

OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM BOARD MEETING

Friday, January 28, 2011 1:00 P.M.		PERS 11410 SW 68 th Parkway Tigard, OR	
ITEM		PRESENTER	
A. Administration – 1:00 P.M.			
1.	November 19, 2010 Board Meeting Minutes	DALTON CLEARY	
2.	Board Officer Election and Subcommittee Appointments		
3.	Director's Report		
	a. Forward-Looking Calendar b. OIC Investment Report c. Budget Report		
B. Notice of Rulemaking			
1.	Notice of Trustee-to-Trustee Transfer Rules	RODEMAN	
C. Final Rule Adoption			
1.	Adoption of Employer Reporting and Remittance Rules	RODEMAN	
D. Action and Discussion Items			
1.	2010 Preliminary Earnings Crediting	RODEMAN / ORR RODEMAN	
2.	2011 Legislative Session Update		
E. Executive Session Pursuant to ORS 192.660(2)(f), (h), and/or ORS 40.225			
1.	Litigation Update	LEGAL COUNSEL	

In compliance with the Americans with Disabilities Act, PERS will provide this document in an alternate format upon request. To request this, contact PERS at 888-320-7377 or TTY 503-603-7766.

<p>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.</p> <p style="text-align: center;">James Dalton, Chair * Eva Kripalani * Mike Pittman * Laurie Warner * Pat West Paul R. Cleary, Executive Director Level 1 - Public</p>
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OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM

Item A.1.

PERS Board Meeting
November 19, 2010
Tigard, Oregon
MINUTES

Board Members:

James Dalton, Chair
Eva Kripalani
Laurie Warner
Pat West

Staff:

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

Others:

Bruce Adams	Keith Kutler	Victor Nolan	Pete Shepherd
Tom Breitbarth	Matt Larrabee	P Peg	Hasina Squires
Linda Ely	Mark Lindland	Scott Preppernau	Leslie Thompson
Marc Feldesman	Blair Crumpacker	Bill Robertson	Deborah Tremblay
Gene Garver	Steve Manton	Lori Sattenspiel	Scott Winkels
Frank Goulard	Elizabeth McCann	Ron Schmitz	Brenda Wilson
Debra Guzman			

Chair James Dalton called the meeting to order at 1:00 P.M. welcoming new Board member Pat West. Dalton noted Board member Mike Pittman was excused.

ADMINISTRATION

A.1. BOARD MEETING MINUTES OF SEPTEMBER 19, 2010

The Board unanimously approved the minutes from the September 24, 2010 Board meeting.

A.2. DIRECTOR'S REPORT

Executive Director Paul Cleary presented the Board's forward-looking calendar including the 2011 Board meeting dates. Cleary noted that all but a few meetings will be held on Fridays and with the Legislative session there could be special Board meetings as needed.

Ron Schmitz, Chief Investment Officer for the Oregon State Treasury, presented the September 30, 2010 Oregon Investment Council Report (OIC) detailing the Fund's asset allocation and related investment returns.

Schmitz distributed the October 31, 2010 OIC investment report noting positive monthly and year to date returns. Schmitz described some new strategic asset allocation initiatives OIC is considering. These initiatives will be presented for approval at the January OIC meeting.

Schmitz also commented on the actuarial audit, supporting the recommendation to continue regular reviews of the assumed earnings rate.

Cleary presented the 2009-11 operating budget report noting a positive variance of approximately \$4 million as of November 2010.

Cleary presented the employer reporting update noting the emphasis on gathering and reconciling missing reports. Cleary noted the different approaches PERS has taken to improve employer reporting and the enhanced employer outreach program.

Cleary presented the Quarterly Report of Member Transactions. The results from the third calendar quarter of 2010 show improvement in closing out the July 1 retirement spike workload. Cleary reported retirements overall continue to be on track with previous year totals while the workload has doubled with the processing of IAP retirements in addition to the related pension retirements.

Cleary presented the Customer Satisfaction Survey results noting good ratings from both members and employers. The report includes results over a five year period. Cleary stated the goal is to receive at least an 80 percent rating of "excellent" or "good" from employers and members. Cleary reported PERS is preparing for a possible increase in workload with 66,000 members eligible to retire that could strain customer service capabilities.

Cleary presented the 2010 Purchasing Power Study prepared by Mercer that analyzes the impact of inflation on retiree benefits. Cleary noted the study shows how purchasing power has been well maintained for those who retired in the last decade.

Audit Committee Chair Kripalani discussed the Financial Transactions of the Executive Director report for the fiscal year ended June 30, 2010. Kripalani reported she has reviewed the report along with PERS Chief Financial Officer Jon DuFrene and PERS Internal Auditor Jason Stanley. Kripalani reported no irregularities and recommended the Board accept the Report.

Laurie Warner moved and West seconded to accept the Financial Transactions of the Executive Director report for the fiscal year ended June 30, 2010. The motion passed unanimously.

Cleary acknowledged and congratulated the Fiscal Services Division staff for receiving the Certificate of Achievement for Excellence in Financial Reporting Award for the 19th consecutive year. Cleary described how the complexity of financial reporting has changed over the years.

NOTICE OF RULEMAKING

B.1. NOTICE OF EMPLOYER REPORTING AND REMITTANCE RULES

Deputy Director Steve Rodeman provided notice of rulemaking for the employer reporting and remittance rules. Rodeman said the purpose of the rules are to prohibit employers from changing reports after the close of a calendar year. No Board action was required. Dalton suggested employers and employee representatives pay attention to this rulemaking. He would like to see a way for staff to authorize subsequent corrections to a report if employers find an error that could result in erroneous payments to members.

FINAL RULE ADOPTION

C.1. ADOPTION OF VERIFICATION OF RETIREMENT DATA RULE

Rodeman presented the Verification of Retirement Data Rule for adoption by the Board, focusing on the policy issue of how much time employers should have to verify data and when the “clock” begins. In addition, the rule addresses how an employer can request an extension of time to complete their data reviews. Rodeman also described the overall verification process.

Warner thanked PERS staff for addressing employer concerns on the development of this rule. Brenda Wilson, Intergovernmental Relations Manager for the City of Eugene, who raised the issue of employers in certain situations needing more time to review data, agreed with the rule as revised for adoption.

Warner moved and West seconded to adopt the Verification of Retirement Data Rule as presented. The motion passed unanimously.

C.2. ADOPTION OF CONFIDENTIALITY OF MEMBER RECORDS RULE

Rodeman presented the Confidentiality of Member Records Rule for adoption by the Board, noting this was a minor rule modification to accommodate employer compliance with electronic reporting requirements.

West moved and Kripalani seconded to adopt the Confidentiality of Member Records Rule as presented. The motion passed unanimously.

ACTION AND DISCUSSION ITEMS

D.1. 2011 SESSION LEGISLATIVE CONCEPTS APPROVAL

Rodeman described each of the three PERS 2011 Legislative Concepts noting those with fiscal impacts. Rodeman presented the drafted concepts individually for Board approval to submit to the Governor’s office for possible introduction in the 2011 Legislative session.

It was moved by Kripalani and seconded by Warner to approve submission of Legislative Concept L45900-001: PERS Housekeeping Bill to the Governor’s Office for possible introduction in the 2011 legislative session. The motion passed unanimously.

It was moved by Warner and seconded by West to approve submission of Legislative Concept L45900-002: OPSRP Pension Withdrawal Restrictions to the Governor's Office for possible introduction in the 2011 legislative session. The motion passed unanimously.

Board member West commented on the Legislative Concept L45900-003: Data Verification Guarantee Provision. He noted his concern that once a member retires he/she cannot ask for his/her position back. He believes PERS should ensure the information is correct so members can rely on it in making retirement decisions.

Dalton noted the current statutory data guarantee is unique among property law and likely among the 50 United States and other benefit systems.

It was moved by Kripalani and seconded by Warner to approve submission of Legislative Concept L45900-003 to the Governor's office for possible introduction in the 2011 legislative session. The motion passed three to one with West opposed. Dalton noted Pittman has also been in favor of the concept.

D.2. SYSTEM ACCOUNTABILITY AND TRANSPARENCY INITIATIVES

Rodeman presented a report outlining the agency's efforts to balance system accountability and transparency initiatives with the need to protect individual member information. Rodeman noted recent media articles and editorials have questioned PERS adherence to two of the Board's Guiding Principles. Rodeman explained the key initiatives undertaken to meet transparency goals and explained how these goals are weighed against protecting member data to the extent required by law. PERS has consistently and thoroughly made information available to members, stakeholders, employers, and media regarding system costs and administration.

Clery described various efforts implemented since the beginning of his tenure at PERS to make information about the PERS system readily available and easily understandable, including the "PERS: By the Numbers" statistical abstract that is regularly updated and posted on the agency website.

Steve Manton, Principal Management Analyst for the City of Portland, noted he has been attending Board meetings for 12 years. He described the difference from the past to the present in the volume and quality of information available from the system. He stated that today you can go online and find any information with the exception of individual accounts details and from his perspective the information is very transparent. Manton thanked PERS on behalf of the employers for these improvements.

Matt Larrabee, Mercer actuary, summarized the extensive and continuous actuarial work and financial modeling produced to enhance system transparency for members, PERS employers, and other interested parties, and improve public understanding regarding PERS.

Larrabee presented information explaining how employer rates are derived and described the key system cost drivers and how they contributed to the rate increase effective July 2011. Larrabee explained why rate increases are likely to occur in subsequent rate-setting periods.

Larrabee explained that the valuation numbers are based on actual payroll for the 2009 calendar year and project forwarded using a variety of assumptions.

D.2.b. ACTUARAL AUDIT RESULTS: GABRIEL ROEDER SMITH, INC.

Dale Orr, PERS Actuarial Services Manager, described the purpose of the actuarial audit of the 2009 valuation which is the basis for setting the 2011-13 employer rates.

Leslie Thompson, a senior consultant and actuary with Gabriel Roeder Smith, Inc. (GRS), presented the results from the audit of PERS' 2009 actuarial valuation. GRS found that Mercer's 2009 actuarial valuation was accurate, representative, and conducted within actuarial standards. Thompson described a few suggestions for consideration in future valuations and some benchmarking measures.

Dalton noted the GRS recommendations will be reviewed with Mercer and considered for the next valuation.

D.2.c. ANALYSIS OF SYSTEM COST, BENEFIT, AND FINANCING CONCEPTS

Cleary presented a staff report analyzing various concepts that have been in the public discussion of ways to mitigate or reduce PERS costs. The analysis provided basic information on how these concepts would affect PERS members and employers, as well as potential impact on system funding and administration. The analysis was provided strictly for informational purposes. Cleary noted PERS does not endorse or advocate any specific concept, including whether the concept is legally sufficient. Cleary also noted the extensive appendix of charts and graphs detailing system data and trends.

D.2.d. PUBLIC RECORDS RESOLUTION MEMO AND ATTACHMENTS

Rodeman described the history of various public record requests and the staff review process. Rodeman noted the recent requests from *The Oregonian* and *Statesman-Journal* raised issues beyond just the correct legal standard to apply under the applicable law. Rodeman noted PERS denied the public records request by *The Oregonian* based on prior understanding of the law. That denial was appealed to the Attorney General who issued an order for release of the requested information. Outside legal counsel was obtained by PERS and a petition for judicial review was filed. Rodeman described other pending records requests. He noted the goal is to move the legal process to a more constructive resolution by establishing standards of general application that could be used to respond to all PERS related public records requests. Rodeman noted that PERS is seeking a settlement conference with *The Oregonian* regarding its public records requests to establish such standards.

Pete Shepherd of Harrang, Long, Gary, Rudnick noted the recommended settlement conference holds the potential of more effectively addressing the competing public interests.

Kripalani said the suggested approach makes sense and recommended moving forward as outlined by Shepherd.

West noted his concern that providing details on specific individual benefit amounts and where a retiree lives crosses a fine line. He asked when a retired member is no longer considered a public employee?

