revoked]* The authority

4 granted a member’s fiduciary will terminate upon the occurrence of the earliest of the

5 following events:

6 (1) A written revocation is filed with PERS containing the *[notarized signature of the]*

7 member’s signature, if the member appointed the member’s fiduciary. *[The notary*

8 *information must be on the same page as the signature of the member. A photocopy of the*

9 *revocation of a power of attorney may be filed with PERS if the notary information is*

10 *clearly legible. PERS may accept an original document, and PERS shall not be responsible*

11 *for the safekeeping or return of any original document;]*

12 (2) A *[Power of Attorney]* Fiduciary Document is filed with PERS which:

13 (a) Bears a date that is later than *[any Power of Attorney]* the Fiduciary Document

14 previously filed with PERS; *[and]*

15 (b) Complies with the requirements set forth in OAR 459-005-0110; and

16 (c) Names a different person as the member’s fiduciary.

17 (3) PERS receives notification of the death of the member.

18 (4) PERS receives notification that the member’s fiduciary has been removed or

19 their authority terminated by the court which originally named or granted authority

20 to the member’s fiduciary, or that action has been taken by a different court.

21 Stat. Auth.: ORS 238.650

22 Stats. Implemented: ORS 238.005 - ORS 238.715

1 *individual as] member's fiduciary that is being granted to the [S]substitute [Attorney-*
2 *in-Fact] member's fiduciary; and*

3 (c) The signature and address of the [S]substitute [Attorney-in-Fact] member's
4 fiduciary.

5 *[(4) A Power of Attorney Document submitted to PERS that meets the requirements*
6 *of OAR 459-005-0110 shall be conclusive evidence of the intent of the member to grant a*
7 *power of attorney in accordance with the express provisions of the submitted Power of*
8 *Attorney Document, subject to OAR 459-005-0120(3).*

9 *(a) PERS shall be entitled to rely upon a submitted Power of Attorney Document*
10 *until it is revoked as provided in OAR 459-005-0130, without liability of PERS for*
11 *actions taken by PERS at the request of the designated Attorney-in-Fact, or Substitute*
12 *Attorney-in-Fact, if applicable, under such unrevoked Power of Attorney Document.*

13 *(b) PERS shall also be entitled to rely upon a submitted Power of Attorney*
14 *Document after the death of the member until PERS receives notice of the member's*
15 *death. PERS shall have no liability for action taken by it at the request of the Attorney-in-*
16 *Fact or Substitute Attorney-in-Fact after the member's death and before PERS has been*
17 *notified of the member's death.]*

18 Stat. Auth.: ORS 238.650

19 Stats. Implemented: ORS 238.005 - ORS 238.715

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 5 – ADMINISTRATION**

1 **459-005-0140**

2 **Permissible Actions Under A *[Power of Attorney]* Fiduciary Document**

3 (1) After receipt by PERS of a *[Power of Attorney]* Fiduciary Document meeting
4 the requirements set forth in OAR 459-005-0110, *[and 459-005-0120, both]* the
5 member's fiduciary and the member (unless the member's fiduciary is a guardian or
6 conservator) *[designated Attorney-in-Fact]* may execute any document required by
7 PERS or perform any PERS related business that falls within the scope of the powers
8 granted by the *[member in the Power of Attorney]* Fiduciary Document.

9 *[(2) Unless otherwise limited in a Power of Attorney Document, the document shall*
10 *be construed as granting the power:*

11 *(a) To designate beneficiaries;*

12 *(b) To select payment options; or*

13 *(c) To make health insurance coverage decisions.]*

14 *[(3)](2)* If the power to appoint a substitute *[Attorney-in-Fact]* member's fiduciary
15 is provided in the Fiduciary Document and is subsequently exercised by *[an*
16 *Attorney-in-Fact]* the member's fiduciary, such appointment must be evidenced by a
17 written document submitted to PERS containing:

18 (a) The member's fiduciary's *[notarized]* signature *[of the Attorney-in-Fact, which*
19 *notary information must appear on the same page as the Attorney-in Fact's signature];*

20 (b) An *[Words]* express~~ly~~ granting of all, or *[a]* whatever portion of, the powers
21 held by the *[Attorney-in-Fact under the Power of Attorney Document to a named*

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 005 – ADMINISTRATION**

1 **459-005-0150**

2 **Effective Date of *[Power of Attorney]* Fiduciary Document Rules**

3 OAR 459-005-0100 to 459-005-0140 shall be effective on the date they are adopted
4 by the Public Employees Retirement Board (Board), and shall govern any documents
5 submitted to PERS on or after the date these rules are adopted by the Board for the
6 purpose of effecting the appointment of *[an Attorney-in-Fact]* a member’s fiduciary or
7 revoking a *[power of attorney]* Fiduciary Document after such date, or until amended or
8 repealed by the Board.

9 Stat. Auth.: ORS 238.650

10 Stats. Implemented: ORS 238.005 - ORS 238.715



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February 16, 2007

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Administrator, PPLAD
SUBJECT: Adoption of Temporary Rules and Notice of Permanent Rulemaking for Direct Rollover Rules
OAR 459-005-0591, *Definitions – Direct Rollovers*
OAR 459-005-0595, *Limitations – Direct Rollovers*
OAR 459-005-0599, *Election Procedures – Direct Rollovers*
OAR 459-050-0090, *Direct Rollover (OSGP)*

MEETING DATE	2/16/07
AGENDA ITEM	C.6. Rollover Rules

OVERVIEW

- Action: Adopt temporary rule modifications to permanent rules OAR 459-005-0591, *Definitions – Direct Rollovers*, OAR 459-005-0595, *Limitations – Direct Rollovers*, OAR 459-005-0599, *Election Procedures – Direct Rollovers*, and OAR 459-050-0090, *Direct Rollovers* (for OSGP).
- Reason: The recent federal Pension Protection Act of 2006 changed the law on beneficiaries who are eligible to roll over benefit payments. In compliance with our statute's direction to adopt rules to conform the plan to federal tax laws, these rules were developed to implement the changes directed by the new federal law.
- Subject: Beneficiaries eligible to roll over PERS Plan benefit payments.
- Policy Issue: Should PERS offer non-spouse beneficiaries the option of rolling lump sum benefits to an individual account or annuity?

BACKGROUND

On August 17, 2006, the federal Pension Protection Act of 2006 was signed into law. A number of provisions in the new law affect the administration of PERS. One provision, which went into effect January 1, 2007, allows plans to offer non-spouse beneficiaries the option of directing rollover eligible distributions to an individual retirement account or annuity in a trustee-to-trustee transfer. This change occasioned the need to update our administrative rules. Two other changes from the federal law, also effective January 1, 2007, are reflected in these rule modifications. One provision extends the time for providing the federal tax information disclosure from 90 days to 180 days. Another allows distributees to roll after-tax dollars to certain types of plans that will accept and account for the after-tax dollars separately.

POLICY ISSUE

Should PERS offer non-spouse beneficiaries the option of rolling lump sum benefits to an individual retirement account or annuity?

The federal law changes added a category of persons, non-spouse beneficiaries, to those allowed to request that an eligible distribution from a retirement plan be rolled over to an individual retirement account or annuity (IRA). Providing this option gives these beneficiaries more flexibility in deciding how to receive a rollover-eligible distribution.

There is only a minimal administrative burden for PERS to allow non-spouse beneficiaries to roll their distributions, as the procedures for processing rollovers are already in place. Staff just needs to be educated that this option is available and forms and procedures changed to conform accordingly.

SUMMARY OF MODIFICATIONS TO RULES

The proposed rule modifications affect a series of rules relating to direct rollovers. Generally, the modifications are to update provisions affected by the federal law changes.

