

OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM BOARD MEETING

**Monday
March 29, 2010
1:00 P.M.**

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

ITEM	PRESENTER
A. Administration – 1:00 P.M.	
1. January 29, 2009 Board Meeting Minutes 2. Director's Report a. Forward-Looking Calendar b. Budget Report c. Employer Reporting and Outreach Program d. 2010 Cost of Living Adjustments (COLA) e. Actuarial Audit Contract f. February 2010 Special Session Recap g. OIC Investment Report	CLEARY
B. Consent Items	
1. Notice of Housekeeping Updates to Various Rules 2. Temporary Adoption and Notice of Rules to Implement Non-Verification Portions of SB 897	RODEMAN
C. Action and Discussion Items	
1. First Reading of Divorce Rules 2. 2011 Session Preliminary Legislative Concepts 3. SB 897 Data Verification Implementation Plan 4. 2009 Final Earnings Crediting 5. ETOB Study Update	RODEMAN RISWICK RODEMAN / ELLEDGE RODEMAN/ORR MERCER
D. 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 regular meeting.

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

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

Level 1 - Public

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OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM

Item A.1.

PERS Board Meeting
January 29, 2010
Tigard, Oregon
MINUTES

Board Members:

James Dalton, Chair
Tom Grimsley, Vice-Chair
Eva Kripalani
Brenda Rocklin
Mike Pittman

Staff:

Donna Allen	Yvette Elledge	Brenda Pearson
Paul Cleary	Brian Harrington	Susan Riswick
David Crosley	Sue Korn	Steve Rodeman
Jon DuFrene	Jeff Marecic	Susan Sjoldal
Joe DeLillo	Dale Orr	Jason Stanley
		Stephanie Vaughn

Others:

Bruce Adams	Linda Ely	Gary Martin	Richard Sears
Michaelyn Baron	Debra Guzman	Elizabeth McCann	Ashley Skaund
Tom Brent Barth	Greg Hartman	Everett Moreland	Hasina Squires
Keven Boyett	Kathleen Hinman	P. Peg	Deborah Tremblay
Jim Brown	Paul Kauffman	Ernie Pressman	Pat West
Linda Burgin	Phil Keisling	Scott Preppernau	Brenda Wilson
Myrnie Daut	Keith Kutler	Jeanette Riopelle	David Wimmer
Mike Eliason	Matt Larrabee	Bill Robertson	Peggy Woolsey
Janne Essenberg	Steve Manton	Lori Sattenspiel	Denise Yunker
		Ron Schultz	

Chair James Dalton called the meeting to order at 1:00 P.M.

ADMINISTRATION

A.1. BOARD MEETING MINUTES OF NOVEMBER 20, 2009

The Board unanimously approved the minutes from the November 20, 2009 Board meeting.

A.2. DIRECTOR'S REPORT

Director Paul Cleary presented the Board's 2010 forward-looking calendar noting the next Board meeting will be held Monday, March 29, 2010 to avoid conflicts with spring break. March agenda items include 2009 Final Earnings Crediting, 2011 Preliminary Legislative Concepts, and a 2010 Special Legislative Session Report. The Audit Committee will meet following the meeting.

Director Cleary reported that the 2011-2013 preliminary agency budget request will be discussed at the May Board meeting. In July, the Board will approve the final budget request for submitting through the Governors' recommend budget process. In September, the Board will adopt 2011-13 employer contribution rates.

Cleary presented the Final 2007-09 Budget Report showing the agency operating budget closed the biennium with a \$3.4 million positive variance. Cleary reported a preliminary positive variance of \$3 million for the 2009-11 operating budget.

Cleary presented a Benefit Payments Division (BPD) update, noting that PERS received 1,003 December 1, 2009 retirement applications which is a four-fold increase over normal December retirements. The change in actuarial equivalency factors (AEF's) and some employer's early retirement incentives likely contributed to the increase. Cleary described a new rule change effective January 1, 2010, that require members to apply for retirement before their effective retirement date. Cleary noted there are 55,000 members eligible to retiree.

Cleary presented the 2010 Legislative Special Session calendar. Currently, there are no pre-session PERS related bills filed and agencies are not allowed to introduce any new legislation. Cleary noted one of the potential actions by the legislature is to consider overriding the Governor's veto of SB 897. The bill was a comprehensive PERS bill with several provisions. The Board was unanimously opposed to the data guarantee provisions. Cleary noted a memo outlining the Board's concerns has been shared with the coalition who sponsored the bill and will be given to the entire legislature. Board Chairman Dalton and Director Cleary will be meeting with Legislative leadership to relay the concerns with the bill. Cleary stated PERS is committed to improving data verification processes and the concerns are not with the process improvements, but with the guarantee provision of SB 897.

Cleary described the Six-Year Strategic Outlook review as a foundation of the agency's budget development process. Cleary noted an important feature is the key indicators for each proposed strategic outcome. These are also linked to the agency's key performance measures and emphasize both accuracy and timeliness. The Board asked staff to review the appropriateness of several key performance measures and to be more aggressive on several of the targets.

Ron Schmitz, Chief Financial Officer for Oregon State Treasury, presented the December 31, 2009 Oregon Investment Council (OIC) report, and provided an overview of the Fund's asset portfolio and related investment returns.

Schmitz reported on the joint OIC/PERS Board meeting on January 27, 2010 to initiate a new asset/liability study. PERS actuaries attended the meeting along with two OIC consulting firms, Strategic Investment Solutions who is leading the project, and Pension Consulting Alliance.

Schmitz reported that the asset/liability study will examine how best to balance short-term volatility with long-term gains. It will evaluate inflation risks and tail/downside risks, and the possibility of partitioning the portfolio by tiers and matching liabilities. In addition, dynamic asset allocation will be reviewed. The project is scheduled to complete around mid year. Schmitz reported the next joint OIC and PERS Board meeting will likely be scheduled in May.

CONSENT ITEMS

B.1. NOTICE OF DIVORCE RULES

Director Cleary described the initial rulemaking notice phase of 14 divorce rules. The rules are scheduled for further consideration during the March Board meeting.

ACTION AND DISCUSSION ITEMS

C.1. EQUAL TO OR BETTER THAN STUDY PROCESS UPDATE

Chair Dalton noted that the rules controlling the Equal to Or Better Than (ETOB) study process have been discussed over several board meetings. Mercer was returning today to provide information to the Board to help determine the “risk-free” rate of return to be used for the ETOB analysis.

Matt Larrabee of Mercer noted the ETOB study process applies to those police and fire employers who do not participate in PERS that are required to provide retirement benefits that are “equal to or better.” Following the 2007 legislative changes, Mercer will conduct new tests of those employer-funded benefits to determine their compliance with the revised ETOB requirements. Larrabee noted that the ETOB rules require the Board to establish a “risk free” rate of return for various aspects of the testing.

Mercer recommended the Board adopt using a single interest rate determined as the average of yields on 30-year constant maturity Treasury Bonds over a 5-year averaging period.

It was moved by Brenda Rocklin and seconded by Mike Pittman to approve Mercers’ recommended methodology in determining the risk-free rate of return to be used in the ETOB testing. The motion passed unanimously.

Mercer will report preliminary determination results at the March Board meeting and final test results for all employers requiring a full ETOB test at the May Board meeting.

C.2. 2009 PRELIMINARY EARNINGS CREDITING AND RESERVING

Deputy Director Rodeman presented the staff’s 2009 Preliminary Earnings Crediting and Reserving recommendations. Rodeman reported that the PERS Fund regular account earned approximately 19.4% in 2009, generating over \$8 billion for the Board to allocate among the various accounts and reserves. Rodeman described the non-discretionary earnings allocations which include replenishing the Tier One Rate Guarantee Reserve with the earnings over 8% generated by Tier One member accounts. This will substantially reduce the previous year’s \$978 million deficit, leaving a \$420 million deficit in the Tier One Rate Guarantee Reserve.

Under statute, the Board must also address whether the Contingency Reserve is adequately funded. Rodeman explained the Board’s Contingency Reserve options. Rodeman then described the staff’s preliminary recommendations, including maintaining the current balance of the \$653.2 million in the Contingency Reserve.

Rodeman recommended the Board pass a motion to adopt the 2009 preliminary earnings crediting and reserving allocations, subject to final adoption at the March 29, 2010 Board meeting. The preliminary allocation will be reported to the Legislature for a 30-day review period and can be revisited in March if necessary.

It was moved by Tom Grimsley and seconded by Eva Kripalani to approve staff's recommended preliminary crediting of earnings for calendar year 2009, subject to final adoption at the March 29, 2010 Board meeting. The motion passed unanimously.

C.3. 2011-13 EMPLOYER RATE SETTING OPTIONS

Chair Dalton noted that, while final 2011-13 employer rates will not be adopted until next fall, the Board wanted to ensure there is enough rate setting information available now for employers to start taking action well in advance of the projected rate increases effective July 1, 2011.

Deputy Director Rodeman described the policy issue of how the rate collar should be implemented now that the majority of employers have crossed below the 80% funding status threshold (excluding side accounts). Employers funded below 80% would see the rate collar double under current methods. Rodeman noted the financial analysis in the Board presentation is based on earnings as of November 2009 and actual employer rates will depend on results of the December 31, 2009 earnings and the 2009 valuation. PERS staff and Mercer developed three options for the Board's consideration that were distributed to interested parties in advance of the meeting.

Matt Larrabee of Mercer described the proposed revised implementation of the double rate collar. The revised implementation would be a sliding scale and would phase in the double rate collar starting at 80% funded status, with full implementation at 70% funded status. The Mercer presentation compared current and revised implementation methods and modeled financial impacts based on investment returns through November 30, 2009. Larrabee described how the revised implementation aligned with the Board's guiding principles for actuarial methods.

Greg Hartman, representing the PERS Coalition, said the Coalition supports the adoption of the revised implementation approach. Hartman noted if the Board had discussed using a sliding scale for the double rate collar back in 2004, he believed it would have been adopted from the outset.

Phil Keisling, private citizen, noted that the analysis supports the adoption of the revised implementation of the double rate collar. He said he respects the analysis; however he expected it to include more rate options and the financial modeling to extend out further.

Each Board member provided their perspective on the proposed revised implementation of the double rate collar, and the analysis of that proposal against the Board's guiding principles.

Board member Tom Grimsley expressed his concern on the effects the projected 2011-13 employer rates will have on school districts. Grimsley proposed a different sliding scale from 3% to 5%, so the maximum rate increase would be 5% rather than 6% of covered payroll.

Board Chair Dalton provided his perspective on the rate setting options and the Boards' fiduciary responsibilities. The Board recognized the dilemma employers face over the upcoming months, and needed to provide as much advance notice of the 2011-13 rate increases as possible so employers could factor it into compensation and budget planning.

It was moved by Eva Kripalani and seconded by Brenda Rocklin to revise the implementation of the double rate collar so that the base rate increases incrementally from 3% to 6% of PERS covered payroll, based on the employer's rate setting funded status without side accounts, using a sliding scale from 80% to 70% funded. Motion passed, Grimsley opposed.

Chair Dalton thanked the audience for their attendance and participation, and adjourned the meeting at 2:59 PM.

Respectfully submitted,

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

Paul R. Cleary
Executive Director

PERS Board Meeting Forward-Looking Calendar

May 21, 2010

Adoption of Housekeeping Updates to Various Rules
Adoption of Rules to Implement Non-Verification Portions of SB 897
Adoption of Divorce Rules
Notice of Disability Rule
ETOB Testing Results
2011-13 Preliminary Agency Request Budget
2011 Retiree Health Insurance Plan Renewals
Actuarial Audit Introduction – Gabriel Roeder Smith

July 23, 2010

Adoption of Disability Rule
2009 Valuation Results
2011-13 Final Agency Request Budget Approval
OSGP Advisory Committee Member Nomination
Audit Committee
Preliminary Actuarial Audit Results

September 24, 2010

2011-13 Employer Rate Adoption
Final Actuarial Audit Results

November 19, 2010

2011 Session Legislative Concept Approval
Audit Committee



Oregon

Theodore R. Kulongoski, Governor

Item A.2.b.

Public Employees Retirement System

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March 29, 2010

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

2009-11 BUDGET UPDATE

Operating expenditures for the months of January and February 2010 were \$2,667,221 and \$3,019,146 respectively.

- To-date, through the first eight months (33.3%) of the 2009-11 biennium, the Agency has expended a total of \$22,398,796 or 27.94 % of PERS' 2009-11 operating budget.
- The Agency's positive budget variance for this biennium is currently projected at \$4,267,093, of which \$434,160 is RIMS Conversion Project (RCP) budget.

2011-13 BUDGET DEVELOPMENT

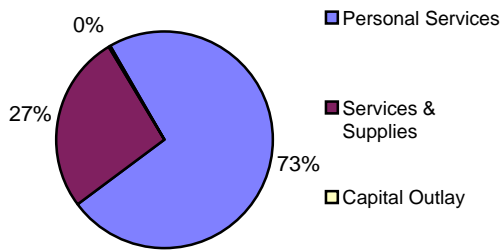
The Agency is currently finalizing 2011-13 Business Plans and drafting PERS' 2011-13 Agency Request Budget (ARB). A summary of the draft Agency Budget Request (ARB) will be submitted to the Board at the May 21, 2010 Board Meeting.

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

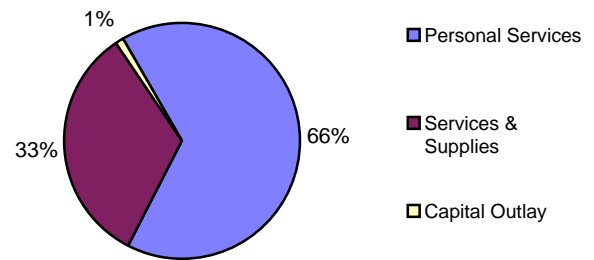
Biennial Summary

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2009-11 LAB	Variance
Personal Services	16,368,951	35,169,280	51,538,231	52,559,956	1,021,725
Services & Supplies	5,941,689	17,681,559	23,623,248	27,007,084	3,383,836
Capital Outlay	88,156	643,900	732,056	593,588	(138,468)
Special Payments					
Total	22,398,796	53,494,739	75,893,535	80,160,628	4,267,093

Actual Expenditures

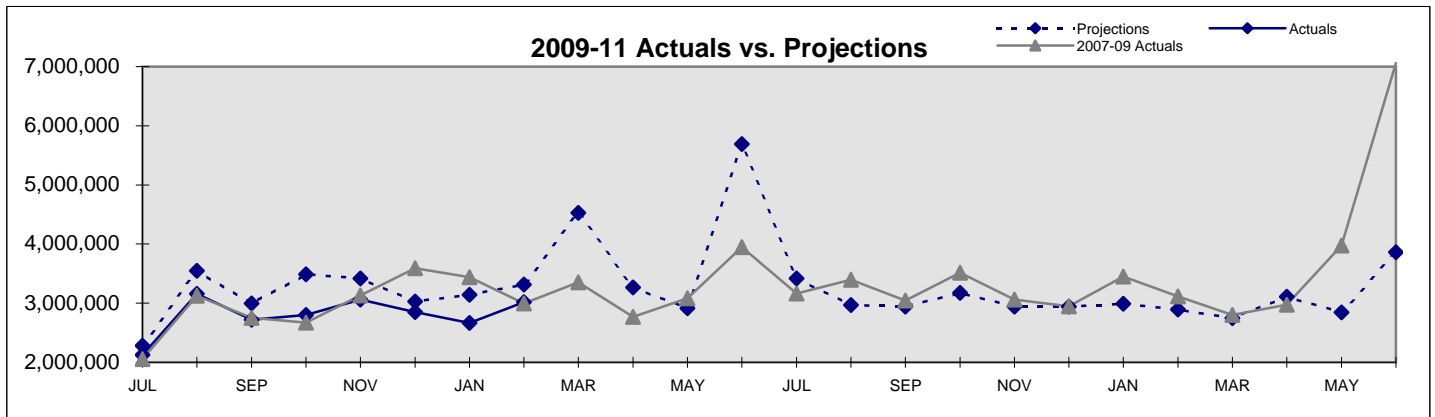


Projected Expenditures



Monthly Summary

Category	Actual Exp.	Projections	Variance	Avg. Monthly Actual Exp.	Avg. Projected Expenditures
Personal Services	2,034,375	2,134,839	100,464	2,046,119	2,198,080
Services & Supplies	984,771	1,179,974	195,203	742,711	1,105,097
Capital Outlay				11,020	40,244
Special Payments					
Total	3,019,146	3,314,813	295,667	2,799,849	3,343,421



2007-09 Biennium Summary

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



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March 29, 2010

TO: Members of the PERS Board
FROM: Yvette Elledge, CSD Administrator
SUBJECT: Employer Reporting and Outreach Program

PERS is currently working with 896 employers to process all outstanding employer reports and suspended records. In addition, PERS continues to monitor all employer accounts receivables and conduct its Employer Outreach Program.

EMPLOYER REPORTING

The table below shows the status as of March 8, 2010 of employer reports and member records for calendar years 2007, 2008, and 2009.