Warner noted she looked at other states' websites and some of them do release this kind of detailed information. She stated this is a policy question of what is right for Oregon. Warner agreed to move forward with the recommended settlement conference to come up with a balanced resolution. She inquired about the timeline and how the settlement process might work.

Shepherd described the different options noting the recommended approach should provide a more rapid and certain resolution. Shepherd noted for Warner that the rules do not provide a mechanism to require *The Oregonian* to participate in a settlement conference.

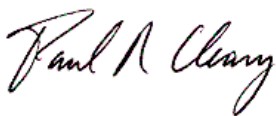
Kripalani moved and Warner seconded to pass a motion to adopt a resolution supporting the request to refer the pending Marion County Circuit Court public records action, and any related matters, to a settlement judge to develop among the parties an administrative framework of general application to PERS public records requests that involve member's personally identifiable data. The motion passed unanimously.

Marc Feldsman, retiree, noted the privacy policies in some other states are different. However, he noted those members are informed at the time of retirement of the respective policy and no such information was provided to PERS retirees. He stated PERS members he worked with understood that their records were public while they worked in public service, but at no time was this expected to apply in retirement.

Greg Hartman, PERS Coalition, stated that his clients have the expectation of privacy and applaud PERS efforts to move forward as recommended. Hartman noted the Attorney General has indicated he would propose modifications to the public records statutes in the upcoming session. Hartman urged the Board to weigh in and noted the need for special PERS provisions.

Chair Dalton adjourned the meeting at 2:55 PM.

Respectfully submitted,



Paul R. Cleary
Executive Director

PERS Board Meeting Forward-Looking Calendar

March 28, 2011

Adoption of Trustee-to-Trustee Transfer Rules
2010 Final Earnings Crediting
Updated Financial Modeling Results
Final ETOB Orders
2011 Legislative Update

Audit Committee Meeting

May 26, 2011

Employer Reporting
Retiree Health Insurance Rates 2011 Plan Renewals and Rates
2011 Legislative Update

July 22, 2011

2010 Experience Study
2011 Legislative Results

Audit Committee Meeting

September 23, 2011

2010 Valuation Results
2010 Actuarial Equivalency Factors

November 18, 2011

Employer Reporting

Audit Committee Meeting

Returns for periods ending 12/31/10

Oregon Public Employees Retirement Fund

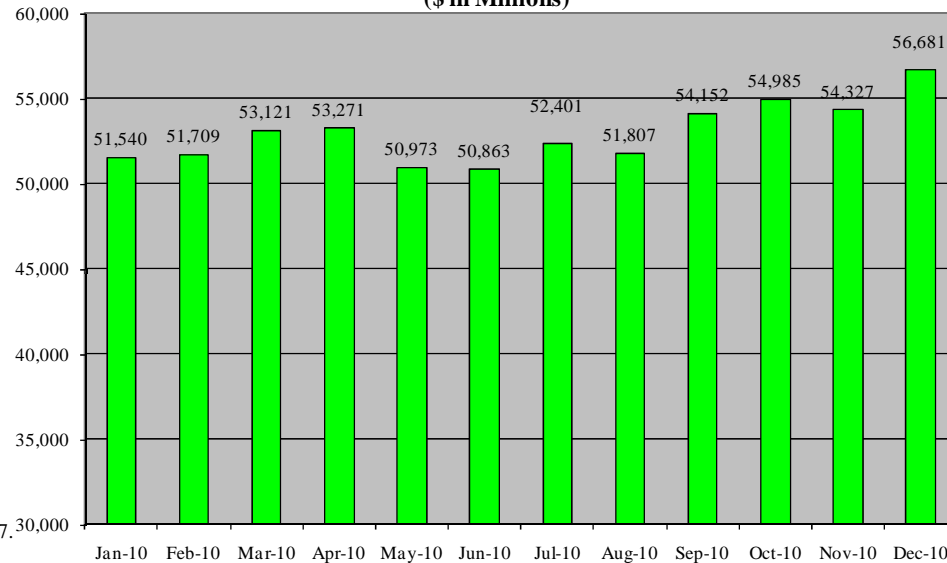
A.3.b.

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%	\$ 23,078,125	41.4%	15.69	15.69	25.86	(3.11)	(0.25)	3.32
Private Equity	12-20%	16%	11,973,204	21.5%	16.44	16.44	5.53	0.54	6.32	8.14
Total Equity	57-67%	62%	35,051,329	62.9%						
Opportunity Portfolio			1,053,075	1.9%	12.37	12.37	24.29	5.10	4.57	
Total Fixed	22-32%	27%	14,190,991	25.5%	10.78	10.78	18.02	7.88	7.11	6.86
Real Estate	8-14%	11%	5,327,435	9.6%	(1.88)	(1.88)	(5.71)	(8.42)	(4.08)	1.51
Cash	0-3%	0%	74,083	0.1%	0.88	0.88	1.62	1.50	2.46	2.98
TOTAL OPERF Regular Account		100%	\$ 55,696,913	100.0%	12.62	12.62	15.96	(0.60)	1.87	4.43
OPERF Policy Benchmark					11.32	11.32	13.40	(0.34)	2.27	4.68
Value Added					1.30	1.30	2.56	(0.26)	(0.40)	(0.25)
TOTAL OPERF Variable Account			\$ 984,391		14.55	14.55	24.62	(3.31)	(2.12)	1.06

Asset Class Benchmarks:

Russell 3000 Index	16.93	16.93	22.50	(2.01)	(0.27)	2.74
MSCI ACWI Ex US IMI Net	12.73	12.73	27.24	(4.22)	0.72	5.52
MSCI ACWI IMI Net	14.35	14.35	24.89	(3.48)	(0.01)	3.86
Russell 3000 Index + 300 bps--Quarter Lagged	14.27	14.27	6.41	(2.48)	2.64	4.69
BC Universal--Custom FI Benchmark	6.69	6.69	7.33	5.85	5.97	5.73
NCREIF Property Index--Quarter Lagged	5.84	5.84	(9.20)	(4.62)	0.45	3.67
91 Day T-Bill	0.13	0.13	0.17	0.79	1.83	2.43

TOTAL OPERF NAV
(includes variable fund assets)
One year ending December 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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January 28, 2011

TO: Members of the PERS Board
FROM: Kyle J. Knoll, Business Operations Manager
SUBJECT: January 2011 Budget Report

2009-11 BUDGET UPDATE

Operating expenditures for the months of November and December, 2010 were \$4,051,731 and \$2,940,984 respectively.

- To-date, through the first eighteen months (75%) of the 2009-11 biennium, the Agency has expended a total of \$53,834,550, or 64.66% of PERS' 2009-11 operating budget.
- PERS currently maintains a projected positive budget variance of \$4,272,839, or approximately 5.1% of the 2009-11 operating budget of \$83,261,952. \$338,309 of that projected positive variance is in the RIMS Conversion Project (RCP) budget.

2011-13 BUDGET UPDATE

The 2011-13 Governor's Recommended Budget (GRB) has been completed and is in the final review and approval process by Governor Kitzhaber.

- The 2011-13 GRB's baseline is the current 2009-11 Legislatively Approved Budget (LAB) minus allotment reductions.
- The 2011-13 GRB will be submitted to the Legislature by February 1, 2011. Specific GRB-related information will begin to be released by Governor Kitzhaber and the Office of Budget and Management (BAM) beginning the week of January 17, 2011.

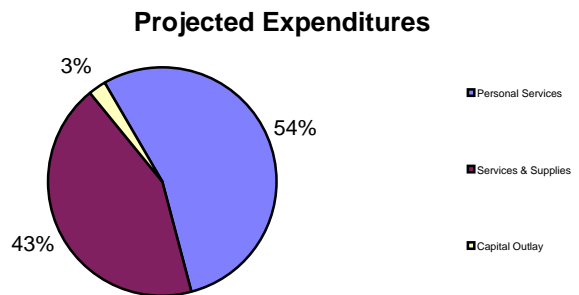
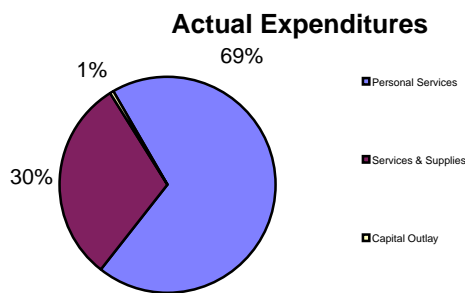
2009-11 Agency-wide Operations - Budget Execution

Summary Budget Analysis For the Month of: December 2010

Biennial Summary

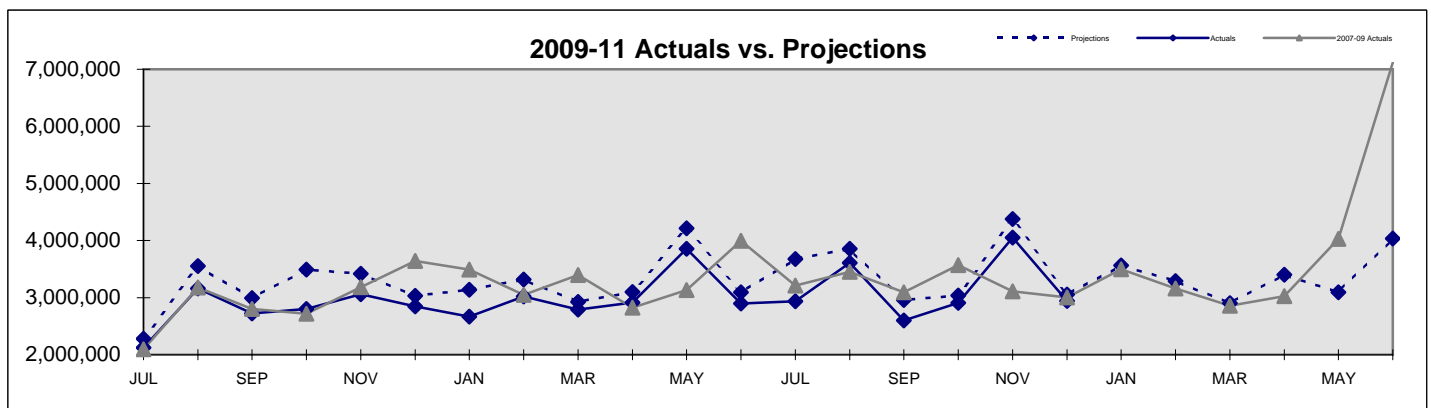
Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2009-11 LAB	Variance
Personal Services	37,125,636	13,631,264	50,756,900	52,751,494	1,994,594
Services & Supplies	16,383,808	10,871,399	27,255,207	29,916,870	2,661,663
Capital Outlay	325,105	651,900	977,005	593,588	(383,417)
Special Payments					
Total	53,834,550	25,154,563	78,989,113	83,261,952	4,272,839

Targeted Reserve Variance	2,754,000
RCP Reserved	338,309
Net Budget Available	1,180,530



Monthly Summary

Category	Actual Exp.	Projections	Variance	Avg. Monthly Actual Exp.	Avg. Projected Expenditures
Personal Services	2,146,926	2,251,880	104,955	2,062,535	2,271,877
Services & Supplies	794,058	801,981	7,923	910,212	1,811,900
Capital Outlay				18,061	108,650
Special Payments					
Total	2,940,984	3,053,861	112,878	2,990,808	4,192,427



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



Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

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January 28, 2011

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
SUBJECT: Notice of Rulemaking for Trustee-to-Trustee Transfer Rules
OAR 459-005-0580, *Trustee-to-Trustee Transfers*
OAR 459-015-0055, *Selection of Benefit Option and Commencement of Allowance*
OAR 459-050-0075, *Allowable Distributions During Employment*
OAR 459-050-0090, *Direct Rollover*

OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Clarify member's ability to restore forfeited creditable service or to make retirement credit purchases via a trustee-to-trustee transfer from certain other retirement plans.
- Subject: Trustee-to-trustee transfers.
- Policy Issue: No policy issues have been identified at this time.

BACKGROUND

Senate Bill 399 (2009), codified as ORS 238.222, allows members who are eligible to obtain restoration of forfeited creditable service or to make certain designated purchases of retirement credit to pay for those purchases with pre-tax dollars transferred from certain other retirement plans. The bill has an operative date of September 1, 2011.