The following substantive modifications have been made, shown as tracked changes in the attached rules:

OAR 459-005-0591:

In Section (3), the definition of “distributee” has been updated to include non-spouse beneficiaries who are designated beneficiaries under the new federal law.

In Section (7), the effective date of the rule was changed to January 1, 2007, to coincide with the effective date of the relevant provision of the new federal law.

OAR 459-005-0595:

Due to the complexity of the rule, the rule was restructured and sections redesignated for clarity.

In Subsection (2)(a), a text reference was edited to reflect the change in the rule structure and for clarity.

In paragraph (2)(b)(B), the words “an annuity contract described in Code Section 403(b)” and “or qualified defined benefit” were added to reflect changes in federal law.

Subsection (2)(b) was re-designated to reflect that the requirement to separately account for amounts transferred does apply to 403(b), defined contribution, and defined benefit plans and does not apply to individual retirement accounts or annuities.

In Section (3), the effective date of the rule was changed to January 1, 2007 to coincide with the effective date of the relevant provisions of the new federal law.

OAR 459-005-0599:

In section (2), “90” was changed to “180” to reflect the change in federal law.

In paragraph (3)(a)(A) and (B), “Member’s” was changed to “Distributee’s” for clarity.

Paragraph (3)(a)(F) was added to establish that non-spouse rollovers are directed to the proper type of account.

In Subsection (3)(b), the words “including whether or not the recipient will accept, and account for separately, after tax dollars” were added for clarity.

In Section (5), “90” was changed to “180” to reflect the change in federal law.

In Section (7), the words “to the recipient plan” were added for clarity.

OAR 459-050-0090:

Paragraph (1)(c)(E) was added to include non-spouse beneficiaries in the definition of “distributee” under the new federal law.

Subsection (2)(a) was edited for clarity.

Paragraph (2)(b)(B) was edited for clarity.

Paragraph (2)(c)(F) was added to establish how non-spouse rollovers are directed to the proper type of account.

Subsection (3)(a) was edited for clarity.

JUSTIFICATION FOR TEMPORARY RULES

PERS’ statutes generally provide the Board with the authority to make rule modifications that bring the plan into conformance with changes in federal laws and rules. These provisions became effective January 1, 2007; this is the Board’s first opportunity to adopt conforming rule modifications. Because the law’s effective date has passed, we are seeking adoption of temporary rules to operate until permanent rulemaking can be completed to incorporate these changes.

LEGAL REVIEW

The attached draft has been submitted to the Department of Justice for legal review. If there are any changes to the temporary rules before adoption, we will inform the PERS Board. Otherwise, any comments or changes will be incorporated before the permanent rule modifications are presented for adoption.

PUBLIC COMMENT AND HEARING

Will be part of permanent rulemaking.

IMPACT

Mandatory: Yes, some of these updates are required by federal law. Others, for example, allowing non-spouses to roll distributions, are not required but the rule modification is within the authority granted by statute.

Impact: Extending the federal tax information notice to 180 days eases an administrative burden and procedures that already exist for trustee-to-trustee transfers (rollovers).

Cost: There is no substantial cost to stakeholders or the Fund as a result of the adoption of these rules. Members will bear no cost from these rules. Employers will not bear any additional cost from these rules. There will be a small administrative cost to implement

these rules in the form of system programming and operational form changes. There is no direct cost to the Fund other than the administrative expenses associated with incorporating these provisions into PERS plan operations.

RULEMAKING TIMELINE

February 16, 2007	PERS Board may adopt the proposed temporary rules and direct PERS staff to file a Notice of Proposed Rulemaking.
March 15, 2007	Staff begins the rulemaking process. Notice of Rulemaking filed with the Secretary of State. Notice to be mailed to legislators, interested parties and stakeholders. Public comment period begins.
April 1, 2007	<i>Oregon Bulletin</i> to publish the Notice.
April 24, 2007	Rulemaking hearing to be held at PERS headquarters in Tigard.
May 18, 2007	First reading of the proposed rules.
May 25, 2007	Public comment period ends at 5:00 PM
June 15, 2007	Permanent rule to be presented to the PERS Board for adoption, including any changes resulting from public comment or reviews by staff or legal counsel.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt temporary rule modifications to permanent rules OAR 459-005-0591, *Definitions – Direct Rollovers*, OAR 459-005-0595, *Limitations – Direct Rollovers*, OAR 459-005-0599, *Election Procedures – Direct Rollovers*, and OAR 459-050-0090, *Direct Rollover*, as presented.”
2. Direct staff to make other changes to the rules or explore other options.

STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

- Reason: Adoption of these rule modifications would fulfill the agency’s obligation to administer the PERS programs in compliance with federal tax law.

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

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 5 – ADMINISTRATION**

1 **459-005-0591**

2 **Definitions -- Direct Rollovers**

3 As used in OAR 459-005-0590 to 459-005-0599 the following words and phrases
4 shall have the following meanings:

5 (1) "Code" means the Internal Revenue Code of 1986, as amended.

6 (2) A "direct rollover" means the payment of an eligible rollover distribution by
7 PERS to an eligible retirement plan specified by the distributee.

8 (3) A "distributee" includes a PERS member, the surviving spouse of a deceased
9 PERS member, a non-spouse beneficiary of the member that is a designated
10 beneficiary under IRC 402(c)(11), and the current or former spouse of a PERS member
11 who is the alternate payee under a domestic relations order that satisfies the requirements
12 of ORS 238.465 and the rules adopted thereunder.

13 (4) An "eligible retirement plan" means any one of the following:

14 (a) An individual retirement account or annuity described in Code Section 408(a) or
15 (b), but shall not include a Roth IRA as described in Code Section 408A;

16 (b) An annuity plan described in Code Section 403(a) that accepts the distributee's
17 eligible rollover distribution;

18 (c) A qualified trust described in Code Section 401(a) that accepts the distributee's
19 eligible rollover distribution;

20 (d) An eligible deferred compensation plan described in Code Section 457(b) which
21 is maintained by an eligible employer described in Code Section 457(e)(1)(A) and
22 accepts the distributee's eligible rollover distribution.

1 (e) An annuity contract described in Code Section 403(b) that accepts the
2 distributee's eligible rollover distribution.

3 (f) For the purposes of ORS 237.650(3), the individual employee account maintained
4 for a member under the Individual Account Program as set forth under ORS
5 238A.350(2); and

6 (g) For the purposes of ORS 237.655(2), the state deferred compensation program.

7 (5) An "eligible rollover distribution" means any distribution of all or any portion of
8 a distributee's PERS benefit, except that an eligible rollover distribution shall not include:

9 (a) Any distribution that is one of a series of substantially equal periodic payment
10 made no less frequently than annually for the life (or life expectancy) of the distributee or
11 the joint lives (or life expectancies) of the distributee and the distributee's designated
12 beneficiary, or for a specified period of ten years or more;

13 (b) Any distribution to the extent that it is a required or minimum distribution under
14 Code Section 401(a)(9).

15 (6) A "recipient plan" means an eligible retirement plan that is designated by a
16 distributee to receive a direct rollover.

17 (7) The provisions of this rule are effective on January 1, ~~2004~~ 2007.

18 Stat. Auth.: ORS 238.650

19 Stats. Implemented: ORS 238.005 - 238.715

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 5 – ADMINISTRATION**

1 **459-005-0595**

2 **Limitations -- Direct Rollovers**

3 **(1)** Notwithstanding any provision to the contrary in OAR 459-005-0590 to 459-
4 005-0599, a distributee's right to elect a direct rollover is subject to the following
5 limitations:

6 **~~[(1)]~~ (a)** A distributee may elect to have an eligible rollover distribution paid in a
7 direct rollover to only one eligible retirement plan.