	<u>CY 2007</u>	<u>CY 2008</u>	<u>CY 2009</u>
Reports due:			
▪ Number expected	12,876	13,042	13,273
▪ Number received	12,865	13,014	13,205
▪ Percent received	99.91%	99.79%	99.48%
▪ Goal	99.0%	99.0%	
Reports fully posted at 100%:			
▪ Number	12,777	12,842	12,196
▪ Percent fully posted at 100%	99.23%	98.47%	91.88%
▪ Goal	95.0%	95.0%	
Records due (estimated)	3,623,237	3,690,837	3,504,052
Records not posted:			
▪ Number	371	3,604	19,980
▪ Percent not posted	≤ .1%	≤ .1%	0.57%
▪ Goal	≤ .2%	≤ .2%	
Contributions posted	\$ 452,720,066	\$ 483,439,039	\$ 504,030,944
Contributions not posted	\$ 7,142	\$ 36,477	\$ 885,017

With 2009 being the first year where there was no longer a need to reconcile member accounts on the legacy RIMS system, the Employer Service Center streamlined the annual reconciliation of 2009 reports. Comparing the 2009 calendar year data to the 2008 data from one year ago, we see improvement in all categories; reports received, records posted and contributions posted, as of the comparable reporting date.

EMPLOYER OUTREACH PROGRAM

The Employer Outreach, Communication and Education (OCE) team continued Employer Data Exchange (EDX) employer training into calendar year 2010 with monthly EDX classes offered in the computer lab of the PERS Tigard headquarters. Employer EDX training is comprised of three classes, including a presentation on EDX basic concepts, a hands-on lab session for practice application of EDX basic concepts, and a presentation on EDX reporting topics of significance to employers.

EDX training was recently expanded by availability of training on the Internet. The first EDX internet training session was completed on February 18, 2010 for two employers, the City of North Bend and Lake ESD in Lakeview, Oregon. The response was positive, and future sessions will be offered at the request of employers. An in-person EDX training session was completed on March 8, 2010 in Corvallis for fourteen Oregon University System staff members representing the Chancellor's Office and the seven campuses within the system.

Twenty-six employer outreach presentations are scheduled during April and May 2010 at seventeen sites throughout the state. This Spring, outreach presentations are focused on review of reporting topics, including reporting retirees returning to work part-time and eligibility rules introduced in 2007. Essentials of the upcoming Employer Compliance Review program will also be covered. The developmental version of the Spring outreach presentation was given by request for fourteen education employer members of the Southern Oregon ESD on February 3, 2010, and was well-received.

A presentation on the steps to becoming a PERS-participating employer and the basics of reporting data through the EDX system was given as a workshop during the 4th Annual Charter School Conference on February 25, 2010. Five individuals were in attendance, representing four new charter schools and a representative from the Oregon Department of Education. An offer to deliver EDX training at a May 2010 charter school workshop was extended to the Oregon Department of Education representative, with additional planning to follow.

ACCOUNTS RECEIVABLE PLAN

Besides assisting employers with overdue reports and electronic payments, PERS' accounts receivable department proactively collects receivable balances that are more than 30 days overdue. As of March 8, 2010, we had 199 outstanding invoices (51 employers) with an aggregate balance of \$737,726. Our goal is to collect all outstanding invoices that exceed 30 days by following up with these employers by phone and letters each month.

The high outstanding balance is normal at this time of year due to the annual reconciliation with employers who are submitting late 2009 reports, and most of these invoices have been outstanding less than 60 days. Staff will continue to monitor this report to ensure that these invoices are paid.

Employer Reporting Report

3/29/10

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The current total of invoices that are over 90 days delinquent is \$274,090. The majority of these past due invoices is the balance of Young Case invoices owed by the State or Oregon, totaling \$130,784. PERS and DAS-HRSD staff continue to review the outstanding balances owed and they are investigating and verifying the amounts each month. DAS staff managed to make a significant improvement in payment in the Young Case invoices and continue to work on the balance for the consolidated employer, Services to Children and Families. Since this data was pulled on March 8, 2010, staff have resolved a \$95,172 outstanding invoice with this employer.



Oregon

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Item A.2.d.

Public Employees Retirement System

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March 29, 2010

TO: Members of the PERS Board
FROM: Brian Harrington, Benefit Payments Division (BPD) Administrator
SUBJECT: Annual Cost-of-Living Adjustment (COLA)

Statute caps annual cost-of-living increases or decreases for PERS benefits at 2 percent. The amount of any COLA increase or decrease in any year in excess of 2 percent shall be accumulated and used to calculate COLA increases or decreases in succeeding years.

The annual COLA is based on the Consumer Price Index (CPI) as published by the U.S. Department of Labor's Bureau of Labor Statistics for the Portland-Salem area. The final 2009 published CPI for the Portland-Salem area is 0.12 percent.

The COLA for PERS retirees and beneficiaries is effective July 1, 2010 and payable with the August 1, 2010 benefit payment and will be applied as follows:

- Tier One and Tier Two members and beneficiaries with effective retirement dates between August 1, 2009 and July 1, 2010, will receive a 0.12 percent COLA, as the adjustment is less than 2 percent and there is no accumulation.
- Tier One and Tier Two members and beneficiaries with effective retirement dates between August 1, 2008 and July 1, 2009, will receive a 1.40 percent COLA, as they had a 1.28 percent accumulation after the prior COLA adjustment.
- Tier One and Tier Two members and beneficiaries with effective retirement dates on or before July 1, 2008, will receive a 2 percent COLA, as they have enough accumulation established from prior years.

Statute controlling the COLA for Oregon Public Service Retirement Plan (OPSRP) Pension Program retirees and beneficiaries also caps increases or decreases at 2 percent, and is effective July 1 and payable August 1. However, statute does not provide for any year to year carryover accumulations for OPSRP Pension Program retirees and beneficiaries. Therefore:

- OPSRP Pension Program retirees and beneficiaries with effective retirement dates on or after August 1, 2009, will receive a pro-rate of the 0.12 percent COLA based on the number of months the benefit was received before July 1, 2010.
- OPSRP Pension Program retirees and beneficiaries with effective retirement dates on or before July 1, 2009, will receive a 0.12 percent COLA.



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March 29, 2010

TO: Members of the PERS Board
FROM: Dale S. Orr, Actuarial Services Manager
SUBJECT: Actuarial Auditor: Gabriel Roeder Smith, Inc.

PERS is hiring Gabriel Roeder Smith, Inc. (GRS) to conduct an audit of PERS' 2009 actuarial valuation. Actuarial audits provide assurance that actuarial valuations, including related methods and assumptions, are accurate, representative and conducted within actuarial standards.

Public pension best practices include a recommendation that an actuarial audit be conducted once every five to ten years. The last PERS actuarial audit was in 2000 for the 1999 valuation. An actuarial audit was planned for the 2005 valuation, but a change of actuaries negated the need for such an audit.

GRS was selected from a group of four national actuarial firms who competed through a structured request for proposal process. The evaluation team included three PERS staff: Steve Rodeman, Deputy Director; Jason Stanley, Director of Audits; and Dale Orr, Actuarial Services Manager and two board members: Eva Kripalani, Chair of the PERS Board Audit Committee, and James Dalton, PERS Board Chair. GRS was chosen based on the completeness of the firm's proposal as well as the experience of its staff, price of the undertaking, and its understanding of PERS. The bid price of GRS' proposal was \$45,000. The contract is currently being negotiated.

The principal actuary on the audit will be Leslie Thompson, Senior Consultant and Actuary. Ms. Thompson has 25 years of actuarial experience and is a Fellow of the Society of Actuaries, a Member of the American Academy of Actuaries and an Enrolled Actuary. She will be leading a team of four other actuaries and analysts.

The audit will be conducted in parallel with the 2009 Valuation. This approach was selected so that any audit findings can be incorporated into the valuation prior to its completion. As a result, audit reports will be presented to the Board in conjunction with Mercer's valuation reports. At this time, there are three GRS audit presentations planned for the following 2010 Board meetings:

May: Introduction, audit scope overview and time line
July: Initial audit findings and recommendations
September: Final audit findings and recommendations



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March 29, 2010

TO: Members of the PERS Board
FROM: Susan Riswick, Administrator, PPLAD
SUBJECT: February 2010 Special Session Recap

The 2010 Special Session began on February 1st and adjourned about four weeks later on Thursday, February 25th. In total, 215 bills were introduced for consideration by the Legislative Assembly. SB 1016 – which updates the connection date to federal Internal Revenue Code and other provisions of federal tax law (Federal Reconnect Bill), was passed by both the Senate and the House. An amendment to HB 3684, the House version of the Federal Reconnect Bill, was proposed to eliminate the “state income tax remedy” from benefits paid to PERS retirees who live out of state; however that amendment did not move beyond a work session. Aside from the two Federal Reconnect Bills, no other PERS-related bills were introduced.

Earlier in the session SB 897, which was vetoed by the Governor following the 2009 session, was reconsidered by the House and Senate floors where it was re-passed by both chambers. The implementation plan for SB 897 is detailed in a separate agenda item for today’s Board meeting.

2010 INTERIM COMMITTEE DAYS

The schedule has been posted for the Interim Committee Days for 2010 (please note that dates are subject to change). An Emergency Board meeting may occur during one or more scheduled Interim Committee Days:

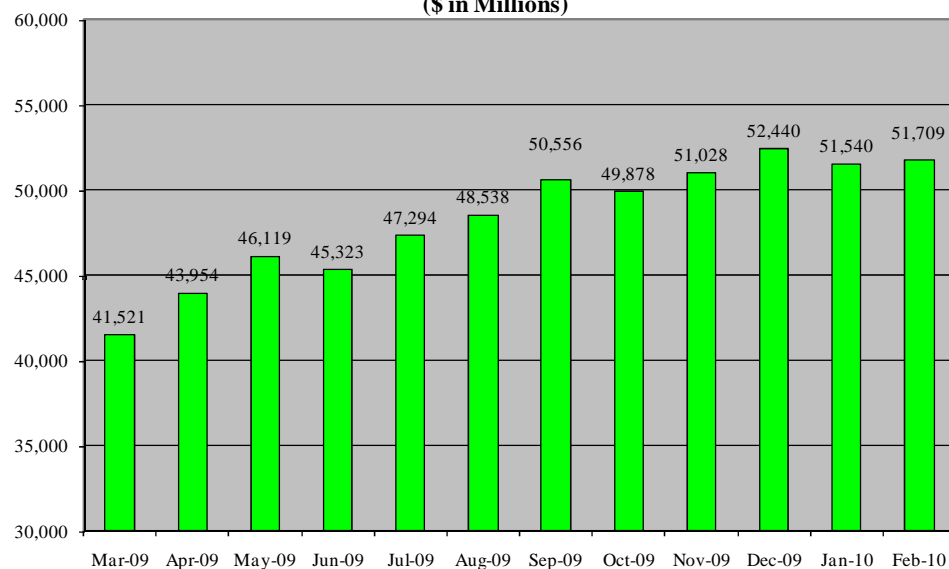
- May 24 – 27
- September 20 – 24
- December 13 – 17

OPERF	Regular Account				Historical Performance (Annual Percentage)					
	Policy ¹	Target ¹	\$ Thousands ²	Actual	Year-To-Date ³	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS
Public Equity	41-51%	46%	\$ 20,895,035	41.2%	(2.93)	59.32	(8.87)	(6.18)	(1.49)	1.86
Private Equity	12-20%	16%	9,929,476	19.6%	N/A	(4.36)	(6.58)	3.15	6.16	12.85
Total Equity	57-67%	62%	30,824,511	60.7%						
Opportunity Portfolio			1,038,816	2.0%	0.95	41.98	2.22	2.42		
Total Fixed	22-32%	27%	13,472,304	26.5%	2.31	28.96	7.50	6.19	6.27	5.85
Real Estate	8-14%	11%	5,422,402	10.7%	(0.25)	(6.79)	(11.18)	(5.49)	1.73	8.08
Cash	0-3%	0%	16,585	0.0%	0.31	2.55	1.52	2.80	3.42	3.43
TOTAL OPERF Regular Account		100%	\$ 50,774,618	100.0%	(0.63)	27.58	(4.96)	(1.96)	1.52	4.29
OPERF Policy Benchmark					(0.93)	25.11	(4.30)	(1.13)	2.15	4.09
Value Added					0.30	2.47	(0.66)	(0.83)	(0.63)	0.20
TOTAL OPERF Variable Account			\$ 934,263		(2.80)	59.18	(8.25)	(7.98)	(3.59)	(0.63)

Asset Class Benchmarks:

Russell 3000 Index	(0.34)	55.96	(6.14)	(5.60)	(1.47)	0.80
MSCI ACWI Ex US IMI Net	(4.59)	64.99	(10.55)	(4.81)	0.94	4.69
MSCI ACWI IMI Net	(2.79)	60.53	(8.91)	(5.51)	(0.54)	2.49
Russell 3000 Index + 300 bps--Quarter Lagged	N/A	(0.99)	(9.94)	(1.00)	2.40	5.41
BC Universal--Custom FI Benchmark	1.80	11.08	5.57	5.83	5.84	5.33
NCREIF Property Index--Quarter Lagged	N/A	(22.11)	(9.45)	(1.29)	3.13	6.16
91 Day T-Bill	0.01	0.20	0.81	2.14	2.85	2.96

TOTAL OPERF NAV
(includes variable fund assets)
One year ending February 2010
(\$ in Millions)



¹OIC Policy 4.01.18, as revised September 2007.

²Includes impact of cash overlay management.

³For mandates beginning after January 1 (or with lagged performance), YTD numbers are "N/A". Performance is reflected in Total OPERF.



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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March 29, 2010

TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Deputy Director

SUBJECT: Notice of Rulemaking for Housekeeping Updates to Various Rules:
Effective Date of Withdrawal: 459-005-0001, *Definitions*
Disability Granted Service: 459-015-0001, *Definitions*; 459-015-0005, *Eligibility for Disability Retirement Allowances*
Leave Without Pay, Creditable Service and Retirement Credit: 459-010-0010, *Leave of Absence Without Pay*; 459-010-0014, *Creditable Service in the PERS Chapter 238 Program*; 459-075-0150, *Retirement Credit*.

OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Modify “effective date of withdrawal” definition to reduce risk of mandatory repayment. Define “granted service” and clarify its application to disability retirement allowance calculations. Clarify the interaction of the leave without pay (LWOP), creditable service, and retirement credit rules.
- Subject: Effective date of withdrawal definition; granted service; LWOP and service credit.
- Policy Issue: No policy issues have been identified at this time.

BACKGROUND

OAR 459-005-0001:

A member is eligible to receive a withdrawal from a PERS program only if the member has been absent from all PERS employment for at least one full calendar month following the month in which the member terminated employment. A member who returns to employment during this period must repay the amount withdrawn. PERS may not issue a withdrawal payment before the effective date of withdrawal. The proposed modification reduces the risk a member may be forced to repay by requiring the effective date of the withdrawal be no earlier than the first day following the mandatory repayment period. Also, the references to the regular and variable accounts are deleted as those accounts are specific to Tier One/Tier Two members. The defined term is relevant to withdrawals from all programs.

OARs 459-015-0001, 459-015-0005:

A Tier One/Tier Two disability retirement allowance for a member who has not reached normal retirement age must be calculated as if the member had worked continuously until normal retirement age. The additional service time included in the calculation is not accrued by the member’s actual service, but is characterized as “granted service” required to comply with

statute. A member receiving a disability retirement allowance may also be eligible for a benefit increase under ORS 238.380 or 238.385, commonly referred to as tax remedy increases. The consideration of “granted service” for those calculations needs clarification. “Granted service” is excluded from the ORS 238.380 calculation because it was not accrued by actual service. It is included in the ORS 238.385 calculation.

The proposed modifications to OAR 459-015-0001 define “granted service,” delete a definition of “qualifying position” that is redundant of statute, and include minor edits for clarity and consistency. The proposed modifications to OAR 459-015-0005 delete unnecessary introductory text and definition references and clarify the use of “granted service” in the disability retirement allowance and tax remedy calculations.

OARs 459-010-0010, 459-010-0014, 459-075-0150:

Minor edits to these rules were recommended to reconcile perceived conflicting standards for the accrual of service credit and the loss of service credit for periods of LWOP. The primary modifications clarify that a leave without pay of at least 11 business days in a calendar month precludes the accrual of creditable service in the PERS Chapter 238 Program or retirement credit in the OPSRP Pension Program for that month. The proposed modifications also clarify the standards for accrual of Educational Service Credit. Other minor edits are proposed for clarity and consistency. The proposed modifications accommodate current practice and functionality.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on April 27, 2010 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on April 30, 2010 at 5:00 p.m.

LEGAL REVIEW

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

IMPACT

Mandatory: No, but staff, members, and employers will benefit from clarification of standards.

Impact: Modifies “effective date of withdrawal” definition to reduce risk of mandatory repayment. Defines “granted service” and clarifies its application to disability retirement allowance calculations. Clarifies the interaction of the LWOP, creditable service, and retirement credit rules.