The rule changes include a new rule that provides the parameters for eligibility to fund a purchase with a trustee-to-trustee transfer, guidance on how PERS will treat excess dollars transferred to PERS, and the relevant timelines. The ability to make purchases via a trustee-to-trustee transfer affects both service and disability retirements. Edits were made to our administrative rule regarding disability and purchases to reflect this new method of funding a purchase.

The bill affects the Oregon Savings Growth Plan (OSGP) as well. While the edits to the PERS administrative rules are specific to allowable purchases under Chapter 238, edits made to administrative rules regarding OSGP allow trustee-to-trustee transfers for the purpose of purchasing permissive service credit generally. These edits allow participants in OSGP to use their OSGP funds to purchase permissive service credit in any governmental defined benefit plan that allows such funding of purchases.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on February 22, 2011 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on March 9, 2011 at 5:00 p.m.

LEGAL REVIEW

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

IMPACT

Mandatory: Yes. These provisions are required by SB 399 (2009).

Impact: Members, employers, and staff will benefit from clarification of the administration of trustee-to-trustee transfers.

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

RULEMAKING TIMELINE

January 14, 2011	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
January 28, 2011	PERS Board notified that staff began the rulemaking process.
February 1, 2011	<i>Oregon Bulletin</i> publishes the Notice. Notice is mailed to employers, legislators, and interested parties. Public comment period begins.
February 22, 2011	Rulemaking hearing to be held at 2:00 p.m. in Tigard.
March 9, 2011	Public comment period ends at 5:00 p.m.
March 28, 2011	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 February 22, 2011, at PERS Headquarters in Tigard. The rules are scheduled to be brought before the PERS Board for adoption at the March 28, 2011 Board meeting.

B.1. Attachment 1 – OAR 459-005-0580, *Trustee-to-Trustee Transfers*

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

B.1. Attachment 3 – OAR 459-050-0075, *Allowable Distributions During Employment*

B.1. Attachment 4 – OAR 459-050-0090, *Direct Rollover*

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

1 459-005-0580

2 Trustee-to-Trustee Transfers

3 (1) For purposes of this rule, “trustee-to-trustee transfer” means a transfer of
4 dollars from an eligible retirement plan to PERS pursuant to ORS 238.222 or
5 section 2, Chapter 971, Oregon Laws 1999.

6 (2)(a) Except as provided in subsection (c) below, PERS must receive the
7 trustee-to-trustee transfer within the time period established in ORS 238.115 for
8 restoration of creditable service or in the time period established in the statute
9 permitting purchase of retirement credit, as applicable.

10 (b) A trustee-to-trustee transfer received by PERS outside the time period
11 permitted for the transfer will be returned to the eligible retirement plan from
12 which the transfer was received.

13 (c) A trustee-to-trustee transfer may be made to complete a purchase of
14 retirement credit properly initiated within the applicable timeframe.

15 (d) Nothing in either ORS 238.222 or this rule shall be construed to provide an
16 extension of time for obtaining restoration of forfeited creditable service or making
17 a purchase of retirement credit beyond the time permitted under the relevant ORS
18 provisions.

19 (3)(a) An amount received by PERS in a trustee-to-trustee transfer may not
20 exceed the amount necessary to obtain restoration of the forfeited creditable service
21 or purchase of retirement credit.

- 1 (b) If PERS receives a trustee-to-trustee transfer and determines that the
- 2 transfer may not be accepted by PERS or must be returned:
- 3 (A) Before the issuance of the member’s notice of entitlement:
- 4 (i) PERS will transfer the excess amount back to the eligible retirement plan
- 5 from which the transfer was received; and
- 6 (ii) PERS will not report the transfer to the Internal Revenue Service or the
- 7 Oregon Department of Revenue.
- 8 (iii) If the retirement plan from which the dollars came will not accept the
- 9 transfer, then PERS will distribute the excess amount to the member and report the
- 10 distribution to the Internal Revenue Service or the Oregon Department of Revenue
- 11 as a non roll eligible distribution.
- 12 (B) After the issuance of the member’s notice of entitlement:
- 13 (i) PERS will distribute the excess amount directly to the member; and
- 14 (ii) PERS will report the distribution to the Internal Revenue Service or the
- 15 Oregon Department of Revenue as an eligible rollover distribution.
- 16 (4) The provisions of this rule are effective on September 1, 2011.
- 17 Stat. Auth.: ORS 238.222 & 238.650
- 18 Stats. Implemented: ORS 238.222 and section 2, Chapter 971, Oregon Laws
- 19 1999.

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

1 **459-015-0055**

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

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

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

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

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

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

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

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

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

4 (a) The benefit will be the benefit as set forth under ORS 238.320(1) if the member is
5 single, or the benefit as set forth under ORS 238.462 if the member is married; and

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

9 (4) Purchases. If a member is eligible to purchase additional creditable service or
10 retirement credit under ORS Chapter 238 or section 2, chapter 971, Oregon Laws 1999, the
11 member must submit payment for the purchase(s) *[at the time]* no later than the earlier of:

12 (a) 90 days following the Director's, or the Director's designee's, approval of the
13 application for disability retirement allowance; or

14 (b) The time the member submits the final selection of benefit option *[form]* required
15 under section (2) of this rule.

16 (5) If the member elects to purchase all or a portion of the additional creditable
17 service or retirement credit through a trustee-to-trustee transfer as described in OAR
18 459-005-0580, the transfer must be received no later than the earlier of:

19 (a) 90 days following the Director's, or the Director's designee's, approval of the
20 application for disability retirement allowance; or

21 (b) The time the member submits the final selection of benefit option.

1 ~~[(5)]~~ (6) The payment of a disability retirement allowance shall commence within 10
2 business days following receipt by PERS of all of the following items, or the date the first
3 payment is due, as set forth in Section ~~[(6)]~~ (7) of this rule, whichever is later:

4 (a) From the member:

5 (A) Completed disability benefit application, [F]final designation of beneficiary and
6 selection of benefit option form;

7 (B) Proof of member's age;

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

9 (D) Spousal consent form.

10 (b) From the employer:

11 (A) Financial; and

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

14 ~~[(6)]~~ (7) A disability benefit accrues from the effective date of disability retirement.
15 The benefit accrued for a month of disability retirement is due on the first of the
16 following month. *[payment is first due on the later of:*

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

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

22 *(c) The first of the calendar month following the date that the disability application is*
23 *approved by the Director.]*

1 ~~[(7)]~~ (8) Notwithstanding section (6) of this rule, no payment shall be made before the
2 end of the period of 90 consecutive days beginning with the date of disability and shall be
3 retroactive to the effective date of disability.

4 ~~[(8)]~~ (9) If PERS cannot calculate the actual disability benefit payment, an estimated
5 payment will be made until PERS receives all the necessary information needed to calculate
6 the actual benefit payment. The payment will be made retroactive to the effective date of
7 disability if the benefits become due before the 90 consecutive day period of incapacitation has
8 elapsed.

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

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

14 ~~[(9)]~~ (10) Minimum disability benefit. A disability benefit will not be less than \$100 per
15 month under the non-refund Option 1 benefit or the amount the member would have received
16 for service retirement, if eligible, whichever is higher.

17 ~~[(10)]~~ (11) In the event a member applying for a disability retirement allowance dies
18 before the Director's approval of the application:

19 (a)(A) If the member has made a preliminary benefit option election, the preliminary
20 election shall be effective upon the Director's approval of the application for disability
21 retirement.

22 (B) If the deceased member was eligible to purchase additional creditable service or
23 retirement credit under ORS Chapter 238, the beneficiary, if any, designated in the preliminary

1 election may make the purchase(s) by submitting the required forms and payment within 90
2 days from the date the disability application is approved.

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

5 (A) If the beneficiary designated under ORS 238.390(1) is the surviving spouse, the
6 surviving spouse may, within 90 days from the date the disability application is approved,
7 elect to have either Option 2 or 3 disability benefits or pre-retirement death benefits, as
8 provided in ORS 238.390 or 238.395, if eligible.

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

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

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

18 Stat. Auth.: ORS 238.650

19 Stats. Implemented: ORS 238.320, 238.325 & 238.330

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 050 – DEFERRED COMPENSATION**

1 **459-050-0075**

2 **[In-Service] Allowable Distributions During Employment**

3 The purpose of this rule is to describe the types of distributions available to a participant
4 who has not had a severance of employment. Distributions made while a participant is still
5 employed are “in-service” distributions.

6 (1) De minimis distribution. A de minimis distribution is an in-service distribution of the
7 entire balance of a small account before the date a participant has a severance of employment.

8 A de minimis distribution may be made if all of the following conditions are satisfied:

9 (a) No prior de minimis distribution was made to the participant;

10 (b) The total balance of the participant's account does not exceed the limitations in the
11 Internal Revenue Code Section (IRC) 457(e)(9)(A), which is \$5,000;

12 (c) Participant has not made any contributions to the Deferred Compensation Plan in the
13 two-year period before the date of distribution; and

14 (d) Participant has submitted an application for a de minimis distribution on forms
15 provided by, or other methods approved by the Deferred Compensation Program. No
16 distribution will be paid unless a complete application is filed with, and approved by, the
17 Deferred Compensation Program.

18 (2) Unforeseeable emergency withdrawal. An unforeseeable emergency withdrawal is an
19 in-service distribution made to a participant due to an unforeseeable emergency. This
20 withdrawal may be made before the date a participant has a severance of employment and as
21 defined in OAR 459-050-0150. A participant must apply for an unforeseeable emergency

1 withdrawal using forms provided by, or other methods approved by, the Deferred
2 Compensation Program as provided for in OAR 459-050-0150(4).

3 (3) Military distribution. A participant is treated as having been severed from
4 employment during any period the participant is performing service in the uniformed services
5 while on active duty for a period of more than 30 days for the purposes of the limitation on in-
6 service distributions. For purposes of this rule, “uniformed services” has the same meaning as
7 given in OAR 459-050-0072. This section applies to distributions made on or after January 1,
8 2009.

9 [\(4\) Trustee-to-trustee transfers. A trustee-to-trustee transfer as defined in OAR](#)
10 [459-050-0090\(1\)\(h\) may be made while a participant is still employed.](#)

11 [\(5\)](#)~~[4]~~ Funds available for in-service distribution. Only funds contributed to a deferred
12 compensation plan, as defined in IRC 457, and earnings on those contributions may be
13 distributed in a de minimis distribution or unforeseeable emergency withdrawal. Any funds
14 directly transferred or rolled over to the Deferred Compensation Program from any plan other
15 than an IRC 457 deferred compensation plan shall not be distributed for a de minimis
16 distribution or an unforeseeable emergency withdrawal.

17 ~~[(5)]~~[\(6\)](#) Prohibitions on elective deferrals after an in-service distribution. A participant
18 who receives a de minimis distribution, an unforeseeable emergency withdrawal, or a military
19 distribution may not make elective deferrals and employee contributions to the Deferred
20 Compensation Program for a period of 6 consecutive months from the date of distribution.

21 [Publications: Publications referenced are available from the agency.]

22 Stat. Auth: ORS 243.470

23 Stats. Implemented: ORS 243.401 - 243.507

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 050 – DEFERRED COMPENSATION**

1 **459-050-0090**

2 **Direct Rollover and Trustee-to-Trustee Transfer**

3 The purpose of this rule is to establish the criteria and process for a direct rollover by
4 the Deferred Compensation Program to an eligible retirement plan *[(a transfer made*
5 *from trustee to trustee)]* or a trustee-to-trustee transfer by the Deferred Compensation
6 Program *[by the Deferred Compensation Program to an eligible retirement plan]* to
7 either (1) a defined benefit governmental plan (within the meaning of Code Section
8 414(d)) or (2) a deferred compensation plan described in Code Section 457(b) that is
9 maintained by a state, political subdivision of a state, or any agency or
10 instrumentality of a state or political subdivision of a state and to establish the criteria
11 and process for the Deferred Compensation Program to accept an eligible rollover
12 distribution from another eligible retirement plan. This rule shall apply to any direct
13 rollover distribution or trustee-to-trustee transfer received by the Deferred
14 Compensation Program on behalf of a participant and any request for distribution from a
15 Deferred Compensation Program account processed on or after January 1, 2008.