8 **~~[(2)]~~ (b)** A distributee may elect a direct rollover only when his or her eligible
9 rollover distribution(s) during a calendar year is reasonably expected to total \$200 or
10 more.

11 **~~[(3)]~~ (c)** A distributee may elect to have part of an eligible rollover distribution be
12 paid directly to the distributee, and to have part of the distribution paid as a direct
13 rollover only if the member elects to have at least \$500 transferred to the eligible
14 retirement plan.

15 **~~[(4)]~~ (2)(a)** The provisions of **subsection (1)(a)** apply to any portion of a
16 distribution, including after-tax employee contributions that are not includible in gross
17 income.

18 **(b)** Any portion of a distribution that consists of after-tax employee contributions
19 that are not includible in gross income may be transferred only to:

20 **(A)** An individual retirement account or annuity described in Code Section 408(a) or
21 (b), or;

1 **(B) An annuity contract described in Code Section 403(b) or** *[to]* a qualified
2 defined contribution **or defined benefit** plan that agrees to separately account for the
3 amounts transferred, including separate accounting for the pre-tax and post-tax amounts.

4 **(c)** The amount transferred shall be treated as consisting first of the portion of the
5 distribution that is includible in gross income, determined without regard to Code Section
6 402(c)(1).

7 *[(5)]* **(3)** The provisions of this rule are effective on January 1, *[2004]* **2007**.

8 Stat. Auth.: ORS 238.650

9 Stats. Implemented: ORS 238.005 - 238.715

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 5 – ADMINISTRATION**

1 **459-005-0599**

2 **Election Procedures -- Direct Rollovers**

3 (1) PERS staff shall provide each distributee with a written explanation of the direct
4 rollover rules for any eligible distribution, as required by Code Section 402(f). In addition
5 to the general explanation required by Code Section 402(f), the written explanation shall
6 include the following information:

7 (a) A statement that the distributee has the right to consider the decision of whether
8 or not to elect a direct rollover for at least 30 days after the notice is provided;

9 (b) An explanation of the default rule set forth in section (5) of this rule;

10 (c) An explanation of the notice and election rules for periodic payments that are
11 eligible rollover distributions.

12 (2) Except as otherwise provided in sections (4) and (6) of this rule, an eligible
13 rollover distribution shall not be paid, either to the distributee or to a recipient plan, less
14 than 30 days or more than [90] 180 days after the distributee has been provided with the
15 written explanation described in section (1) of this rule.

16 (3)(a) Any direct rollover election shall be in writing and must be signed by the
17 distributee or by his or her authorized representative pursuant to a valid power of attorney
18 as described in OAR 459-005-0100 to 459-005-0140. The direct rollover election may be
19 on forms furnished by PERS, or on forms submitted by recipient plan which shall
20 include:

21 (A) [Member's] Distributee's full name;

22 (B) [Member's] Distributee's social security number;

1 (C) Percentage of amount eligible for transfer (whole percent), or the dollar amount
2 (in whole dollars);

3 (D) The distributee's account number with recipient plan, if available;

4 (E) Name and complete mailing address of recipient plan; and

5 (F) If the distributee is a non-spouse beneficiary of the member, the title of the
6 recipient IRA account.

7 (b) The election shall include or be accompanied by a statement by the recipient
8 plan's plan administrator that the plan will accept the direct rollover for the benefit of the
9 distributee, including whether or not the recipient plan will accept, and account for
10 separately, after tax dollars.

11 (4) If a distributee affirmatively elects a distribution after having received the written
12 election described in section (1) of this rule, PERS may make the distribution even if the
13 initial 30-day period described in section (2) of this rule has not expired.

14 (5) If a distributee fails to affirmatively elect to make or not to make a direct rollover
15 within at least 30 and no more than ~~90~~ 180 days after notice is provided as described in
16 section (1) of this rule, PERS shall pay the eligible rollover distribution directly to the
17 distributee.

18 (6) Any series of payments that are eligible rollover distributions shall be governed
19 by the provisions of sections (1), (2), (3), (4), and (5) of this rule for each payment made.

20 (7) For the purposes of this rule, "effective date of payment" means:

21 (a) The date inscribed on check or warrant; or

22 (b) The date of an electronic transfer/transaction to the recipient plan.

23 Stat. Auth.: ORS 238.650

24 Stats. Implemented: ORS 238.005 - 238.715

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 5 – ADMINISTRATION**

1 **459-050-0090**

2 **Direct Rollover**

3 The purpose of this rule is to establish the criteria and process for a direct rollover (a
4 transfer made from trustee to trustee) by the Deferred Compensation Program to an
5 eligible retirement plan and to establish the criteria and process for the Deferred
6 Compensation Program to accept an eligible rollover distribution from another eligible
7 retirement plan. This rule shall apply to any direct rollover distribution received by the
8 Deferred Compensation Program on behalf of a participant and any request for
9 distribution from a Deferred Compensation Program account processed on or after
10 January 1, 2002.

11 (1) Definitions. The following definitions apply for the purpose of this rule:

12 (a) "Code" means the Internal Revenue Code of 1986, as amended.

13 (b) "Direct Rollover" means:

14 (A) The payment of an eligible rollover distribution by the Deferred Compensation Plan
15 to an eligible retirement plan specified by the distributee; or

16 (B) The payment of an eligible rollover distribution by an eligible retirement plan to the
17 Deferred Compensation Program.

18 (c) "Distributee" means:

19 (A) A Deferred Compensation Plan participant who has a severance of employment;

20 (B) A Deferred Compensation Plan participant who is approved for a de minimis
21 distribution under OAR 459-050-0075(1);

22 (C) The surviving spouse of a deceased participant; *[or]*

1 (D) The spouse or former spouse who is the alternate payee under a domestic relations
2 order that satisfies the requirements of ORS 243.507 and OAR 459-050-0200 to 459-050-
3 0250; or

4 (E) The non-spouse beneficiary of a deceased participant who is a designated
5 beneficiary under IRC 402(c)(11).

6 (d) "Distributing Plan" means an eligible retirement plan that is designated to distribute a
7 direct rollover to another eligible plan (recipient plan).

8 (e) "Eligible Retirement Plan" means any one of the following that accepts the
9 distributee's eligible rollover distribution:

10 (A) An individual retirement account or annuity described in Code Section 408(a) or (b),
11 but shall not include a Roth IRA as described in Code Section 408(A);

12 (B) An annuity plan described in Code Section 403(a);

13 (C) An annuity contract described in Code Section 403(b);

14 (D) A qualified trust described in Code Section 401(a);

15 (E) An eligible deferred compensation plan described in Code Section 457(b) that is
16 maintained by a state, political subdivision of a state, or any agency or instrumentality of
17 a state or political subdivision of a state; or

18 (F) A plan described in Code Section 401(k).

19 (f) "Eligible Rollover Distribution" means a distribution of all or a portion of a
20 distributee's Deferred Compensation account. An eligible rollover distribution shall not
21 include:

22 (A) A distribution that is one of a series of substantially equal periodic payments made no
23 less frequently than annually for the life (or life expectancy) of the distributee or the joint

1 lives (or life expectancies) of the distributee and the distributee's designated beneficiary,
2 or for a specified period of ten years or more;

3 (B) A distribution that is a required or minimum distribution under Code Section
4 401(a)(9);

5 (C) An amount that is distributed due to an unforeseen emergency under OAR 459-050-
6 0075(2).

7 (g) "Recipient Plan" means an eligible retirement plan that is designated by a distributee
8 to receive a direct rollover.

