

OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM BOARD MEETING

**Friday
May 27, 2016
1:00 P.M.**

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

ITEM	PRESENTER
A. Administration	
1. March 28, 2016 Board Meeting Minutes	RODEMAN
2. Director's Report	
a. Forward-Looking Calendar	
b. OIC Investment Report	
c. Budget Execution Report	
d. Board Scorecard Report on Agency Performance Measures	BROWN
B. Administrative Rulemaking	
1. Disability Statistics	VAUGHN
2. Notice and First Reading of Disability Rules	
3. Notice of Receipt Date Rule	
4. Adoption of Withdrawals Rules	
C. Action and Discussion Items	
1. <i>Moro</i> Implementation Project Update	ELLEDGE-RHODES
2. 2017 Retiree Health Insurance Plan Renewals and Rates	KOBBERVIG
3. OSGP Advisory Committee Appointments	SMITH
4. 2017-19 Agency Budget Development and Strategic Update	KNOLL

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<http://www.oregon.gov/PERS/>

Remaining 2016 Meetings: July 29* September 30· November 18* * Audit Committee

Stephen Buckley Lawrence Furnstahl Krystal Gema John Thomas, Chair Pat West, Vice Chair Steve Rodeman, Executive Director
SL1

OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM

BOARD MEETING MINUTES

March 28, 2016

Board members present:

Chair John Thomas, Stephen Buckley, Lawrence Furnstahl, Krystal Gema and Vice-Chair Pat West

Staff present:

Linda Barnett, David Crosley, Mary Dunn, Yvette Elledge-Rhodes, Brian Harrington, Jordan Masanga, Beth Porter, Daniel Rivas, Steve Rodeman, Jason Stanley, Marjorie Taylor, Stephanie Vaughn, Anne Marie Vu, Dale Wakabayashi, Joli Whitney, and Yong Yang

Others present:

Jeff Akers, Nancy Brewer, Gordon Friedman, Henry Groepper, Greg Hartman, David Moore, Jennifer Olson, Del Stevens, Deborah Tremblay, Trudy Vidal, and Linnea Wittekind

Chair John Thomas called the meeting to order at 1:00 P.M.

ADMINISTRATION

A.1. MEETING MINUTES OF JANUARY 29 2016

Board member Buckley moved and Vice Chair West seconded approval of the minutes submitted from the January 29, 2016 Board meeting. The motion passed unanimously.

A.2.a. DIRECTOR'S REPORT

Executive Director Steve Rodeman reviewed the Forward Looking Calendar and highlighted the important items to be considered by the Board in the coming year.

Rodeman reviewed the Oregon Investment Council (OIC) Investment Report of the Oregon Public Employees Retirement Fund (OPERF) for the period ending January 31, 2016.

Rodeman presented the Budget Execution Report. Final expenditures for February were not available before the Board meeting materials were sent out. Board member Gema clarified the impacts of budget delays on the policy option package funding.

Chief Compliance, Audit, and Risk Officer Jason Stanley submitted a review of the annual report of the financial transactions of the Executive Director for the fiscal year ended June 30, 2015. There were no questions. The Board acknowledged receipt of the report.

ADMINISTRATIVE RULEMAKING

Policy, Analysis, and Compliance Section Manager Stephanie Vaughn presented.

Vaughn noted that the Disability Rules package is still being worked on and they anticipate that it will be included on the May 27, 2016 meeting agenda.

B.1. NOTICE OF WITHDRAWAL RULES

Vaughn presented the notice of rulemaking for Withdrawal Rules, OAR 459-005-0001, -075-0020; and -080-0020. These rules are being modified to further define "effective date of withdrawal" to reduce incidents of mandatory repayment, clarify items required to process a withdrawal, and a housekeeping edit to include OPSRP Pension Program to the definition of

“effective date of retirement.” A rulemaking hearing will be held at PERS Headquarters April 26, 2016. The public comment period ends May 3, 2016. No Board action was required.

ACTION AND DISCUSSION ITEMS

C.1. MORO IMPLEMENTATION PROJECT UPDATE

Chief Operations Officer Yvette Elledge-Rhodes presented an update on the status of the *Moro* project. In February 2016, 16,464 adjustments were completed. Of these adjustments, approximately 2,760 resulted in members receiving an invoice of \$50 or more. The February adjustments led to a large increase in call volume for the call center. 459 adjustments were postponed until the system has been programmed with new cost of living adjustment (COLA) rules. This is scheduled to happen in a June 2016 system programming update release.

The project is currently on schedule to resolve all *Moro* impacted accounts by the end of 2017.

West complimented the team on their positive results of implementing these changes so far.

C.2. LEGISLATIVE UPDATE

Senior Policy Director Marjorie Taylor presented a review of the 2016 legislative session. She provided updates on the agency’s 2015 policy option packages which were discussed with the Joint Legislative Committee on Information Management and Technology. Taylor also highlighted two bills which passed in 2016 that will impact PERS statutes. House Bill 4022 re-established a work after retirement exception for Tier One and Tier Two speech pathologists working for school districts or education service districts, and House Bill 4025, which is a regular update to connect to the Internal Revenue Code and other provisions of federal law. For the 2017 session, Taylor recommended that the Board not put forward any legislative concepts for consideration. If there is a need to make any of the housekeeping type changes to PERS statutes which were presented in January, we will seek an opportunity to request inserting an amendment into other legislative proposals.

C.3. 2017-19 BUDGET PREVIEW

Chief Information Officer Jordan Masanga presented a preview of the Policy Option Packages that are under development for consideration in the 2017-19 Agency Request Budget. The first was a business case for a Cybersecurity Program. The second was a business case for a Technology Modernization Package.

This presentation was an introduction to the possible agency budget request packages which will be preliminarily presented to the Board in May for final adoption in July.

C.4. POLICY ON FUNDING AND USE OF THE CONTINGENCY RESERVE

Assistant Chief Administration Officer Mary Dunn presented. At the January Board meeting, staff presented historical information and posed two questions for policy review regarding the appropriate use and adequate funding of the Contingency Reserve. Public comment was solicited. Mr. Greg Hartman provided written comments which were included in the Board materials packet.

The Board discussed various options for reducing the Contingency Reserve fund target. Furnstahl suggested that the percentage basis be on the accrued liability instead of the fund balance. Board member Buckley asked how this change will be implemented – if it is only reflected in the minutes or if there is a policy document prepared. Dunn noted that a policy document could be prepared.

Gema moved to adopt a percentage basis funding level for the Contingency Reserve and establish the percentage at this time to be .25 of the accrued liability. West seconded. The motion passed unanimously.

C.5. 2015 FINAL EARNINGS CREDITING AND RESERVING

Dunn presented final earnings crediting allocations for 2015. There were only incidental changes to the preliminary earnings crediting which was presented at the January 29, 2016 Board meeting. The preliminary allocation was reported to the Joint Legislative Committee on Ways and Means on February 12, 2016.

The final crediting rates as presented includes:

Tier One member regular accounts:	7.75%
Tier Two member regular accounts:	1.87%
Individual Account Program accounts:	1.85%
OPSRP Pension	1.82%

Furnstahl moved to adopt the final crediting of earnings as presented for calendar year 2015. Buckley seconded. The motion passed unanimously.

Thomas adjourned the Board meeting at 2:35 PM.

Respectfully submitted,



Steven Patrick Rodeman
Executive Director

PERS Board Meeting Forward-Looking Calendar

Friday, July 29, 2016

Adoption of Disability Rules
Adoption of Receipt Date Rules
Notice of Accounts Receivable Rules
2017-19 Agency Request Budget Adoption
2015 System-wide Valuation Results
Audit Committee Meeting

Wednesday, September 14, 2016

Joint meeting with Oregon Investment Council

Friday, September 30, 2016

Adoption of Accounts Receivable Rules
Notice of PERS Health Insurance Program Appeals/Eligibility Rules
Notice of Reemployed Retirees Rules
Customer Service Survey Results
2017-19 Employer Rate Adoption

Friday, November 18, 2016

Board Scorecard Report on Agency Performance Measures
Actuarial Financial Modeling
Audit Committee Meeting

Returns for periods ending APR-2016

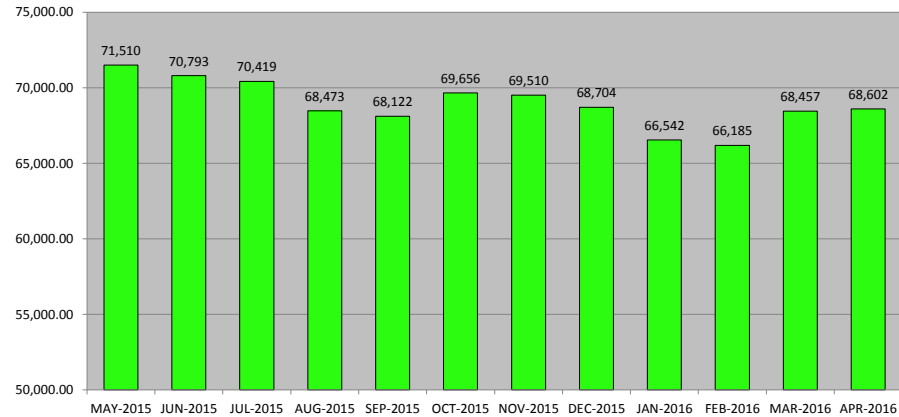
Oregon Public Employees Retirement Fund

OPERF	Regular Account			Historical Performance (Annual Percentage)								
	Policy ¹	Target ¹	\$ Thousands ²	Actual	Year-To-Date ³	1	2	3	4	5	7	10
					YEAR	YEARS	YEARS	YEARS	YEARS	YEARS	YEARS	YEARS
Public Equity	32.5-42.5%	37.5%	\$ 26,424,819	38.9%	1.90	(5.31)	1.10	5.84	8.37	5.32	12.07	4.19
Private Equity	13.5-21.5%	17.5%	\$ 13,771,064	20.3%	0.57	7.48	8.30	12.33	12.76	11.75	13.66	10.37
Total Equity	50.0-60.0%	55.0%	\$ 40,195,883	59.1%								
Opportunity Portfolio	0-3%	0%	\$ 1,351,406	2.0%	(1.38)	(0.90)	2.34	6.00	8.78	6.86	12.98	
Total Fixed	15-25%	20.0%	\$ 15,020,062	22.1%	2.40	1.21	2.19	1.79	3.34	4.07	7.38	5.80
Real Estate	9.5-15.5%	12.5%	\$ 8,523,847	12.5%	4.02	9.44	11.63	11.25	12.44	11.77	10.70	6.30
Alternative Investments	0-12.5%	12.5%	\$ 2,866,087	4.2%	0.23	(1.75)	(0.22)	1.22	1.31			
Cash w/Overlay	0-3%	0%	\$ 6,230	0.0%	0.52	0.74	0.65	0.65	0.74	0.71	0.90	1.73
TOTAL OPERF Regular Account		100.0%	\$ 67,963,516	100.0%	1.88	0.61	4.07	6.75	8.44	7.09	11.18	5.78
OPERF Policy Benchmark					3.19	0.55	4.50	7.60	9.01	7.56	10.80	6.23
Value Added					(1.32)	0.06	(0.43)	(0.85)	(0.57)	(0.47)	0.38	(0.45)
TOTAL OPERF Variable Account			\$ 638,353		2.00	(4.97)	1.12	5.59	7.98	5.11	11.67	3.24

Asset Class Benchmarks:

Asset Class	1	2	3	4	5	7	10
Russell 3000	1.59	(0.18)	6.08	10.77	12.35	10.50	15.53
OREGON MSCI ACWI EX US IMI NET	2.42	(10.28)	(4.06)	0.46	3.73	0.15	8.12
MSCI ACWI IMI NET	1.88	(5.45)	0.74	5.22	7.63	4.73	11.38
RUSSELL 3000+300 BPS QTR LAG	7.04	3.49	9.52	18.14	18.57	15.51	18.52
OREGON CUSTOM FI BENCHMARK	2.44	1.17	2.00	1.37	2.73	3.55	4.70
NCREIF ODCE QTR LAG	2.18	13.67	13.56	13.63	12.91	13.26	9.06
91 Day Treasury Bill	0.10	0.15	0.09	0.08	0.09	0.08	0.10

Total OPEF NAV
(includes Variable Fund asset)
One year ending APR-2016
(\$ in Millions)



¹OIC Policy revised June 2015.

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. YTD is not annualized.



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Kate Brown, Governor

Public Employees Retirement System

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May 27, 2016

TO: Members of the PERS Board
FROM: Linda M. Barnett, Budget Officer
SUBJECT: May 2016 Budget Execution Report

2015-17 OPERATIONS BUDGET

Operating expenditures for March 2016 and preliminary expenditures for April 2016 were \$3,240,773 and \$3,340,434, respectively. Final expenditures for April did not close in the Statewide Financial Management System (SFMS) in time for this report and will be included in the July 2016 report to the Board.

To date, through the first 10 months (or 41.6%) of the 2015-17 biennium, the Agency has expended a total of \$35,190,196, or 33.05% of PERS' legislatively approved operations budget of \$106,478,741. This total budget reflects a \$12,607,587 increase that resulted from budget adjustments in SB 5701 (February 2016 session) and is comprised of the following:

- \$2,990,840 - Salary Pot and Pension Obligation Bond adjustments
- \$6,601,170 - ETS State Govt. Svc. Charge assessment adjustment (BFAP has projected expending this entire amount at this point so we don't false expect a positive variance)
- \$100,000 – Secretary of State/Division of Audits Govt. Svc. Charge technical adjustment (PERS' budget was shorted this amount in the 2015 session budget bill)
- \$1,255,601 – Re-baselining of POP 102 IAP Phase III Project
- \$1,659,976 – IT Maintenance & Enhancements (DAS was instructed to un-schedule this amount until certain criteria are met).

As of April 2016, PERS is awaiting approval from the Legislative Fiscal Office to request the rescheduling of \$3,466,176 to do the following:

- \$1,659,976 – IT Maintenance & Enhancements
- \$1,581,200 Pkg. 105 – to further develop the agency's Disaster Recovery and Business Continuity technology infrastructure in support of the Oregon Retirement Information Online Network (ORION)
- \$225,000 Pkg. 840 – to implement SB 370; this established a new benefit that allows an ex-spouse of an Oregon Public Service Retirement Plan (OPSRP) member to receive a death benefit if the member, who is vested, dies pre-retirement.

The current projected positive variance is \$3,364,896 or approximately 3.16% of the operations budget. The Agency's goal is to maintain a positive variance of at least \$2.1 million (2%).

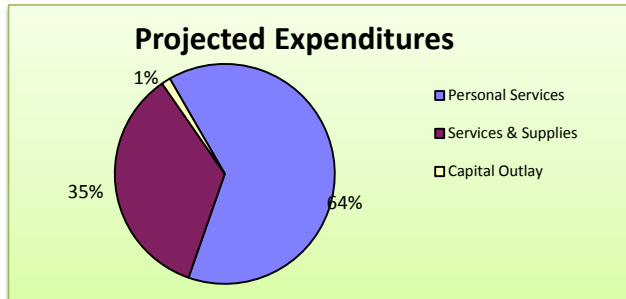
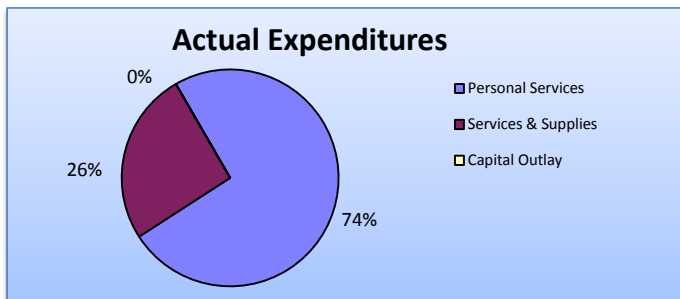
A.2.c. Attachment 1 – 2015-17 Agency-wide Budget Execution Summary Analysis

**2015-17 Agency-wide Budget Execution
Summary Budget Analysis
Preliminary For the Month of: April 2016**

Limited - Operating Budget

2015-17 Biennial Summary

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expenditures	2015-17 LAB	Variance
Personal Services	26,115,833	41,052,382	67,168,215	69,268,743	2,100,528
Services & Supplies	9,064,493	22,552,784	31,617,278	32,648,015	1,030,737
Capital Outlay	9,870	852,307	862,177	1,095,807	233,630
Unscheduled	0	3,466,176	3,466,176	3,466,176	0
Total	35,190,196	67,923,649	103,113,845	106,478,741	3,364,896



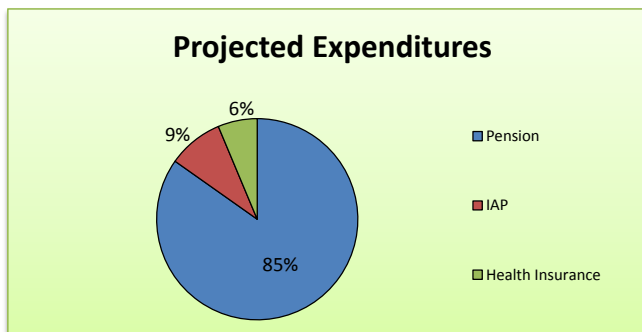
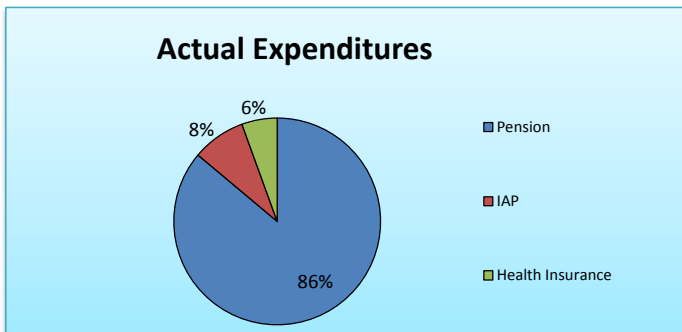
Monthly Summary

Category	Actual Exp.	Projections	Variance	Avg. Monthly Actual Exp.	Avg. Monthly Projected Exp.
Personal Services	2,632,379	2,850,901	218,522	2,611,583	4,105,238
Services & Supplies	708,055	895,269	187,214	906,449	2,255,278
Capital Outlay	0	0	0	987	85,231
Total	3,340,434	3,746,170	405,736	3,519,019	6,445,747

Non-Limited Budget

2015-17 Biennial Summary

Programs	Actual Exp To Date	Projected Expenditures	Total Est. Expenditures	Non-Limited LAB	Variance
Pension	3,209,567,209	4,831,443,829	8,041,011,038	8,291,874,726	250,863,688
IAP	311,356,711	507,312,204	818,668,915	873,488,891	54,819,976
Health Insurance	206,749,113	359,983,443	566,732,556	558,094,445	(8,638,111)
Total	3,727,673,033	5,698,739,476	9,426,412,509	9,723,458,062	297,045,553





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May 27, 2016

TO: Members of the PERS Board
FROM: Paul Brown, Strategic and Operational Planning Manager
SUBJECT: Board Scorecard Report on Agency Performance Measures

A key part of PERS' Outcome-Based Management System is a Quarterly Target Review of scorecards that evaluate our effectiveness in a number of Outcome and Process Measures. These measures foster accountability and transparency in key operating areas. The scorecard results help direct strategic planning, resource allocation, and risk assessment.