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

17 (a) “Code” means the Internal Revenue Code of 1986, as amended.

18 (b) “Direct Rollover” means:

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

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

1 (c) “Distributee” means:

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

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

5 (C) The surviving spouse of a deceased participant;

6 (D) The spouse or former spouse who is the alternate payee under a domestic
7 relations order that satisfies the requirements of ORS 243.507 and OAR 459-050-0200 to
8 459-050-0250; or

9 (E) The non-spouse beneficiary of a deceased participant who is a designated
10 beneficiary under Code Section 402(c)(11).

11 (d) “Distributing Plan” means an eligible retirement plan that is designated to
12 distribute a direct rollover to another eligible plan (recipient plan).

13 (e) “Eligible Retirement Plan” means any one of the following that accepts the
14 distributee’s eligible rollover distribution:

15 (A) An individual retirement account or annuity described in Code Section 408(a) or
16 (b), including a Roth IRA as described in Code Section 408(A);

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

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

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

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

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

1 (f) “Eligible Rollover Distribution” means a distribution of all or a portion of a
2 distributee’s Deferred Compensation account. An eligible rollover distribution shall not
3 include:

4 (A) A distribution that is one of a series of substantially equal periodic payments
5 made no less frequently than annually for the life (or life expectancy) of the distributee or
6 the joint lives (or life expectancies) of the distributee and the distributee’s designated
7 beneficiary, or for a specified period of ten years or more;

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

10 (C) An amount that is distributed due to an unforeseen emergency under OAR 459-
11 050-0075(2).

12 (g) “Recipient Plan” means an eligible retirement plan that is designated by a
13 distributee to receive a direct rollover.

14 **(h) “Trustee-to-Trustee Transfer” means a transfer either:**

15 **(A) By the Deferred Compensation Program to:**

16 **(i) A defined benefit governmental plan (within the meaning of Code Section**
17 **414(d)) for the purchase of permissive service credit as set forth in and meeting the**
18 **requirements of Code Section 415(n); or**

19 **(ii) A deferred compensation plan described in Code Section 457(b) that is**
20 **maintained by a state, political subdivision of a state, or any agency or**
21 **instrumentality of a state or political subdivision of a state if:**

22 **(I) The receiving plan provides for receipt of the transfer;**

1 (II) The participant whose amounts deferred are being transferred will have an
 2 amount deferred immediately after the transfer at least equal to the amount
 3 deferred with respect to that participant immediately before the transfer; and

4 (III) The participant has had a severance from employment with the employer
 5 maintaining the transferring plan and is performing services for the entity
 6 maintaining the receiving plan. The participant is not required to have a severance
 7 from employment if the transfer is between plans maintained by the same employer.

8 (B) To the Deferred Compensation Program from:

9 (i) A deferred compensation plan described in Code Section 457(b) that is
 10 maintained by a state, political subdivision of a state, or any agency or
 11 instrumentality of a state or political subdivision of a state if:

12 (I) The transferring plan provides for the transfer;

13 (II) The participant whose amounts deferred are being transferred will have an
 14 amount deferred immediately after the transfer at least equal to the amount
 15 deferred with respect to that participant immediately before the transfer; and

16 (III) The participant has had a severance from employment with the employer
 17 maintaining the transferring plan and is performing services for the entity
 18 maintaining the receiving plan. The participant is not required to have a severance
 19 from employment if the transfer is between plans maintained by the same employer.

20 (2) Direct rollover to an eligible retirement plan. The direct rollover of an eligible
 21 rollover distribution by the Deferred Compensation Program to an eligible retirement plan
 22 shall be interpreted and administered in accordance with Code Section 457(d)(1)(C) and
 23 all applicable regulations. A distributee may elect to have an eligible rollover distribution

1 paid by the Deferred Compensation Program directly to an eligible retirement plan
2 specified by the distributee.

3 (a) The Deferred Compensation Program staff shall provide each distributee with a
4 written explanation of the direct rollover rules for an eligible distribution, as required by
5 the Code.

6 (b) A distributee’s right to elect a direct rollover is subject to the following
7 limitations:

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

10 (B) A distributee may elect to have part of an eligible rollover distribution be paid
11 directly to the distributee, and to have part of the distribution paid as a direct rollover only
12 if the distributee elects to have at least \$500 transferred to the eligible retirement plan.

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

17 (A) The distributee’s full name;

18 (B) The distributee’s social security number;

19 (C) The distributee’s account number with recipient plan, if available;

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

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

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

5 **(3) Trustee-to-trustee transfer. A participant may elect a trustee-to-trustee**
6 **transfer from the Deferred Compensation Program to another eligible retirement**
7 **plan.**

8 **(a) A trustee-to-trustee transfer request shall be in writing and must be signed**
9 **by the participant or by his or her authorized representative pursuant to a valid**
10 **power of attorney. The trustee-to-trustee transfer request may be on forms**
11 **furnished by the Deferred Compensation Program, or on forms submitted by the**
12 **recipient plan which must include:**

13 **(A) The participant's full name;**

14 **(B) The participant's social security number;**

15 **(C) The participant's account number with the recipient plan, if available;**

16 **(D) The name and complete mailing address of the recipient plan; and**

17 **(E) If the participant is a non-spouse beneficiary of the member, the title of the**
18 **recipient account.**

19 **(b) The participant is responsible for determining that the recipient plan's**
20 **administrator will accept the trustee-to-trustee transfer for the benefit of the**
21 **participant. Any taxes or penalties that are the result of the participant's failure to**
22 **ascertain that the recipient plan will accept the trustee-to-trustee transfer shall be**
23 **the sole liability of the participant.**

1 ~~[(3)]~~(4) Direct rollover from an eligible retirement plan. On or after January 1, 2002,
2 the Deferred Compensation Program shall only accept rollover contributions from
3 participants and direct rollovers of distributions from an eligible retirement plan on behalf
4 of a participant. ~~[Section (3) of this rule]~~ This section shall be interpreted and
5 administered in accordance with Code Section 402(c) and all applicable regulations.

6 (a) The Deferred Compensation Program shall only accept pre-tax assets. After-tax
7 employee contributions are not eligible for rollover into the Deferred Compensation
8 Program.

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

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

20 (b) Subject to the requirements of subsections ~~[(3)]~~(4)(b)(A) and (B) below, eligible
21 rollover distribution(s) shall be credited to the participant’s Deferred Compensation
22 account established pursuant to the Plan and Agreement on file with the Deferred
23 Compensation Program and shall be subject to all the terms and provisions of the Plan and

1 Agreement. Account assets received from the distributing plan will be invested by the
2 Deferred Compensation Plan record keeper in accordance with the terms and conditions
3 of the Deferred Compensation Program according to the asset allocation the participant
4 has established for monthly contributions unless instructed otherwise in writing on forms
5 provided by the Deferred Compensation Program.

6 (A) Assets from an eligible deferred compensation plan account described in Code
7 Section 457(b) will be aggregated with the participant’s accumulated Deferred
8 Compensation Plan account.

9 (B) Assets from an eligible retirement plan other than a Deferred Compensation Plan
10 described in Code Section 457(b) will be segregated into a separate account established by
11 the Deferred Compensation Program for tax purposes only, but not for investment
12 purposes. For investment purposes, the participant’s assets are treated as a single account.
13 If a participant changes the allocation of existing assets among investment options within
14 the plan, the transfer or reallocation shall apply to and will occur in all accounts
15 automatically.

16 (c) Assets directly rolled over to the Deferred Compensation Program may be subject
17 to the 10 percent penalty on early withdrawal to the extent that the funds directly rolled
18 over are attributable to rollovers from a qualified plan, a 403(b) annuity, or an individual
19 retirement account.

20 Stat. Auth: ORS 243.470

21 Stats. Implemented: ORS 243.401 - 243.507



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January 28, 2011

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
SUBJECT: Adoption of Employer Reporting and Remittance Rules
OAR 459-070-0100, *Employer Reporting*
OAR 459-070-0110, *Employer Remittance of Contributions*

OVERVIEW

- Action: Adopt modifications to Employer Reporting and Remittance Rules.
- Reason: To stabilize employment data and enhance the accuracy of data provided to members and used in benefit administration.
- Policy Issue: Should PERS restrict employers' ability to modify employment data after the normal annual data reconciliation period has closed?

BACKGROUND

After the close of each calendar year, employers are notified by PERS that they have a period of time to reconcile employment data reported for the previous calendar year. That reconciliation needs to be completed in early March so PERS can finalize the member account information based on the annual earnings crediting and prepare the file extracts used to generate member annual statements, actuarial valuations, and other items.

Even after engaging in this process, however, employers frequently submit new or amended reports affecting records for prior calendar years after this period has closed. These late reports are one of the primary reasons that member accounts are adjusted after a member has already received an annual statement or a benefit, leading to questions and contests from members. These prior year adjustments also require PERS staff to reconcile and post the resulting account adjustments, retroactive payments, and benefit recalculations, while often also leading to invoices to benefit recipients. Employers often also complain about the unexpected, often unbudgeted, obligations that result from other employers amending their reports, as those changes can result in invoices for prior year contributions and earnings that would have been submitted that year had all employers reported timely.

During the evolution of the electronic reporting system (EDX), employers and PERS did have difficulties in using the system to submit records in an accurate and timely manner. Proficiency has increased, as shown in the Employer Reporting and Outreach Program report presented in the Director's Report at the November 19, 2010, Board meeting. However, employers continue to be able to revise data for prior calendar years, which continues to impose significant administrative burdens on PERS. The penalty provisions in the PERS statutes are also not

always effective as a deterrent; for many employers, the penalties would be insignificant (the maximum is \$2000 per month) and penalty administration is often problematic.

POLICY ISSUE

Should PERS restrict employers' ability to modify employment data for a calendar year after annual data reconciliation?

Employer proficiency with EDX has reached the point that timely reporting and remittance of amounts due is a reasonable and justifiable expectation. For example, as reported in November 2010, for calendar years 2008 and 2009, there were only 17 late reports outstanding and they were attributable to only 4 employers. As of January 10, 2011, there were only 2 late reports outstanding for those years, attributable to one employer. There are still approximately 13,000 unposted records for those years, attributable to multiple employers, with each record posing the possibility of adding to the employer's and PERS' administrative burdens and disrupting the affected members. (Note: A reduction in late reports does not necessarily translate to an immediate reduction in unposted records, as records within a report may still suspend.)

The proposed modifications to OAR 459-070-0100 establish that, beginning with calendar year 2011, when reconciliation of reports for a calendar year is completed in March of the following year, an employer may no longer submit or modify reports for the "closed" year. Any exceptions noted by PERS in a report submitted during the calendar year must be reconciled before the year is closed. The trigger for closing a year is the date PERS issues the employer a statement of contributions due in March of the following year. For example, when PERS issues a statement of contributions to an employer in March, 2012, the employer would no longer be allowed to submit or modify reports for pay periods in calendar year 2011.

In response to Board Chair Dalton's comments at the November 2010 board meeting, the rule was modified as described below to direct that prior year reports can be submitted or modified through PERS if necessary for accurate benefit administration. However, reporting for a closed year is still a late report and subject to penalty.

Staff recommends the proposed modifications. Restricting employer reporting for closed years should reduce the administrative resources required to post prior year adjustments; diminish overpayments, benefit recalculations, and member invoices; limit underpayments, benefit recalculations, and retroactive payments for all programs; and increase data integrity for the member data used in annual statements, estimates, retirement data verifications, notices of entitlement, and online member services.

OTHER PROPOSED RULE MODIFICATIONS

The modifications to OAR 459-070-0100 also update the penalty provisions, permitting the Director or his designee to waive penalties for reports due in calendar year 2011, but requiring employers to petition for waiver for reports due in subsequent calendar years. Other edits are for clarity and consistency.