Cost: There are no discrete costs attributable to the proposed modifications. The modifications accommodate current practice and functionality.

RULEMAKING TIMELINE

February 12, 2010	Staff began the rulemaking process for the Effective Date of Withdrawal and Disability Granted Service rules by filing Notice of Rulemaking with the Secretary of State.
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Notice – Housekeeping Updates to Various Rules

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March 1, 2010	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began.
March 15, 2010	Staff began the rulemaking process for the Leave Without Pay, Creditable Service and Retirement Credit rules by filing Notice of Rulemaking with the Secretary of State.
March 29, 2010	PERS Board notified that staff began the rulemaking process.
April 1, 2010	<i>Oregon Bulletin</i> to publish the Notice for the Leave Without Pay, Creditable Service and Retirement Credit rules. Notice mailed to employers, legislators, and interested parties. Public comment period begins.
April 27, 2010	Rulemaking hearing to be held at 2:00 p.m. in Tigard.
April 30, 2010	Public comment period ends at 5:00 p.m.
May 21, 2010	Staff will propose adopting the permanent rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

NEXT STEPS

A hearing will be held on April 27, 2010 at PERS Headquarters in Tigard. The public comment period ends on April 30, 2010 at 5:00 p.m. The rules are scheduled to be brought before the PERS Board for adoption at the May 21, 2010 Board meeting.

B.1. Attachment 1 – 459-005-0001, *Definitions*

B.1. Attachment 2 – 459-015-0001, *Definitions*

B.1. Attachment 3 – 459-015-0005, *Eligibility for Disability Retirement Allowances*

B.1. Attachment 4 – 459-010-0010, *Leave of Absence Without Pay*

B.1. Attachment 5 – 459-010-0014, *Creditable Service in PERS Chapter 238 Program*

B.1. Attachment 6 – 459-075-0150, *Retirement Credit*

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

1 **459-005-0001**

2 **Definitions, Generally**

3 The words and phrases used in chapter 459, Oregon Administrative Rules, have the
4 same meaning given them in ORS 238.005 to 238.750. Specific and additional terms used
5 in chapter 459 generally are defined as follows unless context of a particular division or
6 rule within this chapter requires otherwise:

7 (1) “Ad hoc” means one-time for a specific purpose, case, or situation without
8 consideration of a broader application.

9 (2) “After-tax” contributions means:

10 (a) Member contributions required or permitted by ORS 238.200 or 238.515 which a
11 participating employer has not elected to “pick up,” assume or pay in accordance with
12 ORS 238.205 and 238.515(b). “After-tax” contributions are included in the member’s
13 taxable income for purposes of state or federal income taxation at the time paid to PERS.
14 “After-tax” contributions are included in computing FAS and in computing the
15 employer’s contributions paid to PERS.

16 (b) Payments made by a member to PERS for the purchase of additional benefits.

17 (3) “Before-tax” contributions means member contributions required or permitted by
18 ORS 238.200 or 238.515 which a participating employer has elected to “pick up,” assume
19 or pay in accordance with ORS 238.205 and 238.515(b). “Before-tax” contributions are
20 not included in the member’s taxable income for purposes of state or federal income
21 taxation at the time paid to PERS. “Before-tax” contributions are included in:

22 (a) Computing final average salary; and

1 (b) Computing the employer’s contributions paid to PERS if the employer has
2 elected to “pick up” the member contributions.

3 (4) “Calendar month” means the Julian Calendar beginning with the first calendar
4 day of a month through the last calendar day of that month.

5 (5) “Casual worker” means an individual engaged for incidental, occasional,
6 irregular, or unscheduled intervals or for a period of less than six consecutive calendar
7 months.

8 (6) “Contributions” means any contributions required or permitted pursuant to ORS
9 238.200 or 238.515.

10 (7) “Differential wage payment” means a payment made on or after January 1, 2009:

11 (a) By an employer to a member with respect to any period during which the
12 member is performing service in the uniformed services, as defined in USERRA, while
13 on active duty for a period of more than 30 consecutive days; and

14 (b) That represents all or a portion of the wages the member would have received
15 from the employer if the member were performing service for the employer.

16 (8) “Effective date of withdrawal” *[is]* means the later of:

17 (a) The first day of the calendar month in which PERS receives the last completed
18 document*[s]* required *[of the]* from a member who *[is]* requested *[ing]* a withdrawal *[of*
19 *the member’s regular account and variable account, if any]*; or

20 (b) The first day of the second calendar month following the calendar month in
21 which the member terminated employment with all participating employers and all
22 employers in a controlled group with a participating employer. *[PERS receives the*
23 *required notice of separation from the member’s former employer(s).]*

1 (9) “Effective retirement date” means:

2 (a) For service retirements, the date described in OAR 459-013-0260; or

3 (b) For disability retirements, the date described in OAR 459-015-0015.

4 (10) “Elected official” means an individual who is a public official holding an
5 elective office or an appointive office with a fixed term for the state or for a political
6 subdivision of the state who has elected to participate in PERS pursuant to ORS
7 238.015(5).

8 (11) “Emergency worker” means an individual engaged in case of emergency,
9 including fire, storm, earthquake, or flood.

10 (12) “Employee” has the same meaning as provided in ORS 238.005(7) and shall be
11 determined in accordance with OAR 459-010-0030.

12 (a) For the purposes of ORS 238.005 to 238.750 the term “employee” includes
13 public officers whether elected or appointed for a fixed term.

14 (b) The term “employee” does not include:

15 (A) A member of the governing board of a political subdivision unless the individual
16 qualifies for membership under ORS 238.015.

17 (B) An individual who performs services for a public employer as a contractor in an
18 independently established business or as an employee of that contractor in accordance
19 with OAR 459-010-0030.

20 (c) An individual providing volunteer service to a public employer without
21 compensation for hours of service as a volunteer, except for volunteer firefighters who
22 establish membership in accordance with ORS 238.015(6).

1 (13) “Employer contribution account” means a record of employer contributions to
2 the Fund, as required by ORS 238.225(1), and investment earnings attributable to those
3 contributions, that the Board has credited to the account after deducting amounts required
4 or permitted by ORS Chapter 238.

5 (14) “Employment” is compensated service to a participating employer as an
6 employee whose:

7 (a) Period or periods of employment includes only the actual hours of compensated
8 service with a participating employer as an employee; and

9 (b) Compensated service includes, but is not limited to, paid vacation, paid sick
10 leave, or other paid leave.

11 (15) “Estimate” means a projection of benefits prepared by staff of a service or
12 disability retirement allowance, a death or a refund payment. An estimate is not a
13 guarantee or promise of actual benefits that eventually may become due and payable, and
14 PERS is not bound by any estimates it provides. (ORS 238.455(6))

15 (16) “FAS” and “final average salary” have the same meaning as provided in:

16 (a) ORS 238.005(8) for all PERS Tier One members;

17 (b) ORS 238.435(2) for all PERS Tier Two members who are not employed by a
18 local government as defined in ORS 174.116;

19 (c) ORS 238.435(4) for all PERS Tier Two members who are employed by a local
20 government as defined in ORS 174.116; or

21 (d) ORS 238.535(2) for judge members of PERS for service as a judge.

22 (17) “General service member” means membership in PERS as other than a judge
23 member, a police officer, a firefighter, or a legislator.

1 (18) “Good cause” means a cause beyond the reasonable control of an individual.
2 “Good cause” exists when it is established by satisfactory evidence that factors or
3 circumstances are beyond the reasonable control of a rational and prudent individual of
4 normal sensitivity, exercising ordinary common sense.

5 (19) “Independent contractor” means an individual or business entity that is not
6 subject to the direction and control of the employing entity as determined in accordance
7 with OAR 459-010-0032.

8 (20) “Judge member” has the same meaning as provided in 238.500(3). For purposes
9 of this chapter, active, inactive, and retired membership of a judge member shall have the
10 same meaning as ORS 238.005(12)(b), (c), and (d), respectively.

11 (21) “Legislator” means an individual elected or appointed to the Oregon Legislative
12 Assembly who has elected to participate in PERS pursuant to ORS 238.015(5) as a
13 member of the Oregon Legislative Assembly as provided in ORS 238.068.

14 (22) “Member cost” means after-tax member contributions and payments made by or
15 on behalf of a member to purchase additional benefits.

16 (23) “Participating employer” means a public employer who has one or more
17 employees who are active members of PERS.

18 (24) “PERS” and “system” have the same meaning as the Public Employees
19 Retirement System in ORS 238.600.

20 (25) “Qualifying position” has the same meaning as provided in ORS 238.005(19).

21 (26) “Regular account” means the account established under ORS 238.250 for each
22 active and inactive member who has made contributions to the Fund or the account of an
23 alternate payee of such a member.

1 (27) “Salary” has the same meaning as provided in ORS 238.005(21).

2 (a) “Salary” includes a differential wage payment, as defined in this rule.

3 (b) For a Tier One member, a lump sum payment for accrued vacation pay is
4 considered salary:

5 (A) In determining employee and employer contributions.

6 (B) In determining final average salary for the purpose of calculating PERS benefits.

7 (c) For a Tier Two member, a lump sum payment for accrued vacation pay:

8 (A) Is considered salary in determining employee and employer contributions.

9 (B) Is not considered salary in determining final average salary for the purpose of
10 calculating PERS benefits.

11 (28) “Seasonal worker” means an individual whose engagement is characterized as
12 recurring for defined periods that are natural divisions of the employer’s business cycle
13 or services.

14 (29) “Staff” means the employees of the Public Employees Retirement System as
15 provided for in ORS 238.645.

16 (30) “Tier One member” means a member who established membership in the
17 system before January 1, 1996, as defined in ORS 238.430(2).

18 (31) “Tier Two member” means a member who established membership in the
19 system on or after January 1, 1996, in accordance with ORS 238.430.

20 (32) “USERRA” means the federal Uniformed Services Employment and
21 Reemployment Rights Act of 1994, 38 U.S.C. 4301-4334, as in effect on the effective
22 date of this rule.

1 (33) “Vacation pay” means a lump sum payment for accrued leave in a Vacation
2 Leave Program provided by a public employer which grants a period of exemption from
3 work for rest and relaxation with pay, and does not include:

4 (a) Sick leave programs;

5 (b) Programs allowing the accumulation of compensatory time, holiday pay or other
6 special leaves unless the public employer’s governing body indicates by resolution,
7 ordinance, or other legislative process, that such leave is intended to serve as additional
8 vacation leave; and

9 (c) Other programs, such as a Personal Time Off (PTO) plan, which are a
10 combination of vacation, sick, bereavement, personal and other leaves of pay as defined
11 and described by a public employer unless the employer has a written policy that clearly
12 indicates the percentage of the plan that represents vacation leave. If the employer’s PTO
13 has a cash option, the employer must report to PERS the amount of any lump sum pay-
14 off for the percentage that represents vacation leave.

15 (34) “Variable account” and “member variable account” mean the account in the
16 Variable Annuity Account established under ORS 238.260(2) for each active and inactive
17 member who has elected to have amounts paid or transferred into the Variable Annuity
18 Account.

19 (35) “Variable Annuity Account” means the account established in ORS 238.260(2).

20 (36)(a) “Volunteer” means an individual who performs a service for a public
21 employer, and who receives no compensation for the service performed.

1 (b) The term “volunteer” does not include an individual whose compensation
2 received from the same public employer for similar service within the same calendar year
3 exceeds the reasonable market value for such service.

4 (37) “Year” means any period of 12 consecutive calendar months.

5 *[(38) The effective date of this rule is January 1, 2009.]*

6 Stat. Auth.: ORS 238.650

7 Stats. Implemented: ORS [Chapter](#) 238

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

1 **459-015-0001**

2 **Definitions**

3 The words and phrases used in this division have the same meaning given them in
4 ORS Chapter 238 and OAR 459-005-0001. Additional terms are defined as follows
5 unless the context requires otherwise.

6 (1) “Any work for which qualified” means [: A] a job, not necessarily the last or
7 usual job, which the applicant for a disability retirement allowance:

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

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

11 (2) “Certified vocational consultant” means [: A] a person who satisfies the criteria
12 set forth under either of the following:

13 (a) A Master’s Degree in vocational rehabilitation, and one year of experience in
14 performing vocation evaluations or developing individualized return-to-work plans; or a
15 Bachelor’s Degree and two years of such experience. All degrees must have been earned
16 at an accredited institution; or

17 (b) Accredited as a Certified Rehabilitation Counselor (CRC) by the Commission on
18 Rehabilitation Counselor Certification; as a Certified Disability Management Specialist
19 (CDMS) by the Certification of Disability Management Specialists Commission; or a
20 Certified Vocational Evaluation Specialist (CVE) or a Certified Work Adjustment
21 Specialist (CWA) by the Commission on Certification of Work Adjustment and
22 Vocational Evaluation Specialists.

1 (3) “Confidential information” means [: I] information of a personal nature such
2 that disclosure would constitute an unreasonable invasion of privacy as defined by state
3 law.

4 (4) “Date of disability” means [: T] the later of:

5 (a) The day an active member ceased to work because of injury or disease;

6 (b) The date an inactive member separated from employment if the inactive member
7 applies for a disability retirement allowance within five years from date of separation and
8 the disability has been continuous from the date of separation; or

9 (c) The date an inactive member was disabled if such disability occurred within six
10 months from date of separation.

11 (5) “Date of termination” means [: T] the date a member terminates from
12 employment such that an employee/employer relationship no longer exists; the last day
13 worked (physically on the job), the last day of paid leave, or the last day of an official
14 leave of absence, whichever is the later.

15 (6) “Extended duration” means [: A] a period of not less than 90 consecutive
16 calendar days, unless the disability is expected to result in the death of the disabled
17 member in less than 90 days.

18 (7) “Granted service” means that portion of creditable service used solely to
19 calculate a disability retirement allowance under ORS 238.320 that is not performed
20 or earned.

21 ~~[(7)]~~ (8) “Independent medical exam” means [: A] an exam or exams conducted by
22 a physician chosen by PERS for purposes other than treatment which results in the

1 issuance of a report or reports based on those exams, giving an opinion regarding the
2 claimed injury or disease.

3 ~~[(8)]~~ (9) “Material contributing cause” means ~~[: T]~~ the efficient, dominant, and
4 proximate cause of the disability, without which the member would not be disabled.

5 ~~[(9)]~~ (10) “Monthly salary” means ~~[:]~~ ~~[S]~~ salary” as defined in ORS
6 238.005(21)(a) that is earned in the last full calendar month of employment, and includes
7 employer payments under ORS 238.205. This includes a differential wage payment as
8 defined in OAR 459-005-0001.

9 (a) Retroactive payments or payments made due to clerical errors, paid in accordance
10 with ORS 238.005(21)(b)(C), are allocated to the period the salary was earned or should
11 have been earned.

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

14 ~~[(10)]~~ (11) “Monthly salary received” means ~~[: is]~~ the greater of the monthly salary
15 paid ~~[, as defined in section (9) of this rule]~~ for the last full calendar month of:

16 (a) Employment before the date of disability; or

17 (b) Differential wage payments made before the date of disability. This subsection is
18 effective January 1, 2009.

19 ~~[(11)]~~ (12) “Normal retirement age” means ~~[: T]~~ the age at which a member can
20 retire without a reduced benefit as set forth under ORS 238.005 and 238.280.

21 ~~[(12)]~~ (13) “Other income” means income that ~~[: I]~~ includes, but is not limited to:

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

23 (b) Self-employment income from:

- 1 (A) Services industry;
- 2 (B) Sales;
- 3 (C) Assembly or manufacturing;
- 4 (D) Consulting;
- 5 (E) Property management;
- 6 (F) Hobby income; or
- 7 (G) Book advances.
- 8 (c) “Other income” does not include:

- 9 (A) Investment income;
- 10 (B) Rent; and
- 11 (C) Royalties.

12 ~~[(13)]~~ **(14)** “Physician” means ~~[: A]~~ **a** medical doctor, a doctor of osteopathy, a
13 doctor of oral surgery, a chiropractic doctor, a naturopathic doctor, or a doctor of
14 psychology practicing only within the purview of their license issued by the designated
15 authority of a state.

16 ~~[(14)]~~ **(15)** “Periodic review” means ~~[: A]~~ **a** review of a member receiving a
17 disability retirement allowance to determine whether or not a continued allowance is
18 warranted.

19 ~~[(15)]~~ **(16)** “Performance of duty” means ~~[: M]~~ **m**ental or physical incapacitation
20 arising out of and in the course of duty and is not intentionally self-inflicted. The injury
21 or disease must be initially caused, aggravated or accelerated to cause incapacitation by
22 the performance of the member’s duties in the employment of a participating public
23 employer. The job must be the material contributing cause of the injury or disease.

1 Performance of duty includes whatever an employee may be directed, required or
2 reasonably expected to do in connection with his or her employment, and not solely the
3 duties peculiar to his or her position.

4 ~~[(16)]~~ (17) “Pre-existing condition” means ~~[: A]~~ a condition that was not sustained
5 in actual performance of duty with the current employer.