The attached Board Scorecard Report for first quarter 2016 focuses on several measures we currently track based on essential business operations. A targeted performance range is created for each measure:

- “Green” – performance is at or above acceptable levels.
- “Yellow” – performance is marginally below acceptable levels.
- “Red” – performance is significantly below; corrective action such as assigning a problem solving team should be directed.

Highlights include:

- An upward trend in the percent of benefit calculations completed within 15 calendar days of receiving a retirement application.
- An increase in the percent of time that systems are available during overnight batch processing of information.

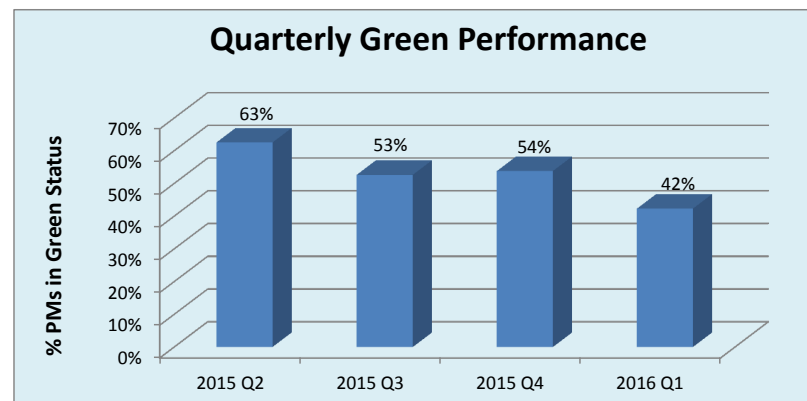
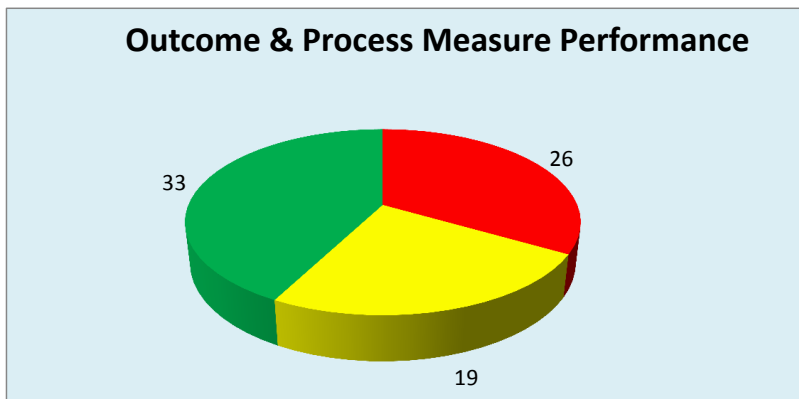
The next report will be presented at the November 18, 2016 meeting, showing the scorecard results for the third quarter.

If you would like us to report on any different measures, please let me know.

A.2.d. Attachment 1 – Board Scorecard Report for First Quarter 2016

PUBLIC EMPLOYEES RETIREMENT SYSTEM Outcome-Based Performance Review

PERS Board Scorecard Report - QTR: 2016 Q1 - Quarter ended March 31, 2016



Operating Processes - Highlighted Measures

	Measure Name	Measure Calculation	RANGE			Target	Desired Perform Trend	Data Collection Frequency	Q2 2015	Q3 2015	Q4 2015	Q1 2016	Trend	Corrective Action & Comments
			Red	Yellow	Green									
OP3c	Estimate KPM	% of estimate requests completed within 30 days of receipt	<75%	75-85	>85%	95%	↑	Quarterly	96.0%	92.2%	44.0%	38.1%	-	Seasonal high volume of work. 2 new employees still in training.
OP4a	Eligibility review completed	% of applications completed by the eligibility team within 30 days of the effective retirement	<50%	50-70	>70%	80%	↑	Monthly	84.0%	79.0%	82.0%	80.0%	-	
OP5b	Accuracy of calculations	% of sample calculations that are accurate within plus or minus \$5	<95%	95-99	>99%	100%	↑	Monthly	99.6%	***	99.3%	97.0%	-	2% IAP- Voya errors in calculating install payments. 1% OPSPR- Education service credit in summer months
OP5c	Timely benefit calculation	% of calculations completed within 15 calendar days from completed application date	<95%	95-99	>99%	100%	↑	Monthly	96.3%	95.1%	94.0%	96.6%	+	Resource diverted to other projects, trending back on track

PUBLIC EMPLOYEES RETIREMENT SYSTEM Outcome-Based Performance Review

Supporting Processes - Highlighted Measures

	Measure Name	Measure Calculation	RANGE			Target	Desired Perform Trend	Data Collection Frequency	Q2 2015	Q3 2015	Q4 2015	Q1 2016	Trend	Corrective Action & Comments
			Red	Yellow	Green									
OP1f	Call Wait Time	Average length of wait before caller reaches live person	>6 minutes	6-4 minutes	<4 minutes	2 minutes	↓	Monthly	3.1	3.2	3.2	9.4	-	About 10K more calls this quarter vs. last - MORO/Tax Tables/Residency/Variable/Legislative Session/Staff assignments
SP2c	Appeal reversal rate	% of staff determinations that are reversed on appeal	>15%	15-10	<10%	5%	↓	Quarterly	6.8%	2.6%	3.8%	29.0%	-	178 determinations sent in the Q; 40 of the 51 reversals were on TR due to recent policy decisions regarding receipt dates and low income individuals.
SP3h	System uptime	% of time systems are available during the service window	<97%	97-98	>98%	100%	↑	Monthly	96.61%	96.02%	94.45%	96.29%	+	- Due to Long Batch Runs (Early Starts + Late Finishes) - System Uptime would be 99.79% if non-error Long Batch Runs were excluded
SP5c	Recruiting / Onboarding	% of employees completing trial service	<85%	85-94	>94%	100%	↑	Quarterly	100%	100%	100%	95%	-	



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May 27, 2016

TO: Members of the PERS Board
FROM: Stephanie Vaughn, Manager, Policy Analysis & Compliance Section
Brian Harrington, Assistant Chief of Operations
SUBJECT: Disability Statistics

BACKGROUND

At the January 2016 Board meeting, concern was expressed regarding changes to the disability rules, specifically the criteria for disability eligibility. Greg Hartman testified that it seems to be more difficult for members to obtain approval of their disability claims. Staff said they would investigate further and return with additional information for the Board at this meeting. Due to this concern, we suspended all proposed changes to the disability rules.

Just as introduction, note that disability benefit eligibility is determined by statute at a very high threshold – the member be unable to perform any work for which they are qualified. This standard is applied not only upon initial application, but members who receive a disability benefit are periodically reviewed to ensure their condition continues to meet this high bar.

STATISTICS

We currently have 5,772 individuals receiving disability payments, which is about 4 percent of our monthly benefit recipients. Attachment 1 is a chart with application, approval, and periodic review information back to 1995, broken out by general service and police and fire (P&F) members. We also included appeal information for 2008 forward. We do have appeal information further back; however, those statistics are not broken out by new applications and continuances. The approval rate has decreased fairly consistently over the last 20 years, as has the number of applications received. On periodic review, the rate of approving a continuing disability has remained consistent over the same period of time at around 91percent.

Applications have probably decreased for two reasons: 1) improved healthcare; and 2) OPSRP's increasing share of members as compared to Tier One/Tier Two. With the population of Tier One /Tier Two members declining and the OPSRP member population increasing, fewer members are currently eligible for non-duty disability benefits (an OPSRP member is not eligible for non-duty disability until they have 10 years of retirement credit, so no OPSRP members were eligible for non-duty disability until 2014). Because of this, in the early years of OPSRP (from about 2005 to 2008) PERS denied approximately 80 percent of the OPSRP disability applications because the members were not yet eligible for non-duty disability. In addition, once a Tier One/Tier Two member reaches normal retirement age, there is not much difference between the amount of a monthly service retirement and a monthly disability retirement. So those who may have applied for disability may simply be opting for a service retirement.

Attachment 2 is a summary of all the changes to the disability administrative rules since 2005. There were many changes to the rules in 2005 in conjunction with the adoption of the disability rules for OPSRP. The following is a very brief overview year by year of the changes since then (Tier One/Tier Two rules only):

Year	Number of Rules Amended	Summary of Changes
2006	0	
2007	0	
2008	1	Clarification on making purchases at disability retirement
2009	1	Added differential wage payments to definition of salary in compliance with the federal HEART Act.
2010	3 (and 1 repeal)	Added definitions (granted service time, periodic review, and physician); clarification on how granted service time is used in calculating a disability retirement; clarification regarding payment due dates and surviving spouse options if member dies before approval. (One rule repealed in accordance with HB 2704 regarding offsets to Tier Two disability benefits.)
2011	6	Added definitions (date an application for disability is filed, effective date of disability retirement, total disability), edited definitions (date of disability, monthly salary, pre-existing condition, similar in compensation), changed defined terms; removed “unable to generate income that is similar” from initial disability eligibility; clarifications recommended by audits; clarified how “similar in compensation” will be used for members who return to work; modification to incorporate SB 399 regarding trustee-to-trustee transfers for purchases.
2012	1	Provides that an active member who was disabled for a time and returns to work must apply within 90 days of being medically released for work or the date the member actually returned to work.
2013	0	
2014	2	Removed option 1 as a preliminary benefit option; added refusal to submit to medical exam or supply a completed application or review form as reasons PERS can deny or discontinue a benefit.
2015	1	Corrected use of defined terms “date of termination”, “date of separation from service”, and “date of disability”.

Of the changes listed above, only one appears to have potentially affected the approval rate. The rate dipped in 2012 and 2013 after the removal of “similar in compensation” from the initial eligibility standards. While this is a correlation, it is not necessarily causation, as the rate has returned to pre-2011 levels with that same standard.

The most common reason for denying a disability applicant is insufficient medical documentation. Only two of the cases that were reversed on appeal since 2008 were reversed by an Administrative Law Judge; the rest were reversed by staff after receiving additional medical documentation. While PERS’ specialist requirements in OAR 459-015-0010 have not changed since 2005, medical providers have increasingly been less inclined to fill out PERS’ forms and give an opinion on disability, or will defer to another provider for such an opinion. The Disability Unit reports that this has been happening increasingly over the last five years.

There are a number of other factors that may contribute to the overall numbers. For one, we now search the Secretary of State’s website for businesses registered by disability applicants and recipients. If a member has registered a business, staff researches further. This has, in a number of cases, revealed previously unreported self-employment. If the self-employment is substantial, it can lead to a denial, offset, or discontinuance.

Also, we have seen an increase of members applying for disability at the urging or insistence of their private disability insurer. If approved, the private insurer will offset what they pay by what the member receives in PERS disability. In addition, these members are less motivated to assist in the development of their case, making it more difficult to obtain the information needed to approve them for PERS disability.

In conclusion, there is no one specific reason for the lower approval rate of new claims. We continue to review each case on its own merits against the statutory standards. We communicate frequently with members, advising when documentation is lacking or missing. Above all, we appreciate the importance of our work and strive to get timely answers to members.

To ensure PERS’ current policy and practices are appropriate as well as in line with statute and rule, staff is forming a focus group including outside stakeholders for further discussion and potential modifications. Any changes in policy or administrative rule that may come from those discussions will be presented to the Board.

B.1. Attachment 1 – PERS Disability Statistics

B.1. Attachment 2 – PERS Disability OAR Changes

Disability Statistics

Decision Year	General Service New Approved	General Service New Denied	General Service Approved Percent	P&F New Approved	P&F New Denied	P&F Approved Percent	Appealed	Approved on Appeal
1995	274	63	81.31%	59	13	81.94%		
1996	258	90	74.14%	60	20	75.00%		
1997	256	97	72.52%	55	20	73.33%		
1998	275	100	73.33%	62	22	73.81%		
1999	241	106	69.45%	61	25	70.93%		
2000	275	102	72.94%	65	23	73.86%		
2001	322	93	77.59%	75	21	78.13%		
2002	271	83	76.55%	59	15	79.73%		
2003	292	106	73.37%	61	19	76.25%		
2004	232	109	68.04%	51	21	70.83%		
2005	216	93	69.90%	50	20	71.43%		
2006	204	102	66.67%	49	22	69.01%		
2007	198	82	70.71%	49	18	73.13%		
2008	164	103	61.42%	41	20	67.21%	14	4
2009	161	77	67.65%	42	18	70.00%	18	6
2010	165	102	61.80%	43	24	64.18%	18	5
2011	143	79	64.41%	36	21	63.16%	16	4
2012	158	121	56.63%	44	34	56.41%	23	8
2013	128	104	55.17%	36	30	54.55%	33	7
2014	117	65	64.29%	32	17	65.31%	22	8
2015	92	54	63.01%	30	17	63.83%	22	

Disability Continuances

	General Service Cont Approved	General Service Cont Denied	P&F Cont Approved	P&F Cont Denied	General Service Cont	P&F Cont	Appealed	Reversed on Appeal
1995	232	24	61	5	90.63%	92.42%		
1996	405	44	92	10	90.20%	90.20%		
1997	445	38	95	8	92.13%	92.23%		
1998	543	57	122	11	90.50%	91.73%		
1999	500	55	120	13	90.09%	90.23%		
2000	524	79	126	18	86.90%	87.50%		
2001	647	76	151	16	89.49%	90.42%		
2002	644	68	142	14	90.45%	91.03%		
2003	608	63	133	13	90.61%	91.10%		
2004	627	64	138	12	90.74%	92.00%		
2005	650	68	151	15	90.53%	90.96%		
2006	560	57	121	9	90.76%	93.08%		
2007	513	22	129	5	95.89%	96.27%		
2008	334	28	84	5	92.27%	94.38%	1	1
2009	356	34	91	8	91.28%	91.92%	3	0
2010	201	20	51	6	90.95%	89.47%	3	1
2011	332	49	82	11	87.14%	88.17%	9	5
2012	294	39	84	11	88.29%	88.42%	9	7
2013	262	28	74	7	90.34%	91.36%	7	5
2014	332	27	88	7	92.48%	92.63%	6	1
2015	239	11	75	6	95.60%	92.59%		

Disability OAR Changes Back to 2005

2015:

- **459-015-0020 – Application Required**
Edited to properly incorporate defined terms “date of termination”, “date of separation from service”, and “date of disability”. Restructured the rule and incorporated the definitions in a manner intended to cover all likely employment/membership scenarios.
- **459-076-0020 – Application Required**
Incorporated the defined term “date of disability” in one place where it was missed in 2011 and made other minor edits for clarification.

2014:

- **459-015-0010 – Criteria for Granting and Denying Disability Retirement Allowances**
Edited to update citation, remove an incorrect reference to neurosurgeon, and added refusal to submit to a medical examination or supply a completed application or review form as reasons PERS can deny or discontinue a benefit.
- **459-015-0055 – Selection of Benefit Option and Commencement of Allowance**
Edited to remove Option 1 as a preliminary option selection as, if it were selected, it provides no protection for a beneficiary should the member die before their disability retirement is approved.