The proposed modifications to OAR 459-070-0110 update and clarify employer obligations to timely remit contributions and penalties, capture more comprehensively the allocation of amounts paid to PERS, and clarify penalty and waiver provisions consistent with OAR 459-070-

0100. It is expected the penalty provisions of both rules will be waived for calendar year 2011 to provide substantial notice to employers and permit them to refine procedures to accommodate the restriction of late reporting effective in March, 2012.

SUMMARY OF MODIFICATIONS TO RULES SINCE NOTICE

In both rules, ORS 238.650 was added as statutory authority.

OAR 459-070-0100:

Subsection (2)(c) was added to permit submission or modification of a report for a closed calendar year if PERS determines the report is necessary for accurate benefit administration. The introductory clause in subsection (2)(b) was edited to acknowledge the addition of this exception. This modification addresses Board Chair Dalton's comment at the November 2010 meeting that blocking any modification after a closed year was inconsistent with the Board's policy that benefit administration should be based on the member's actual service. With this modification, staff's assumption that such modifications would not have been prevented but, rather, flow through PERS staff and not be made by the employer on their own is more clearly stated. Most of the administrative complications arise from employers making these changes in isolation; requiring the change to go through PERS staff will make the consequences more apparent so the member and any affected employer can be involved in resolving any resulting issues.

Subsection (6)(b) was rewritten to clarify that penalties under subsection (6)(a) for failure to submit a report accrue until the report is submitted or the date the report may no longer be submitted, whichever comes first. Penalties accrued to that date are still imposed, but no additional accrual of the penalty will occur.

Subsection (6)(c) was added. It provides that if a report for a closed year is submitted or modified under the "accurate benefit administration" exception established in subsection (2)(c), the report is subject to the penalty for late reporting described in subsection (2)(a) up to the date of the modification. It also provides that the accrual of the penalty under this subsection is not subject to the limitation of subsection (6)(b).

459-070-0110:

Section (4) was edited to more accurately reflect allocation practice and procedure.

Former subsection (4)(g), *Prior Year Contributions*, was deleted as redundant. Prior year contributions are encompassed within the allocations to the respective programs: the Individual Account Program, the OPSRP Pension Program, and the PERS Chapter 238 Program.

Section (5) was added to clarify that PERS and an employer may agree that amounts paid by the employer will be allocated to specific receivables.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on January 4, 2011 at 2:00 p.m. at PERS headquarters in Tigard. No testimony was received at the hearing. The public comment period ended on January 11, 2011 at 5:00 p.m. Two public comments were received.

OAR 459-070-0100:

Linda Ely, representing the Department of Administrative Services Central PERS Services Team, commented by letter dated January 11, 2011. A copy is Attachment 3 to this memo. Ms. Ely stated that present limitations of EDX sometimes prevent an employer or PERS from immediately correcting unposted records or incorrect data and recommends that the proposed rule modifications be delayed until all EDX system limitations are eliminated and all PERS and employer “clean up projects” are completed. She questioned if the rule would prevent employers from working to post suspended records after a closed year if the defects were attributable to system limitations and, if so, if employers would be penalized for the unposted records.

The proposed rule modifications do not present an obstacle to employers continuing to work with PERS staff to reconcile records that failed to post due to system limitations. The exception established by subsection (2)(c) provides substantial flexibility for PERS to accept relevant modifications and corrections after the close of a calendar year, albeit subject to penalty. However, the rule also provides PERS the flexibility to unilaterally waive penalties for reports due in 2011 and, upon an employer’s request, penalties for reports due in and after 2012. Such a waiver is predictable if the system in fact prevents the timely submission or modification of a report or record. Given the delay in the operation of the limitation and the associated penalties, the flexibility provided by the rule, and the ongoing development and refinement of EDX, staff does not recommend delaying adoption of the rule. The rule can be revisited in late 2012 or early 2013 if Ms. Ely’s concerns are relevant to the employer reporting system at that time.

OAR 459-070-0110:

Brenda Wilson, Intergovernmental Relations Manager, City of Eugene, commented by letter dated January 12, 2011, but received by email on January 11. A copy is Attachment 4 to this memo. Ms. Wilson opines that the requirement to pay the amount on a statement within five business days of the statement date is reasonable for current year reporting and notes that doing so has not presented a problem for the City of Eugene. However, she is concerned that a statement may contain amounts for prior year contributions and that, to avoid penalty, the employer must pay the amount due without the opportunity to thoroughly review their records. She suggests limiting the five business day deadline to current year invoices only and offers that issuing a separate statement for prior year contributions might facilitate this limitation.

The five business day deadline has been restated in the rule modifications but exists in the current rule. The rule modifications capture current practice and EDX functionality, which provide numerous opportunities for the employer to address a pending or current invoice for prior year contributions.

The eligibility review process that might give rise to a prior year adjustment and resulting invoice involves the employer from the outset, so any resulting obligation would be based on the

employer's reporting through EDX, which provides the employer with functionality that provides the maximum estimated financial impact to the employer from that change. If the employer is invoiced for prior year contributions and earnings, the employer has 60 days to appeal the invoice and the invoice will be suspended during the appeal. Should the employer prevail in the appeal, the invoice will be canceled and, if necessary, the employer's account will be credited.

As EDX currently provides notice and opportunity to employers to estimate and collaborate on such obligations before and after issuance of a statement of contributions due, staff does not recommend any further modifications to the rule to address this comment.

LEGAL REVIEW

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

IMPACT

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

Effect: Staff, members, and employers will benefit from greater data integrity and reduced administration of adjustments to closed years.

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

RULEMAKING TIMELINE

November 15, 2010	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
November 19, 2010	PERS Board notified that staff began the rulemaking process.
December 1, 2010	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began.
January 4, 2011	Rulemaking hearing held at 2:00 p.m. in Tigard.
January 11, 2011	Public comment period ended at 5:00 p.m.
January 28, 2011	Board may adopt the permanent rule modifications.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to the Employer Reporting and Remittance Rules, as presented.”
2. Direct staff to make other changes to the rules or explore other options.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: To stabilize employment data and enhance the accuracy of data provided to members and used in benefit administration.

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

C.1. Attachment 1 – OAR 459-070-0100, *Employer Reporting*

C.1. Attachment 2 – OAR 459-070-0110, *Employer Remittance of Contributions*

C.1. Attachment 3 – Public comment letter from Linda Ely, Department of Administrative Services

C.1. Attachment 4 – Public comment letter from Brenda Wilson, City of Eugene

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

DIVISION 070 – OREGON PUBLIC SERVICE RETIREMENT PLAN, GENERALLY

1 **459-070-0100**

2 **Employer Reporting**

3 (1) Definition. “Pay period” means the span of time covered by an employer’s report
4 to PERS.

5 (2) Unless otherwise agreed upon *[between]* **by** the PERS Executive Director and
6 the employer, *[the]* **an** employer *[shall]* **must** transmit to PERS an itemized report of all
7 information required by PERS.

8 **(a) [Reports shall] A report must** include wage, service, and demographic data
9 *[related to that]* **for all employees for a** pay period.

10 **(b) Except as provided in subsection (c) of this section, an employer may not**
11 **submit or modify a report for a pay period within a calendar year on or after the**
12 **first date in March of the subsequent calendar year on which PERS issues the**
13 **employer a statement of contributions due. This subsection applies to pay periods**
14 **beginning on or after January 1, 2011.**

15 **(c) PERS will permit an employer to submit or modify a report subject to the**
16 **limitation of subsection (b) of this section if PERS determines the report is necessary**
17 **for accurate benefit administration.**

18 (3) The report required under section (2) of this rule *[shall]* **must** be acceptable to
19 PERS and transmitted on forms furnished by the agency or in an equivalent format. The
20 report *[shall]* **must** be transmitted electronically, faxed, or postmarked, as applicable, no
21 later than three business days *[following]* **after** the end of *[each]* **the** pay period **assigned**
22 **to the employer under [listed in] section (4) of this rule [below].**

1 (4) PERS *[shall]* **will** assign *[the]* **an** employer *[to one of the following]* **a** pay
2 period*[s]* which most closely matches the employer’s pay cycle:

3 (a) Monthly: the pay period ends on the last day of the month;

4 (b) Semi-monthly: the pay period ends on the fifteenth of the month and the last day
5 of the month;

6 (c) Weekly: the pay period ends the Friday of every week*[, commencing January 2,*
7 *2004]*; or

8 (d) Biweekly: the pay period ends every other Friday*.[, commencing January 9,*
9 *2004.]*

10 (5) If *[the]* **a** report required under section (2) of this rule is accepted by PERS,
11 PERS *[shall]* **will** notify the employer of any exceptions and the employer **must** *[will*
12 *have 10 business days to]* reconcile its report. The corrected report must be transmitted
13 *[electronically, faxed, or postmarked, as applicable,]* to PERS **before the employer is**
14 **subject to the limitation of subsection (2)(b) of this rule for that report.** *[no later than*
15 *10 business days from the date of notification to avoid the penalty described under*
16 *section (6) of this rule.]*

17 (6) *[Failure of a]***(a) An** employer **that fails** to transmit *[the]* **a** report **as** required
18 under sections **2** **and 3** of this rule *[shall make the employer liable for]* **must pay** a
19 penalty equal to one percent of the total amount of the prior year’s annual contributions
20 or \$2000, whichever is less, for each month the employer is delinquent.

21 **(b) Penalties under subsection (a) of this section continue to accrue until the**
22 **earlier of the date the report is submitted or the date the limitation of subsection**
23 **(2)(b) is effective.**

1 (c) Notwithstanding subsection (b) of this section, an employer that submits or
2 modifies a report pursuant to subsection (2)(c) of this rule must pay the penalty
3 described in subsection (a) of this section.

4 (7) The PERS Executive Director or a person designated by the Director *[will*
5 *have the discretion to]* may waive the penalty described in section (6) of this rule for
6 *[all]* reports due *[from]* on or after January 1, 2011 and before January 1, 2012.*[04*
7 *through December 31, 2005.]* For reports due on or after January 1, 2012*[following*
8 *that period of time]*, penalties may be waived by the Director or the Director's designee
9 only upon written petition from the employer.

10 *[(8) The effective date of this rule is January 1, 2004.]*

11 Stat. Auth.: ORS 238A.450, 238.650

12 Stats. Implemented: ORS 238A.050 & 238.705

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

DIVISION 070 – OREGON PUBLIC SERVICE RETIREMENT PLAN, GENERALLY

1 **459-070-0110**

2 **Employer Remittance of Contributions**

3 (1) Definition. “Statement date” means the date a statement of contributions or
4 penalty due is generated by PERS.

5 (2) *[Once]* **When** PERS *[receives the report described in OAR 459-070-0100(2) and*
6 *(5), it shall]* issues a statement of contributions **due** and, **if applicable**, any penalty due,
7 *[if applicable.]*

8 *[(3) U]* **u**nless otherwise agreed upon by the PERS Executive Director and the
9 employer, an employer *[shall]* **must pay to PERS the total amount of contributions**
10 **and penalty due no later than five business days from the statement date. Payment**
11 **must be made pursuant to OAR 459-005-0225.***[transmit the amount of employee*
12 *contributions, employer paid employee contributions, and employer contributions for the*
13 *Individual Account Program along with the corresponding contributions to fund the*
14 *pension programs, for each pay period to the Board so that it shall be electronically*
15 *transferred no later than five business days from the statement date, under the provisions*
16 *of OAR 459-005-0225.]*

17 *[(4)]* **(3)** *[Failure of any]* **An** employer **that fails** to *[transmit contributions]* **pay the**
18 **total amount due on a statement** within the time *[limit]* specified in section *[(3)]* **(2) of**
19 **this rule** *[will make the employer liable for]* **must pay** a penalty equal to one percent of
20 the total amount of contributions due **on that statement** *[for that pay period]* for each
21 month the employer is delinquent.