6 ~~[(17)]~~ (18) “Protected health information” means ~~[: H]~~ h health information created
7 or received by a health care provider, health plan, or health care clearinghouse, where an
8 individual has a reasonable belief that the information can identify the individual, which
9 relates to:

- 10 (a) The past, present, or future physical or mental health of an individual;
- 11 (b) The provision of health care to an individual; or
- 12 (c) The past, present, or future payment for the provision of health care to an
13 individual.

14 ~~[(18)]~~ *Qualifying position: One or more concurrent positions with a participating
15 employer, in a participating class, which requires 600 or more hours in a calendar year.]*

16 (19) “Separation from all service entitling the member to membership in the
17 system[:]” means the last day worked (physically on the job), the last day of paid leave,
18 or the last day of an official leave of absence, whichever is the later.

19 (20) “Similar in compensation” means ~~[: S]~~ s salary or income, excluding overtime,
20 equaling at least 80% of the monthly salary, as defined in section ~~[(9)]~~ (10) of this rule.

21 (21) “Similar location: A position in the same general area of the applicant’s
22 residence or last employment location.

1 (22) “Training or vocational rehabilitation program” means [: A] a comprehensive,
2 coordinated program, usually state or federally funded, to train and assist individuals with
3 disabilities in securing gainful employment commensurate with their abilities and
4 capabilities.

5 (23) “Vocational evaluation” means [: A] an evaluation conducted by a certified
6 vocational consultant, to determine the ability of an applicant to perform any work for
7 which they are qualified.

8 (24) “Work related stress” means [: C] conditions or disabilities resulting from, but
9 not limited to:

- 10 (a) Change of employment duties;
- 11 (b) Conflicts with supervisors;
- 12 (c) Actual or perceived threat of loss of a job, demotion, or disciplinary action;
- 13 (d) Relationships with supervisors, coworkers, or the public;
- 14 (e) Specific or general job dissatisfaction;
- 15 (f) Work load pressures;
- 16 (g) Subjective perceptions of employment conditions or environment;
- 17 (h) Loss of job or demotion for whatever reason;
- 18 (i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;
- 19 (j) Objective or subjective stresses of employment; or
- 20 (k) Personnel decisions.

21 Stat. Auth.: ORS 238.650

22 Stats. Implemented: ORS 238.320 - 238.345 & 238.435(5)

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

1 **459-015-0005**

2 **Eligibility for Disability Retirement Allowances**

3 (1) *[The Legislative Assembly has adopted rigorous criteria for eligibility to draw*
4 *disability retirement allowance.]* Total, not partial disability, for an extended duration is
5 required and eligibility for a disability retirement allowance requires that:

6 (a) A member be disabled to such an extent that the member is unable to perform
7 any work for which qualified *[as defined in OAR 459-015-0001(1)]*; and

8 (b) Is unable to generate any income that is similar in compensation *[as defined in*
9 *OAR 459-015-0001(20)]* as of date of disability.

10 (2) In determining a member's eligibility for a disability retirement allowance, the
11 burden of proof is upon the applicant. The Board is not required to prove whether the
12 applicant is or is not eligible for a disability retirement allowance.

13 (3) Eligibility requirements for duty disabilities.

14 (a) Applicants with less than ten years of PERS employment must establish that they
15 are members of PERS and were disabled while in the actual performance of duty *[, as*
16 *defined in OAR 459-015-0001(15)]*.

17 (b) A member who has a pre-existing condition *[(as defined in OAR 459-015-*
18 *0001(16))]* must prove that the material contributing cause *[(as defined in OAR 459-015-*
19 *0001(8))]* of the disability was sustained while in actual performance of duty.

20 (c) Work related stress *[, as defined in OAR 459-015-0001(24),]* will not be
21 considered as the material contributing cause *[, as defined in OAR 459-015-0001(8),]* of a
22 duty disability unless the applicant establishes all of the following:

1 (A) The employment conditions producing the work-related stress exist in a real and
2 objective sense;

3 (B) The employment conditions producing the work-related stress are conditions
4 other than conditions generally inherent in every working situation or reasonable
5 disciplinary, corrective or job performance evaluation actions by the employer, or
6 cessation of employment or employment decisions attendant upon ordinary business or
7 financial cycles;

8 (C) There is a diagnosis of a mental or emotional disorder which is generally
9 recognized in the medical or psychological community; and

10 (D) There is evidence that the work-related stress arose out of and in the course of
11 employment.

12 (4) Eligibility requirements for non-duty disabilities. Eligible applicants must have a
13 minimum of ten years of employment as calculated pursuant to ORS 238.320(6).

14 **(5) A member's disability retirement allowance shall be calculated based on:**

15 **(a) Creditable service, and**

16 **(b) Granted service if the member had not attained:**

17 **(A) Age 55 if the last qualifying position was as a police officer or a firefighter.**

18 **(B) Age 58 if the last qualifying position was as other than a police officer or**
19 **firefighter.**

20 **(c) Granted service is:**

21 **(A) not included in the calculation of increased benefits payable under**

22 **ORS 238.380.**

23 **(B) included in the calculation of increased benefits payable under**

1 ORS 238.385.

2 *[(5) If a member meets the eligibility criteria, the member's disability retirement*
3 *allowance shall be based on creditable service[time as though the member had*
4 *continuously worked for a PERS participating employer to:*

5 *(a) Age 55 if retiring due to disability when the applicant's last PERS covered*
6 *position was as a police officer or a firefighter.*

7 *(b) Age 58 if retiring due to disability when the applicant's last PERS covered*
8 *position was as other than a police officer or firefighter.*

9 *(c) Actual service if member is over age 55 or 58 as used in (a) and (b) above.]*

10 (6) Termination of membership. Disability retirement allowances are available only
11 to PERS members. PERS membership is terminated by either loss of membership or
12 withdrawal of the member account balance as provided in ORS 238.095. Therefore,
13 former PERS members who have terminated their membership through loss of
14 membership or withdrawal are not eligible to receive PERS disability retirement
15 allowances.

16 Stat. Auth.: ORS 238.650 & 238.095

17 Stats. Implemented: ORS 238.320 - 238.345

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

1 **459-010-0010**

2 **Leave of Absence Without Pay**

3 **(1) For purposes of this rule:**

4 **(a) “Business day” means a day Monday through Friday when PERS is open**
5 **for business.**

6 **(b) “Major fraction of a month” means a minimum of 11 business days in a**
7 **calendar month.**

8 ~~[(1)]~~**(2)** Employer/Employee Agreement. An official leave of absence without pay
9 for any purpose must have the following in order to be considered bona fide:

- 10 (a) An agreement in writing;
- 11 (b) Accordance with the applicable law, rules and regulations;
- 12 (c) The duration specifically stated at the time of granting; and
- 13 (d) Certification to PERS by the employer granting such leave.

14 ~~[(2)]~~**(3)** Creditable Service **and Retirement Credit.**

15 (a) A leave of absence without pay occurring on or after July 1, 1987, which
16 constitutes the major fraction of a *[calendar]* month:

- 17 (A) May not be used to calculate “years of membership” under ORS 238.300; and
- 18 (B) May not be used to determine “creditable service” *[under ORS 238.005]* or
19 “retirement credit” under ORS 238.005.

20 (b) A leave of absence without pay occurring before July 1, 1987, which constitutes
21 the major fraction of a *[calendar]* month:

- 22 (A) Must be used to calculate “years of membership” under ORS 238.300; and

1 (B) Must be used to determine “creditable service” *[under ORS 238.005 or]* and
2 “retirement credit” under ORS 238.005.

3 (c) A leave of absence without pay occurring on or after January 1, 2004, which
4 constitutes the major fraction of a month may not be used to determine “retirement
5 credit” under ORS 238A.140 for any period of employment after the date
6 membership is established under ORS 238A.100.

7 *[(3)](4)* Reporting Requirement. Unless otherwise agreed upon by PERS, the
8 employer shall report the following in a format acceptable to PERS:

9 (a) Any period of leave of absence without pay, which constitutes the major fraction
10 of a *[calendar]* month, for each member at the time the leave begins. The reported period
11 of leave of absence without pay must include an end date.

12 (b) Any amendment or extension to a previously reported period of leave of absence
13 without pay.

14 *[(4)](5)* A PERS member on an official leave of absence without pay is not
15 considered terminated from service with a participating employer.

16 *[(5)](6)* An employee on an official leave of absence without pay on the date the
17 employer begins to participate in PERS, shall be considered to be an employee on such
18 date for the purpose of determining eligibility for participation in PERS.

19 *[(6)](7)* A layoff from employment does not constitute a leave of absence without
20 pay.

21 Stat. Auth.: ORS 238.650 & 238A.450

22 Stats. Implemented: ORS 238.300 & 238A.140

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

1 **459-010-0014**

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

3 (1) For purposes of this rule:

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

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

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

10 (2) Except as provided in OAR 459-010-0010(3), [A]an active member accrues
11 one month of creditable service for each month in which the member performs service for
12 the major fraction of the month.

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

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

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

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

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

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

8 (5) *[Sections (2) and (3) of this rule notwithstanding,]* Except as provided in OAR
9 459-010-0010(3), an active member who is a school employee will accrue six months of
10 creditable service if the member performs service for *[all portions]* a major fraction of
11 each month of a school year that falls between January 1 and June 30, and six months of
12 creditable service if the member performs service for *[all portions]* a major fraction of
13 each month of a school year that falls between July 1 and December 31.

14 *[(6) A member may accrue creditable service as provided in [OAR 459-010-*
15 *0042(3).]*

16 *[(7)]*(6) A member may not accrue more than one month of creditable service for
17 any calendar month and no more than one year of creditable service for any calendar
18 year.

19 *[(8)]*(7) The provisions of this rule are effective for service credit determinations
20 made on or after January 1, 2008.

21 Stat. Auth.: ORS 238.650

22 Stats. Implemented: ORS 238.005 & 238.300

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

1 **459-075-0150**

2 **Retirement Credit**

3 (1) For purposes of this rule:

4 (a) “Active member” has the same meaning as provided in ORS 238A.005(1).

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

8 (2) Except as provided in OAR 459-010-0010(3), [A]an active member accrues one
9 month of retirement credit for each month in which the member performs service for the
10 major fraction of the month.

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

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

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

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

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

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

5 (5) *[Sections (2) and (3) of this rule notwithstanding,]* Except as provided in OAR
6 459-010-0010(3), an active member who is a school employee will accrue six months of
7 retirement credit if the member performs service for *[all portions]* a major fraction of
8 each month of a school year that falls between January 1 and June 30, and six months of
9 creditable service if the member performs service for *[all portions]* a major fraction of
10 each month of a school year that falls between July 1 and December 31.

11 (6) A member may not accrue more than one month of retirement credit for any
12 calendar month and no more than one year of retirement credit for any calendar year.

13 (7) Credit for the six-month waiting period required by OAR 459-075-0010(2).

14 (a) Upon establishing membership in the pension program, a member shall receive
15 credit for the waiting period required to establish membership under OAR 459-075-
16 0010(2).

17 (b) If the member's waiting period before establishment of membership included an
18 interruption of service as described in OAR 459-075-0010(2)(b), no credit shall be
19 awarded for the period of employment before the interruption.

20 (8) The provisions of this rule are effective for retirement credit determinations made
21 on or after January 1, 2008.

22 Stat. Auth.: 238A.450

23 Stats. Implemented: *[OL 2007 Ch. 769]* ORS 238A.140



Oregon

Theodore R. Kulongoski, Governor

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March 29, 2010

TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Administrator, PPLAD

SUBJECT: Temporary Adoption and Notice of Permanent Rulemaking for Rules to Implement Portions of SB 897:
 OAR 459-035-0000, *Policy and Goals*
 OAR 459-035-0001, *Definitions*
 OAR 459-035-0020, *Eligibility, General*
 OAR 459-035-0030, *Eligibility, Retirement Health Insurance Account*
 OAR 459-035-0040, *Eligibility, Retiree Health Insurance Premium Account*
 OAR 459-010-0042, *Retroactive Salary Payments*
 OAR 459-011-0050, *Forfeiture and Restoration of Service Rights*

OVERVIEW

- Action: Adopt temporary modifications to Health Insurance Program rules impacted by SB 897 and begin notice of permanent rulemaking for all rules to implement other portions of that bill.
- Reason for Temporary Rules: To update several Health Insurance rules to comply with the expanded eligibility provisions of SB 897, effective February 8, 2010.
- Subject: Rule modifications needed to comply with portions of SB 897 that have immediate effect: OPSRP member participation in the PERS Health Insurance Program and Retirement Credit for Retroactive Salary Payments.
- Policy Issue: No policy issues have been identified.

BACKGROUND

Senate Bill 897, which became effective on February 8, 2010, allows OPSRP Pension Program retired members, their spouses, and eligible dependents to participate in the PERS Health Insurance Program. The proposed rule modifications are necessary to include ORS Chapter 238A in that program's rules. SB 897 also provides that if retroactive payment of wages is included in the salary of an employee, the employee shall receive retirement credit for the periods to which the payment is allocated. The proposed rule modifications eliminate redundant OAR 459-010-0042, and move section (4) of 459-010-0042 to OAR 459-011-0050, *Forfeiture and Restoration of Service Rights*.

SUMMARY OF PROPOSED RULE MODIFICATIONS

PERS Health Insurance Programs:

OAR 459-035-0000: This rule provides the policy and goals of the PERS Health Insurance Program. References to Chapter 238A were added as OPSRP members are now included in the Health Insurance Program.

OAR 459-035-0001: This rule provides definitions for terms used throughout the Health Insurance Program rules. The modifications to the rule incorporate the appropriate OPSRP terms and Chapter 238A citations.

OAR 459-035-0020: This rule describes the eligibility requirements to participate in a PERS-sponsored health insurance plan. The rule modifications cite the appropriate OPSRP statute that implements SB 897.

OAR 459-035-0030: This rule provides eligibility criteria for the Retirement Health Insurance Account (RHIA). The modifications to the rule clarify that OPSRP members are not eligible to participate in the RHIA.

OAR 459-035-0040: This rule provides eligibility criteria for the Retiree Health Insurance Premium Account (RHIPA). The modifications to the rule clarify that OPSRP members are not eligible to participate in the RHIPA.

Retroactive Salary and Retirement Credit

OAR 459-010-0042 (Repeal): All sections of this rule other than section (4) are redundant and do not require clarification in OAR; section (4) is being moved into OAR 459-011-0050.

OAR 459-011-0050: The proposed change incorporates section (4) from the above repealed rule.

JUSTIFICATION FOR TEMPORARY RULEMAKING

Staff recommends temporary adoption of the rule modifications and the commencement of permanent rulemaking. Failure to temporarily adopt the rules will create conflicting OARs and statutes. Delay in adoption of the Health Insurance Program rules impacted by SB 897 would incorrectly exclude OPSRP members from eligibility for the Health Insurance Program. The temporary adoption of the rules will provide PERS an authority and mechanism to avoid these consequences.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on April 27, 2010 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on May 3, 2010 at 5:00 p.m.

LEGAL REVIEW

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

EFFECTIVE DATE

These rule modifications will become effective upon filing. The maximum period the temporary rules can remain in effect is 180 days, so staff has initiated permanent rulemaking to replace these temporary rules.

IMPACT

Mandatory: Yes, to comply with statutory changes.

Impact: Employers, OPSRP members, and staff will benefit from clarification of the eligibility standards for the PERS Health Insurance Program. The changes to OAR 459-010-0042 and 459-011-0050 will eliminate redundancy and clarify the retirement credit provisions of SB 897.

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

RULEMAKING TIMELINE

March 15, 2010	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
March 29, 2010	PERS Board may adopt the proposed temporary rule modifications; PERS staff will proceed with permanent rulemaking unless otherwise directed.
April 1, 2010	<i>Oregon Bulletin</i> publishes the Notice of Rulemaking Hearing.
April 27, 2010	Rulemaking hearing to be held at 2:00 p.m. in Tigard.
May 3, 2010	Public comment period ends.
May 21, 2010	Staff will propose adopting the permanent rule modifications, 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 modifications to OAR 459-035-0000, 459-035-0001, 459-035-0020, 459-035-0030 and 459-035-0040.”
2. Direct staff to make other changes to the rules or explore other options.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: The rules are needed to update several Health Insurance Program rules with the provisions of SB 897, effective February 8, 2010.