2012:

- **459-015-0020 – Application Required**
Edited to change “date of termination” to “date of separation from service” and to provide that, for a member who has not terminated employment or become inactive and returns to work, the member’s application must be filed no later than 90 days from either the date the member was medically released for work or the date the member actually returned to work, whichever is earlier.

2011:

- **459-015-0001 – Definitions**
Added definitions for “Date an application for disability retirement is filed”, “Effective date of disability retirement”, and “total disability”; edited definitions of “Date of disability”, “Monthly salary”, “Pre-existing condition”, and “Similar in compensation”, and; changed “Other income” to “Earned income” and “Separation from all service entitling the member to membership in the system” to “Date of separation from service”.
- **459-015-0005 – Eligibility for Disability Retirement Benefits**
Updated to provide that a member must be totally, not partially, disabled to meet the eligibility criteria for disability retirement or disability benefits. The additional criteria of “unable to generate income that is similar” was removed from initial eligibility.

- **459-015-0020 – Application Required**

Clarified the standards set forth in the administrative rules for eligibility for disability retirement at the recommendation of Internal Audit findings and made other improvements.

- **459-015-0045 – Return to Work**

Edited to clarify how “similar in compensation” will be applied to members who are receiving disability and return to work; added language explaining how a member account will be restored upon a member’s return to work.

- **459-015-0050 – Periodic Reviews**

Edited to reflect the consideration of the new return to work provisions in 459-015-0045.

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

Modified based on Senate Bill 399 (2009), codified as ORS 238.222, which 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.

2010:

- **459-015-0001 – Definitions**

Added definitions for “Granted Service”, “Periodic review”, and “Physician”. Deleted definition for “Qualifying position”.

- **459-015-0005 – Eligibility for Disability Retirement Benefits**

Updated to clarify how granted service is used in calculating a disability retirement allowance, particularly in relation to tax remedy.

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

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

- House Bill 2704 eliminated the offset of Workers’ Compensation benefits to PERS Tier 2 and OPSRP disability recipients. 459-015-0060, which directed offsetting monthly disability payments when certain income levels are exceeded, was therefore obsolete and repealed to conform to the legislative changes.

2009:

- **459-015-0001 – Definitions**

Edited definitions to include differential wage payments in salary according to the Federal HEART Act. Other housekeeping changes (updated professional designations).

2008:

- **459-015-0055 – Selection of Benefit Option and Commencement of Allowance:** clarified the administration of purchases of additional creditable service and retirement credit by members approved for disability retirement, and their beneficiaries.

2005:

- Major disability rulemaking to provide Tier 1/2 members applying for a disability retirement allowance with adequate guidance on major administrative and policy issues. These rule modifications clarified standards and practices so members have sufficient, consistent information. Extensive edits to disability rules, including:
 1. “Regular monthly salary” excludes certain types of “passive income.”
 2. Overtime pay is not included in determining “similar in compensation” to what a member earned prior to disability.
 3. Set forth guidelines for establishing disability due to work related stress.
 4. Expanded the types of cases where a specialist is required.
 5. Revised information release requirements to accommodate HIPAA requirements.
 6. Members can apply for service retirement after their disability application is denied, with an effective retirement date as if the applications had been submitted concurrently.
 7. PERS will not obtain an independent medical examination or a vocational evaluation in every case.
 8. Staff will review disability retirements as warranted, not on the same schedule for all.
 9. Staff may waive the requirement for the review of disability retirements in some cases.
 10. PERS will consider pre-existing condition as part of duty disability determination.
 11. PERS’ options include both a treating physician’s medical report and/or having the applicant submit to an IME, not either/or.
 12. Removed requirement for consultation with PERS’ medical advisor for waiving a periodic review.
 13. Clarified burden of applicant.
 14. Any penalty resulting from failing to attend a scheduled IME or vocational evaluation appointment will be deducted from a monthly benefit under the provisions set forth in ORS 238.715.
 15. Information submitted will be reviewed if it is submitted within the 30 day timeframe as set forth in the rule.
 16. Removed requirement for consultation with PERS’ medical advisor for waiving a periodic review.
 17. Clarified provision for beneficiary under the provisions of ORS 238.390(2) in cases where a member dies prior to submitting a beneficiary designation.
 18. PERS may contact any public or private insurance carrier for documentation of disability payments.
- Adopted new rules in Division 76 relating to disability benefits under the OPSRP Pension Program.



Oregon

Kate Brown, Governor

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May 27, 2016

TO: Members of the PERS Board

FROM: Stephanie Vaughn, Manager, Policy Analysis & Compliance Section

SUBJECT: First Reading of Disability Definitions and Eligibility Determinations Rules:
 OAR 459-015-0001, *Definitions (Tier One/Tier Two)*
 OAR 459-015-0010, *Criteria for Granting and Denying Disability Retirement Allowances (Tier One & Tier Two)*
 OAR 459-015-0050, *Periodic Reviews (Tier One & Tier Two)*
 OAR 459-076-0001, *Definitions (OPSRP)*
 OAR 459-076-0010, *Criteria for Granting and Denying Disability Benefits (OPSRP)*

Notice of Rulemaking for Disability Rules:
 OAR 459-015-0020, *Application Required (Tier One/Tier Two)*
 OAR 459-015-0025, *Application Processing – Independent Examinations and Appeals (Tier One/Tier Two)*
 OAR 459-015-0040, *Proof of Case – Contested Case Hearings (Tier One/Tier Two)*
 OAR 459-076-0020, *Application Required (OPSRP)*
 OAR 459-076-0025, *Application Processing – Independent Examinations and Appeals (OPSRP)*
 OAR 459-076-0040, *Proof of Case – Contested Case Hearings (OPSRP)*
 OAR 459-076-0050, *Periodic Reviews (OPSRP)*

OVERVIEW

- Action: None. This is first reading of the disability definitions and eligibility determinations rules and notice of rulemaking for the disability rules.
- Reason: Update definition of physician to address circular issue between definition and specialist requirements; new definition for other health practitioners; address effect of unemployment benefits in determining disability eligibility; add physical capacity to independent evaluations; clarify period review standard; and new rule for burden of proof at hearings for OPSRP.
- Policy Issue: No policy issues have been identified at this time.

BACKGROUND

Some of these rules were noticed in January 2016 and are presented for first reading; the rest are being presented for notice. Staff engaged outside stakeholders regarding the proposed modifications. Through that engagement, the stakeholders requested a broader review of PERS' policies and practices regarding the disability process. Staff has agreed to form a focus group

including both member and employer representatives and will continue to work with them on proposed modifications. We are including all modifications currently under consideration with the exception of one that relates to a case that is still in the contested case process. For ease of discussion, the modifications are outlined below by subject instead of by rule.

Definition of Physician and Other Health Practitioner

Rules affected: 459-015-0001, 459-015-0010, 459-015-0020, 459-015-0025, 459-015-0040, 459-076-0001, 459-076-0010, 459-076-0020, 459-076-0025

PERS relies on physician statements and medical records to determine a member's eligibility for disability benefits. Currently, the definition of "physician" includes specialists who hold a doctorate rather than a degree in medicine. The modifications to the rules clarify that the definition of "physician" means a doctor with a degree in medicine who is properly licensed to practice medicine. We have also added a definition for "orthopedic specialist," which is a term used in other administrative rules but was previously undefined.

At the January 2016 meeting, staff acknowledged that, with the removal of chiropractor, naturopaths, and other health providers from the definition of physician, the rules did not address how PERS will handle reports from these providers. To remedy this, a definition for "other health practitioner" has been added to include these other health providers and the term has been incorporated into the rules where appropriate.

459-015-0010 has been modified to specify that a physician assistant's examination will be treated as a report from a physician when also signed by the supervising physician. And, finally, since many rheumatologists will diagnose fibromyalgia, but will not treat it, we added physical medicine and rehabilitation physician as an alternate specialist for treatment of fibromyalgia.

Receipt of Unemployment Benefits

Rules affected: 459-015-0010, 459-015-0050, 459-076-0010, 459-076-0050

PERS disability eligibility standards require a member be totally disabled and unable to perform any work for which qualified. When an individual receives unemployment benefits, they certify each week that they are able to work and are actively seeking work. For a member who is receiving unemployment benefits and applies for disability, this weekly certification for unemployment benefits is in direct contrast to the disability requirement that the member be totally disabled and unable to perform any work for which qualified.

The rule modifications incorporate the recent decision in the *Drake* case, in which the Court of Appeals upheld the Board's Final Order that the member was not eligible for a disability retirement while receiving unemployment benefits for two years. The Court establish that a member's receipt of unemployment benefits is substantial evidence that the member is not disabled. PERS will still perform a full medical review in making a final determination on disability eligibility. PERS will also be working with the Employment Department in the event a member is determined to be totally disabled and has received unemployment benefits.

Note that the modifications related to the next three subjects reflect PERS' current policy and procedures and are presented for the purpose of providing transparency to those procedures.

Independent Examinations

Rules affected: 459-015-0001, 459-015-0025, 459-076-0001, 459-076-0025

PERS will request an independent evaluation of the member's disability claim when appropriate. The types of independent evaluations include medical, vocational, and physical. The rule currently lists only medical and vocational evaluations. These rules have been amended to include an independent physical capacity evaluation by other health practitioners.

Periodic Review Standard

Rules affected: 459-015-0050, 459-076-0050

Members who receive a monthly disability retirement or benefit are subject to periodic reviews. This rule clarifies that the disability eligibility review follows the criteria established in the original approved disabling condition and, by practice, the periodic review is based on the administrative rules in effect as of the disability review date.

New Proof of Case Rule for OPSRP

Rules affected: 459-076-0040

The new OPSRP proof of disability contested case rule mirrors the Tier One/Tier Two rule.

SUMMARY OF MODIFICATIONS TO RULES SINCE NOTICE

OAR 459-015-0001: In section (12), after "exams" added ",including physical capacity evaluations," and after "physician" inserted "or other health practitioner"; in section (17), changed the term "Orthopedic specialist physician" to "Orthopedic specialist"; in section (18), added a new definition: "Other health practitioner means a treating provider who is properly licensed or certified and is performing within the scope of his or her practice in accordance with the law or standards established by the appropriate governing authority."; renumbered sections.

OAR 459-015-0010: In section (2), added: "A physician assistant's examination report will be accepted as a physician's report when signed by the supervising physician"; in subsection (3)(d), after "fibromyalgia" inserted "at least one documented diagnosis by a rheumatologist, and"; after "rheumatologist" added "or physical medicine and rehabilitation physician"; in section (5), replaced "is a dispute" with "are conflicting opinions", and replaced "medical experts" with "physicians referenced in section (3)"; added a new paragraph in section (6): "As supporting evidence, reports from other health practitioners. When there are conflicting opinions among other health practitioners, more weight will be given to those medical opinions that are both well-reasoned and based on complete information."; in subsection (7), deleted "attributable to PERS covered employment"; renumbered sections.

OAR 459-015-0050: In subsection (4)(a), to end of sentence added "and will be based on the administrative rules in effect when PERS initiates the disability periodic review."; on page 2, line 5, after "payments" deleted "attributable to PERS covered employment."

OAR 459-076-0001: In subsection (11), after "exams" inserted "including physical capacity evaluations," and after "physician" inserted "or other health practitioner"; in section (15), changed the term "Orthopedic specialist physician" to "Orthopedic specialist"; added new definition in section (16): "Other health practitioner means a treating provider who is properly

licensed or certified and is performing within the scope of his or her practice in accordance with the law or standards established by the appropriate governing authority.”; renumbered sections.

OAR 459-076-0010: In section (2), added: “A physician assistant’s examination report will be accepted as a physician’s report when signed by the supervising physician.”; in subsection (3)(d), after “fibromyalgia” inserted “at least one documented diagnosis by a rheumatologist, and”, and after “rheumatologist” added “or physical medicine and rehabilitation physician”; in section (5), replaced “is a dispute” with “are conflicting opinions” and replaced “medical experts” with “physicians referenced in section (3)”; added a new paragraph to section (6): “As supporting evidence, reports from other health practitioners. When there are conflicting opinions among other health practitioners, more weight will be given to those medical opinions that are both well-reasoned and based on complete information.”; in section (7), deleted “attributable to PERS covered employment”; renumbered sections.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing for the previously noticed rules was held December 15, 2015, at 2:00 p.m. at PERS headquarters in Tigard. No members of the public provided comment on the rules. The original public comment period for the prior noticed rules ended December 29, 2015, at 5:00 p.m. PERS received a letter dated December 17, 2015, from Nelson Hall on behalf of the PERS Coalition. A copy of the letter and a summary of the comments were included in the January 2016 Board packet. A new Notice of Rulemaking has been filed with the Secretary of State, and a new public comment period begins June 1, 2016, for all the rules included in this memo.

A rulemaking hearing will be held June 28, 2016, at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends July 6, 2016, at 5:00 p.m.

LEGAL REVIEW

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

IMPACT

Mandatory: No.

Impact: Establish additional criteria for disability definitions and eligibility.

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

RULEMAKING TIMELINE

November 13, 2015	Staff began the rulemaking process for the disability definitions and eligibility determinations rules by filing Notice of Rulemaking with the Secretary of State.
November 20, 2015	PERS Board notified that staff began the rulemaking process.
December 1, 2015	<i>Oregon Bulletin</i> published the Notice. Notice was sent to employers, legislators, and interested parties. Public comment period began.

First Reading and Notice of Disability Rules

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December 15, 2015	Rulemaking hearing held at 2:00 p.m. at PERS in Tigard.
December 29, 2015	Original public comment period for the disability definitions and eligibility determinations rules ended at 5:00 p.m.
May 13, 2016	Staff began the rulemaking process for all the disability rules addressed in this memo, including those previously noticed to the Board, by filing Notice of Rulemaking with the Secretary of State.
May 27, 2016	PERS Board notified that staff began the rulemaking process, and first reading of disability definitions and eligibility rules.
June 1, 2016	<i>Oregon Bulletin</i> publishes the Notice. Notice is sent to employers, legislators, and interested parties. Public comment period begins.
June 28, 2016	Rulemaking hearing to be held at 2:00 p.m. at PERS in Tigard.
July 6, 2016	Public comment period ends at 5:00 p.m.
July 29, 2016	Staff will propose adopting the rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

NEXT STEPS

A rulemaking hearing will be held June 28, 2016, at 2:00 p.m. at PERS headquarters in Tigard. These rules are scheduled to be brought before the PERS Board for adoption at the July 29, 2016 Board meeting.

- B.2. Attachment 1 – OAR 459-015-0001, *Definitions (Tier One/Tier Two)*
- B.2. Attachment 2 – OAR 459-015-0010, *Criteria for Granting and Denying Disability Retirement Allowances (Tier One/Tier Two)*
- B.2. Attachment 3 – OAR 459-015-0020, *Application Required (Tier One/Tier Two)*
- B.2. Attachment 4 – OAR 459-015-0025, *Application Processing – Independent Examinations and Appeals (Tier One/Tier Two)*
- B.2. Attachment 5 – OAR 459-015-0040, *Proof of Case – Contested Case Hearings (Tier One/Tier Two)*
- B.2. Attachment 6 – OAR 459-015-0050, *Periodic Reviews (Tier One/Tier Two)*
- B.2. Attachment 7 – OAR 459-076-0001, *Definitions (OPSRP)*
- B.2. Attachment 8 – OAR 459-076-0010, *Criteria for Granting and Denying Disability Benefits (OPSRP)*
- B.2. Attachment 9 – OAR 459-076-0020, *Application Required (OPSRP)*
- B.2. Attachment 10 – OAR 459-076-0025, *Application Processing – Independent Examinations and Appeals (OPSRP)*
- B.2. Attachment 11 – OAR 459-076-0040, *Proof of Case – Contested Case Hearings (OPSRP)*
- B.2. Attachment 12 – OAR 459-076-0050, *Periodic Reviews (OPSRP)*

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

1 **459-015-0001**

2 **Definitions**

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

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

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

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

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

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

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

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

3 (4) “Date an application for disability retirement is filed” means the receipt date as
4 determined pursuant to OAR 459-005-0220.

5 (5) “Date of disability” means the later of:

6 (a) The date an active member ceased to work because of inability to perform any
7 work for which qualified due to injury or disease; or

8 (b) The date an inactive member became unable to perform any work for which
9 qualified provided such inability occurred within six months after the date of separation
10 from service.

11 (6) “Date of separation from service” means the later of: the last day worked or the
12 last day of paid leave with a PERS participating employer.

13 (7) “Date of termination” means the date a member terminates from employment such
14 that an employee/employer relationship no longer exists.

15 (8) “Earned income” means income that includes, but is not limited to:

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

17 (b) Self-employment income from:

18 (A) Services industry;

19 (B) Sales;

20 (C) Assembly or manufacturing;

21 (D) Consulting;

22 (E) Property management;

23 (F) Hobby income; or

1 (G) Book advances.

2 (c) “Earned income” does not include:

3 (A) Investment income;

4 (B) Rent; and

5 (C) Royalties.

6 (d) Earned income is deemed to be received by the member on the date it is issued by
7 the payer.