1 ~~[(5)]~~ (4) If an employer transmits an amount less than the ~~[contributions]~~ amount
2 required by section ~~[(3)]~~ (2) of this rule, PERS ~~[shall]~~ will allocate the ~~[contributions~~
3 ~~received]~~ amount to receivables by due date, oldest first. If multiple receivables have
4 the same due date, PERS will allocate the amount to the receivables in the following
5 order:

- 6 (a) ~~[To t]~~ The Individual Account Program;
- 7 (b) ~~[To t]~~ The **OPSRP P**ension Program;
- 8 (c) ~~[To the PERS Fund.]~~ **The Retiree Health Insurance Account and the Retiree**
9 **Health Insurance Premium Account;**
- 10 **(d) Police Officer and Firefighter Unit Accounts;**
- 11 **(e) Judge member accounts;**
- 12 **(f) The PERS Chapter 238 Program;**
- 13 **(g) Penalties;**
- 14 **(h) Benefit Equalization Fund invoices;**
- 15 **(i) Social Security; and**
- 16 **(j) Other receivables due from the employer.**

17 **(5) By agreement with an employer, PERS may allocate amounts paid by the**
18 **employer to specific receivables.**

19 (6) The PERS Executive Director **or a person designated by the Director** ~~[will have~~
20 ~~the discretion to]~~ may waive the penalty described in section ~~[(4)]~~ (3) of this rule for
21 ~~[all]~~ contributions due ~~[from]~~ on or after January 1, 2011 ~~[04 through December 31,]~~
22 and before January 1, 2012 ~~[05]. [Following that period of time,]~~ For contributions
23 due on or after January 1, 2012, penalties may be waived by the Director or the
24 Director's designee only upon written petition from the employer.

1 *[(7) If PERS is required to invoice an employer for employee contributions and*
2 *corresponding employer contributions on wages paid in previous reporting periods, an*
3 *amount equal to the earnings that would have been credited to affected members and*
4 *employers for those years, if any, may be added to the applicable account and charged to*
5 *the employer.]*

6 *[(8) The effective date of this rule is January 1, 2004.]*

7 Stat. Auth.: ORS 238A.450, [238.650](#)

8 Stats. Implemented: ORS 238A.050 & 238.705



Oregon

John A. Kitzhaber, MD, Governor

Department of Administrative Services

Human Resource Services Division

155 Cottage Street NE, U30

Salem, OR 97301

FAX: (503) 373-7684

January 11, 2011

PERS Board
Public Employees Retirement System
PO Box 23700
Tigard, OR 97281

Re: Public Comment on Rulemaking for
OAR 459-070-0100 (Employer Reporting)

Dear Board Members:

The purpose of this letter is to provide comments on the amendments to this rule.

We believe that the integrity and accuracy of the data we provide to PERS along with the timeliness of reporting this data and paying of all contributions are all very important and a high priority. However, everyday we see system constraints that consistently do not allow us to report data. We also see data on the PERS system that is incorrect for some members due to system limitations. Until the PERS system can be programmed to handle all reporting needs for the data that PERS requires employers to provide, the concept of closing a year and not allowing further modifications to reports or records for a year, causes us great concern.

For calendar year 2007, we had approximately 100 records that were suspended at the close of the annual reconciliation process. This left a number of unposted reports. The data reported in the records was correct, and any contributions due had been remitted. Due to a problem with the member's account the system could not accept the data. We had to wait for PERS staff to fix the accounts, one by one, so these records could post. We still have 31 records affecting 2 agencies that currently remain unposted.

We are still waiting for PERS to fix a number of records for years 2008 and 2009. Many of these suspended records affect all future records, in future reports up to and through 2010 for that particular member. For many records this will continue into 2011.

The amendment to OAR 459-070-0100(2)(b) states "*...an employer may not submit or modify a report for a pay period within a calendar year on or after the first date in March of the subsequent calendar year...*" What happens next March 2012, at the close of calendar year 2011, when these records are still suspended and the reports have not posted? Will we be able to continue to work to get the data to post? Will there be penalties if they are not posted, even though they were reported and the contributions paid timely?

The following are some examples of current system constraints that have created a backlog of work for both PERS and ourselves:

1. Currently, the system does not work properly around the resetting of the Contributions Start Date (CSD). If a person was entered on to the system, but terminated before meeting their waiting period, and was later re-hired, none of the new wage records reported for this individual can post until there is a manual intervention. We must contact our account representative to have the CSD manually deleted or changed. At this point we have been informed by PERS staff that it will be at least summer of 2011, before the system can be corrected for the reset process to once again be automated.

We report wage data for approximately 40,000 employees on a monthly basis. This affects a number of employee records each month, and will continue to do so until the system is corrected.

2. We are able to report and remit P&F unit contributions for employees we know to be in P&F positions, but that are not correctly classified in these position on the PERS system. Sometime ago, we were informed that even though the Employer Data Exchange (EDX), the interface employers use to report data to PERS and jClarety, has allowed the reports and records to be accepted and the funds to be delivered. If the member is not currently classified in a P&F position on the PERS system, the funds are not credited to the member's unit account. Unless a record suspends to let us know there is a discrepancy with the data we are reporting, we have no idea the funds are not being correctly credited or that additional data is required to correct the member's account information.

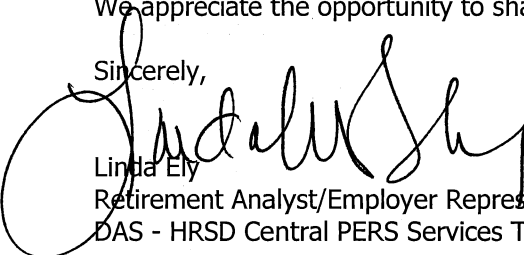
Additionally, the system has no restrictions set to suspend records once a member has met their statutory dollar limit of \$4,000 for their unit account. The system does not have functionality to suspend records for members who are purchasing units, attain age 65, and are no longer eligible to purchase units. The system allows us to keep reporting and remitting unit dollars, when it should provide a warning or a flag that there is an issue.

3. At this time, most employers are not reporting domestic partner medical premiums paid by OPSRP members as subject salary. ORS 238.005(21)(c)(B), for Tier 1 and Tier 2 members, clearly makes these premiums non-subject for PERS purposes. But, ORS 238A.005(16)(a) does not have this same exclusion. We have been told that this affects the pension program, but not the Individual Account Program (IAP). We have been advised that we could begin paying contributions on these premiums by adding them to subject salary. The problem is that if it only affects the pension program, we should not be paying 6% employee contributions into the IAP for these premiums. By adding these premiums to subject salary there is no mechanism in the reporting system that would allows us to only pay the employer contributions into the pension program.

Our goal is to provide accurate data for all state employees. However, the data is only as good as the information people have to input into the system. Until all of the plan changes due to the elimination in break in service are completed, all of our own and PERS' data clean up projects are finished, and the system is programmed to meet all the data needs that are required, we believe that the proposed change to OAR 459-070-0100(2)(b) could be detrimental to employers and should not be implemented at this time.

We appreciate the opportunity to share our thoughts and concerns.

Sincerely,



Linda Ely
Retirement Analyst/Employer Representative
DAS - HRSD Central PERS Services Team

CC: Diana Foster, Administrator, DAS Human Resource Services Division



**Intergovernmental
Relations**

Date: 1/18/2011

**Public Employees Retirement Board
P O Box 23700
Tigard, OR 97281-3700**

Re: Comment on proposed OAR 459-070-0110

Chair Dalton and Members of the Board:

Following are comments on proposed OAR 459-070-0110. As set forth in the rulemaking notification, the proposed changes to this administrative rule would “update and clarify employer obligations to timely remit contributions and penalties, capture more comprehensively the allocation of amounts paid to PERS, and clarify penalty and waiver provision consistent with OAR 459-070-0100. It is expected the penalty provisions of both rules will be waived for 2011 to provide substantial notice to employers and permit them to refine procedures to accommodate the restriction of late reporting effective in March, 2012.”

The City of Eugene has concerns regarding the five day remitting requirement in OAR 459-070-0110. Currently, the City of Eugene remits invoiced amounts in a timely manner and does not have an issue with “regular” invoicing. Statements sent by PERS, however, sometimes contain invoices for “prior-year” earnings (going back 1, 5, 10 years or more) and “other” adjustments. Prior to remitting payments for prior year invoices, the City of Eugene must make sure the information and charges are accurate before we remit payment. These types of invoices often take significant amounts of time to research to verify that the information is correct. This is especially true with the limited amount of information supplied on the statement regarding prior-year invoices.

Because of the sometimes significant time it takes to research these prior year invoices, the requirement to remit the total amount of contributions (and any penalties) no later than five business days from the statement date can prove to be difficult. Five days is a very tight timeframe for researching past invoices to make sure they are correct. When a payment is due in five days, it means we need to send the payment on the 4th day. This means creating the payment on the 3rd day. This leaves us 2-2.5 days to balance an invoice that can contain thousands of lines of information. One way to address this could be to apply the five day deadline to just the current year invoices and allow additional time for prior year invoices. This might be made easier by separating the prior year invoices on a separate statement. The City of Eugene would support this solution.

Please let me know if you have questions about these comments and we appreciate your willingness to work with us and hear our concerns during the rulemaking process.

Yours very truly,

/S/ Brendalee Wilson
Intergovernmental Relations Manager
City of Eugene



Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

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January 28, 2011

TO: Members of the PERS Board

FROM: Dale S. Orr, Actuarial Services Manager

SUBJECT: 2010 Preliminary Earnings Crediting and Reserving

OVERVIEW

- Action: Adopt 2010 preliminary earnings crediting decisions.
- Reason: ORS 238.670(5) requires PERS to submit a preliminary proposal to the appropriate legislative committee at least 30 days before making a final decision on earnings crediting.
- Subject: Crediting earnings for calendar year 2010 to the PERS Fund's accounts and reserves.
- Policy Issue: Is the Contingency Reserve adequately funded?

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, the preliminary earnings allocation will reflect the following:

1. **Administrative Expenses:** Administrative costs are funded by earnings when they are sufficient, as they were in 2010 (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 created as part of the PERS Fund and 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 2010, the preliminary rate for these accounts is estimated to be 12.12%.
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 2010, the preliminary rate for these accounts is estimated to average 12.74%.
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 2010 are estimated to be 15.17%, and IAP account earnings for 2010 are estimated to be 12.29%.
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 is

currently in deficit. 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 2010 earnings used for this offset will depend, in part, on the Board's Contingency Reserve decision.

DISCRETIONARY EARNINGS ALLOCATIONS

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 2010 earnings exceeded the assumed rate, the PERS Board must again address whether the Contingency Reserve is adequately funded. Staff has developed two options for the Board's consideration in funding this reserve (charts showing the impact of each option are attached):

Option 1: Make no additional allocation. This would leave the Contingency Reserve's balance at \$653.1 million.

Option 2: Increase the Contingency Reserve's funding by transferring the maximum amount of earnings allowed. This would increase the reserve's balance to \$1,039.0 million, an increase of \$385.9 million.

POLICY ISSUE

- *Is the Contingency Reserve adequately funded?*

In 2007, the Board set the current balance (\$653.1 million) based on the status of ongoing litigation and the unknown impact from unsettled financial markets. Those dynamics have not changed appreciably since the PERS Board established this funding level. The Board preserved the reserve's balance from the substantial 2008 investment losses and considered the reserve to be adequately funded when allocating 2009 earnings, which was another year when earnings exceeded the assumed rate. Given those dynamics, staff recommends that the PERS Board make no additional allocation to the Contingency Reserve from 2010 earnings.

In addition to the Contingency Reserve allocation, the PERS Board's Annual Crediting Rule (OAR 459-007-0005) directs the crediting to the Judge and Tier Two member regular accounts, as well as the OPSRP Pension, Benefits-in-Force, and Employer reserves.

RECOMMENDED 2010 PRELIMINARY ALLOCATIONS

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

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.

Funding of Contingency Reserve

Make no additional allocation to the Contingency Reserve from available 2010 earnings, maintaining the current balance at \$653.1 million (Option 1).

Judge Member Accounts

Credit Judge Member Accounts with the assumed earnings rate (8%).