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

Temporary Adoption & Notice – Rules to Implement Non-Verification Portions of SB 897

03/29/2010

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B.2. Attachment 1 – 459-035-0000

B.2. Attachment 2 – 459-035-0001

B.2. Attachment 3 – 459-035-0020

B.2. Attachment 4 – 459-035-0030

B.2. Attachment 5 – 459-035-0040

B.2. Attachment 6 – 459-010-0042

B.2. Attachment 7 – 459-011-0050

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

1 **459-035-0000**

2 **Policy and Goals**

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

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

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

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

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

1 **459-035-0001**

2 **Definitions**

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

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

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

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

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

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

15 (a) A natural child.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (19) “Qualifying Service” means:

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

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

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

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

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

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

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

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

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

4 *[(27) The provisions of this rule are effective on January 1, 2005.]*

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

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

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

1 **459-035-0020**

2 **Eligibility, General**

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

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

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

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

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

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

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

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

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

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

8 (5) A surviving spouse or dependent means:

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

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

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

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

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

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

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

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

1 **459-035-0030**

2 **Eligibility, Retirement Health Insurance Account**

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

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

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

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

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

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

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

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

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

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

8 Stat. Auth: ORS 238.650

9 Stats. Implemented: ORS 238.420

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

1 **459-035-0040**

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

3 This rule describes the eligibility requirements for an “eligible retired state
4 employee” participating in a PERS-sponsored health insurance plan, exclusive of dental
5 coverage, to be eligible for a contribution from the RHIPA toward the cost of premiums
6 for that health insurance plan. The amount of the contribution is established in OAR 459-
7 035-0050. An “eligible retired state employee” must be a Tier One or Tier Two
8 member and *[shall]* includes the following:

9 (1) A retiree who was a state employee at the time of retirement and who is not
10 eligible for Medicare, and who:

11 (a) Is receiving a PERS service or disability retirement allowance or benefit, and had
12 8 or more years of qualifying service as defined in OAR 459-035-0001(19)(a) at the time
13 of retirement; or

14 (b) Is receiving a PERS disability retirement allowance computed as if the member
15 had eight or more years of creditable service as defined in ORS 238.005(5), and has
16 attained the earliest service retirement age under ORS 238.280.

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

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

20 (b) Was covered under the eligible retired state employee’s PERS-sponsored health
21 insurance plan, and the eligible retired state employee retired on or after September 29,
22 1991.

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

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

10 Stat. Auth: ORS 238.650

11 Stats. Implemented: ORS 238.415

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

1 **[459-010-0042**

2 ***Retroactive Salary Payments***

3 *(1) For the purpose of this rule, “retroactive payment” means a payment of salary*
4 *attributable to a prior period made pursuant to a court order, administrative order,*
5 *arbitration award, conciliation agreement, or private settlement agreement that resolves*
6 *a dispute or claim based upon an employee’s rights under employment and wage law or*
7 *a collective bargaining agreement.*

8 *(2) A retroactive payment must be allocated to the period(s) in which the work was*
9 *done or would have been done and deemed paid as so allocated pursuant to ORS*
10 *238.005(21)(b)(C). Payments allocated to any period during which the employee was an*
11 *active or inactive member must be used in the determination of employee and employer*
12 *contributions and in the calculation of benefits. Payments allocated to any period of non-*
13 *membership or retired membership must not be used to determine contributions or*
14 *calculate benefits.*

15 *(3) Except as provided in OAR 459-010-0014(7), an employee who is an active*
16 *member on the date of a retroactive payment will receive creditable service for those*
17 *periods of active or inactive membership to which the payment is allocated.*

18 *(4) An employee who is terminated from employment, withdraws the member*
19 *account under ORS 238.265, and is reinstated to employment in connection with a*
20 *retroactive payment may restore membership and service rights as provided in OAR 459-*
21 *011-0050 within the time period described in Section (2) of that rule or within one year*
22 *from the date the employee actually returns to employment, whichever is later.*

1 *(5) The provisions of this rule apply to retroactive payments made on or after July*

2 *31, 2003.*

3 *Stat. Auth.: ORS 238.650*

4 *Stats. Implemented: ORS 238.005, 238.105]*

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 011 – RETIREMENT CREDIT**

1 **459-011-0050**

2 **Forfeiture and Restoration of Service Rights**

3 (1) A member who, pursuant to ORS 238.265, withdraws the amount credited to the
4 member's account forfeits all membership rights accrued under ORS chapter 238 before
5 the date of the withdrawal, including any service rights attributable to employment before
6 the date of the withdrawal.

7 (2) Any such person who reenters the service of a participating employer within five
8 years from the date of the last separation from employment that preceded the member's
9 withdrawal may, at any time during the one-year period immediately following the date
10 of reemployment, repay to PERS, in a single lump sum payment, an amount equal to the
11 amount withdrawn plus the earnings the amount withdrawn would have accumulated
12 from the date of withdrawal to the date of repayment.

13 (3) Upon repayment as described in section (2) of this rule, the PERS Chapter 238
14 Program membership and service rights forfeited by the withdrawal will be restored. The
15 former member will reestablish membership in the PERS Chapter 238 Program on the
16 first day of the month following the date of the repayment. Service by the former member
17 from date of reemployment to the date membership is reestablished shall be attributed to
18 the PERS Chapter 238 Program. The withdrawn member account will be reestablished in
19 the amount of the repayment.

20 **(4) An employee who is terminated from employment, withdraws the member**
21 **account under ORS 238.265, and is reinstated to employment in connection with a**
22 **retroactive payment may restore membership and service rights within the time**

1 period described in section (2) of this rule or within one year from the date the
2 employee actually returns to employment, whichever is later. A retroactive payment
3 must be allocated pursuant to section 7(2), Enrolled Senate Bill 897 (2010). So
4 allocated, the payment must be used in the determination of employee and employer
5 contributions and in the calculation of benefits.

6 ~~[(4)]~~(5) Notwithstanding the provisions of this rule, a member who withdraws
7 pursuant to ORS 238.265 and receives an additional amount pursuant to section 2,
8 chapter 276, Oregon Laws 2003, may not reestablish membership under section (2) of
9 this rule.

10 Stat. Auth.: ORS 238.650

11 Stats. Implemented: ORS 238.105, OL 2007 Ch. 769, Enrolled Senate Bill 897
12 (2010)



Oregon

Theodore R. Kulongoski, Governor

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March 29, 2010

TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Deputy Director

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

OVERVIEW

- Action: None. This is the first reading of new rules and modifications to existing rules in Division 45, Domestic Relations Orders.
- Reason: Create new rules to address domestic relations orders for members of Chapter 238A OPSRP Pension Program and Individual Account Program (IAP); modify existing rules to reference Chapter 238A and PERS divorce forms; address domestic partner issues; and edit for clarity.
- Subject: Domestic Relations Orders.
- Policy Issue: No policy issues have been identified at this time.

BACKGROUND

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

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

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

SUMMARY OF MODIFICATIONS TO RULES SINCE NOTICE

The Oregon Family Fairness Act, effective January 1, 2008, allows people of the same sex to enter into a registered domestic partnership. The act requires PERS to provide benefits to a registered domestic partner to the same extent that a spouse or ex-spouse would be entitled to PERS benefits under the plan unless it would conflict with the plan's federal tax qualification. While these rules were open for rulemaking, the agency determined how it will administer PERS benefits that are divided due to dissolution of a registered domestic partnership, including tax reporting. To allow time for public comment and review of these modifications regarding registered domestic partnerships, we are delaying adoption until the next meeting. The following rules modifications are proposed to address this area:

459-045-0001, *Definitions*

The definitions in sections (2) and (6) were modified to include domestic partners and the dissolution of those relationships in defining an "alternate payee" and a "court order." Sections (11) and (12) were modified to reference a registered domestic partnership and partner respectively. Definitions for "partner" and "registered domestic partnership" were added.

459-045-0030(6), *General Administration for Chapter 238 Tier One/Tier Two*

459-045-0032(7), *General Administration for OPSRP Pension Program*

459-045-0034(4), *General Administration for Individual Account Program (IAP)*

The last section in each of these rules clarifies that if the alternate payee was a partner of the member, the award to the alternate payee is a distribution to the member for federal tax purposes. Therefore, an award of a portion of a member's monthly benefit must be as a deduction from the member's benefit and establishing an alternate payee's separate account must be done in accordance with the plan's tax qualification requirements.

There were no substantive changes to the other rules since notice.

PUBLIC COMMENT AND HEARING TESTIMONY

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

LEGAL REVIEW

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

IMPACT

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

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

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

RULEMAKING TIMELINE

October 14, 2009	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
November 1, 2009	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began.
December 22, 2009	Rulemaking hearing held at 2:00 p.m. in Tigard.
January 29, 2010	PERS Board notified that staff began the rulemaking process.
March 10, 2010	First public comment period ended at 5:00 p.m.
March 29, 2010	First reading of the rules.
April 30, 2010	Second public comment period ends at 5:00 p.m.
May 21, 2010	Staff will propose adopting the permanent rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

NEXT STEPS

The public comment period ends on April 30, 2010 at 5:00 p.m. The rules are scheduled to be brought before the PERS board for adoption at the May 21, 2010 Board meeting.

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

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

1 *[459-045-0000*

2 *Authority and Purpose*

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

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

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

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

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

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

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

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

21 *Stats. Implemented: ORS 238.465]*

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

1 **459-045-0001**

2 **Definitions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (a) The member’s account(s);

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

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

20 and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 Stats. Implemented: ORS 238.465

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

1 **459-045-0010**

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

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

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

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

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

11 **(a) The date of annulment, separation, divorce, or property settlement.**

12 **(A) The separate account will be established as of December 31 of the calendar**
13 **year before this date unless:**

14 **(i) A prior year is provided in the court order, or**

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

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

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

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

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

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

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

3 (3) Award of Payment from Member's Monthly Benefit (Non-Retired Member).

4 If a final court order awards an alternate payee a reduction or deduction amount
5 from the monthly service or disability retirement benefit that shall be paid in the
6 future to the member, the court order must provide:

7 (a) The date of annulment, separation, divorce, or property settlement.

8 (b) Whether the award is a reduction or deduction from the member's benefit.

9 If the award is a reduction, the court order must provide whether the alternate
10 payee is eligible to elect a separate benefit option at any time after the member
11 reaches earliest retirement eligibility.

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

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

15 (B) A dollar amount; or

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

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

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

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

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

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

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

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

7 (A) Before retirement.

8 (B) At retirement.

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

10 (A) The member.

11 (B) The alternate payee.

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

15 (a) The date of annulment, separation, divorce, or property settlement.

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

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

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

21 (B) A dollar amount.

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

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

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

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

7 (A) The member.

8 (B) The alternate payee.

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

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

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

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

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

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

4 *[(e) The court order shall specify a date between January 1, and through December*
5 *31, on which to base the transfer of the alternate payee's award from the member's PERS*
6 *account. If a court order directs PERS to transfer a certain percentage to the alternate*
7 *payee, it shall be converted into a dollar amount. The converted dollar amount or the*
8 *dollar amount stated in the court order that is awarded to the alternate payee shall be*
9 *applied against the last audited PERS member account balance on record as of the end*
10 *of the plan year (December 31) on or immediately preceding the award date specified in*
11 *the court order and then it shall be deposited into a separate account in the name of the*
12 *alternate payee.]*

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

20 *[(g) A percentage award that is due an alternate payee shall be applied against the*
21 *member's individual account, and in the Variable Annuity Account in the Fund. Specific*
22 *dollar amounts awarded to an alternate payee shall be applied against the member's*

1 *individual account, and in the Variable Annuity Account in the Fund on a pro-rata*
2 *basis.]*

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

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

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

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

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

18 *[(b) The award is computed using either formula (A) which uses years and months,*
19 *or formula (B), which uses member contributions and interest credited to the member's*
20 *PERS account. Each of these formulas is then multiplied by a subsequent percentage as*
21 *described in sub-paragraph (C). Any court order that PERS receives that utilizes the*
22 *ratio method must spell out in full the formula that is to be used for determining the*
23 *alternate payee's award.]*

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

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

6 *TCS]*

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

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

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

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

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

19 *TA]*

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

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

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

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

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

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

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

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

19 *[(a) An alternate payee to elect to receive his or her award in the form of retirement*
20 *payment option on or after the member's earliest eligibility for service retirement*
21 *benefits, regardless of whether or not the member actually retires, and/or the member or*
22 *the member's beneficiaries elects to begin receiving benefits.]*

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

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

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

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

21 *[(4) The Payment Division Deduction Method: This method can be used in regard to*
22 *a member prior to retirement, or in regard to a member who has retired and has started*
23 *receiving payment. A court order provides an award, which is stated as a flat or set*

1 *dollar amount, or as a percentage, either directly or pursuant to a formula, that is to be*
2 *paid to an alternate payee from the service or disability retirement benefit that shall be*
3 *paid in the future to a member, or that is presently being paid by PERS to a retired*
4 *member.]*

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

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

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

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

20 *[(e) If a member has retired and been receiving payment for more than the period*
21 *allowed in ORS 238.305(1) PERS shall only allow a change in the beneficiary*
22 *designation if the option originally selected by the member allows for a change of*

1 *beneficiary, regardless of any direction to the contrary that may be contained in a court*
2 *order.]*

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

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

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

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

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

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

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

17 Stat. Auth.: ORS 238.465~~[(3)]~~ & 238.650

18 Stats. Implemented: ORS 238.465

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

1 459-045-0012

2 OPSRP Pension Program Division of Benefits

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

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

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

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

12 (a) The date of annulment, separation, divorce, or property settlement.

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

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

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

20 (B) A dollar amount; or

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

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

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

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

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

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

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

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

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

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

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

19 (a) The date of annulment, separation, divorce, or property settlement.

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

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

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

1 (B) A dollar amount.

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

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

6 (f) Whether a member, who elected to receive their pension under ORS
7 238A.190(1)(b) or (d), is allowed to receive the higher pension benefit under ORS
8 238A.190(2)(b).

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

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

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

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

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

20 (a) The date of annulment, separation, divorce, or property settlement.

21 (b) Whether the award is a reduction or deduction from the member's monthly
22 disability benefit.

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

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

2 [Stats. Implemented: ORS 238.465](#)

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

1 459-045-0014

2 Individual Account Program (IAP) Division of Benefits

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

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

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

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

11 (a) The date of annulment, separation, divorce, or property settlement.

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

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

15 (ii) The date is December 31.

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

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

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

22 (i) A percentage, expressed in whole numbers, or

1 (ii) A dollar amount.

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

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

4 (3) Award of IAP Alternate Payee Account (Retired Member). If a final court
5 order provides an award of an alternate payee account to be established from the
6 remaining account balance of a retired member receiving installment payments, to
7 be effective on the date that PERS establishes the alternate payee account, the court
8 order must provide:

9 (a) The date of annulment, separation, divorce, or property settlement.

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

11 (A) The effective date of the alternate payee account shall be as soon as
12 administratively feasible after PERS receives and approves a final court order as
13 administrable.

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

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

16 (D) Any installment payments paid to the member before the alternate payee
17 account is established will not be included in the award.

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

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

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

21 Stats. Implemented: ORS 238.465

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

1 459-045-0020

2 Court Orders

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 Stats. Implemented: ORS 238.465

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

1 459-045-0030

2 General Administration for Chapter 238 Tier One / Tier Two

3 (1) Alternate payee account.

4 (a) A percentage award will be applied against the member's regular account

5 and if applicable, Variable Annuity Account. A dollar award will be applied

6 proportionately against the member's regular account and if applicable, Variable

7 Annuity Account.

8 (A) Once the amount of an alternate payee's award is determined, funds will be

9 transferred to an alternate payee account.

10 (B) An alternate payee may not participate in the Variable Annuity Account

11 program.

12 (C) Earnings and losses on the alternate payee's account will be based on

13 regular account earning rates in accordance with OAR chapter 459, division 007

14 after the transfer.

15 (b) At the time of the alternate payee's death, if the provisions of ORS 238.395

16 are met by the member, the alternate payee's beneficiary will receive matching

17 employer dollars regardless of whether a final court order awarded matching

18 employer dollars.

19 (c) An alternate payee is not entitled to matching employer dollars if the

20 alternate payee elects to receive the award in the form of a withdrawal, regardless of

21 whether a final court order awarded matching employer dollars.

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

3 (A) Refund Annuity.

4 (B) Option 1.

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

6 (D) Lump-sum Option 1.

7 (E) Total lump-sum option.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 *and*

3 *(c) Actuarially computed based on the age and life expectancy of the alternate*

4 *payee.]*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 Stat. Auth.: ORS 238.465 & 238.650

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

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

1 459-045-0032

2 General Administration for OPSRP Pension Program

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 459-045-0034

2 General Administration for Individual Account Program (IAP)

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

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

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

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

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

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

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

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

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

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

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

1 459-045-0040

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

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

6 (a) A member release.

7 (b) An alternate payee release.

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

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

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

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

16 (c) That service was improper.