8 (9) “Effective date of disability retirement” means the first day of the month
9 following the date of disability in which all of the following has been met:

10 (a) The member is paid no salary from a participating employer, and

11 (b) The member does not receive paid leave from a participating employer except for
12 any lump sum payment for accrued vacation leave or compensatory time.

13 (10) “Extended duration” means a period of not less than 90 consecutive calendar
14 days, unless the disability is expected to result in the death of the disabled member in less
15 than 90 days.

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

19 (12) “Independent medical exam” means an exam or exams, including physical
20 capacity evaluations, conducted by a physician or other health practitioner chosen by
21 PERS for purposes other than treatment which results in the issuance of a report or reports
22 based on those exams, giving an opinion regarding the claimed injury or disease.

1 (13) “Material contributing cause” means the efficient, dominant, and proximate
2 cause of the disability, without which the member would not be disabled.

3 (14) “Monthly salary” means “salary” as defined in ORS 238.005 that is earned in the
4 last full calendar month of employment, and includes employer payments under ORS
5 238A.335 and differential wage payments as defined in OAR 459-005-0001.

6 (a) Retroactive payments or payments made due to clerical errors, paid in accordance
7 with ORS 238.005, are allocated to the period the salary was earned or should have been
8 earned.

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

11 (15) “Monthly salary received” means the greater of the monthly salary paid for the
12 last full calendar month of:

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

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

16 (16) “Normal retirement age” means the age at which a member can retire without a
17 reduced benefit as set forth under ORS 238.005 and 238.280.

18 **(17) “Orthopedic specialist” means an orthopedist, orthopedic surgeon or**
19 **physical medicine and rehabilitation specialist.**

20 **(18) “Other health practitioner” means a treating provider who is properly**
21 **licensed or certified and is performing within the scope of his or her practice in**
22 **accordance with the law or standards established by the appropriate governing**
23 **authority.**

1 **(19)**~~(17)~~ “Performance of duty” means whatever an employee may be directed,
2 required or reasonably expected to do in connection with his or her employment, and not
3 solely the duties particular to his or her position.

4 **(20)**~~(18)~~ “Periodic review” means a review of a member receiving a disability
5 retirement allowance to determine whether or not a continued allowance is warranted.

6 **(21)**~~(19)~~ “Physician” means **a person who holds a degree of doctor of medicine,**
7 **doctor of osteopathy, doctor of podiatric medicine, or**~~*[a medical doctor, a doctor of*~~
8 ~~*osteopathy, a]*~~ doctor of oral surgery ~~*[, a chiropractic doctor, a naturopathic doctor, or a*~~
9 ~~*doctor of psychology practicing only within the purview of their license issued by the*~~
10 ~~*designated authority of a state.]*~~ **and is licensed by law to practice medicine or surgery**
11 **by the designated authority of any state within the United States of America or the**
12 **District of Columbia. PERS may accept at its discretion a physician licensed by**
13 **another country.**

14 **(22)**~~(20)~~ “Pre-existing condition” means a condition that was not sustained in actual
15 performance of duty in a qualifying position with a participating employer.

16 **(23)**~~(21)~~ “Protected health information” means health information created or
17 received by a health care provider, health plan, or health care clearinghouse, where an
18 individual has a reasonable belief that the information can identify the individual, which
19 relates to:

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

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

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

1 (24)[(22)] “Similar in compensation” means salary or other earned income, excluding
2 overtime, equaling at least 80% of the monthly salary.

3 (25)[(23)] “Total disability” means the inability to perform any work for which
4 qualified for an extended duration due to physical or mental incapacitation.

5 (26)[(24)] “Training or vocational rehabilitation program” means a comprehensive,
6 coordinated program, usually state or federally funded, to train and assist individuals with
7 disabilities in securing gainful employment commensurate with their abilities and
8 capabilities.

9 (27)[(25)] “Vocational evaluation” means an evaluation conducted by a certified
10 vocational consultant, to determine the ability of an applicant to perform any work for
11 which they are qualified.

12 (28)[(26)] “Work related stress” means conditions or disabilities resulting from, but
13 not limited to:

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

- 1 (k) Personnel decisions.
- 2 Stat. Auth.: ORS 238.650
- 3 Stats. Implemented: ORS 238.320 - 238.345

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

1 **459-015-0010**

2 **Criteria for Granting and Denying Disability Retirement Allowances**

3 (1) Medical documentation is required by PERS. Each disability retirement applicant
4 shall supply any treating or consulting physician’s examination report or other medical
5 information requested by PERS. PERS may base its determination on either a treating or
6 consulting physician’s medical examination report or have the applicant examined by one
7 or more physicians selected by PERS, or both.

8 (2) All claims of a disability must be supported by at least one physician’s report,
9 resulting from a physical examination, documenting how the injury or disease
10 incapacitates the member. **A physician assistant’s examination report will be accepted**
11 **as a physician’s report when signed by the supervising physician.**

12 (3) In addition, a disability retirement applicant shall be required to furnish the
13 following:

14 (a) For claims of mental or emotional disorder, at least one report of examination by
15 a psychiatrist or at least one report of evaluation by a psychologist when accompanied by
16 a report of physical examination by a treating or consulting physician;

17 (b) For claims of orthopedic injury or disease, at least one report of a treating or
18 consulting orthopedic specialist;

19 (c) For claims of neurological or neurosurgical injury or disease, at least one report
20 of a treating or consulting neurologist or neurosurgeon;

1 (d) For claims of fibromyalgia, at least one documented diagnosis by a
2 rheumatologist, and at least one report of a treating or consulting rheumatologist or
3 physical medicine and rehabilitation physician; and

4 (e) Any other specialized physician’s report that PERS deems necessary.

5 (4) To demonstrate that he or she is unable to perform any work for which qualified,
6 as defined in OAR 459-015-0001(1), the applicant shall document how the injury or
7 disease incapacitates the applicant. The standard is subjective (that is, whether the
8 applicant is actually incapacitated) not objective (that is, whether a “normal” member
9 would have been incapacitated by the same events).

10 (a) In determining what work for which a member is qualified, the following factors
11 shall be considered:

12 (A) Previous employment experience;

13 (B) Formal education;

14 (C) Formal training;

15 (D) Transferable skills;

16 (E) Age; and

17 (F) Physical or mental impairment.

18 (b) In determining what work for which a member is qualified, PERS may request, at
19 PERS’ expense, a vocational evaluation be done by a vocational consultant who is fully
20 certified as set forth in OAR 459-015-0001(2).

21 (c) The inability of the applicant to perform the duties of his or her last job, in itself,
22 does not satisfy the criterion.

1 (5) When there are conflicting opinions *[is a dispute]* among physicians
2 referenced in section (3) *[medical experts]*, more weight will be given to those medical
3 opinions that are both well-reasoned and based on complete information.

4 (6) As supporting evidence, PERS will accept reports from other health
5 practitioners. When there are conflicting opinions among other health practitioners,
6 more weight will be given to those medical opinions that are both well-reasoned and
7 based on complete information.

8 (7)[(6)] The Board may deny any application or discontinue any disability
9 retirement allowance if an applicant:

10 (a) Refuses to submit to an independent medical or vocational examination; or

11 (b) Refuses to submit to any medical examination or supply a completed application
12 or review form.

13 (8) Receipt of weekly unemployment insurance payments after the date of
14 disability is substantial evidence that the member is able, available, actively seeking
15 and willing to accept employment and is not totally and continuously disabled.

16 Stat. Auth.: ORS 238.650

17 Stats. Implemented: ORS 238.320 & 238.335

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

1 **459-015-0020**

2 **Application Required**

3 (1) Application must be made on forms provided by PERS. PERS may require the
4 member to provide any information that PERS considers necessary to determine the
5 applicant’s eligibility for a disability retirement allowance.

6 (2) No disability retirement allowance will be paid unless the member files a timely
7 and complete application.

8 (3) Application must be made by a member or the member’s authorized
9 representative. A representative must submit to PERS written proof of the
10 representative’s authority, such as a power of attorney, guardianship or conservatorship
11 appointment.

12 (4) A member cannot apply for disability retirement before their date of disability.

13 (5) Upon the filing of an application for a disability retirement allowance, PERS will
14 notify the applicant’s current or most recent employer of the filing. Additionally, PERS
15 may request of an employer information pertaining to current or previous employment.

16 (6) When an active member becomes disabled due to injury or disease, the member
17 may make application immediately after the last day worked even though the member
18 may be on a paid leave or on an official leave of absence without pay. Total disability
19 must be continuous from the date of disability to the date the application is filed. If the
20 member becomes an inactive member, the application must be submitted within the
21 timelines outlined in section (8) of this rule.

1 (7)(a) For a member who becomes totally disabled due to injury or disease but does
2 not terminate employment, an application for disability retirement must be filed no later
3 than 90 calendar days from the earlier of:

4 (A) The date the member is medically released for work; or

5 (B) The date the member returns to work.

6 (b) Total disability must be continuous from the date of disability to the earlier of
7 paragraph (a)(A) or (B) of this section.

8 (8) An application by an inactive member is considered filed in a timely manner
9 when received by PERS as follows:

10 (a) For an inactive member who becomes totally disabled due to injury or disease
11 before the date of separation from service from all PERS qualifying positions and has not
12 withdrawn the amount credited to the account of the member in the system, the member
13 must file an application for a disability retirement allowance within five calendar years of
14 the date of separation from service. Total disability must be continuous from the date of
15 separation from service to the date the application is filed.

16 (b) For an inactive member who becomes totally disabled due to injury or disease
17 after the date of separation from service from all PERS qualifying positions and has not
18 withdrawn the amount credited to the account of the member in the system, the member
19 must file an application for a disability retirement allowance within six months (180
20 days) after the date of separation from service. Total disability must be continuous from
21 the date of disability to the date the application is filed.

22 (9) In determining the effective date of a disability retirement allowance, PERS may
23 allow up to 60 months of benefits retroactive from the date the application is filed with

1 PERS, but in no case earlier than the first day of the month following the date of
2 separation from service.

3 (10) When making application for a PERS disability retirement allowance, PERS
4 will request the applicant authorize any physician, other health practitioner, hospital,
5 clinic, pharmacy, employer, employment agency, or government agency to release and
6 disclose to PERS, or independent physicians and vocational consultants retained by
7 PERS, any information within their records or knowledge, including that information
8 otherwise protected under federal or state law, regarding the applicant’s health and
9 employment which PERS determines relates to the applicant’s claim of disability and
10 inability to perform any work for which qualified.

11 (11) When filing an application for disability retirement allowance, if the applicant
12 wishes to authorize release and disclosure of protected health information, as defined in
13 OAR 459-015-0001, the applicant must complete and sign a consent form which
14 specifically authorizes the release and disclosure of such information.

15 (a) This authorization is voluntary. PERS is not a covered entity as defined in 45
16 CFR Parts 160 and 164, and the protected health information is not subject to federal and
17 state health information privacy laws, but may be protected under Oregon State Public
18 Record disclosure laws.

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

1 (c) If the applicant refuses to give or revokes authorization to disclose to PERS
2 medical information that PERS determines it needs to evaluate the application, eligibility
3 for a disability retirement allowance may be affected.

4 Stat. Auth.: ORS 238.650

5 Stats. Implemented: ORS 238.320 - 238.345

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

1 **459-015-0025**

2 **Application Processing — Independent Examinations and Appeals**

3 (1) Following the timely filing of a completed application, PERS may, at its
4 discretion, request an independent medical exam, physical capacity evaluation, or a
5 vocational evaluation. If PERS requests one or more of these exams or evaluations, PERS
6 will pay the reasonable associated expenses.

7 (a) For independent medical exams and physical capacity evaluations, PERS shall
8 inform the applicant in writing and postmarked not less than *[ten]* **10** days before a
9 scheduled examination, of the identity of the physician*[(s)]* or other health practitioner
10 selected to examine the applicant, together with location, date and time.

11 (b) For vocational evaluations, the vocational consultant or locator service shall
12 inform the applicant of the location, date and time of the scheduled examination.

13 (c) If the applicant fails to meet the scheduled appointment or fails to reschedule the
14 examination within five days of notification, PERS will not reschedule an examination at
15 PERS' expense unless the applicant can demonstrate good cause for having failed to meet
16 the scheduled appointment or reschedule the appointment as required.

17 (d) Good cause includes, but is not limited to:

18 (A) Physical or mental incapacitation preventing the member from meeting or
19 rescheduling the examination;

20 (B) Failure of PERS or the vocational consultant or locator service to send the
21 member notice as described above; or

22 (C) A death in the member's immediate family.

1 (e) Good cause does not include:

2 (A) A member’s refusal to attend the scheduled appointment;

3 (B) A member’s failure to meet the appointment with no reason provided; or

4 (C) A member’s failure to make appropriate transportation arrangements.

5 (2) When PERS requires an applicant to travel to be examined by a physician,
6 vocational consultant, or other health practitioner *[professional]*, PERS will reimburse
7 the applicant’s reasonable transportation costs based on the least costly alternative and on
8 availability. Travel by private vehicle shall be compensated at the rate applicable to travel
9 by unrepresented state employees on state business. Transportation by taxi, bus, rail, or
10 other public carrier shall be paid only upon presentation of receipts from the providers.
11 Lodging and subsistence shall be allowed only when an overnight stay is necessary and
12 shall be paid at the rate applicable to unrepresented state employees traveling on state
13 business. Reimbursements will be reduced by the amount of any penalty assessed by
14 PERS because of a member’s failure to meet a scheduled appointment.

15 (3) In the event a member fails to meet a scheduled appointment in accordance with
16 section (1) of this rule, and PERS is assessed a penalty by the service provider for the
17 failure to meet the scheduled appointment, the disability applicant shall bear the cost of
18 the penalty as follows:

19 (a) If the disability application is not approved, by making direct payment to the
20 service provider who assessed the penalty; or

21 (b) If the disability application is approved:

22 (A) By making direct payment to the service provider who assessed the penalty; or

1 (B) By having the amount of the penalty deducted from the monthly disability
2 retirement allowance, as provided for under ORS 238.715, payable to the member until
3 the invoice is satisfied.

4 (4) The Director, or the Director’s designee, is hereby authorized to approve or deny
5 a disability retirement application. Upon receipt and review of all necessary
6 documentation, staff shall present applicant’s claim to the Director, or the Director’s
7 designee, with a recommendation to approve or to deny a disability retirement allowance.
8 The Director, or the Director’s designee, may accept or reject the staff's recommendation,
9 or refer the application back to staff for further documentation and review.

10 (a) If the Director, or the Director’s designee, approves a disability claim, the staff
11 will notify the applicant and the applicant’s employer of such approval.

12 (b) If the disability claim is denied, the staff shall issue an Intent to Deny letter by
13 regular and certified mail, return receipt requested. The denial letter shall advise the
14 applicant that additional information to substantiate the claim, or a request for an
15 extension of 30 days to present additional information, may be submitted to the staff in
16 writing within 30 days of the date of the Intent to Deny letter.

17 (c) An applicant who is otherwise eligible for a service retirement allowance shall
18 have 30 days from the date of the Intent to Deny letter to apply for a service retirement
19 allowance and be entitled to establish an effective date of service retirement for the first
20 of the month that the application for disability retirement allowance was received by
21 PERS.

1 (d) The application for a service retirement allowance as provided for in subsection
2 (c) of this section shall not preclude a disability applicant from requesting a contested
3 case hearing under OAR 459-015-0030.

4 (5) Following the issuance of an Intent to Deny letter, staff will review any
5 additional information which is submitted within 30 days from the issuance of the Intent
6 to Deny letter.

7 (a) If the additional information results in a recommendation to approve the
8 application, staff shall resubmit the application to the Director, or the Director’s designee,
9 with the recommendation.

10 (b) If the additional information does not result in a recommendation to approve the
11 application, PERS will issue a final denial letter by regular and certified mail, return
12 receipt requested.

13 (c) If no additional information is received, PERS will issue a final denial letter by
14 regular and certified mail, return receipt requested.

15 (6) The final denial letter will provide the applicant with notification of the right to
16 request a contested case hearing as provided for in OAR 459-015-0030 and 459-001-
17 0035.

18 (7) PERS will notify the most recent employer of the approval or the denial of an
19 application for a disability retirement allowance, a request for review of the Director’s
20 determination, and the Director’s final action. Such notification will not contain any
21 confidential information as defined in OAR 459-015-0001(3).

22 Stat. Auth.: ORS 238.650

23 Stats. Implemented: ORS 238.320 & 238.335

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

1 **459-015-0040**

2 **Proof of Case — Contested Case Hearings**

3 (1) Burden of Proof in Hearings: The burden of proof for entitlement to a disability
4 retirement allowance is upon the applicant. The Board is not required to prove that the
5 applicant is entitled to a disability retirement allowance.

6 (2) Standards of Proof:

7 (a) An order granting entitlement to a disability retirement allowance shall be
8 supported in the record by sufficient evidence demonstrating that the applicant suffers
9 from a physical or mental/emotional injury or disease, and that the applicant is unable to
10 perform any work for which he or she is qualified;

11 (b) An order denying entitlement to a disability retirement allowance need not be
12 supported by medical or vocational evidence presented by the Board. An order may deny
13 entitlement to a disability retirement allowance if the applicant fails to present sufficient
14 proof of disability and inability to work. An order may deny entitlement to a disability
15 retirement allowance on the basis of medical or vocational evidence presented by the
16 Board.