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

Credit Tier Two member regular accounts and the Benefits-In-Force and Employer reserves evenly with the remaining available earnings. The preliminary crediting rate to those accounts would be 12.65%.

BOARD OPTIONS

The Board may:

1. **Adopt Staff's Recommendation:** Pass a motion to "adopt the staff's recommended preliminary crediting of earnings for calendar year 2010, subject to final adoption at the March 28, 2011 PERS Board meeting."
2. **Adopt an Optional Policy Position:** Pass a motion to "adopt the staff's recommended preliminary crediting of earnings for calendar year 2010, subject to final adoption at the March 28, 2011 PERS Board meeting," but amending that recommendation as follows:
 - Increase the Contingency Reserve by 7.5% of Regular Account earnings (Option 2);
or
 - Increase the Contingency Reserve funding by a stated dollar amount or percentage of available earnings.
3. **Develop alternative strategies:** Adopt an alternative preliminary crediting to the Contingency or other reserves. That alternative should be adopted to allow for adequate reporting to the legislature as required by ORS 238.670(5) and adopt final earnings crediting decisions at the PERS Board's March 28, 2011 meeting.

NEXT STEPS

Once the Board makes its preliminary decisions, staff will prepare and present the required report to the Oregon Legislature's Ways and Means Committee. Any comments received from the committee will be presented to the Board prior to its final crediting decision on March 28, 2011.

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

Attachments:

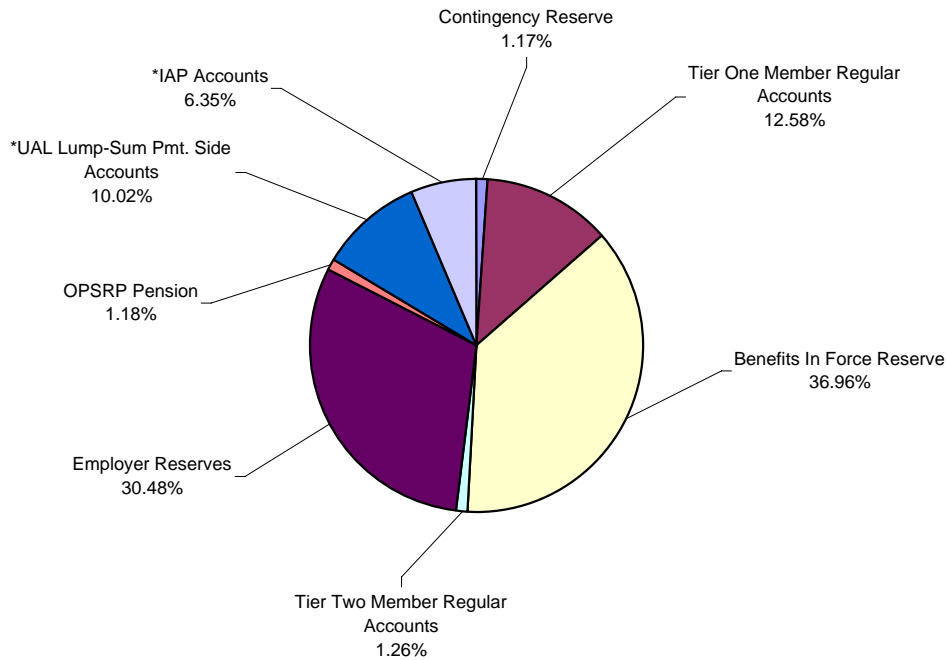
Option 1: Maintain Current Contingency Reserve Balance

Option 2: Allocate 7.5% of Earnings to Contingency Reserve

OPTION 1: Recommended Allocation
Maintain Current Contingency Reserve Balance
2010 Preliminary Earnings
(All dollar amounts in millions)

Regular Account Reserve	Reserves Before Preliminary Crediting	2010 Preliminary Crediting	Reserves After Preliminary Crediting	2010 Preliminary Rates
Contingency Reserve	\$653.1	\$0.0	\$653.1	N/A
Tier One Member Regular Accounts	6,485.4	518.8	7,004.2	8.00%
Tier One Rate Guarantee Reserve	-441.8	246.1	-195.7	N/A
Benefits In Force Reserve	18,270.7	2,312.5	20,583.1	12.65%
Tier Two Member Regular Accounts	625.3	79.1	704.4	12.65%
Employer Reserves	15,070.7	1,907.5	16,978.1	12.65%
OPSRP Pension	587.3	68.8	656.1	11.71%
*UAL Lump-Sum Pmt. Side Accounts	4,932.3	647.5	5,579.7	Various
*IAP Accounts	3,150.5	386.4	3,536.9	12.29%
Total	\$49,333.3	\$6,166.6	\$55,500.0	

2010 Regular Account Reserve Balances
After 2010 Preliminary Crediting



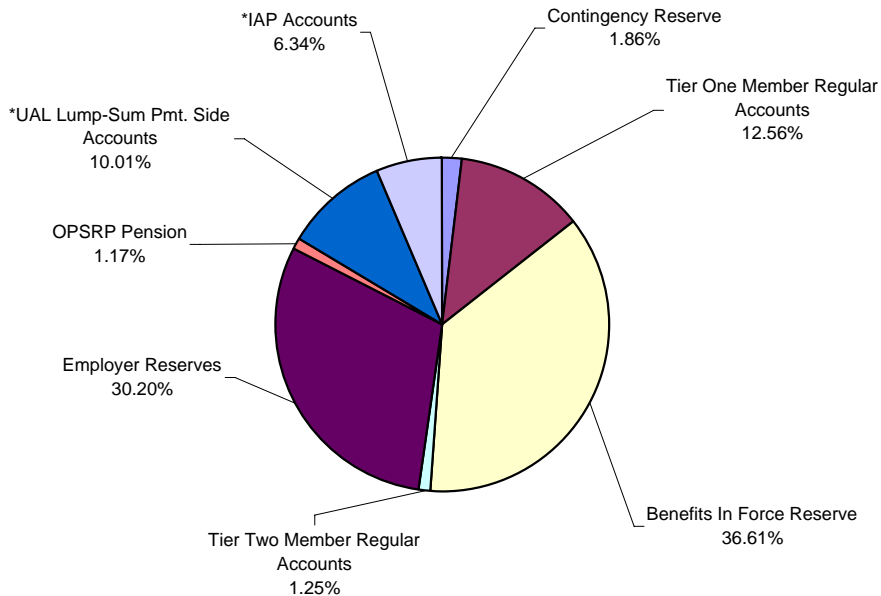
*Informational only. Not affected by Board reserving or crediting decisions.

OPTION 2

7.5% of Earnings to Contingency Reserve 2010 Preliminary Earnings (All dollar amounts in millions)

Regular Account Reserve	Reserves Before Preliminary Crediting	2010 Preliminary Crediting	Reserves After Preliminary Crediting	2010 Preliminary Rates
Contingency Reserve	\$653.1	\$385.9	\$1,039.0	N/A
Tier One Member Regular Accounts	6,485.4	518.8	7,004.2	8.00%
Tier One Rate Guarantee Reserve	-441.8	188.6	-253.1	N/A
Benefits In Force Reserve	18,270.7	2,138.8	20,409.5	11.70%
Tier Two Member Regular Accounts	625.3	73.2	698.5	11.70%
Employer Reserves	15,070.7	1,764.2	16,834.9	11.70%
OPSRP Pension	587.3	63.2	650.5	10.76%
*UAL Lump-Sum Pmt. Side Accounts	4,932.3	647.5	5,579.7	Various
*IAP Accounts	3,150.5	386.4	3,536.9	12.29%
Total	\$49,333.3	\$6,166.6	\$55,500.0	

**2010 Regular Account Reserve Balances
After 2010 Preliminary Crediting**



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



Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

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January 28, 2011

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
SUBJECT: Legislative Update – 2011 Regular Session

The Oregon Legislature's 2011 Regular Session started on January 10, 2011. After organizational meetings over the first few days of that week, the House and Senate recessed until February 1, 2011, when committees will begin substantive hearings. Pre-session filed bills have been printed and will probably be first on the agenda once the legislature returns. The legislative calendar is attached to this memo, showing the key milestones as the chambers work towards the goal of adjourning no later than June 30, 2011.

PERS-SPONSORED BILLS

The three legislative concepts submitted by the PERS Board were forwarded by the Governor's Office and have now been printed as the following House bills:

- HB 2113 Modifies retirement plan options of persons elected or appointed as members of Legislative Assembly. Authorizes use of trustee-to-trustee transfers to fund specified retirement credit purchases under Public Employees Retirement System. Modifies vesting dates for pension program and individual account program of Oregon Public Service Retirement Plan. Amends law relating to crediting of earnings on PERS member accounts for purpose of conforming law to Supreme Court decision.
- HB2114 Provides that inactive member of pension program of Oregon Public Service Retirement Plan who withdrew amounts in individual account program becomes member of individual account program immediately upon reemployment in qualifying position.
- HB2115 Modifies law that allows member of Public Employees Retirement System to request verification of retirement data before retirement. Eliminates provision that prohibits Public Employees Retirement Board from using creditable service, retirement credit, final average salary, member account balances or accumulated unused sick leave that is less than amount specified in verification for purposes of determining retirement benefits.

CHANGES TO PERS PLAN

The second attachment to this memo lists the substantive bills introduced to date that would make a substantive change to the PERS Plan.

BOARD POLICY POSITIONS

The Board adopted policy positions for the 2009 session for Legislators to consider when evaluating proposed legislation that related to the PERS Plan. Those policy positions that pertain to bills already introduced in the 2011 session were:

1039 Exceptions

Additional exceptions to the 1039-hour limitation should be narrowly tailored and clearly defined; include a declaration establishing a work force shortage or other special situation; and include a sunset clause no later than January 1, 2012.

Additionally, the Board urges the Legislature to commence a comprehensive evaluation before the next legislative session with the goal of establishing a consistent standard on future proposed exceptions.

Expanding the Definition of “Police” & “Firefighter”

For legislation that expands the definition of “Police Officer” or “Firefighter,” “Police Officer” status should only apply to positions that principally engage in the custody, control, or supervision of individuals convicted of, or arrested for, a criminal offense or confined to a place of incarceration or detention.

Other policy positions will be presented for the Board’s consideration based on your direction or recommendations developed by the PERS staff through the Legislative Advisory Committee.

OSGP STATUTORY CHANGE

On September 27, 2010, President Obama signed into law The Small Business Jobs Act of 2010 (the "Jobs Act"). Beginning in January 2011, the Jobs Act will allow governmental 457(b) plans like the Oregon Savings Growth Plan (OSGP) to offer a Roth account. It also provides for Roth conversions within the plan.

A Roth 457 would allow participants to contribute to the OSGP on an after-tax basis. The contribution limits for the Roth 457 are the same as the pre-tax 457 (in 2010, \$16,500 or \$22,000 if age 50). Anything contributed to the Roth would be invested in the same options currently available in OSGP.

The conversion provision would allow participants to convert any pre-tax amounts from OSGP that are eligible for rollover (e.g., at the time of termination of employment or retirement), or rollover money participants have in OSGP from 401(k), 403(b) or pre-tax IRAs, into a Roth. The amount rolled over must qualify as an eligible rollover distribution and the participant must be eligible for a distribution under the plan

Adding a Roth 457 would give participants another vehicle to save for retirement, and would also be very desirable for younger employees who want to be able to save on an after-tax basis and not have to pay taxes when they retire. OSGP’s Advisory Committee fully supports adding the Roth feature. SEIU’s President and Executive Director wrote the attached letter in support of adding this feature. Also, OSGP posted an informal survey on its website: of the 2738 employees responded to the survey, 79% were currently enrolled in OSGP, 27% were currently contributing

to a Roth IRA, and 78% indicated they would contribute to a Roth 457 if one became available. Also, 48% of non-participants said they would be more likely to enroll in OSGP if a Roth were offered.