9 (2) Direct rollover to an eligible retirement plan. The direct rollover of an eligible
10 rollover distribution by the Deferred Compensation Program to an eligible retirement
11 plan shall be interpreted and administered in accordance with Code Section 457(d)(1)(C)
12 and all applicable regulations. A distributee may elect to have an eligible rollover
13 distribution paid by the Deferred Compensation Program directly to an eligible retirement
14 plan specified by the distributee.

15 (a) The Deferred Compensation Program staff shall provide each distributee with a
16 written explanation of the direct rollover rules for an eligible distribution, as required by
17 [the](#) Internal Revenue Code.

18 (b) A distributee's right to elect a direct rollover is subject to the following limitations:

19 (A) A distributee may elect to have an eligible rollover distribution paid as a direct
20 rollover to only one eligible retirement plan.

21 (B) A distributee may elect to have part of an eligible rollover distribution be paid
22 directly to the distributee, and to have part of the distribution paid as a direct rollover

1 only if the *[member]* distributee elects to have at least \$500 transferred to the eligible
2 retirement plan.

3 (c) A direct rollover election shall be in writing and must be signed by the distributee or
4 by his or her authorized representative pursuant to a valid power of attorney. The direct
5 rollover election may be on forms furnished by the Deferred Compensation Program, or
6 on forms submitted by recipient plan which must include:

7 (A) The distributee's full name;

8 (B) The distributee's social security number;

9 (C) The distributee's account number with recipient plan, if available; *[and]*

10 (D) The name and complete mailing address of recipient plan; and

11 (E) If the distributee is a non-spouse beneficiary of the member, the title of the
12 recipient IRA account.

13 (d) The distributee is responsible for determining that the recipient plan's administrator
14 will accept the direct rollover for the benefit of the distributee. Any taxes or penalties that
15 are the result of the distributee's failure to ascertain that the recipient plan will accept the
16 direct rollover shall be the sole liability of the distributee.

17 (3) Direct rollover from an eligible retirement plan. On or after January 1, 2002, the
18 Deferred Compensation Program shall only accept rollover contributions from
19 participants and direct rollovers of distributions from an eligible retirement plan on behalf
20 of a participant. Section (3) of this rule shall be interpreted and administered in
21 accordance with Code Section 402(c) and all applicable regulations.

1 (a) The Deferred Compensation Program shall only accept pre-tax assets *[from pre-tax*
2 *accounts. Accounts that contain]*. After-tax employee contributions are not eligible for
3 rollover into the Deferred Compensation Program.

4 (A) The Deferred Compensation Program may require that a direct rollover from an
5 eligible deferred compensation plan described in Code Section 457(b) plan include or be
6 accompanied by a statement by the participant's previous employer or the plan
7 administrator that the distribution is eligible for rollover treatment.

8 (B) A direct rollover from an eligible retirement plan other than a Deferred
9 Compensation Plan described in Code Section 457(b) must be an eligible rollover
10 distribution. It is the participant's responsibility to determine that the assets qualify for
11 rollover treatment. Any taxes or penalties that are the result of the participant's failure to
12 ascertain that the distributing plan assets qualify for a direct rollover to a deferred
13 compensation plan described in Code Section 457(b), shall be the sole liability of the
14 distributee.

15 (b) Subject to the requirements of subsections (3)(b)(A) and (B) below, eligible rollover
16 distribution(s) shall be credited to the participant's Deferred Compensation account
17 established pursuant to the Plan and Agreement on file with the Deferred Compensation
18 Program and shall be subject to all the terms and provisions of the Plan and Agreement.
19 Account assets received from the distributing plan will be invested by the Deferred
20 Compensation Plan record keeper in accordance with the terms and conditions of the
21 Deferred Compensation Program according to the asset allocation the participant has
22 established for monthly contributions unless instructed otherwise in writing on forms
23 provided by the Deferred Compensation Program.

- 1 (A) Assets from an eligible deferred compensation plan account described in Code
2 Section 457(b) will be aggregated with the participant's accumulated Deferred
3 Compensation Plan account.
- 4 (B) Assets from an eligible retirement plan other than a Deferred Compensation Plan
5 described in Code Section 457(b) will be segregated into a separate account established
6 by the Deferred Compensation Program for tax purposes only, but not for investment
7 purposes. For investment purposes, the participant's assets are treated as a single account.
8 If a participant changes the allocation of existing assets among investment options within
9 the plan, the transfer or reallocation shall apply to and will occur in all accounts
10 automatically.
- 11 (c) Assets directly rolled over to the Deferred Compensation Program may be subject to
12 the 10 percent penalty on early withdrawal to the extent that the funds directly rolled over
13 are attributable to rollovers from a qualified plan, a 403(b) annuity, or an individual
14 retirement account.
- 15 Stat. Auth.: ORS 243.470
16 Stats. Implemented: ORS 243.401 - 243.507



Oregon

Theodore R. Kulongoski, Governor

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February 16, 2007

TO: Members of the PERS Board
FROM: Dale S. Orr, Coordinator, Actuarial Analysis Section
SUBJECT: 2006 Preliminary Earnings Crediting and Reserving

MEETING DATE	2/16/07
AGENDA ITEM	D.1. Earnings & Reserving

Staff recommends that the Board, at its February 16, 2007 meeting, make its preliminary crediting and reserving decisions for 2006 earnings to comply with the reporting requirements in ORS 238.670(5). This statute requires PERS to submit a preliminary proposal to the appropriate legislative committee 30 days prior to making a final decision on the crediting of any interest or other income.

Once the Board makes its preliminary decisions, staff will prepare and present the required report to the Legislature's Ways and Means Committee (Committee). Any comments received from the Committee will be presented to the Board prior to its final earnings crediting decision on March 30, 2007. A Committee hearing is scheduled for February 19, 2007 to receive the Board's preliminary decision.

This preliminary action and the resulting report to the Legislature do not prohibit the PERS Board from changing its final crediting and reserving decisions, such as if new information becomes available. If the Board makes a significant change from its preliminary decisions, staff will promptly report the Board's actions to the Legislature.

BACKGROUND

There are several components to the Board's preliminary earnings crediting and reserving decisions. Many of these components are articulated in statute or rule. Some components have down-stream effects, such as crediting decisions regarding the Contingency and Capital Preservation Reserves, which determine the amount of earnings remaining to credit to other reserves and accounts. The statutes and rules governing the decisions are briefly summarized below:

- a. Contingency Reserve (Current Balance: \$250.00 million, with \$7.5 million encumbered). In each year that available earnings exceed the assumed rate, ORS 238.670(1) (copy attached) requires the Board to consider funding the Contingency Reserve until the Board determines that the reserve is adequately funded. The Board cannot credit more than 7.5% of that year's earnings to the Contingency Reserve. Moreover, the Contingency Reserve is not credited with its own earnings but, instead, funds are added to the reserve only when the Board directs.

- b. Capital Preservation Reserve (Current Balance: \$0.00 million). This reserve can be used to “offset gains and losses in invested capital” (ORS 238.670(3) (copy attached). The funding of this reserve is at the Board’s discretion. This reserve can also be funded with transfers from the Contingency Reserve.
- c. Tier One Rate Guarantee Reserve (Current Balance: \$981.5 million). This reserve, established under ORS 238.255(1) (copy attached), is to be used to fund crediting of the assumed rate to Tier One member regular accounts. Those accounts may be credited with more than the assumed rate only when this reserve is fully funded with amounts determined by the Board, after consultation with the actuary, to be necessary to ensure a zero balance in the reserve when all Tier One members have retired, and funded to that limit for three consecutive years.
- d. OAR 459-007-0005. This rule (copy attached) sets forth the sequence and summarizes the statutory limitations that form the basis for annual earnings crediting.