17 (3) Professional opinions:

18 (a) A physician **or other health practitioner** may express an opinion regarding
19 whether the injury or disease was caused by the performance of job duties;

20 (b) A physician **or other health practitioner** may express an opinion regarding the
21 applicant’s ability to perform any work, related tasks, or functions;

1 (c) The administrative law judge shall have the discretion to give more weight to the
2 testimony (findings and opinions) of the treating, the examining, or the consulting
3 physician as the facts indicate.

4 Stat. Auth.: ORS 183.310 - 183.550, 183.600 - 183.690, 237.171, 237.191 &
5 237.263

6 Stats. Implemented:

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

1 **459-015-0050**

2 **Periodic Reviews**

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

6 (2) Periodic reviews will be used to determine that continued disability retirement
7 allowances are warranted. In recommending the continuance or discontinuance of a
8 disability retirement allowance, PERS will follow the criteria established under OAR
9 459-015-0005 for the original approved disabling condition or a new medical condition.
10 PERS will also consider the Return to Work provisions of ORS 238.330(3), 238.340, and
11 OAR 459-015-0045.

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

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

18 (a) The reviews may be medical or vocational in nature, or both and will be based
19 on the administrative rules in effect when PERS initiates the disability periodic
20 review.

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

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

1 (B) Updated physician or specialist reports;
2 (C) Independent medical or vocational examinations; or
3 (D) Employment and wage information, including but not limited to, tax returns or
4 information from the State Employment Department. Receipt of weekly unemployment
5 insurance payments after the date of disability is substantial evidence that the
6 member is able, available, actively seeking and willing to accept employment and is
7 not totally and continuously disabled.

8 (c) PERS may immediately discontinue the disability retirement allowance of any
9 person who refuses to provide current medical evidence or refuses to submit to an
10 examination.

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

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

19 (i) If the additional information results in a recommendation to approve the
20 application, staff shall resubmit the application to the Director, or the Director’s designee,
21 with the recommendation.

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

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

6 (D) The final discontinuation letter will provide the applicant with notification of the
7 right to request a contested case hearing as provided for in OAR 459-015-0030 and 459-
8 001-0035.

9 (5) The member has the burden to prove continuing eligibility for a disability
10 retirement allowance.

11 (6) The Director, or the Director's designee, may approve or deny the continuance of
12 a disability retirement allowance.

13 Stat. Auth.: ORS 238.650

14 Stats. Implemented: ORS 238.320 & 238.335

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

1 **459-076-0001**

2 **Definitions**

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

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

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

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

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

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

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

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

3 (4) “Date an application for a disability benefit is filed” means the receipt date as
4 determined pursuant to OAR 459-005-0220.

5 (5) “Date of disability” means the date an active member ceased to work because of
6 inability to perform any work for which qualified due to injury or disease.

7 (6) “Date of separation from service” means the later of: the last day worked or the last
8 day of paid leave with a PERS participating employer.

9 (7) “Date of termination” means the date a member terminates from employment such
10 that an employee/employer relationship no longer exists.

11 (8) “Earned income” includes, but is not limited to:

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

13 (b) Self-employment income from:

14 (A) Services industry;

15 (B) Sales;

16 (C) Assembly or manufacturing;

17 (D) Consulting;

18 (E) Property management;

19 (F) Hobby income; or

20 (G) Book advances.

21 (c) “Earned income” does not include:

22 (A) Investment income;

23 (B) Rent; and

24 (C) Royalties.

1 (d) Earned income is deemed to be received by the member on the date it is issued by the
2 payer.

3 (9) “Effective date of disability benefit” means the first day of the month following the
4 date of disability, in which:

5 (a) The member is paid no salary from a participating employer; and

6 (b) The member does not receive paid leave from a participating employer, except for
7 any lump sum payment for accrued vacation leave or compensatory time.

8 (10) “Extended duration” means a period of not less than 90 consecutive calendar days
9 unless the disability is expected to result in the death of the disabled member in less than 90
10 days.

11 (11) “Independent medical exam” means an exam or exams, including physical
12 capacity evaluations, conducted by a physician or other health practitioner chosen by
13 PERS for purposes other than for treatment which results in the issuance of a report or reports
14 based on those exams, giving an opinion regarding the claimed injury or disease.

15 (12) “Material contributing cause” means the efficient, dominant, and proximate cause of
16 the disability, without which the member would not be disabled.

17 (13) “Monthly salary” means salary as defined in ORS 238A.005 that is earned in the last
18 full calendar month of employment and includes a differential wage payment, as defined in
19 OAR 459-005-0001.

20 (a) Retroactive payments or payments made due to clerical errors, paid in accordance
21 with ORS 238A.005, are allocated to the period the salary was earned or should have been
22 earned.

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

1 (14) “Monthly salary received” means the greater of the salary paid for the last full
2 calendar month of:

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

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

6 (15) “Orthopedic specialist” means an orthopedist, orthopedic surgeon or physical
7 medicine and rehabilitation specialist.

8 (16) “Other health practitioner” means a treating provider who is properly licensed
9 or certified and is performing within the scope of his or her practice in accordance with
10 the law or standards established by the appropriate governing authority.

11 (17)~~(15)~~ “Performance of duty” means whatever an employee may be directed,
12 required or reasonably expected to do in connection with his or her employment, and not
13 solely the duties particular to his or her position.

14 (18)~~(16)~~ “Periodic review” means a review of a member receiving a disability benefit
15 to determine whether or not a continued benefit is warranted.

16 (19)~~(17)~~ “Physician” means a person who holds a degree of doctor of medicine,
17 doctor of osteopathy, doctor of podiatric medicine, or *[a medical doctor, a doctor of*
18 *osteopathy, a] doctor of oral surgery**[, a chiropractic doctor, a naturopathic doctor, or a*
19 *doctor of psychology practicing only within the purview of their license issued by the*
20 *designated authority of a state]* and is licensed by law to practice medicine or surgery by
21 the designated authority of any state within the United States of America or the District
22 of Columbia. PERS may accept at its discretion a physician licensed by another country.

23 (20)~~(18)~~ “Pre-existing condition” means a condition that was not sustained in actual
24 performance of duty in a qualifying position with a participating employer.

1 (21)[(19)] “Protected health information” means health information created or received
2 by a health care provider, health plan, or health care clearinghouse, where an individual has a
3 reasonable belief that the information can identify the individual, which relates to:

- 4 (a) The past, present, or future physical or mental health of an individual;
- 5 (b) The provision of health care to an individual; or
- 6 (c) The past, present, or future payment for the provision of health care to an individual.

7 (22)[(20)] “Total disability” means the inability to perform any work for which qualified
8 for an extended duration due to physical or mental incapacitation.

9 (23)[(21)] “Vocational evaluation” means an evaluation conducted by a certified
10 vocational consultant, to determine the ability of an applicant to perform any work for which
11 they are qualified.

12 (24)[(22)] “Work related stress” means conditions or disabilities resulting from, but not
13 limited to:

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

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1 Stat. Auth.: ORS 238A.450

2 Stats. Implemented: ORS 238A.235

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

1 **459-076-0010**

2 **Criteria for Granting and Denying Disability Benefits**

3 (1) Medical documentation is required by PERS. Each disability benefit applicant
4 shall supply any treating or consulting physician’s examination report or other medical
5 information requested by PERS. PERS may base its determination on either a treating or
6 consulting physician’s medical examination report or have the applicant examined by one
7 or more physicians selected by PERS, or both.

8 (2) All claims of a disability must be supported by at least one physician’s report,
9 resulting from a physical examination, documenting how the injury or disease
10 incapacitates the member. **A physician assistant’s examination report will be accepted
11 as a physician’s report when signed by the supervising physician.**

12 (3) In addition, a disability benefit applicant shall be required to furnish the
13 following:

14 (a) For claims of mental or emotional disorder, at least one report of examination by
15 a psychiatrist or at least one report of evaluation by a psychologist when accompanied by
16 a report of physical examination by a treating or consulting physician;

17 (b) For claims of orthopedic injury or disease, at least one report of a treating or
18 consulting orthopedic specialist;

19 (c) For claims of neurological or neurosurgical injury or disease, at least one report
20 of a treating or consulting neurologist or neurosurgeon;

1 (d) For claims of fibromyalgia, at least one documented diagnosis by a
2 rheumatologist, and at least one report of a treating or consulting rheumatologist or
3 physical medicine and rehabilitation physician; and

4 (e) Any other specialized physician’s report PERS deems necessary.

5 (4) To demonstrate that he or she is unable to perform any work for which qualified,
6 as defined in OAR 459-076-0001(1), the applicant shall document how the injury or
7 disease incapacitates the applicant. The standard is subjective (that is, whether the
8 applicant is actually incapacitated) not objective (that is, whether a "normal" member
9 would have been incapacitated by the same events).

10 (a) In determining what work for which a member is qualified, the following factors
11 shall be considered:

12 (A) Previous employment experience;

13 (B) Formal education;

14 (C) Formal training;

15 (D) Transferable skills;

16 (E) Age; and

17 (F) Physical or mental impairment.

18 (b) In determining what work for which a member is qualified, PERS may request, at
19 PERS’ expense, a vocational evaluation be done by a vocational consultant who is fully
20 certified as set forth in OAR 459-076-0001(2).

21 (c) The inability of the applicant to perform the duties of his or her last job, in itself,
22 does not satisfy the criterion.

1 (5) When there are conflicting opinions*[is a dispute]* among physicians referenced
2 in section (3) *[medical experts]*, more weight will be given to those medical opinions
3 that are both well-reasoned and based on complete information.

4 (6) As supporting evidence, PERS will accept reports from other health
5 practitioners. When there are conflicting opinions among other health practitioners,
6 more weight will be given to those medical opinions that are both well-reasoned and
7 based on complete information.

8 ~~(7)~~*[(6)]* The Board may deny any application or discontinue any disability benefit if
9 an applicant:

10 (a) Refuses to submit to an independent medical or vocational examination; or

11 (b) Refuses to submit to any medical examination or supply a completed application
12 or review form.

13 (8) Receipt of weekly unemployment insurance payments after the date of
14 disability is substantial evidence that the member is able, available, actively seeking
15 and willing to accept employment and is not totally and continuously disabled.

16 Stat. Auth.: ORS 238A.450

17 Stats. Implemented: ORS 238A.235

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

1 **459-076-0020**

2 **Application Required**

3 (1) Application must be made on forms provided by PERS. PERS may require the
4 member to provide any information that PERS considers necessary to determine the
5 member's eligibility for a disability benefit.

6 (2) No disability benefit will be paid unless the member files a timely and complete
7 application with PERS.

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

12 (4) A member must file a timely application for disability benefits:

13 (a) An active member may file the application immediately after the last day worked
14 even though the member may be on a paid leave or on an official leave of absence
15 without pay. No application will be accepted that predates the last day the member was
16 actually on the job, and:

17 (A) The application must be filed no later than 90 calendar days from:

18 (i) The date the member is medically released for work; or

19 (ii) The date the member returns to work, whichever is earlier.

20 (B) Total disability must be continuous from the date of disability to the earlier of
21 paragraph (A)(i) or (ii) of this subsection.

1 (b) An inactive member who became totally disabled due to injury or disease while
2 the applicant was an active member and has not terminated membership, must file an
3 application for a disability benefit within five calendar years of the date of separation
4 from service. Total disability must have arisen while the applicant was an active member
5 and be continuous from the date of disability to the date the application is filed.

6 (c) A member cannot apply for disability benefits before their date of disability.

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

10 (6) Upon the filing of an application for a disability benefit, PERS will notify the
11 applicant’s current or most recent employer of the filing. Additionally, PERS may request
12 of an employer information pertaining to current or previous employment.

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

21 (8) When filing an application for disability benefit, if the applicant wishes to
22 authorize release and disclosure of protected health information, as defined in OAR 459-

1 076-0001, the applicant must complete and sign a consent form which specifically
2 authorizes the release and disclosure of such information.

3 (a) This authorization is voluntary. PERS is not a covered entity as defined in 45
4 CFR Parts 160 and 164, and the protected health information is not subject to federal and
5 state health information privacy laws, but may be protected under Oregon State Public
6 Record disclosure laws.

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

10 (c) If the applicant refuses to give or revokes authorization to disclose to PERS
11 medical information that PERS determines it needs to evaluate the application, eligibility
12 for a disability benefit may be affected.

13 Stat. Auth.: ORS 238A.450

14 Stats. Implemented: ORS 238A.235

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

1 **459-076-0025**

2 **Application Processing — Independent Examinations and Appeals**

3 (1) Following the timely filing of a completed application, PERS may, at its
4 discretion, request an independent medical exam, physical capacity evaluation, or a
5 vocational evaluation. If PERS requests one or more of these exams or evaluations, PERS
6 will pay the reasonable associated expenses.

7 (a) For independent medical exams and physical capacity evaluations, PERS will
8 inform the applicant in writing and postmarked not less than 10 days before a scheduled
9 examination, of the identity of the physician~~[(s)]~~ or other health practitioner selected
10 to examine applicant, together with location, date and time.

11 (b) For vocational evaluations, the vocational consultant or locator service shall
12 inform the applicant of the location, date and time of the scheduled examination.

13 (c) If the applicant fails to meet the scheduled appointment or fails to reschedule the
14 examination within five days of notification, PERS will not reschedule an examination at
15 PERS' expense unless the applicant can demonstrate good cause for having failed to meet
16 the scheduled appointment or reschedule the appointment as required.

17 (d) Good cause includes, but is not limited to:

18 (A) Physical or mental incapacitation preventing the member from meeting or
19 rescheduling the examination;

20 (B) Failure of PERS or the vocational consultant or locator service to send the
21 member notice as described above; or

22 (C) A death in the member's immediate family.

1 (e) Good cause does not include:

2 (A) A member’s refusal to attend the scheduled appointment;

3 (B) A member’s failure to meet the appointment with no reason provided; or

4 (C) A member’s failure to make appropriate transportation arrangements.

5 (2) When PERS requires an applicant to travel to be examined by a physician,
6 vocational consultant, or other health practitioner *[professional]*, PERS will reimburse
7 the applicant’s reasonable transportation costs based on the least costly alternative and on
8 availability. Travel by private vehicle will be compensated at the rate applicable to travel
9 by unrepresented state employees on state business. Transportation by taxi, bus, rail, or
10 other public carrier will be paid only upon presentation of receipts from the providers.
11 Lodging and subsistence will be allowed only when a stop-over is necessary and will be
12 paid at the rate applicable to unrepresented state employees traveling on state business.
13 Reimbursements will be reduced by the amount of any penalty assessed PERS because of
14 a member’s failure to meet a scheduled appointment.

15 (3) In the event a member fails to meet a scheduled examination in accordance with
16 section (1) of this rule, and PERS is assessed a penalty by the service provider for the
17 failure to meet the scheduled appointment, the disability applicant will bear the cost of
18 the penalty as follows:

19 (a) If the disability application is not approved, by making direct payment to the
20 service provider who assessed the penalty; or

21 (b) If the disability application is approved:

22 (A) By making direct payment to the service provider who assessed the penalty; or

1 (B) By having the amount of the penalty deducted from the monthly disability
2 benefit, as provided for under ORS 238.715, payable to the member until the invoice is
3 satisfied.

4 (4) The Director, or the Director’s designee, is hereby authorized to approve or deny
5 a disability benefit application. Upon receipt and review of all necessary documentation,
6 staff will present applicant’s claim to the Director, or the Director’s designee, with a
7 recommendation to approve or to deny a disability benefit. The Director, or the Director’s
8 designee, may accept or reject the staff’s recommendation, or refer the application back
9 to staff for further documentation and review.

10 (a) If the disability claim is approved, the staff will notify the applicant and the
11 applicant’s employer of such approval.

12 (b) If the disability claim is denied, the staff will issue an Intent to Deny letter by
13 regular and certified mail, return receipt requested. The Intent to Deny letter will advise
14 the applicant that additional information to substantiate the claim, or a request for an
15 extension of 30 days to present additional information, may be submitted to the staff in
16 writing within 30 days of the date of the Intent to Deny letter.

17 (5) Following the issuance of an Intent to Deny letter, staff will review any
18 additional information submitted within 30 days from the issuance of the Intent to Deny
19 letter.

20 (a) If the additional information results in a recommendation to approve the
21 application, staff will resubmit the application to the Director with the recommendation.

1 (b) If the additional information does not result in a recommendation to approve the
2 application, PERS will issue a final denial letter by regular and certified mail, return
3 receipt requested.

4 (c) If no additional information is received, PERS will issue a final denial letter by
5 regular and certified mail, return receipt requested.

6 (6) The final denial letter will provide the applicant with notification of the right to
7 request a contested case hearing as provided for in OAR 459-015-0030 and 459-001-
8 0035.

9 (7) A contested case hearing on the denial of disability benefits shall be conducted
10 according to OAR 459-015-0030, 459-015-0035, and ~~[459-015-0040]~~ [459-076-0040](#).