To offer this feature now made available because of the federal law change, OSGP would need to change the Oregon law. ORS 243.460 does not currently allow for after-tax contributions to OSGP because, prior to this change in federal law, none were allowed. To allow OSGP to offer a Roth 457 feature, this statute needs to be amended to reference the new federal law allowing after-tax contributions. If this statutory change can be made, PERS would make necessary revisions to its administrative rules at a future board meeting to add the Roth 457 to OSGP.

State agencies were required to submit their 2011 session concepts back in April 2010, before the federal law change that allowed for the Roth 457 feature. Therefore, PERS cannot introduce this concept on its own, but can cooperate with a bill sponsor should one come forward with this amendment, which is likely given the broad support for adding this feature among OSGP's Advisory Board, membership, and stakeholders. As this concept was not developed or sponsored by PERS, we will work with other potential proponents in an attempt to have the necessary statutory changes made to include this offering to OSGP members, unless directed otherwise by the PERS Board.

D.2. Attachment 1 – 2010-11 Legislative Filing Calendar

D.2. Attachment 2 – 2011 PERS Plan Bills to Date

D.2. Attachment 3 – SEIU Letter on OSGP ROTH Accounts

Legislative Calendar - 2011

JANUARY						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10 Opening Day	11 Organizational	12 Session	13	14 Session Bill Request Deadline	15
16	17 MLK Day Holiday	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

FEBRUARY						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14 LC Return Bills	15 Projected Revenue Forecast	16	17 Bill Filing Deadline	18	19
20	21	22	23	24	25	26
27	28 Daily Floor Session Begins					

MARCH						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18 Executive Branch Furlough Day	19
20	21	22	23	24	25	26
27	28	29	30	31		

Senate Floor
House Floor
House and Senate Floor Session
January Recess - No Committee mtgs or Floor Sessions

APRIL						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8 Policy Comm. Deadline to Post Work Session	9
10	11	12	13	14	15	16
17	18	19	20	21 Policy Comm. Deadline for Chamber of Origin Bills	22	23
24	25	26	27	28 Possible Evening Floor Session - House	29	30 Possible Floor Session - Senate

MAY						
S	M	T	W	T	F	S
1	2 Possible Evening Floor Session - Senate	3 Possible Evening Floor Session - House & Senate	4 Possible Evening Floor Session - Senate	5	6	7
8	9	10	11	12 Projected Revenue Forecast	13	14
15	16	17	18	19	18 Executive Branch Furlough Day	21
22	23 Policy Comm. Deadline to Post Work Session 2nd Chamber	24	25	26	27	28
29	30 Memorial Day In District Day	31				

JUNE						
S	M	T	W	T	F	S
			1 Last Day for Policy Com WK	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30 Sine Die		

2011 Proposed Deadlines
W&M policy committee bills hearing

Bill Summary Report – PERS Plan Changes

Report Date: Thu, Jan 13, 2011

Bill # Summary

- HB 2113** Modifies retirement plan options of persons elected or appointed as members of Legislative Assembly. Authorizes use of trustee-to-trustee transfers to fund specified retirement credit purchases under Public Employees Retirement System. Modifies vesting dates for pension program and individual account program of Oregon Public Service Retirement Plan. Amends law relating to crediting of earnings on PERS member accounts for purpose of conforming law to Supreme Court decision. Declares emergency, effective on passage.
- HB 2114** Provides that inactive member of pension program of Oregon Public Service Retirement Plan who withdrew amounts in individual account program becomes member of individual account program immediately upon reemployment in qualifying position. Declares emergency, effective on passage.
- HB 2115** Modifies law that allows member of Public Employees Retirement System to request verification of retirement data before retirement. Eliminates provision that prohibits Public Employees Retirement Board from using creditable service, retirement credit, final average salary, member account balances or accumulated unused sick leave that is less than amount specified in verification for purposes of determining retirement benefits. Declares emergency, effective on passage.
- HB 2161** Eliminates employee contributions, employer contributions and rollover contributions to individual account program of Oregon Public Service Retirement Plan, effective January 1, 2012. Prohibits employee from becoming member of program on or after January 1, 2012. Declares emergency, effective on passage.
- HB 2343** Modifies law limiting number of hours that retired member of Public Employees Retirement System may work while still receiving retirement benefits. Eliminates limitation on reemployment of certain retired employees by or in certain cities and counties with specified populations. Declares emergency, effective on passage.
- HB 2436** Provides that Public Employees Retirement Board may not require employer contributions during 2011-2013 biennium, 2013-2015 biennium or 2015-2017 biennium that would cause contribution rate of participating public employer to increase by more than three percent over average contribution rate during immediately preceding biennium. Provides that public employer that has side account by reason of lump sum payment to Public Employees Retirement Fund may elect to apply amounts in account to offset contributions to system that would otherwise be required during 2011-2013 biennium, 2013-2015 biennium and 2015-2017 biennium that are in excess of amounts determined by Public Employees Retirement Board. Declares emergency, effective on passage.
- HB 2444** Limits cost-of-living adjustments for monthly benefits payable under Public Employees Retirement System to members of system who have at least 10 years of creditable service at time member retires, becomes disabled or dies. Applies only to members who retire, become disabled or die on or after effective date of Act. Declares emergency, effective on passage.

- HB 2445** Modifies laws governing cost-of-living increases for benefits paid by Public Employees Retirement System. Provides that cost-of-living increase or decrease in excess of maximum annual retirement allowance adjustment of two percent does not accumulate from year to year and Public Employees Retirement Board may not include excess in computation of increases or decreases in subsequent years. Declares emergency, effective on passage.
- HB 2447** Provides that, in computing final average salary for purpose of determining retirement benefit of members of Public Employees Retirement System, salary includes amounts attributable to hours of overtime only to extent that hours do not exceed average number of hours of overtime for same class of employees. Applies only to members who retire on or after effective date of Act. Declares emergency, effective on passage.
- HB 2453** Modifies cost-of-living adjustment for retirement allowances, pensions and other benefits payable under Public Employees Retirement System. Limits application of adjustment to lesser of \$2,000 or amount of monthly retirement allowance, pension or other benefit. Declares emergency, effective on passage.
- HB 2454** Eliminates use of accumulated unused vacation leave and unused sick leave in computation of final average salary for purposes of determining retirement benefit of member of Public Employees Retirement System. Applies only to members who retire on or after effective date of Act. Declares emergency, effective on passage.
- HB 2455** Limits retirement allowance or pension payable to retired member of Public Employees Retirement System to final average salary of member. Applies only to members who retire on or after effective date of Act. Declares emergency, effective on passage.
- HB 2456** Prohibits Public Employees Retirement Board from paying increased benefit by reason of state income taxation of payments made by board if person receiving payments does not pay Oregon income tax on retirement benefits. Provides procedures for enforcing prohibition. Imposes similar prohibition for certain public employers that provide retirement benefits for police officers and firefighters other than by participation in Public Employees Retirement System. Provides for expedited review by Supreme Court upon petition by adversely affected party. Declares emergency, effective on passage.
- HB 2535** Updates connection date to federal Internal Revenue Code and other provisions of federal tax law. Takes effect on 91st day following adjournment sine die.
- HB 2814** Modifies law limiting number of hours that may be worked by retired member of Public Employees Retirement System while still receiving retirement benefits. Eliminates limitation on reemployment of certain public safety officers by or in certain small cities and counties, based on population under 2000 federal decennial census instead of latest federal decennial census. Declares emergency, effective on passage.

- HB 2984** Eliminates employer pick-up of six percent employee contribution required of members of individual account program of Public Employees Retirement System. Requires employee contributions to individual account program only if elected by employee. Requires that employee contributions be percentage of salary, be not less than one percent of salary or more than six percent of salary, and be whole number. Eliminates ability of public employer to make employer contributions to individual account program. Declares emergency, effective on passage.
- HB 2985** Eliminates employer pick-up of six percent employee contribution required of members of Public Employees Retirement System. Eliminates ability of public employer to make employer contributions to individual account program of system. Declares emergency, effective on passage.
- HB 2986** Eliminates Oregon Public Service Retirement Plan and substitutes Tier 3 level of benefits under Public Employees Retirement System. Specifies benefits payable to Tier 1 PERS members, Tier 2 PERS members and Tier 3 PERS members.
- HB 2987** Provides that person appointed or elected as member of Legislative Assembly may not become member of Public Employees Retirement System. Retains provision allowing person appointed or elected as member of Legislative Assembly to elect to become legislator member of state deferred compensation plan. Requires that Legislative Assembly make employer contributions to state deferred compensation plan on behalf of legislative member in amount that is equal to six percent of members salary or amount that is equal to legislator members contribution, whichever is less. Applies only to service as member of the Legislative Assembly that is attributable to election or appointment that occurs on or after effective date of Act. Confers jurisdiction on Supreme Court to review petition of any person aggrieved by Act. Declares emergency, effective on passage.
- HB 2988** Provides that person appointed or elected as member of Legislative Assembly may not become member of Public Employees Retirement System or participate in state deferred compensation plan as legislator member. Applies only to service as member of the Legislative Assembly that is attributable to election or appointment that occurs on or after effective date of Act. Declares emergency, effective on passage.
- HB 2989** Provides that person appointed or elected as member of Legislative Assembly may not become member of Public Employees Retirement System or participate in state deferred compensation plan as legislator member. Applies to members of Legislative Assembly who are first appointed or elected on or after effective date of Act. Declares emergency, effective on passage.
- HB 2990** Establishes Fair Retirement Plan for persons hired on or after July 1, 2011, who have not established membership in Public Employees Retirement System before July 1, 2011. Specifies that Fair Retirement Plan be part of Public Employees Retirement System administered by Public Employees Retirement Board. Provides that Fair Retirement Plan be defined contribution plan. Declares emergency, effective on passage.

HB 2991 Prohibits Public Employees Retirement Board from paying increased benefit by reason of state income taxation of payments made by board if person receiving payments does not pay Oregon income tax on retirement benefits. Provides procedures for enforcing prohibition. Imposes similar prohibition for certain public employers that provide retirement benefits for police officers and firefighters other than by participation in Public Employees Retirement System. Provides for expedited review by Supreme Court upon petition by adversely affected party. Declares emergency, effective on passage.

SB 34 Removes limit on number of hours retired member may work and still qualify for retirement under Public Employees Retirement System if retired member is employed by school district or education service district as other than teacher or management employee, or by community college as other than faculty member or management employee. Applies to Oregon Public Service Retirement Plan.

SB 76 Expands definition of corrections officer to include officers who supervise other corrections officers. Declares emergency, effective on passage.

SB 223 Declares that physician faculty workforce shortage exists. Provides that Governor may suspend declaration by executive order. Provides that limitations on employment of retired member of Public Employees Retirement System do not apply to retired member who is physician and is employed by Oregon Health and Science University as faculty member during period in which workforce shortage declaration remains in effect. Declares emergency, effective on passage.

SB 301 Updates connection date to federal Internal Revenue Code and other provisions of federal tax law. Takes effect on 91st day following adjournment sine die.



Service Employees International Union, Local 503, OPEU

January 14, 2011

Gay Lynn Bath, Deferred Compensation Manager
Oregon Savings Growth Plan
800 Summer Street NE, Suite 200
Salem, OR 97301

Re: Roth 457

Dear Ms. Bath:

It is our understanding that the Oregon Savings Growth Plan (OSGP), a defined contribution plan under IRC 457, currently allows voluntary, pre-tax contributions for state employees, and that all state employees are eligible for OSGP immediately upon employment.

It is also our understanding that on September 27, 2010, President Obama signed into law The Small Business Jobs Act of 2010 (the "Jobs Act"), which among other provisions, will allow governmental 457(b) plans like OSGP to offer a Roth account, which would allow participants to contribute to the plan on an after-tax basis.

As many state employees have expressed an interest in contributing to a Roth 457 through a survey done by your agency, and because we support state employees having access to retirement plans that allow them to save for a secure financial future, the Service Employees International Union (SEIU) believes that a Roth 457 would be beneficial to employees. Therefore, SEIU would be supportive of any legislative changes required to revise ORS 243.460 to allow the Roth 457 for participants in OSGP.

Sincerely,

Linda J. Burgin, President

Heather Conroy, Executive Director