POLICY DISCUSSIONS

Contingency and Capital Preservation Reserves:

In 2006, the Board assessed the funding levels and various uses for the Contingency and Capital Preservation Reserves. As a result, the Board deployed all of the funds from the Capital Preservation Reserve and retained \$250 million in the Contingency Reserve. At that time, the Board, through consultation with its actuary, decided that using the Contingency or Capital Preservation Reserves to offset investment losses or stabilize employer rates was not efficient given the structural changes resulting from PERS reform and other available tools and options (e.g. rate collaring). In addition, due to restrictions on the Capital Preservation Reserve, the Board determined that the Contingency Reserve could serve the same purpose as the Capital Preservation Reserve while simultaneously allowing more flexibility in the use of reserved funds. The Board funded the Contingency Reserve at \$250 million to offset potential legal costs, protect against employer insolvencies, and cover other unforeseen costs.

Because preliminary 2006 earnings exceeded the assumed earnings rate, the Board must again consider whether the Contingency Reserve is adequately funded. Staff developed four options, two of which would effectively increase the Contingency Reserve from the level established in last year’s discussions. Charts showing the full impact of each option are attached.

Option 1: No increase. This would leave the Contingency Reserve at the funded level established by the Board in 2006, subject to diminishment from known encumbrances.

Option 2: \$7.5 million increase. This amount represents the anticipated charges against the Contingency Reserve that are expected to be incurred during 2007. These anticipated charges cover member contributions and earnings related to prior year lump sum adjustments under HB 2189 and damages awarded in the Howser duty disability class action litigation settlement. Adding this amount from available earnings to the Contingency Reserve would preserve the \$250 million funding level established by the Board in 2006, should 2007 earnings

be insufficient (i.e., fail to exceed the assumed rate) to allow the Board to top up the reserve after the anticipated charges are incurred.

Option 3: \$250 million increase. This would double the size of the Contingency Reserve to \$500 million, subject to known encumbrances.

Option 4: \$493.2 million increase. This represents crediting the full 7.5% of earnings, the maximum amount that can be placed in the Contingency Reserve from 2006 earnings. This would bring the reserve balance to \$743.2 million, subject to known encumbrances.

A summary of these options is shown as follows:

Reserve Additions	Option 1	Option 2	Option 3	Option 4
Earnings to Contingency Reserve	\$0	\$7.5 million	\$250 million	\$493.2 million
Earnings to Tier One Rate Guarantee Reserve	\$675.5 million	\$674.1 million	\$628.9 million	\$583.5 million
Total Reserve Additions	\$675.5 million	\$681.6 million	\$878.9 million	\$1,076.7 million
Effect by Reserve:				
Contingency Reserve	\$250.0 million	\$257.5 million	\$500.0 million	\$743.2 million
Capital Pres. Reserve	\$ 0.0	\$0.0	\$0.0	\$0.0
Rate Guarantee Res.	\$1,657.0 million	\$1,655.6 million	\$1,610.1 million	\$1,564.4 million
Reserve Totals	\$1,907.0 million	\$1,913.1 million	\$2,110.1 million	\$2,307.6 million

Tier One Rate Guarantee Reserve:

Earnings above the assumed rate from Tier One member Regular Accounts have been credited to this reserve since it was established in the 2003 PERS Reform legislation. Tier One member Regular Accounts cannot be credited from this reserve unless earnings fall below the assumed rate or the reserve's statutorily mandated funding level and three consecutive year duration is met (explained above). In October 2006, the Board directed its actuary to conduct a financial modeling study to assist the Board in determining the appropriate reserve funding level. The actuary will provide its analysis to the Board on March 30, 2007. No further Board action is required at this time.

Strunk Attorney Fees:

The Oregon Supreme Court in the *Strunk* case awarded attorney fees to the plaintiff's attorneys on a common fund theory of recovery. Under that theory, the attorney fees are to be awarded from the fund created by their success on the issues where they prevailed in that case. One of those issues was the restoration of annually crediting at least the assumed rate (currently 8%) to Tier One member Regular Accounts.

Although several issues remain unresolved at this time related to this award, such as the amount of the award in total and how much of it will be attributed to recovered Tier One member Regular Account earnings, at some point the PERS Board may need to reduce the earnings credited below the assumed rate to reflect this recovery.

If an order awarding and allocating fees is received prior to March 30, 2007, the Board may be required to take the fees from Tier One 2006 earnings. If so, Tier One member Regular Accounts will receive less than the assumed earnings rate of eight percent for 2006. If the court order is not received in time to be incorporated into this year's earning crediting, this deduction from the assumed rate will occur in a future year's crediting.

Judge Account Crediting

In previous years, the PERS Board did not assign a distinct crediting rate for judge member accounts. As a practical matter, judge member accounts were credited at the same rate as Tier One member regular accounts.

PERS reform set some parameters on Tier One member regular account crediting, such as the limitations connected to the Rate Guarantee Reserve, that do not apply consistently and comprehensively to judge member accounts. Consequently, staff is recommending that, for calendar year 2006 and forward, the PERS Board declare a distinct crediting rate that will be applied to judge member accounts. Again, generally, this rate will parallel the Tier One member Regular Account rate, but establishing this distinct rate will prompt the consideration of whether those rates should necessarily be parallel in that year's rate setting cycle.

PRELIMINARY EARNINGS CREDITING DECISION

To aid the Board in making its preliminary earnings crediting decision for 2006, staff has prepared a set of recommended actions. These actions are based on the following assumptions and preliminary steps, as outlined in OAR 459-007-0005:

1. The health insurance accounts in the PERS Fund are credited with their actual earnings, less administrative expenses incurred.
2. Employer lump sum payment accounts are credited with their actual earnings based on time on deposit, less administrative expenses as authorized by ORS 238.225(10).
3. Variable Annuity Accounts are credited with their actual earnings, less a proportional charge for administrative expenses. Variable earnings for 2006 are currently estimated at 15.31 percent.
4. Available earnings are net of the agency's administrative expenses, which are to be recovered first from available earnings according to ORS 238.610.

RECOMMENDED 2006 PRELIMINARY EARNINGS CREDITING ACTIONS

Staff recommends the following earnings allocations be adopted preliminarily by the PERS Board:

1. Funding of Contingency Reserve

Credit \$7.5 million to the Contingency Reserve. (Option 2).

2. Judge and Tier One Member Regular Accounts

Credit Judge and Tier One member Regular Accounts with the assumed earnings rate (8%) and credit the remainder of Tier One member regular account earnings to the Tier One Rate Guarantee Reserve.

3. Tier Two Member Regular Accounts, Benefits-In-Force and Employer Reserves

Credit Tier Two member Regular Accounts, Benefits-In-Force Reserve and Employer Reserves evenly with the remaining available earnings attributable to those accounts and reserves.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt the staff’s recommended earnings crediting preliminary allocation for calendar year 2006, subject to final adoption at the March 30, 2007 PERS Board meeting.”
2. Pass a motion to “adopt the staff’s recommended earnings crediting preliminary allocation for calendar year 2006, subject to final adoption at the March 30, 2007 PERS Board meeting, but amending that recommendation as follows:
 - By crediting no dollars to the Contingency Reserve.” (Option 1)
 - By crediting \$250 million dollars to the Contingency Reserve.” (Option 3)
 - By crediting 7.5% of available earnings to the Contingency Reserve.” (Option 4)