11 (8) PERS will notify the most recent employer of the approval or the denial of an
12 application for a disability benefit, a request for review of the Director’s determination,
13 and the Director’s final action. Such notification will not contain any confidential
14 information as defined in OAR 459-076-0001(3).

15 Stat. Auth.: ORS 238A.450

16 Stats. Implemented: ORS 238A.235

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

1 459-076-0040

2 Proof of Case — Contested Case Hearings

3 (1) Burden of Proof in Hearings: The burden of proof for the right to a
4 disability benefit is upon the applicant. The Board is not required to prove that the
5 applicant is entitled to a disability benefit.

6 (2) Standards of Proof:

7 (a) An order granting the right to a disability benefit shall be supported in the
8 record by sufficient evidence demonstrating that the applicant suffers from a
9 physical or mental/emotional injury or disease, and that the applicant is unable to
10 perform any work for which he or she is qualified;

11 (b) An order denying the right to a disability benefit need not be supported by
12 medical or vocational evidence presented by the Board. An order may deny the
13 right to a disability benefit if the applicant fails to present sufficient proof of
14 disability and inability to work. An order may deny the right to a disability benefit
15 on the basis of medical or vocational evidence presented by the Board.

16 (3) Professional opinions:

17 (a) A physician or other health practitioner may express an opinion regarding
18 whether the injury or disease was caused by the performance of job duties;

19 (b) A physician or other health practitioner may express an opinion regarding
20 the applicant's ability to perform any work, related tasks, or functions;

1 (c) The administrative law judge shall have the discretion to give more weight
2 to the testimony (findings and opinions) of the treating, the examining, or the
3 consulting physician as the facts indicate.

4 Stat. Auth.: ORS 183.310 - 183.550, 183.600 - 183.690, 237.171, 237.191 &
5 237.263

6 Stats. Implemented:

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

1 **459-076-0050**

2 **Periodic Reviews**

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

6 (2) Periodic reviews will be used to determine that continued disability benefits are
7 warranted. In recommending the continuance or discontinuance of a disability benefit,
8 PERS will follow the criteria established under OAR 459-076-0005 for the original
9 approved disabling condition or a new medical condition. If a member receiving a
10 disability benefit becomes employed, the member's disability benefit will be terminated
11 as provided in OAR 459-076-0005.

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

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

18 (a) The reviews may be medical or vocational in nature, or both and will be based
19 on the administrative rules in effect when PERS initiates the disability periodic
20 review;

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

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

- 1 (B) Updated physician or specialist reports;
- 2 (C) Independent medical or vocational examinations; or
- 3 (D) Employment and wage information, including but not limited to, tax returns or
- 4 information from the State Employment Department. Receipt of weekly unemployment
- 5 insurance payments after the date of disability is substantial evidence that the
- 6 member is able, available, actively seeking and willing to accept employment and is
- 7 not totally and continuously disabled.

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

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

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

18 (i) If the additional information results in a recommendation to approve the
19 application, staff shall resubmit the application to the Director, or the Director’s designee,
20 with the recommendation;

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

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

3 (D) The final discontinuation letter will provide the applicant with notification of the
4 right to request a contested case hearing as provided for in OAR 459-015-0030 and 459-
5 001-0035.

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

8 (6) The Director, or Director’s designee, may approve or deny the continuance of a
9 disability benefit.

10 Stat. Auth.: ORS 238A.450

11 Stats. Implemented: ORS 23A8.235



Oregon

Kate Brown, Governor

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May 27, 2016

TO: Members of the PERS Board
FROM: Stephanie Vaughn, Manager, Policy Analysis & Compliance Section
SUBJECT: Notice of Receipt Date Rule:
OAR 459-005-0220, *Receipt Date for Reports, Documents, Remittances, and Payments*

OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: (1) Modify the date that imaged items are deemed filed and received from three business days to one business day before the imaged date; and (2) Change the date that items recorded on PERS' daily cash receipts log and/or check log are considered received to one business day before the recorded date on the cash receipts log and/or check log.
- Policy Issue: No policy issues have been identified.

BACKGROUND

Numerous PERS statutory provisions require receipt of certain items such as documents or payments within a specified time period. In 2007, PERS adopted OAR 459-005-0220 to provide guidelines for when an item is considered received by PERS. Since the rule's implementation, PERS document receipt practices have improved and processes have been streamlined to achieve timely and accurate imaging. Today, all items received by the agency are imaged the same business day. After they are imaged, they are then loaded into system workflows that notify the relevant sections that the item has been received. In other words, imaging is the first destination before any further action is taken. As such, the "imaged date" and the "receipt date" are usually one and the same. An exception to this general rule is items that are sent to PERS' post office box. Mail delivered to the box late in the day is not picked up until the next business day.

While developing the rule modifications, staff learned of another problem. If a member mails a purchase to the PERS post office box, the purchase may arrive by the due date at the post office box, but take until the next business day to arrive at PERS. Therefore, it won't be entered into the check log until a day after arriving at the post office box and, unfortunately, this may cause the purchase to be considered late under the current rule. In some cases, a member will submit a service retirement application and purchase together in the same mailing, but under the current rules the application would be accepted as timely, but the purchase would not, even though they arrived together. Therefore, the proposed rule modifications specify that if the cash receipts log date or check log date is later than the due date, the payment will be deemed filed and received one business day before the cash receipts log date or check log date, consistent with the receipt rule for documents.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held June 28, 2016, at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends July 6, 2016, at 5:00 p.m.

LEGAL REVIEW

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

IMPACT

Mandatory: No.

Impact: Members and staff will benefit from the updated receipt date requirements.

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

RULEMAKING TIMELINE

May 13, 2016	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
May 27, 2016	PERS Board notified that staff began the rulemaking process.
June 1, 2016	<i>Oregon Bulletin</i> publishes the Notice. Notice is sent to employers, legislators, and interested parties. Public comment period begins.
June 28, 2016	Rulemaking hearing to be held at 2:00 p.m. at PERS in Tigard.
July 8, 2016	Public comment period ends at 5:00 p.m.
July 29, 2016	Staff will propose adopting the rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

NEXT STEPS

A rulemaking hearing will be held June 28, 2016, at 2:00 p.m. at PERS headquarters in Tigard. The rule is scheduled to be brought before the PERS Board for adoption at the July 29, 2016 Board meeting.

B.3. Attachment 1 – OAR 459-005-0220, *Receipt Date for Reports, Documents, Remittances, and Payments*

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

1 **459-005-0220**

2 **Receipt Date for Reports, Documents, Remittances, and Payments**

3 (1) As used in this rule:

4 (a) “Imaged date” means the date on which a report, document, remittance, or
5 payment is imaged and stored electronically to a dedicated network server.

6 (b) “Private express carrier” has the same meaning as in ORS 293.660(2).

7 (c) “Settlement date” means the date on which the participating Depository Financial
8 Institution (DFI) or its correspondent is scheduled to be debited or credited by the Federal
9 Reserve.

10 (2) If the due date of a report, document, remittance, or payment falls on a weekend or
11 legal holiday, the due date is deemed to be the next business day.

12 (3) Any report, document, or remittance[, *or payment*] required by PERS shall be
13 deemed filed and received [*based*] on the date of the receipt stamp affixed to the report,
14 document, or remittance[, *or payment*] when received by PERS[; *or*]. [*i*]In the case of a
15 check or cash submission, the payment shall be deemed filed and received on the date
16 recorded in PERS’ daily cash receipts log or check log.

17 (4) Any report, document, remittance, or payment that does not display a PERS
18 receipt stamp, or has not been recorded in PERS’ daily cash receipts log or check log, shall
19 be deemed filed and received on the imaged date. If the imaged date, cash receipts log
20 date or check log date is later than the due date, the report, document, remittance, or
21 payment shall be deemed filed and received [*three (3)*] one business day[*s*] before the
22 imaged date, cash receipts log date, or check log date.

1 (5) Any report, document, remittance, or payment required by PERS which is lost or
2 delayed in transmission through USPS or by a private express carrier, shall be deemed
3 filed and received on the date it was mailed or deposited for transmittal if the sender:

4 (a) Can establish by evidence satisfactory to PERS, which includes but is not limited
5 to documentation provided by USPS or the private express carrier, that the report,
6 document, remittance, or payment was deposited in the USPS or with a private express
7 carrier before the date due for filing, and was correctly addressed to PERS;

8 (b) Files with PERS a duplicate of the lost report, document, remittance, or payment,
9 in accordance with the transmittal requirements of OAR 459-005-0210 or 459-005-0215;
10 and

11 (c) Satisfies the requirements of subsections (a) and (b) of this section within 30 days
12 after PERS notifies the sender in writing of failure to receive the report, document,
13 remittance, or payment.

14 (6) An electronic funds transfer (EFT) shall be deemed received on the settlement date
15 of the transfer. A settlement date specified by an employer for an EFT shall be no later
16 than the due date specified by PERS for a remittance or a payment.

17 (7) Any report or document that PERS accepts by fax as provided in OAR 459-005-
18 0210 or 459-005-0215, which is:

19 (a) Transmitted by a fax device to any office of PERS shall be deemed filed *[or]* and
20 received on the date of transmission as inscribed by the PERS fax device.

21 (b) Lost in transmission through a fax communication shall be deemed filed and
22 received when originally transmitted if the sender can establish by affidavit the proof of

1 sending and correct addressing, together with a copy of any activity report from the
2 sender’s fax device, and a duplicate of the original report or document.

3 (8) A fax shall be accepted on weekends and holidays as long as the fax is otherwise
4 in compliance with due dates specified in administrative rule.

5 (9) Any report or document that PERS accepts by e-mail transmission as specified in
6 OAR 459-005-0210(5), which is:

7 (a) Transmitted by e-mail to any office of PERS shall be deemed received as of the
8 date PERS receives the transmission.

9 (b) Lost in transmission by e-mail shall be deemed filed and received when originally
10 transmitted if the sender can establish by affidavit the proof of sending and correct
11 addressing, together with a copy of any activity report from the sender’s electronic device,
12 and a duplicate of the original report or document.

13 (10) A report or document transmitted by fax or e-mail must be transmitted in
14 accordance with the provisions of this rule and OAR 459-005-0215 and must be received
15 by PERS before midnight on the due date.

16 (11) When transmitting a document or report by use of fax or e-mail, the sender bears
17 the risk of failure of the transmission.

18 Stat. Auth.: ORS 238.650

19 Stats. Implemented: ORS 238, 238A



Oregon

Kate Brown, Governor

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May 27, 2016

TO: Members of the PERS Board
FROM: Stephanie Vaughn, Manager, Policy Analysis & Compliance Section
SUBJECT: Adoption of Withdrawal Rules:
OAR 459-005-0001, *Definitions, Generally*
OAR 459-075-0020, *Withdrawal from OPSRP Pension Program*
OAR 459-080-0020, *Withdrawal of Individual Accounts*

OVERVIEW

- Action: Adopt modifications to the Withdrawal rules.
- Reason: Modify definition of “effective date of withdrawal” to reduce incidents of mandatory repayment, clarify items required to process a withdrawal, and housekeeping edit to definition of “effective date of retirement” to include OPSRP Pension Program reference.
- Policy Issue: No policy issues were identified.

BACKGROUND

A vested, inactive member of the Oregon Public Service Retirement Plan (OPSRP) Pension Program may withdraw from the program under ORS 238A.120. Upon withdrawal, the member receives the actuarial equivalent of their benefit in a lump sum. To withdraw from the OPSRP Pension Program, the member must be separated from all PERS covered employment, and the actuarial equivalent of their pension benefit must be less than \$5,000. To determine the actuarial equivalent of their pension benefit, a calculation is performed using the member’s age at the time of the withdrawal and the actuarial equivalency factor adopted by the PERS Board.

Submission of Last Completed Document Required from the Member/Proof of Age

The definition of “effective date of withdrawal” in OAR 459-005-0001, which applies to all programs, currently states:

“Effective date of withdrawal” means the later of:

- (a) The first day of the calendar month in which PERS receives the last completed document required from a member who requested a withdrawal; or
- (b) The first day of the second calendar month following the calendar month in which the member terminated employment with all participating employers and all employers in a controlled group with a participating employer.

When this definition was adopted, proof of age was not required¹. In 2012, PERS started to require that OPSRP Pension Program members present documentation to verify their age as part of the withdrawal process but did not amend corresponding administrative rules to reflect the change in practice. This created some confusion as to whether the proof of age was a required “completed document” or was merely part of the withdrawal process.

An OPSRP member providing their proof of age after the withdrawal application has been submitted is not uncommon. If the “effective date of withdrawal” does not occur by rule until the proof of age is received (i.e., the proof of age is required to consider the application a “completed document”), a mandatory repayment could be triggered if the member has subsequently returned to work with a participating employer prior to PERS’ receiving the member’s proof of age to complete the application.

Modifying the definition clarifies that the “effective date of withdrawal” is to be based on receipt of the completed application only; if proof of age is required and not submitted until later, the effective date will still be the date of the application. To further clarify, the modification to OAR 459-075-0020 reflects PERS’ practice and states that PERS will not process the withdrawal payment until proof of age is received.

Department of Motor Vehicles (DMV) Access

PERS is able to verify proof of age through DMV records for persons with a valid Oregon driver license, permit, or identification card. Because the DMV’s documentation process meets PERS’ standards for proof of age, we will accept information obtained from the DMV as proof of age as required in OAR 459-075-0020(7). For those members whose age cannot be verified through the DMV, the member must submit a valid proof of age before their withdrawal will be processed.

Cancellation If Required Items Not Submitted Within 180 Days of Application Submission

Further rule modifications would allow PERS to cancel the member’s withdrawal application if required items are not submitted within 180 days after submitting their withdrawal application. This has been our practice and is explained in the withdrawal application packet instructions. If cancelled, members may resubmit their application so long as they remain separated from PERS-covered employment.

Impact of “Withdraw From One, Withdraw From All”

Statute requires that a member who withdraws from the OPSRP Pension Program also withdraw from the IAP. IAP withdrawals are processed simultaneously with OPSRP Pension withdrawals, so these rule modifications reference that the OPSRP Pension withdrawal documentation requirements also pertain to an IAP withdrawal application. Consequently, if an OPSRP Pension member’s withdrawal is delayed or canceled because the required items are not timely submitted, then their IAP withdrawal will be similarly impacted.

¹ There is no change to Tier One or Tier Two member account withdrawals because they do not require “proof of age” documentation.

SUMMARY OF MODIFICATIONS TO RULES SINCE NOTICE

The modifications to use the term “terminated” instead of “separated” were removed in order to be consistent with statute and to avoid any unnecessary confusion. The term “separated” appears in OAR 459-075-0020 paragraphs (2), (6), (7), and (9).

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held April 26, 2016, at 2:30 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended May 3, 2016, at 5:00 p.m. No public comment was received.

LEGAL REVIEW

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

IMPACT

Mandatory: No.

Impact: Reduces incidents of mandatory repayment and provides further clarification of the OPSRP Pension Program withdrawal process. Promotes administrative efficiency.

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

RULEMAKING TIMELINE

March 15, 2016	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
March 28, 2016	PERS Board notified that staff began the rulemaking process.
April 1, 2016	<i>Oregon Bulletin</i> published the Notice. Notice was sent to employers, legislators, and interested parties. Public comment period began.
April 26, 2016	Rulemaking hearing held at 2:30 p.m. at PERS in Tigard.
May 3, 2016	Public comment period ended at 5:00 p.m.
May 27, 2016	Board may adopt the permanent rule modifications.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to the Withdrawals 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.

Adoption – Withdrawals

05/27/16

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- Reason: Modify definition of “effective date of withdrawal” to reduce incidents of mandatory repayment, clarify items required to process a withdrawal, and housekeeping edit to definition of “effective date of retirement” to include OPSRP Pension Program reference.

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.

B.4. Attachment 1 – OAR 459-005-0001, *Definitions, Generally*

B.4. Attachment 2 – OAR 459-075-0020, *Withdrawal from OPSRP Pension Program*

B.4. Attachment 3 – OAR 459-080-0020, *Withdrawal of Individual Accounts*

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

1 **459-005-0001**

2 **Definitions, Generally**

3 The words and phrases used in OAR Chapter 459 have the same meaning given them
4 in ORS Chapters 237, 238, 238A, and 243 unless otherwise indicated. Specific and
5 additional terms used in OAR Chapter 459 generally are defined as follows unless context
6 requires otherwise:

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

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

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

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

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

22 (a) Computing final average salary; and

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

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

5 (5) “Calendar month” means a full month beginning with the first calendar day of a
6 month and ending on the last calendar day of that month.

7 (6) “Calendar year” means 12 consecutive calendar months beginning on January 1
8 and ending on December 31.

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

11 (8) “Contributions” means any contributions required or permitted pursuant to ORS
12 238.200 or 238.515.

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

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

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

19 (10) “Effective date of withdrawal” means the later of:

20 (a) The first day of the calendar month in which PERS receives *[the last]* a completed
21 *[document required]* application from a member who requested a withdrawal; or

1 (b) The first day of the second calendar month following the calendar month in which
2 the member terminated employment with all participating employers and all employers in
3 a controlled group with a participating employer.