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

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

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

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

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

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

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

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

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

22 Stats. Implemented: ORS 238.465

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

1 459-045-0050

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

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

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

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

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

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

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

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

17 **(a) In writing;**

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

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

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

1

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

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

8 *(a) An Alternate Payee Retirement Application form, completed and signed before a*
9 *notary, and*

10 *(b) An Acknowledgment of Receipt of Federal Tax Information on Service*
11 *Retirements form, completed and signed, and*

12 *(c) A Retirement Benefit Distribution Election form, or*

13 *(d) An Account Balance Refund Request Packet completed and signed before a*
14 *notary.*

15 *(e) Verification of age of the alternate payee.*

16 *(f) Verification of age of the member if required for computation of benefits.*

17 *(g) A Notice of Divorce Decree Administrative Fee form, completed and signed, and*

18 *(h) An Alternate Payee Election Request and/or Option Release form.]*

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

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

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

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

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

13 Stats. Implemented: ORS 238.465

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

1 459-045-0060

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 Stats. Implemented: ORS 238 .465

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

1 **459-045-0080**

2 **PERS Notifications**

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

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

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

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

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

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

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

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

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

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

21 Stats. Implemented: ORS 238.465

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

1 **459-045-0090**

2 **PERS Administrative Fee**

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

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

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

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

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

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

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

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

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

7 Stats. Implemented: ORS 238.465



Oregon

Theodore R. Kulongoski, Governor

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March 29, 2010

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

In preparation for the Oregon Legislature's 2011 regular session, PERS staff has developed legislative concepts for possible introduction by the Governor's Office as possible agency-sponsored bills. The development process involved soliciting ideas from PERS staff that were then discussed with the PERS Board's Legislative Advisory Committee (LAC), as reported in more detail below. If the PERS Board approves further development at this meeting, these concepts would proceed along the following time line:

- April 9, 2010** Deadline for submitting concepts (including "placeholder" concepts) to DAS for the 2011 legislative session.
- June 1, 2010** Last day for DAS to submit approved concepts to Legislative Counsel for drafting (does not include "placeholder concepts").
- July 14, 2010** Deadline for submitting additional "placeholder" information to DAS.
- July 30, 2010** Last day for DAS to submit approved "placeholder" information to Legislative Counsel for drafting.
- August – November** Legislative Counsel drafts legislative concepts.
- November 19, 2010** PERS Board reviews final draft concepts and decides whether to submit the concept(s) to the Governor's office for introduction.
- December 15, 2010** Deadline for Governor to pre-session file agency bills.
- January 10, 2011** Session begins.

STAFF RECOMMENDATION

PERS staff recommends that PERS submit two concepts for further development as described below:

LEGISLATIVE CONCEPT #1: PERS HOUSEKEEPING BILL

This concept would correct technical discrepancies and anomalies in existing statutes. Following is an explanation of each provision within this concept:

- **Legislator Retirement Plans**

Amend current statutes to resolve statutory conflicts governing retirement plan choices for elected and appointed legislators and conform those statutes to federal law. Remove

inconsistent requirements or incompatible elections consistent with the repeal of “Break in Service.” This concept would apply retroactive to August 29, 2003, provides a remedy for invalid elections, and provides a default in lieu of a legislator’s election.

- **Payment for Purchases by Trustee-to-Trustee Transfer**

Amend current statutes to correct an omission in SB 399 (2009). That bill allows members to pay for purchases via a pre-tax transfer from certain other retirement plans. The bill omitted two types of purchases:

- Credit for service as a public safety officer in another state.
- Retirement credit for service while on loan to the federal government.

- **OPSRP Pension Program Vesting**

The existing OPSRP Pension Program vesting standards provide that a member may vest in one of two ways:

- Upon working 600 or more hours in each of five calendar years, or
- Upon reaching normal retirement age (65) *as an active member on that date*.

Currently, non-vested members who leave employment before reaching age 65, or who begin employment after that age, cannot vest in their OPSRP Pension benefits by reason of age.

This concept would allow any member to vest in whatever pension benefit their service has entitled them to upon reaching normal retirement age or older, even if they are not an active member on the date they reach normal retirement age. This concept would apply retroactive to August 29, 2003.

- **Re-codify Invalid Statutory Sections**

This concept would re-codify ORS 238.250 and 238.255 to remove statutory sections that were invalidated by the Oregon Supreme Court in the *Strunk* case.

LAC AND OTHER STAKEHOLDER COMMENTS

The PERS Board’s Legislative Advisory Committee discussed these topics at its meeting on March 10, 2010. The provisions in this concept drew little comment and found general support.

BOARD OPTIONS

The Board may:

1. Direct staff to submit this legislative concept to DAS for further development.
2. Direct staff to submit this legislative concept with modifications to DAS for further development.
3. Direct staff not to submit this legislative concept to DAS.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: This legislative concept clarifies and corrects the affected statutes and better conforms those statutes to stakeholder expectations, system functionality, and plan qualification requirements.

LEGISLATIVE CONCEPT #2: OPSRP PENSION WITHDRAWAL RESTRICTIONS

This concept would be submitted as a “placeholder” to allow for further discussion with staff and stakeholders.

OVERVIEW

An OPSRP Pension member may withdraw only if the member is vested and the present value of the member’s pension is \$5,000 or less. That same member may, however, withdraw from the Individual Account Program (IAP) without any restriction. That dynamic sets up a potential inconsistency when that person subsequently returns to PERS-covered employment: the employee needs to serve another waiting time to establish membership in the IAP, so employee contributions cannot start until the end of that waiting time, but that same employee retains their OPSRP Pension membership, so employer contributions should start immediately. Having the same person be a member in one program and not the other presents administrative challenges our current computer system can’t resolve and is inconsistent with the PERS Plan’s “Withdraw from One, Withdraw from All” structure in the Tier One/Two program. This concept would address this inconsistency and coordinate the contribution start dates for both the OPSRP Pension and IAP programs.

LAC AND OTHER STAKEHOLDER COMMENTS

The PERS Board’s Legislative Advisory Committee discussed this concept at its meeting on March 10, 2010. Originally included in the housekeeping legislative concept described above, the diversity of opinion expressed by LAC members warranted its consideration as a separate concept. There was support, as well as concern, for maintaining the limitations, eliminating the limitations, and providing for forfeiture of the pension benefit if the member withdrew from the IAP. There was no consensus in the brief discussion on the concept, so staff recommends removing this concept from the PERS housekeeping bill and submitting a placeholder so further discussion and consensus can be achieved, if possible.

BOARD OPTIONS

The Board may:

1. Direct staff to submit legislative concept #2 to DAS as a “placeholder” to allow for further discussion and development.
2. Direct staff to submit legislative concept #2 with modifications to DAS as a “placeholder” for further discussion and development.
3. Direct staff to not submit legislative concept #2 to DAS.

STAFF RECOMMENDATION

Staff recommends the Board choose Option # 1.

- Reason: The persistent administrative dilemma presented by the withdrawal limitations requires resolution. Staff would like the opportunity to consider the LAC comments and develop an approach that can be supported by the majority of stakeholders. The Board will have an opportunity to review and discuss this concept again during the July 23, 2010 meeting.

OTHER CONCEPT CONSIDERATIONS

Reemployment of Retired Members

The PERS Board's Legislative Advisory Committee discussed re-employment of retired members during their March 10, 2010 meeting. LAC members unanimously agreed that a consensus approach related to re-employment of retired members would not be reached. LAC members were not interested in forming a task group to further discuss the issue and preferred to address reemployment scenarios independently.

For the time being, therefore, staff is not recommending an omnibus legislative concept that would address the reemployment of retired members with PERS-covered employers. Instead, staff will continue to put forth the Board's policy position that any proposed exceptions to the current return to work limitations be narrowly tailored and clearly defined; include a declaration establishing a work force shortage or other special situation; and include a sunset clause.



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March 29, 2010

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
Yvette Elledge, Customer Service Division Administrator
SUBJECT: SB 897 Data Verification Implementation Plan

Senate Bill 897 provides that a Tier One, Tier Two, and OPSRP Pension Program member can, within two years of their earliest retirement age, request a verification of certain retirement data:

- the member's accrued creditable service or retirement credit,
- the member's "final average salary."

For Tier One/Tier Two members, the verification will also include:

- the member's regular and variable account balances, and
- any accumulated unused sick leave, if applicable. (Sick leave data is not required to be included in verifications requested before July 1, 2012.)

If a verification is produced, SB 897 further provides that, when the member retires, the retirement benefit will be calculated using data that is not less than the amounts provided in the verification, except:

- creditable service, retirement credit, and final average salary may increase for service or salary attributable to periods of employment after the date specified in the verification;
- account balances will be adjusted for earnings or losses credited up to the member's effective retirement date;
- accumulated unused sick leave will be adjusted for leave accrued and used after the date specified in the verification; and
- PERS can use an amount less than an amount provided in the verification if the member knew the data in the verification was inaccurate and did not dispute the accuracy.

Employers will have a reasonable time to confirm information reported to PERS before a verification is issued, but will not be able to change that information once the verification is issued. Members will have 60 days after PERS provides the verification to dispute the accuracy of the data in the verification.

The bill also provides that, if PERS overpays a benefit because of an error in the data used to produce a verification, PERS cannot reduce the benefit on account of the error or recover the amount overpaid. The overpayment must be charged to the PERS Fund's Contingency Reserve or paid as an administrative expense. Members can request one verification at no cost, and fees may be established for additional verifications.

IMPLEMENTATION PLANNING

PERS staff are currently developing an implementation plan for the data verification provisions of SB 897, as requested in the budget note that accompanied the bill. The budget note defined the Legislative Fiscal Office's expectation that the plan would contain a time line for implementation, specific deliverables provided through executing the plan, and an evaluation of the resources needed to obtain those deliverables.

The implementation plan will be designed to accomplish the following objectives:

- Provide members with a data verification in a reasonable amount of time that contains:
 - Employment history and the number of years and months of service/retirement credit from that employment
 - Salary for each calendar year and the final average salary derived from that data
 - If applicable, regular and variable account balances as of the end of the specified year
 - If applicable, the total amount of unused sick leave accumulated as of the specified date
- Provide employers and members with a process to gather, validate, and correct the data at the time of the request for the verification.
- Provide the member with a process to dispute the data in the verification.
- Ensure that certain data at retirement is not less than the verified amounts, with statutory exceptions.
- Automate the verification process as much as possible, using Online Member Services (OMS), Employer Data Exchange (EDX), jClarety, and FileNet workflow.

TIMELINE

Timely, efficient, and effective implementation of SB 897's data verification process is predicated on accomplishing the major milestones in resource acquisition, development, and management. First, PERS staff presented a draft plan to PERS Board's Legislative Advisory Committee at its March 10, 2010 meeting. Staff then revised that plan based on the LAC's comments and are now presenting it to the PERS Board at its March 29, 2010 meeting. Also at this meeting, PERS staff will be seeking authority to request additional resources from the Legislature's Emergency Board at its May 2010 meeting.

The plan presentation will identify IT system requirements and project management revisions to incorporate the data verification functionality into the agency's administration system and request any additional budget or position authority identified through the plan development process. Once the plan has passed this stage of approval and resources have been identified, staff will develop and execute communication plans to employers and members to clarify expectations on the data verification process. Also, system programming will continue in concert with the final elements of the RIMS Conversion Project, and staff training and development will occur to allow for a successful process operational date of July 1, 2011. These and other elements are set forth in the attached high level time line.

DELIVERABLES

The implementation plan will define the elements that PERS staff believe are critical to the data verification process. At a high level, those deliverables are briefly described below, separated into those elements we expect to automate into the agency's Oregon Retirement Information Online Network (ORION) administration system and those which will be provided outside that network:

ORION System deliverables:

jClarety

- Verified data will be locked with a specific date. Address the Generate Benefit Estimates (GBE) overrides and how that will interact with locked verification data.
- Build a "Lock" feature that will use the higher amount of verification information or data at retirement. This feature will have to be able to be unlocked in cooperation between PERS and the employer for certain adjustments such as settlements, etc.
- Changes to verification data will be restricted to those allowed in SB 897.
- Build a process to address sick leave data verification. Employers report unused sick leave at termination, so members may already have some balances reported for prior employment segments, but no balances are reported for currently open job segments.
- Modify the system's current electronic employer work-list functionality for data verification.
- Update the system to address qualifying and non-qualifying employment.
- Develop an edit in the retirement calculation process so that a calculation override won't override the verified data fields. The calculation also needs a warning message so that staff know a verification was done.
- Develop a process to complete multiple verifications. The system must be able to handle subsequent verification requests and the period of time since the previous verification.
- Changes will need to be made to the Salary Certification process.
- Programming may be needed for the Notice of Entitlement process.
- Modify the system to print a hard copy of a data verification request form and also to provide a data verification in hard copy for members without online access.
- Build a system process to charge for extra verification requests.

Online Member Services (OMS)

- Allow members to validate employment and salary history in OMS at the time a verification is requested.
- Expand screens to display all existing salary years and employment history (LWOP, service time adjustments, class changes, etc.).
- Initiate a workflow when a verification request is submitted through OMS.
- OMS forms (electronic or printed) need to be automatically sent to FileNet.

FileNet

- Develop workflows for the data verification processes identified above.
- Amend current workflows to account for process changes caused by data verification.

Employer Data Exchange (EDX)

- Employers will receive electronic work-list items to verify data and respond electronically.
- Build a verification activity so that, when data is submitted, it connects to our workflows.
- Enhance the Demographic Correction Report process.
- Evaluate other employer activities to streamline data submission and correction.

Business deliverables:

Communication Plan

- Involve employers, members, and other stakeholders (Legislative Advisory Committee, Employer Advisory Committee, and a Member Focus Group) to gain feedback through the administrative rule process and other public forums where the data verification process is developed.
- Use Employer Outreach Presentations, employer communications, and training sessions to familiarize employers with EDX updates as they are developed and available.
- Clearly specify to employers how and when they will be notified and how and when they must respond to requests for verification.
- Identify that, once verified, the employer will not be allowed to change records used in the verification.
- Establish service levels and expectations for employers.
- “Reasonable time” standards will be defined for the required employer response to a verification request and for members in expecting a completed verification request.
- Staff communication will include training and updates as the verification program is developed.

PERS staff

- Develop a Notice of Dispute Procedure.
- Update the Notice of Entitlement to clarify the dispute process for verified data.
- Develop business processes and procedures to support the data verification function.

EVALUATION OF RESOURCES

ORION Modifications

The RIMS Conversion Project is on schedule for completion later in 2010 with the final deployment of Stage 2B. Our technology partners, HP Enterprise Services, have initially analyzed the functional areas of the jClarety system that are likely to be affected by the data verification process. These initial estimates show this new functionality affecting around 15% of the functional areas that have either already been completed in this project or are slated to be completed later this year.

Adding the data verification functionality to the jClarety system presents several challenges:

- Project resources are scheduled out over the remaining RCP time line. That schedule would be impacted by diverting some of those resources to the data verification functionality. On the other hand, if we wait to begin working on the new functionality until the project is completed, meeting the July 1, 2011 deadline for SB 897 implementation is doubtful.

- Serial deployments of major portions of system functionality so close together are not an efficient use of development and deployment resources. The Stage 2B elements impacted by adding the data verification functionality would only have a “useful life” of a few months before necessary changes would require re-deployment. Pervasive adjustments to a large number of functional areas mean rigorous regression testing is warranted; two deployments doubles that testing whereas combining the deployments could show significant efficiencies.
- Initial estimates of the system development resources needed for the data verification functionality substantially exceed the \$500,000 in additional budget authority that was approved in SB 897. While those estimates will be further refined as the functionality proceeds through design and development, that gap will not close completely. At this point, overall system development resources may be adequate to fill that gap, but some sifting of those resources may need to be approved by the Legislature’s Emergency Board. Alternatively, the additional functionality may need to be reduced in scope to fit within already approved resources.

Staffing Requirements

The estimated data verification workload is derived from the number of estimate requests that we receive each biennium. It reflects an expected 22,500 requests for verifications in the 2011-13 biennium from a pool of approximately 82,000 members within two years of retirement eligibility. Both the number of verification requests and those members within two years of retirement eligibility are likely to increase for the foreseeable future.

To handle this additional workload, PERS staff recommends that staff be allocated to a new Data Verification Team. The advantage of this option is that, since verifications and retirements both have a statutory requirement for delivery, there would be no competing priorities over which process should be completed first. The existing Eligibility Team could continue to work on pending retirement and, over time, their workload may be reduced as data verification requests are completed by the Data Verification Team so the projected increase in verifications and retirements have a better probability of being achieved with current and projected staffing levels.

Option 1:

Request additional position authority and budget from the Legislature’s Emergency Board for a total of 13 additional FTE:

- 4 Retirement Counselor 1 to perform eligibility reviews and studies
- 3 Retirement Counselor 2 to perform peer reviews and handle complex accounts
- 1 Operations & Policy Analyst 1 as a lead worker to develop policies and procedures
- 1 Operations & Policy Analyst 2 to administer member disputes
- 2 Office Specialist 2 positions to provide administrative support
- 1 Principle Executive Manager B to manage the new team
- 1 Office Assistant 2 for processing documents in the Image and Information Management (IIM) section of the Information Services Division

Impact:

- ✓ Maintain timely eligibility studies to support benefit payments; having a designated team would prevent the data verification workload from competing with existing priorities from paying timely benefits.
- ✓ With the additional Data Verification Team focusing on that workload, the current Eligibility Team's workload will decrease over time as the scope or number of eligibility reviews at retirement decreases. This will allow the Eligibility Team to complete eligibility reviews on non-pending retirement accounts; pro-actively review accounts earlier in the member's life cycle; or accounts needing review per an employer's request.
- ✓ Estimates and other sections within Customer Service would not be impacted.