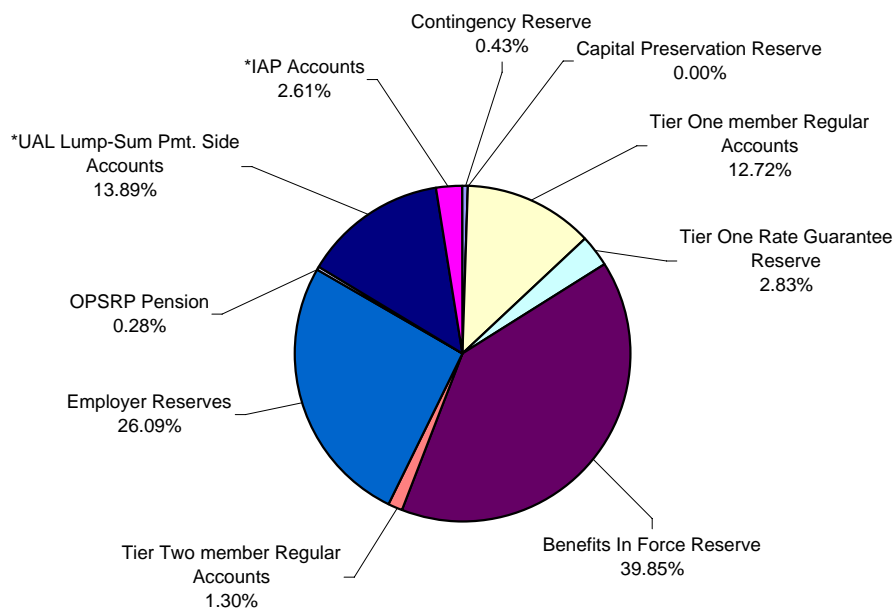
Attachments:

- Option 1: \$0 Increase in the Contingency Reserve**
- Option 2: \$7.5 million Increase in the Contingency Reserve**
- Option 3: \$250 million Increase in the Contingency Reserve**
- Option 4: \$493 million Increase in the Contingency Reserve**
- ORS 238.670 – Reserve Accounts**
- ORS 238.255 – Credits to Regular Accounts**
- OAR 459-007-0005 “Annual Earnings Crediting”**

Option 1
2006 Preliminary Earnings Crediting
No Increase in Contingency or Capital Preservation Reserves
(All dollar amounts in millions)

Regular Account Reserve	Reserves Before Crediting	2006 Preliminary Crediting	Reserves After Crediting	2006 Preliminary Rates
Contingency Reserve	\$250.0	\$0.0	\$250.0	N/A
Capital Preservation Reserve	0.0	0.0	0.0	N/A
Tier One member Regular Accounts	6,888.2	551.1	7,439.3	8.00%
Tier One Rate Guarantee Reserve	981.5	675.5	1,657.0	N/A
Benefits In Force Reserve	20,164.4	3,145.2	23,309.6	15.60%
Tier Two member Regular Accounts	655.5	102.2	757.7	15.60%
Employer Reserves	13,202.1	2,059.2	15,261.3	15.60%
OPSRP Pension	143.1	19.3	162.4	13.49%
*UAL Lump-Sum Pmt. Side Accounts	7,025.4	1,098.5	8,123.9	15.64%
*IAP Accounts	1,327.4	199.4	1,526.8	15.02%
Total	\$50,637.6	\$7,850.4	\$58,488.0	

2006 Estimated Regular Account Reserve Balances
After Est. 2006 Preliminary Crediting



*Informational only. Not affected by Board reserving or crediting decisions.

Option 2

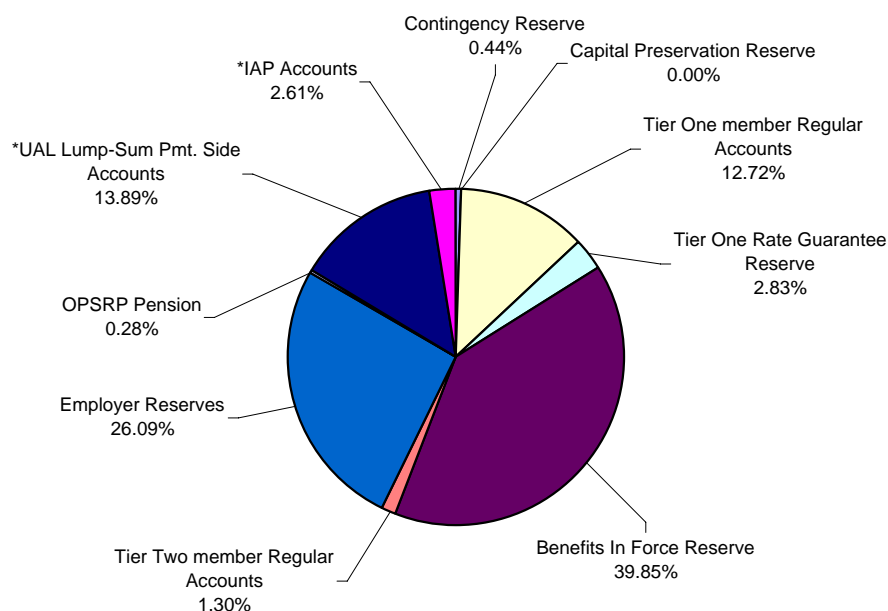
2006 Preliminary Earnings Crediting

\$7.5 Million Additional to Contingency Reserve; No Additional to Capital Preservation Reserve

(All dollar amounts in millions)

Regular Account Reserve	Reserves Before Crediting	2006 Preliminary Crediting	Reserves After Crediting	2006 Preliminary Rates
Contingency Reserve	\$250.0	\$7.5	\$257.5	N/A
Capital Preservation Reserve	0.0	0.0	0.0	N/A
Tier One member Regular Accounts	6,888.2	551.1	7,439.3	8.00%
Tier One Rate Guarantee Reserve	981.5	674.1	1,655.6	N/A
Benefits In Force Reserve	20,164.4	3,141.6	23,306.0	15.58%
Tier Two member Regular Accounts	655.5	102.1	757.6	15.58%
Employer Reserves	13,202.1	2,056.9	15,259.0	15.58%
OPSRP Pension	143.1	19.2	162.3	13.42%
*UAL Lump-Sum Pmt. Side Accounts	7,025.4	1,098.5	8,123.9	15.64%
*IAP Accounts	1,327.4	199.4	1,526.8	15.02%
Total	\$50,637.6	\$7,850.4	\$58,488.0	

**2006 Estimated Regular Account Reserve Balances
After Est. 2006 Preliminary Crediting**



*Informational only. Not affected by Board reserving or crediting decisions.

Option 3

2006 Preliminary Earnings Crediting

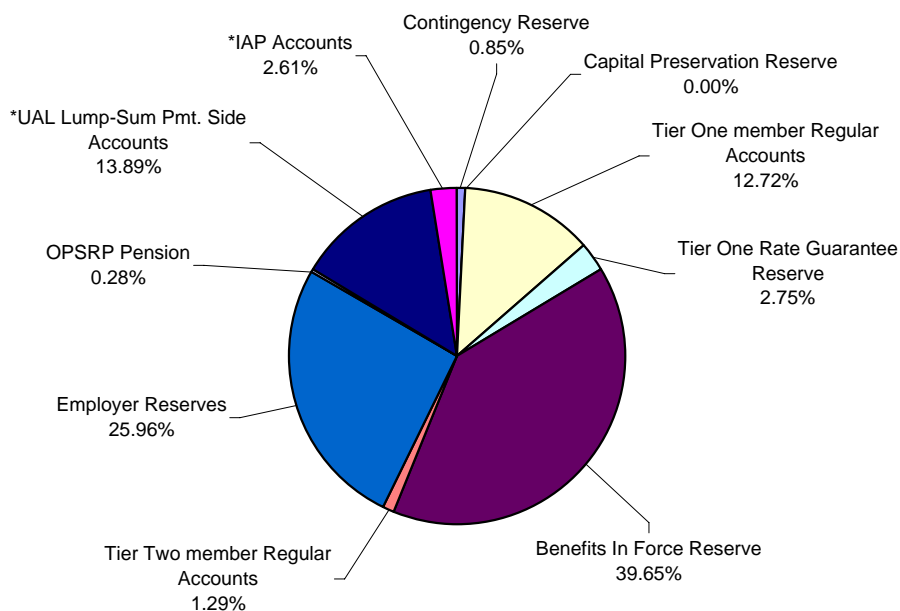
\$250 Million Additional to Contingency Reserve; No Additional to Capital Preservation Reserve