4 (11) “Effective retirement date” means:

5 (a) For Tier One and Tier Two service retirements, the date described in OAR 459-
6 013-0260.*[; or]*

7 (b) For Tier One and Tier Two disability retirements, the date described in OAR
8 459-015-0001.

9 (c) For OPSRP Pension Program service retirements, the date described in OAR
10 459-075-0175.

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

14 (13) “Emergency worker” means an individual engaged in case of emergency,
15 including fire, storm, earthquake, or flood.

16 (14) “Employee” has the same meaning as provided in ORS 238.005 and shall be
17 determined in accordance with OAR 459-010-0030.

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

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

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

1 (B) An individual who performs services for a public employer as a contractor in an
2 independently established business or as an employee of that contractor as determined in
3 accordance with OAR 459-010-0032.

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

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

11 (16) “Employment” is compensated service to a participating employer as an
12 employee whose:

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

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

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

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

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

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

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

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

6 (19) “General service member” means membership in PERS as other than a judge
7 member, a police officer, a firefighter, or a legislator.

8 (20) “Good cause” means a cause beyond the reasonable control of an individual.

9 “Good cause” exists when it is established by satisfactory evidence that factors or
10 circumstances are beyond the reasonable control of a rational and prudent individual of
11 normal sensitivity, exercising ordinary common sense.

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

15 (22) “Judge member” has the same meaning as provided in ORS 238.500(3). For
16 purposes of this chapter, active, inactive, and retired membership of a judge member shall
17 have the same meaning as provided in ORS 238.005.

18 (23) “Legislator” means an individual elected or appointed to the Oregon Legislative
19 Assembly who has elected to participate in PERS for their legislative service.

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

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

1 (26) “PERS” and “system” have the same meaning as the Public Employees
2 Retirement System in ORS 238.600.

3 (27) “Public university” means a public university with a governing board as listed in
4 ORS 352.002.

5 (28) “Qualifying position” has the same meaning as provided in ORS 238.005 and
6 OAR 459-010-0003.

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

10 (30) “Salary” has the same meaning as provided in ORS 238.005.

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

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

14 (A) In determining employee and employer contributions.

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

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

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

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

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

1 (32) “Staff” means the employees of the Public Employees Retirement System as
2 provided for in ORS 238.645.

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

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

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

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

13 (a) Sick leave programs;

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

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

1 (37) “Variable account” and “member variable account” mean the account in the
2 Variable Annuity Account established under ORS 238.260(2) for each active and inactive
3 member who has elected to have amounts paid or transferred into the Variable Annuity
4 Account.

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

6 (39) “Volunteer” means an individual who performs a service for a public employer,
7 and who receives no compensation for the service performed. The term “volunteer” does
8 not include an individual whose compensation received from the same public employer for
9 similar service within the same calendar year exceeds the reasonable market value for such
10 service.

11 (40) “Working day” means a day that the employer is open for business. Unless the
12 employer communicates this information to PERS, PERS will presume an employer’s
13 “working day” is the same as a “business day,” as defined in section (4) of this rule.

14 (41) “Year” means any period of 12 consecutive calendar months.

15 Stat. Auth.: ORS 238.650

16 Stats. Implemented: ORS 238

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

1 **459-075-0020**

2 **Withdrawal from OPSRP Pension Program**

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

4 (a) “Controlled group” means a group of employers treated as a single employer for
5 purposes of maintaining qualified status under federal law.

6 (b) “Effective date of withdrawal” has the same meaning as given the term in OAR
7 459-005-0001[(8)](10).

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

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

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

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

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

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

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

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

1 (f) The member complies with the requirements of *[section 2, chapter 52, Oregon*
2 *Laws 2007]* ORS 238A.120(4).

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

5 (4) A member may revoke a request for withdrawal from the pension program if
6 PERS receives the member’s written revocation of the request before the earlier of:

7 (a) The date of distribution; or

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

10 (5) A member who withdraws from the pension program terminates membership in
11 the pension program as of the effective date of withdrawal.

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

17 (7) The withdrawal shall be processed following receipt by PERS of all the
18 items in subsections (a) and (b) of this section:

19 (a) From the member:

20 (A) Completed withdrawal application; and

21 (B) Proof of member’s age.

1 (b) From the employer: Financial and demographic information indicating the
2 member has separated from employment with all participating employers and all
3 employers in a controlled group with a participating employer.

4 (8) PERS may cancel a member’s request for withdrawal if PERS does not
5 receive all the items specified in section (7) of this rule within 180 days of PERS’
6 receipt of the original withdrawal application.

7 ~~[(7)]~~(9) If a former member who has withdrawn from the pension program returns to
8 employment with a participating employer or an employer in a controlled group with a
9 participating employer before the first day of the second calendar month following the
10 month of the separation described in subsection (2)(b) of this rule, the withdrawal is
11 cancelled and membership is restored. The member must repay to PERS in a single
12 payment the total amount of all payments attributable to the withdrawal within 30 days
13 following the effective date of the employment. Upon receipt by PERS of repayment
14 under this section, service forfeited under section (6) of this rule is restored as of the
15 effective date of withdrawal.

16 ~~[(8)]~~(10) If the member fails to repay as provided in section ~~[(7)]~~(9) of this rule,
17 PERS shall take all reasonable steps to recover the repayment amount due, including any
18 interest, costs, or penalties assessed by PERS, under the provisions of ORS 238.715 and
19 OAR 459-005-0610. Upon receipt by PERS of repayment under this section, service
20 forfeited under section (6) of this rule is restored effective the first day of the month
21 following the date of repayment.

22 ~~[(9)]~~(11) The effective date of this rule is January 1, 2008.

23 Stat. Auth.: ORS 238A.450

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

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 080 – OPSRP INDIVIDUAL ACCOUNT PROGRAM**

1 **459-080-0020**

2 **Withdrawal of Individual Accounts**

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

4 (a) “Controlled group” means a group of employers treated as a single employer for
5 purposes of maintaining qualified status under federal law.

6 (b) “Effective date of withdrawal” has the same meaning as given the term in OAR
7 459-005-0001(8).

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

9 (d) “Individual account program” has the same meaning given the term in ORS
10 238A.005(9).

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

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

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

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

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

23

1 (d) The member complies with the requirements of *[section 3, chapter 52, Oregon*
2 *Laws 2007]* [ORS 238A.375\(4\)](#).

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

5 (a) The date of distribution; or

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

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

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

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

17 (7) If a former member who has withdrawn the individual accounts returns to
18 employment with a participating employer or an employer in a controlled group with a
19 participating employer before the first day of the second calendar month following the
20 month of the separation described in subsection (2)(a) of this rule the withdrawal is
21 cancelled and membership is restored. The member must repay to PERS in a single
22 payment the total amount of all payments attributable to the withdrawal within 30 days
23 following the effective date of the employment. Upon receipt by PERS of repayment under
24 this section, account(s) forfeited under section (5) and service forfeited under section (6) of

1 this rule are restored effective the date of distribution. The repayment amount received will
2 be credited pro rata to the accounts from which the withdrawal amount was derived.

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

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

12 Stat. Auth.: ORS 238A.450

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



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Kate Brown, Governor

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May 27, 2016

TO: Members of the PERS Board
FROM: Yvette Elledge-Rhodes, Chief Operations Officer
SUBJECT: *Moro* Implementation Project Update

COLA RESTORATION FUNDING

In September 2015, the Board approved funding the restored COLA payments from the Contingency Reserve in an amount approximating \$63.4 million. Below are the actual charges based on the completion of the first two populations in October 2015 and February 2016:

- October 2015 retroactive COLA payments grossed \$71.4 million, reduced by \$8.8 million from recovered Supplementary Payments resulting in a net of \$62.6 million charged to the Contingency Reserve.
- February 2016 retroactive COLA payments grossed \$4.9 million, reduced by \$704,384 from recovered Supplementary Payments and \$248,189 from Actuarial Equivalency Factor Invoices resulting in a net of \$3.9 million charged to the Contingency Reserve.
- Total charged to the Contingency Reserve to date: \$66.6 million

There will be additional charges to the Contingency Reserve for the remaining populations of 1,200 benefit recipients and 7,500 deceased accounts.

PROJECT ACTIVITIES

- User testing for the upcoming system release to incorporate the new COLA rules, scheduled for June 14, 2016.
- Planning a system batch process in October to adjust the remaining benefit recipients who were not captured in the two previous populations. (Population C)
- Planning the adjustment process for the deceased member population. (Population D)
 - We explored outsourcing the research needed to identify a contact for the deceased benefit recipient, but the cost was very high. Temporary resources will be used instead.
- Planning for the 2016 COLA update in July that will be paid to benefit recipients August 1, 2016. Information added to the PERS website.

Our project end date to resolve all *Moro* impacted accounts is still the end of the biennium, June 30, 2017.



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May 27, 2016

TO: Members of the PERS Board
FROM: Mini Kobbervig, PERS Health Insurance Program Manager
SUBJECT: PERS Health Insurance Program (PHIP) 2017 Plan Renewals and Rates

BACKGROUND

The PERS Health Insurance Program (PHIP) 2017 plan renewal posed a strategic challenge for PERS staff and consultants due to:

- a) Increased utilization of benefits resulting in initial rate proposals that were higher than recent year rate increases for some lines of coverage. The Medicare rates in particular are a major concern, the initial Retiree Only rates presented by several carriers are 30% and 40% increases over prior year rates.
- b) Continued financial pressures on insurance carriers from reductions in revenue (reimbursements) from the Centers for Medicare and Medicaid Services (CMS).
- c) Changes in methodologies used by CMS to determine reimbursements; for example, particularly targeting Employer Group Waiver Plans (EGWP) such as PHIP. This reduction was first announced in the Advance Notice in February 2016 and then confirmed in the Final Notice in April, along with the rationale for the change of reducing EGWP benefits to a level closer to the individual market. The projected reduction in annual reimbursement will be about 2-3%. CMS believes that EGWPs offer richer benefits and, by reducing the reimbursements to the carriers, it will cause EGWP benefits to be reduced to a level closer to the individual marketplace. The Final Notice for 2017 released from CMS announced that the changes to the EGWP rating methodologies will be implemented over a two-year period, signaling that the 2018 renewal will present similar challenges.
- d) Significant increases in actual and projected prescription drug costs.
- e) Conversion to a Per Member Per Month (PMPM) rate structure.

Actual 2015 experience showed increases in prescription drug utilization. The resulting claims costs reduced PHIP's financial reserves well beyond what was projected. As in years past, a variety of approaches were employed in an effort to minimize rate increases experienced by PHIP retirees. Some lines of coverage will receive a subsidy to maintain program stability. However, we are vigilant about tracking the use of reserves and, consequently, the amount of subsidies to be paid out of PHIP reserves will be vastly reduced in 2017.

The contract renewal process began in February 2016. After carriers had an opportunity to present their renewals and preliminary rate offers in March, meetings were held with individual carriers. At the end of April, PHIP staff and consultants met with its retiree advisors, including the PERS Board Liaison, to present and discuss the 2017 renewal. Several scenarios to contain costs were reviewed while waiting for the carriers' final offers to be submitted on May 2. After several exchanges, the proposed 2017 premium rate changes were finalized as shown in Attachment 2, detailed by carrier plan and type of coverage for both Medicare and non-Medicare enrollees.

PHIP is a voluntary insurance plan where eligible members pay their own premiums (with minimal subsidies as provided by law) for the plan of their choice. In addition to the premium, PERS retirees also cover the cost of program administration. The premium rates that members pay are inclusive of these costs.

2017 PLAN RENEWAL OVERVIEW

Medicare Plans

PHIP staff, consultants, retiree advisors, and carriers participated in numerous meetings and discussions to review and analyze ways in which the benefit design and cost share could be structured differently to mitigate the rate impacts that our membership would experience. For Plan Year 2017, PHIP will implement a number of changes to several of the Medicare Advantage plan offerings. These changes, while not significant in and of themselves, have resulted in more manageable rate increases to the PHIP Medicare Advantage medical plans.

Our carriers were asked to provide rate decrements (decreases) on variations of cost share and benefit plan designs, thus providing PHIP a menu approach as to which changes would be adopted for 2017. While PHIP attempts to maintain the stability of the plans year over year, we must also weigh the overall impact to the program and its members. After much consideration, the following changes were determined to provide the greatest rate relief and least amount of membership impact and have been adopted across all carriers:

- Medicare Medical: Part B drugs covered at 80%/20%;
- Durable medical equipment coinsurance has increased to 80%/20%;
- Office copays for specialists have been increased; and
- Medicare Pharmacy: 40% up to \$250 maximum per script; applicable to all medications, brands, generic and specialty.

Changes to Moda and Providence Medicare Advantage plans include slightly higher cost sharing for out of network services. This is a common industry standard and keeps our plans more closely aligned with the commercial marketplace, although the PHIP benefits remain richer.

Prescription Drug Program

Since the early 1990s, PHIP has offered a single prescription drug program for all non-Kaiser enrollees (Kaiser has been providing prescription drug benefits to their members throughout their contract with PHIP). In spring 2013, PHIP began looking at changing that model, allowing each of the other carriers to provide a prescription plan for their respective membership.

Nationally, there has been a dramatic upward trend in the cost of prescription drugs. Previously, cost trends for Medicare prescription drugs in 2012 and 2013 were actually negative due, in large part, to a much higher use of generic drugs. Actual 2015 experience for PHIP (as of December 2015) shows that trend for Medicare and non-Medicare has reversed, increasing by 16.7% and 17.8%, respectively. Much of the cost is attributable to new specialty drugs that have come to market and a 15% increase in the cost of generics. Some of these specialty drugs can cost upwards of \$28,000 for a 30-day supply. The most recent quarterly review shows that, in just five of the top 10 therapeutic categories, 5% of the volume is driving 31% of the plan cost. These cost drivers presented a big challenge for the program when trying to balance member benefits, co-pays, and maximum out-of-pocket costs and, at the same time, ensuring that PHIP maintains

financial viability. This prescription drug cost trend has clearly put upward pressure on premium rates. PHIP continues to work closely with all of our carriers for innovative ways to control costs without jeopardizing customer service and member advocacy that are hallmarks of the program.

During the 2016 renewal process, PHIP analyzed whether to cede the Prescription Drug Plan (PDP) to the individual medical carriers and concluded that the membership and program would be better served if the PDP was moved from a single uniform administrator, Moda, to the individual carriers: PacificSource, Providence, and Moda. January 1, 2016, came without any major member disruption and the transition is viewed as a big success despite the complicated nature of the transition.

The 2017 renewal process for pharmacy came on the tail-end of six months of intense work by PHIP and the affected carriers to transition member pharmacy data to the respective plans. PHIP staff and consultants are working closely with each individual carrier to monitor and review trends and costs at the individual carrier level, but the 2017 renewal relied upon much of the same data for rate development because PacificSource and Providence did not yet have sufficient data of their own to utilize.

Non-Medicare

In 2014, PHIP expanded the non-Medicare plan offerings and introduced the Select Value plan with a \$1,000 deductible for all carriers. This allowed the program to maintain a level of compatibility and competitiveness with the evolving Affordable Care Act (ACA) marketplace. As of March 2016, about 668 members are enrolled in the Select Value plans across all PHIP carriers, an increase of about 300 members since 2015. Members in the Select Value plan are not permitted to move back into the Core Value plan (\$500 deductible); this is to maintain stability of the plans and minimize anti-selection that could lead to negative rate impacts.

The 2017 non-Medicare Select and Core Value plans' prescription drug program maximum per prescription has been increased from \$150 to \$250 per prescription. The overall annual out-of-pocket maximum for the prescription drug program has been increased to \$5,000. These changes were implemented to mitigate some of the premium rate increases that are attributed to higher prescription claims cost and to keep in relative alignment with the Medicare prescription plan changes. Members have options available in the commercial marketplace, but PHIP plans are generally considered less confusing and more stable while offering a richer benefit.

Rate Premium Methodology

In spring 2014, PHIP began exploring the possibility of changing from a two-tier rate structure (Single and Family) to a Per Member Per Month (PMPM) structure. PHIP has used a two-tier rate structure for decades. Under this methodology, there is a rate for retiree-only coverage and a higher rate for those that cover a spouse and/or dependent children. This two-tiered structure has weaknesses that PHIP has been attempting to address. Under this methodology, the actual number of additional dependents covered is not reflected in the premium charged, resulting in internal subsidies for both the retiree-only coverage and those with smaller families. Furthermore, appropriate rating is more complicated when a family consists of both Medicare and non-Medicare memberships as those programs have different benefits, rates, and administrative components.

For 2017, PHIP is moving to the new PMPM rate structure, which is more consistent with the individual marketplace. Under PMPM, every member, up to a capped number of dependents, receives an additional rate charge. The PMPM tiering change resulted in greater increases for some family structures. PHIP decided to smooth the rates in this first year of change using the following methodology: an Adult premium was first determined, followed by a Child cost to Adult cost ratio, and lastly a per Child cap was established. PHIP has 96% Medicare and 4% non-Medicare membership, which adds to the complexity of the PHIP as we can have families whose members fall into both Medicare and non-Medicare plans.