PERS does not have the ability to handle the data verification program with existing resources unless some drastic changes are made to reorganize the Customer Service Division, including ending or substantially reducing some current services. Although there are nine Limited Duration positions allocated to the Eligibility Team in the 2009-11 budget, that staffing level is only sufficient to complete eligibility reviews for new retirements and some estimates. If this staff were diverted to fulfilling the new data verification process, timely benefit payments would be seriously impacted and the incidence of estimated benefits and subsequent revisions would increase. Also, retirement estimates are not required by law, and that functionality could be eliminated except in the limited incidence of calculating the cost of a member purchase. These consequences would result from requiring the resource reallocation shown under Option 2 below.

Option 2:

Reallocate existing staff from within the Customer Service Division

- 4 FTE from Estimate Team
- 1 Manager from Estimate team
- 4 FTE from the Eligibility Team
- 3 from elsewhere in the Division
- IIM would have to absorb the additional work

Impact:

- ✓ Estimates would only be completed for purchase information and members would be forced to go to Online Member Services to complete their own estimates.
- ✓ A backlog would occur for the data verifications and disputes as we pull staff from the other areas for training.
- ✓ Timely benefit payments will be impacted and could increase estimated payments and phone calls and escalations. If we issue estimated payments to meet statutory deadlines, we create a backlog of these unfinished cases.
- ✓ IIM would have to absorb the additional work for historical employment research and records requests.

LAC DISCUSSION ITEMS

The following issues were discussed at the Legislative Advisory Committee meeting on March 10, 2010.

- What is a “reasonable time” for employers to verify data?
- What should be the maximum time frame to complete the verification?
- How will we prioritize requests received?
 - Requested retirement date
 - Receipt date of request
 - Age of member
- How to resolve the situation where a member requests a verification and applies to retire at the same time:
 - Receive a complete verification and delay retirement date?
 - Skip the verification and retire at the requested time?

OREGON ADMINISTRATIVE RULE IMPACT:

Staff have also begun to identify policies or issues that will require new or amended Oregon Administrative Rules. The following areas have been identified so far:

1. Clearly specify the notification and response process to employers for verification requests, including the “reasonable time” for employers to respond. Specify the process for employers to reconcile the data and restrict their ability to change the records used in the verification.
2. Establish the process to request a verification and the predicates, such as having the member review and validate their employment history as part of their request for a verification. Specify the effective dates for each data element in the verification.
3. Establish procedures for identifying and recovering administrative costs for providing additional verifications after the member has received the one free verification request. Also address charging overpayments as an administrative expense or against the Contingency Reserve, perhaps under delegated authority.

BOARD ACTION ITEM

Expenditure authority for the system changes and additional staff positions can only be authorized during this budget cycle through the Legislature’s Emergency Board. PERS staff recommends that a request be developed for the May 2010 Emergency Board detailing the resources needed for a successful implementation of SB 897 by the July 1, 2011 implementation deadline. That request would detail the realigned or augmented budget authority for changes to the ORION system as well as position and budget authority to establish the Data Verification Team and supporting personnel as outline in Option 1 above. That request would be submitted in early May 2010 for the Emergency Board’s meeting anticipated to be scheduled during the week of May 24-28, 2010.

The Board may:

1. Pass a motion to “authorize staff to request the necessary SB 897 implementation resources at the May 2010 Emergency Board.”
2. Direct staff to implement SB 897 within its existing budget allocations or authority, using only established system resources and position authority.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: Successful implementation of SB 897 requires additional expenditures and staffing during this budget cycle that can only be approved through the Legislature’s Emergency Board.

If the Board does not adopt: Staff would revise implementation plans based on a re-allocation of current resources, including reductions in other operational areas not specifically mandated by law.

C.3. Attachment 1 - Implementation Time Line

SB 897 Time Line (DRAFT)

	2/1/10	3/1/10	4/1/10	5/1/10	6/1/10	7/1/10	8/1/10	9/1/10	10/1/10	11/1/10	12/1/10	1/1/11	2/1/11	3/1/11	4/1/11	5/1/11	6/1/11	7/1/11
Executives/Steering Committee		3/4/10																
Legislative Advisory Committee		3/10/10																
Employer Advisory Committee		3/17/10																
PERS Board		3/29/10																
E-Board report due			4/_/10															
E-Board meeting				5/_/10														
OAR development			Identify		Draft			Rulemaking										
BR development																		
Forms development																		
Policies written																		
Procedures written																		
Website changes																		
Manuals updated																		
Employer communication								Rulemaking										
Employer training																		
Member communication								Rulemaking			Perspectives			Perspectives				
Member Focus Group																		
Plan for other personal services																		
Advertise positions																		
Process applications																		
Interview candidates																		
Hire new staff to start 1/1/11																		
Staff training																		
System updates (jClarety, OMS, EDX, FileNet)																		
Systems inception																		
Systems elaboration																		
Systems construction																		
Systems transition																		
Accepting verification requests																		

E-Board Decision

Stage deployment

Staff hire date

Go live



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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www.oregon.gov/pers

March 29, 2010

TO: Members of the PERS Board

FROM: Dale S. Orr, Actuarial Services Manager

SUBJECT: 2009 Final Earnings Crediting and Reserving

OVERVIEW

- Action: Adopt crediting and reserving decisions for 2009.
- Reason: Statutes require the Board to annually credit earnings to accounts and reserves.
- Policy Issue: Should the current method for allocating administrative expenses and earnings be changed?

BACKGROUND

At its meeting on January 29, 2010, the Board approved the preliminary crediting of 2009 regular account earnings. The Board's action was reported, as required by ORS 238.670(5), to the Joint Ways and Means Committee on February 3, 2010 (see attached report). All legislative questions were addressed by staff with no further consideration required of the Board. Final 2009 earnings are still being calculated as of the Board book mail date. Final numbers will be provided to the Board prior to its meeting on March 29, 2010.

The Board's January 29, 2010 decision directed that 2009 earnings be preliminarily credited as follows:

Reserves and Accounts	Balance Before 2009 Crediting (millions)	2009 Preliminary Crediting amounts (millions) or Rate	Preliminary Ending Reserve Balances (millions)
Contingency	\$653.2	\$0.0	\$653.2
Tier One Rate Guarantee	\$-978.5	\$557.4	\$-421.1
Tier One Accounts	\$6,687.6	8%	\$7,222.6
Tier Two Accounts	\$541.9	19.13%	\$645.6
Employer	\$12,885.4	19.13%	\$15,350.9
Benefits In Force	\$16,136.0	19.13%	\$19,223.5
OPSRP Pension	\$377.1	17.35%	\$442.5

POLICY ISSUE

- *Should the current method for allocating administrative expenses and earnings be changed?*

An internal audit report of the PERS annual earnings crediting process dated November 14, 2008, included a finding regarding the method of allocating earnings and expenses to each program. The management response to that finding was that staff would consider alternative approaches and report this issue and its chosen action to the PERS Board.

Currently, administrative costs are charged to each program in accordance with the PERS cost allocation system. This system uses data collected quarterly to allocate expenses during the year to specific programs. The process operates through a combination of direct cost application and indirect cost allocations based on management's assessment of staff time.

Earnings are allocated among the programs based on year end balances. There is, consequently, not a direct correlation between the cost allocations and the earnings allocated to each program, since they occur on different cycles.

Fiscal Services Division management reviewed the allocation methodology and considered options to coordinate these two activities. One option would be to apply an aggregate annual cost rate to all programs, instead of allocating costs based on direct and indirect assessments. Another option would be to allocate earnings more frequently based on mid-year earnings estimates.

Management ultimately concluded that no change to the current practice was necessary. The current method of charging administrative costs among programs throughout the year based on PERS' current allocation system is a valid, consistent, and reasonable methodology. This system was supported by the implementation and use of the R☆STARS cost allocation system. The Legislative Fiscal Office concurs that system reasonably allocates costs to the various programs.

Allocating earnings based on year end reserve balances is also a reasonable approach. The methodology minimizes the impact of market timing related to illiquid investment activity, such as alternative investments. Also, allocating earnings based on program-level investments does not acknowledge that programs are co-mingled in the PERS Fund and participate in the same investment portfolio. The annual earnings crediting methodology is consistent with the historical perspective, maintained by the PERS Board, that accounts and reserve do not have a claim on their earnings until the Board actually allocates earnings in accordance with established statutes and applicable rules.

The current method does result in a reproducible and consistent year-to-year application of administrative expenses and earnings allocation. Therefore, no change to the current methods is proposed.

CREDITING OF EARNINGS AND RESERVES

The PERS Board is charged with crediting earnings from the PERS Fund each calendar year. Some of those allocations are directed by statute or rule; the balance is at the PERS Board's discretion.

NON-DISCRETIONARY EARNINGS ALLOCATIONS

The following reserves and accounts are allocated earnings by applicable statute or rule. In compliance with these restrictions, earnings allocations will reflect the following:

- 1. Administrative Expenses:** Administrative costs are funded by earnings when they are sufficient, as they were in 2009 (ORS 238.610(1)). Earnings allocated to administrative expenses are reflected in the rates stated below for other accounts and reserves.
- 2. Health Insurance Accounts:** These accounts are directed by statute to be credited with actual earnings or losses, less the expense related to the administration of the programs (ORS 238.410(7); 238.415(4); 238.420(4)). For 2009, the preliminary crediting rate to these accounts was 18.13%.
- 3. Employer Lump Sum Payment Accounts:** These accounts are credited with actual earnings or losses less administrative expenses, as authorized by ORS 238.225(10). For 2009, the preliminary crediting rate to these accounts averaged 19.02%.
- 4. Variable Annuity Account and Individual Account Program (IAP):** These accounts are credited with actual earnings or losses, less a proportional charge for administrative expenses. Preliminary variable earnings for 2009 were estimated to be 37.46%, and IAP account earnings were estimated to be 18.48% for 2009.
- 5. Tier One Rate Guarantee Reserve:** This reserve, established under ORS 238.255(1), is to be used to credit the assumed rate to Tier One member regular accounts. The reserve went into a deficit in 2008. When in deficit status, earnings on the Tier One member regular accounts that are in excess of the assumed earnings rate must be used to offset that deficit. The amount of 2009 earnings used for this offset depends, in part, on the Board's Contingency Reserve decision. Based on the Board's January 29, 2009 preliminary decision that credited no additional dollars to the Contingency Reserve, \$535.0 million would be transferred, reducing the Tier One Rate Guarantee Reserve deficit to \$-421.1 million.

DISCRETIONARY EARNINGS ALLOCATIONS

The PERS Board has broader discretion in allocating earnings to the balance of the fund's accounts and reserves. The predicate decision for 2009 earnings is whether to allocate additional funds to the Contingency Reserve. According to ORS 238.670(1), in those years in which earnings exceed the assumed rate, up to 7.5% of earnings can be allocated to the Contingency Reserve. The Contingency Reserve is not credited with its own earnings or losses but, instead, funds are added to or transferred from the reserve only as directed by the Board.

As 2009 earnings exceed the assumed rate, the PERS Board has the option to allocate additional earnings to the Contingency Reserve. Staff presented three options for allocations to this reserve at the Board's January 29, 2010 meeting, recommending that no additional allocations be made from 2009 earnings as the system risks addressed by the Contingency Reserve have not appreciably changed since that reserve's funding level was set in 2007.

In adopting its preliminary crediting decision, the PERS Board supported the staff's recommendation not to allocate additional earnings to the Contingency Reserve. Now, with making its final earnings crediting decision, the Board can revisit that issue, but staff continues to recommend that the Board not allocate additional earnings to the Contingency Reserve.

Regardless of the level of 2009 earnings allocated to the Contingency Reserve, staff recommends that the balance of the accounts and reserves (Tier Two member regular accounts, Employer Reserves, and the Benefits-in-Force Reserve) be credited with their proportional share of the

remaining available 2009 earnings based on the year-end balances in those accounts and reserves.

RECOMMENDED 2009 CREDITING

Staff recommends the following allocations be adopted by the PERS Board. Charts showing results of this recommendation as well as the impact of the other two Contingency Reserve options will be provided to the Board prior to its meeting on March 29, 2010.

1. Non-Discretionary Allocations

Credit administrative expenses, health insurance accounts, employer lump sum accounts, variable annuity accounts, and accounts in the Individual Account Program at the rates described above. Credit 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.

2. Funding of Contingency Reserve

Credit no 2009 earnings to the Contingency Reserve.

3. Judge Member Accounts

Credit Judge Member Accounts with the assumed earnings rate (8%).

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

Credit these accounts and reserves proportionally with the remaining available earnings.

BOARD OPTIONS

The Board may:

- 1. Adopt Staff's Recommendation:** Pass a motion to "adopt the staff's recommended crediting of 2009 calendar year earnings."
- 2. Adopt an Optional Policy Position:** Pass a motion to "adopt the staff's recommended crediting of 2009 calendar year earnings," but amend that recommendation based on alternative crediting to the Contingency or other reserves.

C.4. Attachment 1: 2009 Preliminary Legislative Earnings Crediting Report



Oregon

Theodore R. Kulongoski, Governor

C.4. Attachment **Public Employees Retirement System**

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR
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January 29, 2010

Senator Peter Courtney, Co-Chair
Representative Peter Buckley, Co-Chair
Joint Ways and Means Committee
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Dear Co-Chairs:

Nature of the Request:

To report the PERS Board's preliminary crediting of 2009 earnings received through investment of the Oregon Public Employees Retirement Fund (OPERF) Regular Account. This report is provided in accordance with ORS 238.670(5), which requires PERS to submit a preliminary annual crediting report to the appropriate legislative committee 30 days prior to the allocation of earnings and losses to member and employer accounts and other reserves.

Agency Action:

On January 29, 2010, the PERS Board preliminarily approved the allocation of approximately \$8.1 billion in OPERF Regular Account 2009 earnings to member and employer accounts and other reserves. In this preliminary action, the Board allocated earnings at a rate of 19.13% to the Benefits-In-Force Reserve, Employer Reserves and Tier Two member regular accounts and 17.35% to the OPSRP Pension Reserve.

The Board also preliminarily approved crediting earnings at the current assumed rate of 8.00% to Tier One member regular accounts. Earnings from these accounts over the assumed rate, totaling \$557.4 million, are required by ORS 238.255(1) to be used to offset the deficit in the Tier One Rate Guarantee Reserve. This preliminary action reduced the Tier One Rate Guarantee Reserve's deficit from -\$978.5 million to -\$421.1 million. The deficit in this reserve resulted from having to cover 2008 losses related to Tier One member regular accounts and provide the mandatory crediting of the assumed earnings rate to those accounts. The remaining deficit will be funded from future Tier One member regular account earnings in excess of the assumed earnings rate.

The Board left the Contingency Reserve unchanged with a current balance of \$653.2 million. A summary of the Board's preliminary decision is reflected in the attached document.

PERS staff will be available to report to the Legislature and answer questions regarding the Board's preliminary decisions on February 3, 2010.

Action Requested:

PERS is requesting that the Committee acknowledge receipt of the report.

Legislation Affected:

No legislative revisions will be required.

Thank you for your interest and assistance.

Sincerely,

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

Paul R. Cleary
Executive Director

Attachment: 2009 Preliminary Earnings Crediting and Reserving



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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March 29, 2010

TO: Members of the PERS Board

FROM: Dale S. Orr, Manager, Actuarial Analysis Section

SUBJECT: 2009 Final Earnings Crediting and Reserving

The final amount of 2009 earnings available for allocation has been calculated. The attached chart ('Recommended Allocation') shows the results of an allocation based on the Board's preliminary decision to maintain the current Contingency Reserve balance at \$653.2 million. Two additional charts are attached showing the other results if the Board instead would decide to: 1) credit the statutory maximum 7.5% of 2009 earnings to the Contingency Reserve; or 2) adjust the Contingency Reserve to equal 1% of total reserves and accounts.

The 2009 earnings amount changed only marginally from the preliminary estimates: earnings are approximately \$5 million more and beginning reserve balances increased by approximately \$43 million. These changes resulted from routine final year-end postings and adjustments.