(All dollar amounts in millions)

Regular Account Reserve	Reserves Before Crediting	2006 Preliminary Crediting	Reserves After Crediting	2006 Preliminary Rates
Contingency Reserve	\$250.0	\$250.0	\$500.0	N/A
Capital Preservation Reserve	0.0	0.0	0.0	N/A
Tier One member Regular Accounts	6,888.2	551.1	7,439.3	8.00%
Tier One Rate Guarantee Reserve	981.5	628.9	1,610.4	N/A
Benefits In Force Reserve	20,164.4	3,025.1	23,189.5	15.00%
Tier Two member Regular Accounts	655.5	98.3	753.8	15.00%
Employer Reserves	13,202.1	1,980.7	15,182.8	15.00%
OPSRP Pension	143.1	18.4	161.5	12.86%
*UAL Lump-Sum Pmt. Side Accounts	7,025.4	1,098.5	8,123.9	15.64%
*IAP Accounts	1,327.4	199.4	1,526.8	15.02%
Total	\$50,637.6	\$7,850.4	\$58,488.0	

2006 Estimated Regular Account Reserve Balances

After Est. 2006 Preliminary Crediting



*Informational only. Not affected by Board reserving or crediting decisions.

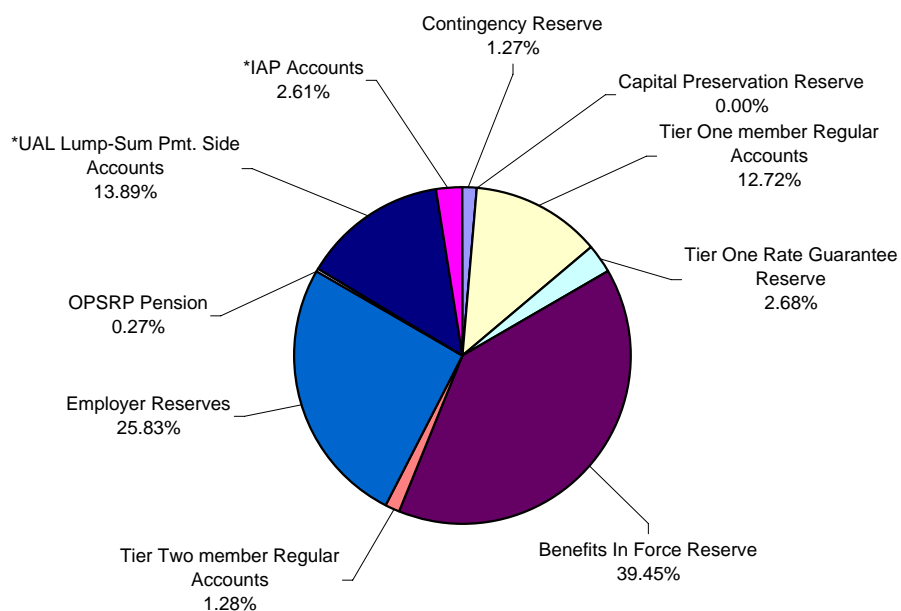
Option 4

2006 Preliminary Earnings Crediting

7.5% Of Earnings Additional to Contingency Reserve; No Additional to Capital Preservation Reserve
(All dollar amounts in millions)

Regular Account Reserve	Reserves Before Crediting	2006 Preliminary Crediting	Reserves After Crediting	2006 Preliminary Rates
Contingency Reserve	\$250.0	\$493.2	\$743.2	N/A
Capital Preservation Reserve	0.0	0.0	0.0	N/A
Tier One member Regular Accounts	6,888.2	551.1	7,439.3	8.00%
Tier One Rate Guarantee Reserve	981.5	583.5	1,565.0	N/A
Benefits In Force Reserve	20,164.4	2,908.4	23,072.8	14.42%
Tier Two member Regular Accounts	655.5	94.5	750.0	14.42%
Employer Reserves	13,202.1	1,904.2	15,106.3	14.42%
OPSRP Pension	143.1	17.6	160.7	12.30%
*UAL Lump-Sum Pmt. Side Accounts	7,025.4	1,098.5	8,123.9	15.64%
*IAP Accounts	1,327.4	199.4	1,526.8	15.02%
Total	\$50,637.6	\$7,850.4	\$58,488.0	

**2006 Estimated Regular Account Reserve Balances
After Est. 2006 Preliminary Crediting**



*Informational only. Not affected by Board reserving or crediting decisions.

238.670**Reserve accounts in fund.**

(1) At the close of each calendar year in which the earnings on the Public Employees Retirement Fund equal or exceed the assumed interest rate established by the Public Employees Retirement Board under ORS 238.255, the board shall set aside, out of interest and other income received through investment of the Public Employees Retirement Fund during that calendar year, such part of the income as the board may deem advisable, not exceeding seven and one-half percent of the combined total of such income, which moneys so segregated shall remain in the fund and constitute therein a reserve account. The board shall continue to credit the reserve account in the manner required by this subsection until the board determines that the reserve account is adequately funded for the purposes specified in this subsection. Such reserve account shall be maintained and used by the board to prevent any deficit of moneys available for the payment of retirement allowances, due to interest fluctuations, changes in mortality rate or, except as provided in subsection (3) or (4) of this section, other contingency. In addition, the reserve account may be used by the board for the following purposes:

(a) To prevent any deficit in the fund by reason of the insolvency of a participating public employer. Reserves under this paragraph may be funded only from the earnings on employer contributions made under ORS 238.225.

(b) To pay any legal expenses or judgments that do not arise in the ordinary course of adjudicating an individual member's benefits or an individual employer's liabilities.

(c) To provide for any other contingency that the board may determine to be appropriate.

(2) At the close of each calendar year, the board shall set aside, out of interest and other income received during the calendar year, after deducting the amounts provided by law and to the extent that such income is available, a sufficient amount to credit to the reserves for pension accounts and annuities varying percentage amounts adopted by the board as a result of periodic actuarial investigations. If total income available for distribution exceeds those percentages of the total accumulated contributions of employees and employers, the reserves for pensions and annuities shall participate in such excess.

(3) The board may set aside, out of interest and other income received through investment of the fund, such part of the income as the board considers necessary, which moneys so segregated shall remain in the fund and constitute one or more reserve accounts. Such reserve accounts shall be maintained and used by the board to offset gains and losses of invested capital. The board, from time to time, may cause to be transferred from the reserve account provided for in subsection (1) of this section to a reserve account provided for in this subsection such amount as the board determines to be unnecessary for the purposes set forth in subsection (1) of this section and to be necessary for the purposes set forth in this subsection.

(4) The board may provide for amortizing gains and losses of invested capital in such instances as the board determines that amortization is preferable to a reserve account provided for in subsection (3) of this section.