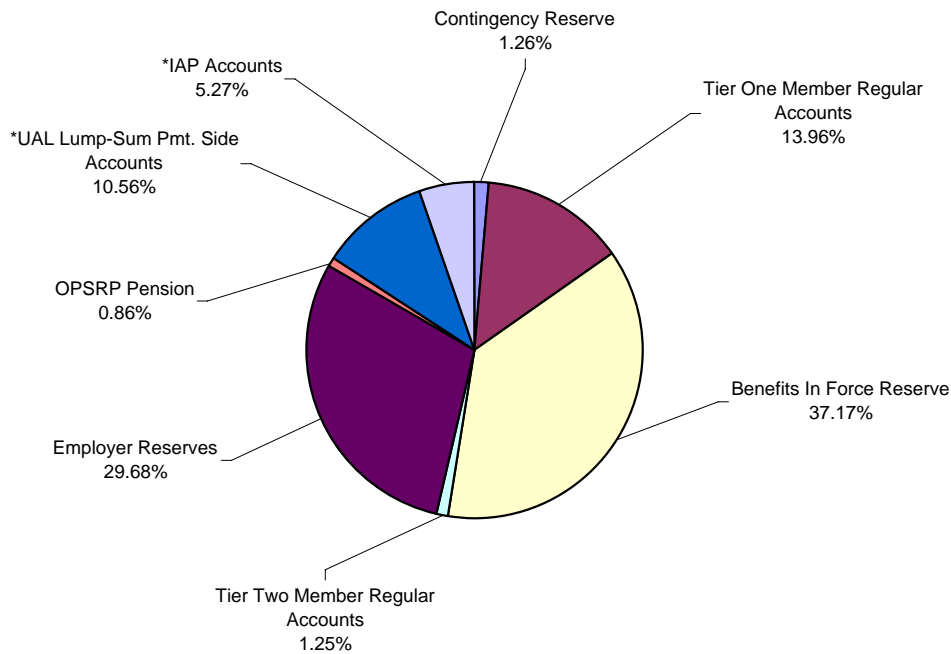
Attachments:

- a. Maintain Current Contingency Reserve Balance (recommended allocation)
- b. Credit 7.5% of Earnings to Contingency Reserve
- c. Adjust Contingency Reserve to Equal 1% of Total Reserves and Accounts

**Oregon Public Employees Retirement System
2009 Preliminary Earnings Crediting and Reserving
No Additional Allocation to Contingency Reserve
(All dollar amounts in millions)**

Regular Account Reserve	Reserves Before Allocation	2009 Preliminary Allocation	Reserves After Allocation	2009 Preliminary Rates
Contingency Reserve	\$653.2	\$0.0	\$653.2	N/A
Tier One Member Regular Accounts	6,687.6	535.0	7,222.6	8.00%
Tier One Rate Guarantee Reserve	-978.5	557.4	-421.1	N/A
Benefits In Force Reserve	16,136.0	3,087.5	19,223.5	19.13%
Tier Two Member Regular Accounts	541.9	103.7	645.6	19.13%
Employer Reserves	12,885.4	2,465.5	15,350.9	19.13%
OPSRP Pension	377.1	65.4	442.5	17.35%
*UAL Lump-Sum Pmt. Side Accounts	4,567.7	891.6	5,459.2	Various
*IAP Accounts	2,297.7	425.6	2,723.4	18.48%
Total	\$43,168.2	\$8,131.8	\$51,300.0	

**2009 Regular Account Reserve Balances
After 2009 Preliminary Crediting**

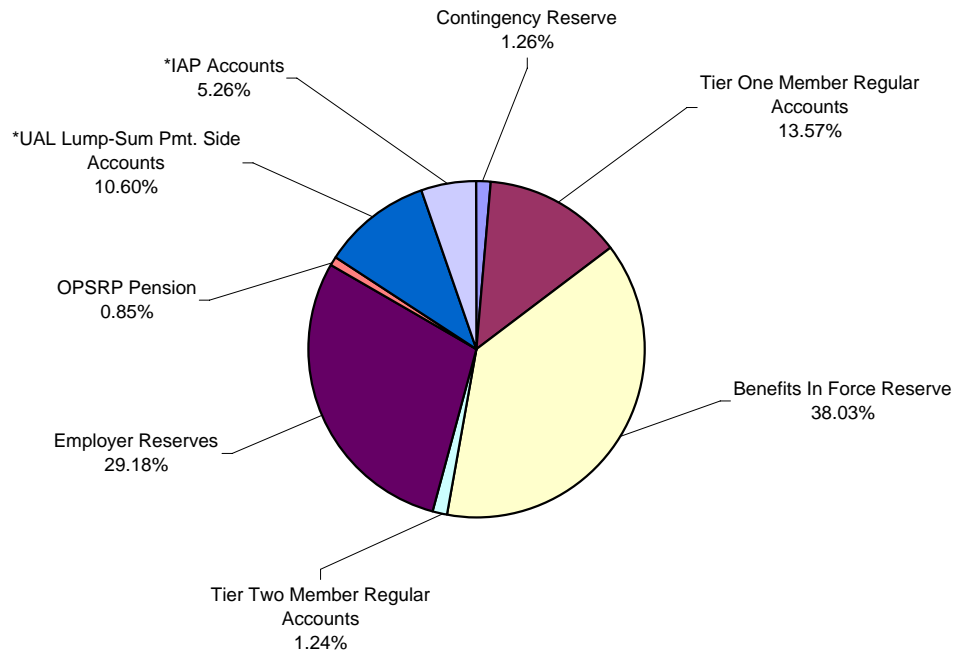


*Informational only. Not affected by Board reserving or crediting decisions.

Recommended Allocation
Maintain Current Contingency Reserve Balance
2009 Earnings
 (All dollar amounts in millions)

Regular Account Reserve	Reserves Before Allocation	2009 Allocation	Reserves After Allocation	2009 Rates
Contingency Reserve	\$653.2	\$0.0	\$653.2	N/A
Tier One Member Regular Accounts	6,507.5	520.6	7,028.0	8.00%
Tier One Rate Guarantee Reserve	-978.5	536.7	-441.8	N/A
Benefits In Force Reserve	16,532.0	3,161.4	19,693.4	19.12%
Tier Two Member Regular Accounts	540.5	103.4	643.9	19.12%
Employer Reserves	12,687.1	2,426.1	15,113.2	19.12%
OPSRP Pension	377.1	64.9	442.0	17.21%
*UAL Lump-Sum Pmt. Side Accounts	4,594.9	895.5	5,490.4	Various
*IAP Accounts	2,297.1	427.9	2,725.0	18.47%
Total	\$43,210.8	\$8,136.5	\$51,347.3	

2009 Regular Account Reserve Balances
After 2009 Crediting



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

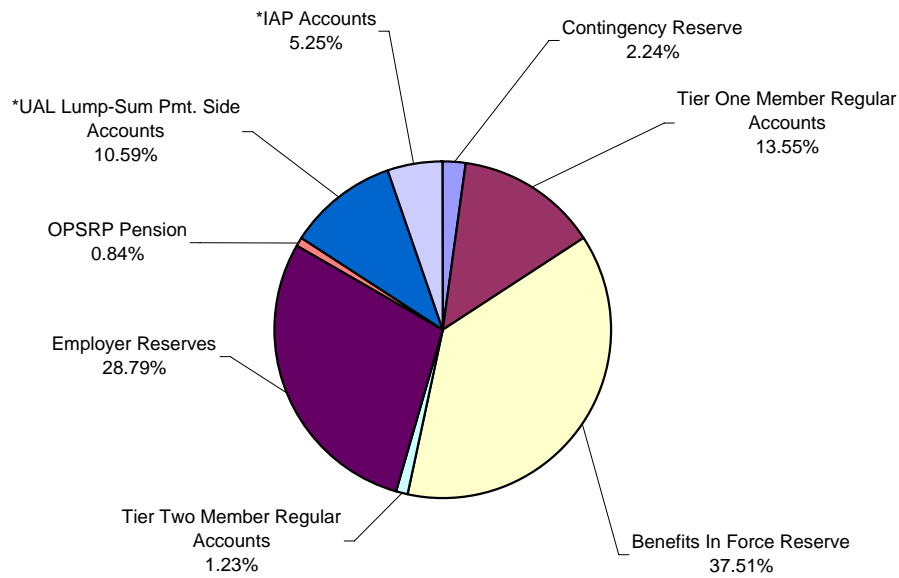
Credit 7.5% of Earnings to Contingency Reserve

2009 Earnings

(All dollar amounts in millions)

Regular Account Reserve	Reserves Before Crediting	2009 Crediting	Reserves After Crediting	2009 Rates
Contingency Reserve	\$653.2	\$510.1	\$1,163.4	N/A
Tier One Member Regular Accounts	6,507.5	520.6	7,028.0	8.00%
Tier One Rate Guarantee Reserve	-978.5	457.6	-520.8	N/A
Benefits In Force Reserve	16,532.0	2,924.9	19,456.9	17.69%
Tier Two Member Regular Accounts	540.5	95.6	636.2	17.69%
Employer Reserves	12,687.1	2,244.7	14,931.7	17.69%
OPSRP Pension	377.1	59.5	436.6	15.78%
*UAL Lump-Sum Pmt. Side Accounts	4,594.9	895.5	5,490.4	Various
*IAP Accounts	2,297.1	427.9	2,725.0	18.47%
Total	\$43,210.8	\$8,136.5	\$51,347.3	

**2009 Regular Account Reserve Balances
After 2009 Crediting**

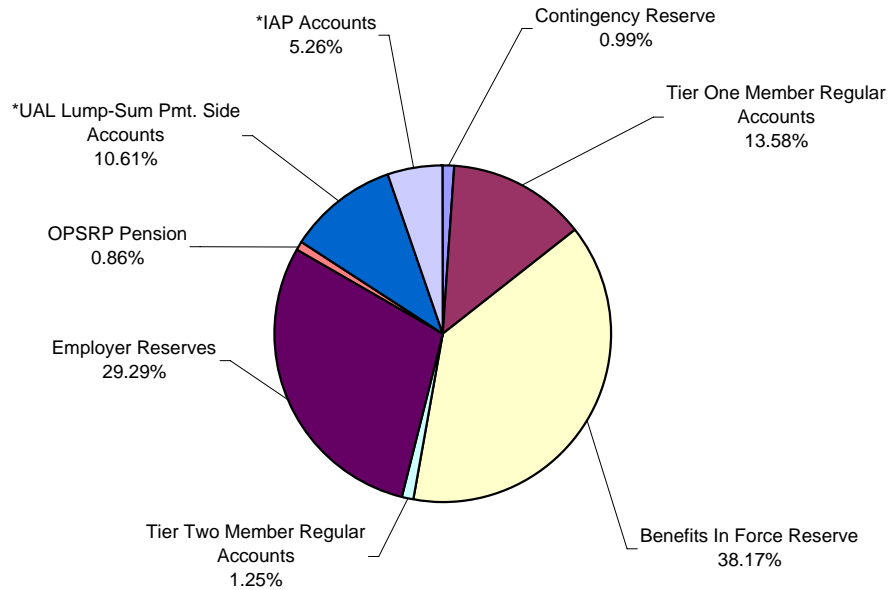


*Informational only. Not affected by Board reserving or crediting decisions.

Adjust Contingency Reserve Balance to Equal 1% of Total Reserves and Accounts
2009 Earnings
 (All dollar amounts in millions)

Regular Account Reserve	Reserves Before Crediting	2009 Crediting	Reserves After Crediting	2009 Rates
Contingency Reserve	\$653.2	(\$139.7)	\$513.5	N/A
Tier One Member Regular Accounts	6,507.5	520.6	7,028.0	8.00%
Tier One Rate Guarantee Reserve	-978.5	558.4	-420.1	N/A
Benefits In Force Reserve	16,532.0	3,226.2	19,758.2	19.51%
Tier Two Member Regular Accounts	540.5	105.5	646.0	19.51%
Employer Reserves	12,687.1	2,475.8	15,162.9	19.51%
OPSRP Pension	377.1	66.4	443.4	17.60%
*UAL Lump-Sum Pmt. Side Accounts	4,594.9	895.5	5,490.4	Various
*IAP Accounts	2,297.1	427.9	2,725.0	18.47%
Total	\$43,210.8	\$8,136.5	\$51,347.3	

2009 Regular Account Reserve Balances
After 2009 Crediting



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



March 29, 2010

Equal to or Better (ETOB) Testing Update

- Risk-Free Rate**
- Preliminary Determination Results**

Oregon Public Employees Retirement System

Matt Larrabee, FSA, EA, MAAA
Scott Preppernau, FSA, EA, MAAA

Introduction

- On behalf of the PERS Board, Mercer is currently conducting ETOB testing to comply with updated statute and administrative rules
 - Employers with exemptions from PERS participation for their public safety personnel must have their plans compared to PERS to confirm compliance with the updated ETOB requirements
 - More detail on testing requirements can be found in some of our recent 2009 and 2010 Board presentations
- Summary of recent Board actions on ETOB:
 - November meeting
 - Established testing date of December 31, 2008, and endorsed Preliminary Determination concept
 - January meeting
 - Selected a basis for calculating the “risk-free rate” to be used in testing

Overview

- Since January, we have commenced employer tests
 - Both Preliminary Determination testing and full ETOB testing
- Developing the detailed testing methodology has led us to favor a more nuanced interpretation of the risk-free rate specified by the administrative rule than that enacted at the January meeting
- Today's presentation:
 - Proposes a refinement to the risk-free rate methodology
 - We will ask for a Board decision on this today
 - Summarizes the results of the Preliminary Determination testing
 - Employers who do not satisfy the standard on a Preliminary Determination basis will undergo full testing
 - Results of full tests are scheduled to be delivered at the May Board meeting

Guiding Principles

- As an outcome of a stakeholder input process on the OAR, PERS Staff established the following principles to guide ETOB testing:
 - ***Comparability – the test should make an “apples to apples” comparison***
 - ***Durability – test results should be consistent over time barring a change to provisions***
 - ***Cost Effectiveness – an appropriate low cost method that does not compromise the validity of results should be used***

Risk-Free Rate Methodology

Background

- The Oregon Administrative Rule (OAR) governing the test requires the PERS actuary to value benefits using a “risk-free” rate
 - A risk-free rate is consistent with valuing benefits on a “value to the employee” basis
- Several calculations in the test use the “risk-free” rate
 - Accumulating historical account balances
 - Projecting future earnings or crediting on account balances
 - Converting from lump sums or account balances to annuities
 - Calculating the “net present value” of future benefit payments
- The basis for the risk-free rate selected in January was a 5-year historical average of 30-year Treasury yields
 - A 5-year average was judged to balance the principle of durability with the need to reflect current market conditions
 - This produced a risk-free rate of 4.7%

Risk-Free Rate Methodology

- Currently, this single basis for the risk-free rate would be used for all risk-free rate calculations in the test
 - However, as discussed in January, the appropriate approach to determining a risk-free rate depends on how it is to be used
- For accumulating historical account balances, a case can be made that a more representative risk-free rate would reflect the prevailing risk-free rates during the period of accumulation
 - Such an approach would allow approximation of the current value of participant accounts invested in a risk-free strategy during that historical period
- The basis established in January (a smoothed assessment of current risk-free rates) is theoretically appropriate for:
 - Projecting future earnings or crediting on account balances
 - Calculating account balance to annuity conversions
 - Determining the net present value of future payments

Risk-Free Rate Methodology

- The proposed refinement to the risk-free rate methodology would bifurcate the determination of the risk-free rate
 - For accumulating historical account balances:
 - Use a risk-free rate tied to the appropriate historical average
 - In keeping with the statutory structure of the test, the averaging period could be based on the corresponding PERS benefit tier
 - The average service for each tier at the ETOB testing date could be used to identify appropriate averaging periods

Tier	Average Service at 12/31/2008
Tier 1	19 years
Tier 2	9 years
OPSRP	3 years

- For all purposes other than accumulating historical accounts:
 - Continue to use the 5-year average of 4.7%

Risk-Free Rate Methodology

- This methodology produces the following rates for each PERS tier:

Tier	Averaging Period	30-year Treasury Rate
Tier 1	19 years	6.0%
Tier 2	9 years	5.0%
OPSRP	3 years	4.6%

- We believe using this approach for accumulating historical accounts:
 - Satisfies the Statute and Administrative Rule
 - Is in keeping with the Guiding Principles established for the test
 - Has the additional benefit of accounting for historical risk-free rates in accumulating account balances to the ETOB testing date

Preliminary Determination

Background

- The concept of “Preliminary Determination”:
 - Compares program provisions side-by-side and tier-by-tier
 - Comparison is between PERS and the exempt employer
 - If the comparison indicates that the plan will clearly satisfy the ETOB requirement under the updated testing rules, the actuary will issue a certification detailing the basis for that conclusion
- The Preliminary Determination approach is not appropriate for defined contribution or cash balance designs
- This approach was formulated to be consistent with the goal of minimizing the cost of testing while not jeopardizing the validity of test results

Preliminary Determination

Process

- Of the ten employers subject to ETOB testing, five qualified for a Preliminary Determination analysis
 - City of Portland
 - Tillamook County
 - City of Forest Grove
 - City of Seaside
 - Morrow County
- For these employers, we compared key provisions to relevant PERS benefit tiers, including:
 - Benefit formula
 - Definition of average compensation
 - Early retirement subsidies
 - Cost of living adjustments
 - Percentage of benefit funded by employee contributions

Preliminary Determination

Results

- Based on this analysis, the following two employers were judged to satisfy ETOB via a Preliminary Determination:
 - City of Portland
 - Morrow County
- The details of this analysis will be included in the certification reports
- The fact that the other three did not pass on this basis should not be interpreted to mean they will not ultimately satisfy ETOB
 - Rather, it means the provisions of those plans do not allow a conclusive determination using this high-level comparison approach

Next Steps

- Board decision on proposed refinement to risk-free rate methodology
- Publication of the certification report for the two employers deemed to satisfy ETOB via preliminary determination
- Continue with ETOB testing for the eight remaining employers
 - City of Springfield
 - Wheeler County
 - Mid-Columbia Fire & Rescue
 - City of The Dalles
 - City of Seaside
 - Tillamook County
 - City of Forest Grove
 - Union County
- We anticipate presenting test results for these employers at the May Board meeting

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