(5) At least 30 days before crediting any interest and other income received through investment of the Public Employees Retirement Fund to any reserve account in the fund, the board shall submit a preliminary proposal for crediting to the appropriate legislative review agency, as defined in ORS 291.371 (1), for its review and comment. [Formerly 237.281; 2001 c.945 §5]

238.255**Credits to regular accounts when earnings less than assumed interest rate.**

(1) The regular account for members who established membership in the system before January 1, 1996, as described in ORS 238.430, and for alternate payees of those members, shall be examined each year. If the regular account is credited with earnings for the previous year in an amount less than the earnings that would have been credited pursuant to the assumed interest rate for that year determined by the Public Employees Retirement Board, the amount of the difference shall be credited to the regular account and charged to a reserve account in the fund established for the purpose. In years following the year for which a charge is made to the reserve account, all earnings on the regular accounts of members who established membership in the system before January 1, 1996, as described in ORS 238.430, and of alternate payees of those members, shall first be applied to reduce or eliminate the amount of a deficit. Only earnings on the regular accounts of members who established membership in the system before January 1, 1996, as described in ORS 238.430, and of alternate payees of those members, may be used to reduce or eliminate the amount of a deficit.

(2) Notwithstanding subsection (1) of this section and except as provided in subsection (5) of this section, the board may not credit any earnings to the regular accounts of members who established membership in the system before January 1, 1996, as described in ORS 238.430, or of alternate payees of those members, in any year in which there is a deficit in the reserve account established under subsection (1) of this section, or credit any earnings to the regular accounts of those members, or alternate payees, that would result in a deficit in that reserve account. In any year in which the fund experiences a loss, the board shall charge the amount of the loss attributable to the regular accounts of members who established membership in the system before January 1, 1996, as described in ORS 238.430, against the reserve account.

(3) The regular account for members who established membership in the system before January 1, 1996, as described in ORS 238.430, and for alternate payees of those members, may not be credited with earnings in excess of the assumed interest rate until:

(a) The reserve account established under subsection (1) of this section is fully funded with amounts determined by the board, after consultation with the actuary employed by the board, to be necessary to ensure a zero balance in the account when all members who established membership in the system before January 1, 1996, as described in ORS 238.430, have retired; and

(b) The reserve account established under subsection (1) of this section has been fully funded as described in paragraph (a) of this subsection in each of the three immediately preceding calendar years.

(4) The board may divide the reserve account established under subsection (1) of this section into one or more subaccounts for the purpose of implementing the provisions of this section.

(5) Subsection (2) of this section does not apply to a person who is a judge member of the system on June 30, 2003. [Formerly 237.277; 2001 c.945 §4; 2003 c.3 §1; 2003 c.67 §5; 2003 c.625 §10]

459-007-0005

Annual Earnings Crediting

(1) For purposes of this rule, "remaining earnings" means earnings available for distribution to a particular account or reserve after deduction of amounts required or authorized by law for other purposes.

(2) Except as otherwise specified in this division, earnings on all accounts and reserves in the Fund shall be credited as of December 31 of each calendar year in the manner specified in this rule.

(3) **Health insurance accounts.** All earnings attributable to the Standard Retiree Health Insurance Account (SRHIA), the Retiree Health Insurance Account (RHIA) or the Retirement Health Insurance Premium Account (RHIPA) shall be credited to the account from which they were derived, less administrative expenses incurred by each account, as provided in ORS 238.410, 238.415 and 238.420, respectively.

(4) **Employer lump sum payments.** All earnings or losses attributable to the employer lump sum payment accounts established under ORS 238.225(9) shall be credited to the accounts from which they were derived.

(5) **Administrative expenses.**

(a) Earnings on the Variable Annuity Account shall first be used to pay a pro rata share of administrative expenses in accordance with ORS 238.260(6). If the Variable Annuity Account experiences a loss, the loss shall be increased to pay a pro rata share of administrative expenses.

(b) Earnings attributable to Tier One regular accounts, the Tier One Rate Guarantee Reserve, Tier Two member regular accounts, employer contribution accounts, the Contingency Reserve, the Benefits-in-Force Reserve and the Capital Preservation Reserve shall first be used to pay the system's remaining administrative expenses under ORS 238.610.

(6) **Member variable accounts.** All remaining earnings or losses attributable to the Variable Annuity Account shall be credited to the participants of that account, as provided under ORS 238.260(6) and (7)(b).

(7) **Contingency Reserve.**

(a) In any year in which total earnings on the Fund equal or exceed the assumed rate, an amount not exceeding seven and one-half percent of remaining earnings attributable to Tier One member regular accounts, the Tier One Rate Guarantee Reserve, Tier Two member regular accounts, Benefits-in-Force Reserve, employer contribution accounts, the Capital Preservation Reserve and the Contingency Reserve shall be credited to the Contingency Reserve to the level at which the Board determines it is adequately funded for the purposes specified in ORS 238.670(1).

(b) The portion of the Contingency Reserve allowed under ORS 238.670(1)(a) for use in preventing a deficit in the fund due to employer insolvency may only be credited using earnings attributable to employer contribution accounts.

(8) **Tier One Member Deficit Reserve.** All remaining earnings attributable to Tier One member regular accounts and the Tier One Rate Guarantee Reserve shall be credited to the Tier One Member Deficit Reserve established in ORS 238.255(1) until the deficit is eliminated.

(9) **Capital Preservation Reserve.** Remaining earnings attributable to the Tier Two member regular accounts, employer contribution accounts, the Benefits-in-Force Reserve, the Contingency Reserve and the Capital Preservation Reserve may be credited from those sources to one or more reserve accounts that may be established under ORS 238.670(3) to offset gains and losses of invested capital.

(10) **Tier One member regular accounts.** All remaining earnings attributable to Tier One member regular accounts and the Tier One Rate Guarantee Reserve shall be credited to Tier One member regular accounts at the assumed rate in any year in which the conditions set out in ORS 238.255 have not been met. Crediting under this subsection shall be funded first by all remaining earnings attributable to Tier One member regular accounts and the Tier One Member Rate Guarantee Reserve, then moneys in the Tier One Member Rate Guarantee Reserve.

(11) **Tier One Member Rate Guarantee Reserve.** In any year in which the Tier One Member Deficit Reserve has a zero balance, remaining earnings attributable to Tier One member regular accounts, the Tier One Member Rate Guarantee Reserve, the Benefits-in-Force Reserve, and the Contingency Reserve may be credited to the Tier One Member Rate Guarantee Reserve established under ORS 238.255(1).

(12) **Tier Two member regular accounts.** All remaining earnings or losses attributable to Tier Two member regular accounts shall be credited to all active and inactive Tier Two member regular accounts under ORS 238.250.

(13) **Benefits-in-Force Reserve.** Remaining earnings attributable to the Benefits-in-Force Reserve, the Contingency Reserve, the Capital Preservation Reserve and employer contribution accounts, in that order, shall be used, to the extent available, to credit the Benefits-in-Force Reserve with earnings up to the assumed rate for that calendar year in accordance with ORS 238.670(2).

(14) **Employer contribution accounts.** All remaining earnings attributable to employer contribution accounts shall be credited to employer contribution accounts.

(15) **Remaining earnings.** Any remaining earnings shall be credited to accounts and reserves in the Fund at the Board's discretion.

(16) The provisions of this rule shall be applied retroactively to April 15, 2004.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238

Hist.: PERS 8-2004, f. & cert. ef. 4-15-04; PERS 18-2005(Temp), f. & cert. ef. 10-26-05 thru 4-19-06



Oregon

Theodore R. Kulongoski, Governor

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February 16, 2007

TO: Members of the PERS Board
FROM: Steve Delaney, PERS Deputy Director
SUBJECT: 2007 Legislative Concepts

MEETING	02-16-07
DATE	
AGENDA	D.2.
ITEM	Legislative

The House Business and Labor Committee considered all seven of the PERS Board's sponsored bills in public hearing on Monday, February 5, 2007.

Because legislative action is taking place rapidly at this point in the session, PERS staff will prepare an up-to-date report prior to the PERS Board's next meeting, and will distribute that electronically to the Board the day before the February 16 meeting. A hard copy will be distributed at the Board meeting, and PERS staff will be prepared to discuss the report in detail at that time.