In recommending a change to this premium methodology, PHIP reviewed two of the program's core values: 1. Maintaining stability of premiums, and 2. Maintaining stability of coverage. With respect to these values, PHIP is proposing to smooth the PMPM rates to minimize the initial impact to those larger families that will be impacted. This smoothing will initially place a rating cap on families with more than two covered children. This practice will be reviewed during the 2018 rate setting process to determine if it should continue or change.

CURRENT 2016 PHIP PLANS OFFERED

The PHIP contracts with four health insurers for a variety of coverages, allowing participants a range of choices while maintaining stability of the overall program. Contracts that are in place and/or proposed are as follows:

- 1) Kaiser Permanente
 - a) Medicare Advantage - Senior Advantage HMO Plan
 - b) Traditional HMO (Core) Non-Medicare Plan
 - c) \$1,000 Deductible (Select) Non-Medicare HMO plan
 - d) PDP that covers: Kaiser Permanente Medicare and Non-Medicare participants
 - e) Dental Plan
- 2) Moda Health Plan/ODS - Delta Dental of Oregon
 - a) Traditional Medicare Supplement
 - b) Medicare Advantage - PERS Moda Health PPORX (PPO) Plan
 - c) \$500 Deductible (Core) Non-Medicare PPO Plan
 - d) \$1,000 Deductible (Select) Non-Medicare PPO Plan
 - e) PDP that covers: Moda Health Medicare and Non-Medicare participants
 - f) Dental Plan
- 3) PacificSource Community Health Plans, Inc.
 - a) Medicare Advantage - Medicare Essentials RX 803 HMO Plan
 - b) \$500 Deductible (Core) Non-Medicare PPO Plan
 - c) \$1,000 Deductible (Select) Non-Medicare PPO Plan
 - d) PDP that covers: PacificSource Health Plan Medicare and Non-Medicare participants
- 4) Providence Health Plan
 - a) Medicare Advantage - Medicare Align Plan (HMO)
 - b) Medicare Advantage - Medicare Flex Plan (POS)
 - c) \$500 Deductible (Core) Non-Medicare PPO Plan
 - d) \$1,000 Deductible (Select) Non-Medicare PPO Plan
 - e) PDP that covers: Providence Health Plan Medicare and Non-Medicare participants

Additionally, PHIP contracts with UNUM for Long Term Care (LTC) coverage offered to PERS retirees under age 84 and qualified through the UNUM application process. It should be noted that UNUM has received approval from the state for a rate increase of 20% in both 2017 and 2018. While PHIP holds the group policy, it does not negotiate rates for LTC; the Oregon Insurance Division works directly with UNUM on rate settings.

SUMMARY OF PROPOSED RENEWAL ACTION REQUIRING BOARD APPROVAL

PHIP recommends the following for the 2017 Plan Year:

- For medical, prescription drugs, and dental (where applicable), PHIP will continue to contract for Medicare plans with Kaiser Permanente, Moda Health Plan, PacificSource Health Plans, and Providence Health Assurance. For non-Medicare plans, PHIP will continue to contract with Kaiser Permanente, Moda Health Plan, PacificSource Health Plans, and Providence Health Plan.
- To modify prescription out-of-pocket maximums on a per prescription and annual basis for the non-Medicare Select and Core Value plans as described above.
- To modify plan design, co-pays, and prescription out-of-pocket maximums for Medicare plans as described above.
- To move from a two-tier rate structure to a PMPM rate tier structure and implement the premium rates to carriers as shown on Attachment 2.

As part of this renewal, a reduced number of subsidies have been incorporated into the rates. Proposed medical plan subsidies are detailed in the chart below. There are no surcharges on rates in plan year 2017.

2017 Plan Subsidy	Medicare Moda Supplement	Non-Medicare PacificSource Core Value
RX	(\$10.00)	\$0.00
Medical	\$0.00	(\$95.00)

The Moda Supplement subsidy is provided from surplus reserves that have accumulated over previous years with better than expected Moda experience in comparison to premiums charged. The Moda programs’ funding mechanism allows any of these surpluses to flow back to the member as opposed to being retained. Additionally, because PacificSource returned 2015 funds (after rates had been set for the year) to PHIP from an ACA tax that was not applicable, PHIP is able to pass these funds back to the PacificSource members to assist in mitigating the higher rate impact on the PacificSource Core Value plan rate .

We are pleased to bring these proposals to you and thereby conclude another year of hard work by our consultants, health plans, retiree advisors, and PHIP staff. With the PERS Board’s approval today, PHIP’s third-party administrator (TPA), staff, and our consultants will begin updating the PHIP Member Handbook and Benefit Guide and plan change materials. After that, starting in mid-September, PHIP staff, the TPA, and carriers will begin holding retiree Plan Change meetings throughout the state. Traditionally, these meetings have been very well attended and we anticipate at least the same or greater attendance this year.

Our membership continues to grow annually and we are looking forward to another successful year and partnership with our members, vendors, consultants, and retiree advisors.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt the proposed PHIP contract renewals, benefits and rates for 2017 as presented in Attachment 2.”
2. Direct staff to make other changes to the program or explore other negotiations with the carriers.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: These renewal rates were developed over months of review, negotiation with the carriers, and consultation with the PHIP Advisory Committee. Changes to the plans or resulting rates would require re-engagement and renegotiation with affected carriers, putting in jeopardy our time line for the Plan Renewal meetings and other communications to allow our members to prepare for these plan changes.

If the Board does not adopt: Staff would return with renegotiated renewal terms and rates based on further plan changes.

C.2. Attachment 1 - PERS Health Insurance Program Statistics

C.2. Attachment 2 - PERS Health Insurance Program Proposed 2017 Renewal Rates



Program Enrollment (March 2016)	Non- Medicare Core & Select Value Plans	Medicare	Totals
Covered Lives	2,579	57,291	59,870
Retirees (or surviving spouses)	1,587	46,908	48,495
Spouses/Dependents	992	10,383	11,375
Average Age of Enrolled Retirees	56	75	74

Health Plan Membership Enrollment			
Medicare		Non-Medicare (Core & Select Plans)	
Kaiser (Portland to Salem)	9,760	Kaiser (Portland to Salem)	604
Kaiser (No. California)	33	Kaiser (No. California)	0
Kaiser (So. California)	29	Kaiser (So. California)	0
Moda - Advantage (Oregon)	8,414	Moda	807
Moda - Supplement (all 50 States)	25,411		
PacificSource	1,283	Pacific Source	21
Providence - Medicare Flex	2,405	Providence	1,146
Providence- Medicare Align	9,956		
Dental		Dental	
Kaiser Dental	4,178	Kaiser Dental	333
ODS/Delta Dental	31,045	ODS/Delta Dental	1,621

Statutory Health Insurance Premium Subsidies (March 2016)	
Retirees Receiving RHIA	44,921
Retirees Receiving RHIPA	1,270
RHIA Monthly Payment - \$60 PMPM	\$2,695,260
RHIPA Monthly Payment - \$259 (avg) PMPM	\$376,567
Total Monthly Premium Paid to Health Plans	\$18,834,104

PHIP 2017 RENEWAL RATES

2017 vs 2016 | Carrier Rates
Including All Carrier Administrative Fees

Moda Medical / Rx	Medicare Supplement	Medicare Advantage	Non- Medicare Core	Non-Medicare Select	Providence Medical / Rx	Medicare Align	Medicare Flex	Non- Medicare Core	Non- Medicare Select
Adult Medical Rate	\$299.84	\$360.57	\$934.00	\$880.00	Adult Medical Rate	\$249.15	\$215.37	\$947.84	\$799.94
Child Medical Rate	\$239.87	\$288.45	\$280.20	\$264.00	Child Medical Rate	\$199.32	\$172.30	\$284.35	\$239.98
Common Enrollment					Common Enrollment				
Retiree only	\$299.84	\$360.57	\$934.00	\$880.00	Retiree only	\$249.15	\$215.37	\$947.84	\$799.94
Retiree + Spouse	\$599.68	\$721.14	\$1,868.00	\$1,760.00	Retiree + Spouse	\$498.30	\$430.74	\$1,895.68	\$1,599.88
Retiree + 1 child	\$539.71	\$649.02	\$1,214.20	\$1,144.00	Retiree + 1 child	\$448.47	\$387.67	\$1,232.19	\$1,039.92
Retiree + 2 children*	\$779.58	\$937.47	\$1,494.40	\$1,408.00	Retiree + 2 children*	\$647.79	\$559.97	\$1,516.54	\$1,279.90
Retiree + Spouse + 1 child	\$839.55	\$1,009.59	\$2,148.20	\$2,024.00	Retiree + Spouse + 1 child	\$697.62	\$603.04	\$2,180.03	\$1,839.86
Retiree + Spouse + 2 children*	\$1,079.42	\$1,298.04	\$2,428.40	\$2,288.00	Retiree + Spouse + 2 children*	\$896.94	\$775.34	\$2,464.38	\$2,079.84
Enrollment as of March 2016	20,517	7,103	319	50	Enrollment as of March 2016	8,246	1,918	618	445
Current 2016 Retiree Only Rate	\$252.98	\$319.26	\$996.61	\$931.78	Current 2016 Retiree Only Rate	\$225.40	\$199.00	\$878.37	\$736.43
Proposed 2017 Retiree Only Rate	\$299.84	\$360.57	\$934.00	\$880.00	Proposed 2017 Retiree Only Rate	\$249.15	\$215.37	\$947.84	\$799.94
Percentage Change 2017 vs 2016	18.5%	12.9%	-6.3%	-5.6%	Percentage Change 2017 vs 2016	10.5%	8.2%	7.9%	8.6%

Moda - Delta Dental | Dental Plan

Adult Rate	\$63.15
Child Rate	\$25.26
Enrollment as of March 2016	23,583
Current 2016 Retiree Only Rate	\$65.41
Proposed 2017 Retiree Only Rate	\$63.15
Percentage Change 2017 vs 2016	-3.5%

Assumptions

1. Medicare Child at .8 vs 1 with a 2 child cap
2. Non-Medicare child at .3 with a 2 child cap
3. Dental Child at .4 vs 1 with a 2 child cap
4. Rates shown do not include any applicable subsidies
5. Includes all Carrier Administrative Fees
6. Effective January 1, 2017
7. *Two Child Cap established

PHIP 2017 RENEWAL RATES

2017 vs 2016 | Carrier Rates
Including All Carrier Administrative Fees

Kaiser (Oregon) Medical / Rx	Medicare Advantage	Non- Medicare Core	Non-Medicare Select	PacificSource Medical / Rx	Medicare Essentials RX 803	Non- Medicare Core	Non- Medicare Select
Adult Medical Rate	\$220.24	\$821.00	\$682.00	Adult Medical Rate	\$310.70	\$1,044.06	\$879.38
Child Medical Rate	\$176.19	\$246.30	\$204.60	Child Medical Rate	\$248.56	\$313.22	\$263.82
Common Enrollment				Common Enrollment			
Retiree only	\$220.24	\$821.00	\$682.00	Retiree only	\$310.70	\$1,044.06	\$879.38
Retiree + Spouse	\$440.48	\$1,642.00	\$1,364.00	Retiree + Spouse	\$621.40	\$2,088.12	\$1,758.76
Retiree + 1 child	\$396.43	\$1,067.30	\$886.60	Retiree + 1 child	\$559.26	\$1,357.28	\$1,143.20
Retiree + 2 children*	\$572.62	\$1,313.60	\$1,091.20	Retiree + 2 children*	\$807.82	\$1,670.50	\$1,407.02
Retiree + Spouse + 1 child	\$616.67	\$1,888.30	\$1,568.60	Retiree + Spouse + 1 child	\$869.96	\$2,401.34	\$2,022.58
Retiree + Spouse + 2 children*	\$792.86	\$2,134.60	\$1,773.20	Retiree + Spouse + 2 children*	\$1,118.52	\$2,714.56	\$2,286.40
Enrollment as of March 2016	7,900	319	45	Enrollment as of March 2016	1,033	8	7
Current 2016 Retiree Only Rate	\$223.89	\$840.61	\$680.63	Current 2016 Retiree Only Rate	\$262.76	\$885.93	\$746.37
Proposed 2017 Retiree Only Rate	\$220.24	\$821.00	\$682.00	Proposed 2017 Retiree Only Rate	\$310.70	\$1,044.06	\$879.38
Percentage Change 2017 vs 2016	-1.6%	-2.3%	0.2%	Percentage Change 2017 vs 2016	18.2%	17.8%	17.8%

Kaiser | Dental Plan

Adult Rate	\$63.79
Child Rate	\$25.52
Enrollment as of March 2016	3,567
Current 2016 Retiree Only Rate	\$62.98
Proposed 2017 Retiree Only Rate	\$63.79
Percentage Change 2017 vs 2016	1.3%

Assumptions

1. Medicare Child at .8 vs 1
2. Non-Medicare child at .3 vs 1
3. Dental Child at .4 vs 1
4. Rates shown do not include any applicable subsidies
5. Includes all Carrier Administrative Fees
6. Effective January 1, 2017
7. *Two Child Cap established



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Kate Brown, Governor

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May 27, 2016

TO: Members of the PERS Board
FROM: Roger Smith, Deferred Compensation Manager
SUBJECT: Appoint Advisory Committee Members for Oregon Savings Growth Plan

OVERVIEW

- Action: Appoint one new member to fill an unexpired vacancy and renew the appointment of three current members to the Oregon Savings Growth Plan (OSGP) Advisory Committee.
- Reason: The Advisory Committee consists of seven members appointed by the PERS Board for fixed terms, but each member serves at the pleasure of the PERS Board.

BACKGROUND

ORS 243.505 provides an Advisory Committee for OSGP that consists of seven members with knowledge of deferred compensation plans. According to that statute and OAR 459-050-0025 (attached), the Committee shall study and advise the Public Employees Retirement Board, upon request, on all aspects of the deferred compensation program, including but not limited to:

- a) The deferred compensation program fee structure and program procedures;
- b) State and federal legislative issues relative to the administration of deferred compensation;
- c) Administration of the catch-up and financial hardship provisions in Section 457 of the Internal Revenue Code;
- d) Ways and means to inform and educate eligible employees about the deferred compensation program;
- e) The expressed desires of eligible employees as to the deferred compensation program.

Advisory Committee members must be OSGP participants and have knowledge of the current program. One member shall be retired from state service. Two members shall be participants with separate local government plan sponsors who offer OSGP. Four members shall be employees of separate state agencies. No member shall be an employee of PERS during the term of appointment. No two members shall be employed by the same state agency or local government plan sponsor.

Appointment is for three years except in the case of a vacancy during an unexpired term, in which case the Board's appointment will become immediately effective for the unexpired term. A member is eligible for reappointment, but no person shall serve more than two consecutive full terms.

Currently, the Advisory Committee is made up of the following members:

Name	Employer/City	Term	Term Ends
Jeff Labhart	Oregon Dept. of Transportation, Bend	Second	Retiring
Richard Bailey	Oregon Institute of Technology	First	6/30/16
Brady Boothe	Oregon State Police	First	6/30/16
Kevin Nordhill	Retiree	First	6/30/16
Celeste Van Cleave	Central Linn School District	First	6/30/17
Steve Schnurbusch	Oregon Dept. of Environmental Quality	First	6/30/17
Mark Carlton, Chair	McMinnville, Water & Light	Second	6/30/18

The criteria staff use in selecting Advisory Committee members includes:

1. Current participation in OSGP.
2. Meeting the qualifications for the vacancy to be filled.
3. Possessing a mixture of expertise, knowledge, and experience useful to the Advisory Committee.
4. Sincere interest in deferred compensation program.
5. Willing and able to work in a group setting to review and recommend policies governing the program.

RECOMMENDED APPOINTMENTS

The first three-year term of Kevin Nordhill, Richard Bailey, and Brady Boothe will expire on June 30, 2016. OSGP staff recommends reappointing them for an additional three-year term.

Staff also recommends Thomas Poon, from the Department of Consumer and Business Services, to fill the vacancy due to Jeff Labhart's separation from state service.

BOARD ACTION

The Board's options for appointments to the OSGP Advisory Committee are:

1. Accept the recommendation to appoint Thomas Poon to fill the vacancy of the state employee on the Advisory Committee, effective immediately, and appoint Kevin Nordhill, Richard Bailey, and Brady Boothe to a second three-year term.
2. Request staff to solicit further applications for review.

STAFF RECOMMENDATION

Staff recommends the Board adopt Option #1 above.

- Reason: Staff believes Thomas Poon meets the criteria and service needs of the Advisory Committee. Kevin Nordhill, Richard Bailey, and Brady Boothe have served well during their first term and are all assets to the Advisory Committee.

C.3. Attachment 1 – ORS 243.505, *Deferred Compensation Advisory Committee*; OAR 459-050-0025, *Deferred Compensation Advisory Committee*

ORS 243.505 Deferred Compensation Advisory Committee

- (1) The Deferred Compensation Advisory Committee shall be appointed by the Public Employees Retirement Board, consisting of seven members with knowledge of deferred compensation plans.
- (2) At the direction of the board, the committee shall advise the Public Employees Retirement Board on policies and procedures and such other matters as the board may request.
- (3) The term of office of each member is three years, but a member serves at the pleasure of the board. Before the expiration of the term of a member, the board shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the board shall make an appointment to become immediately effective for the unexpired term.
- (4) A member of the Deferred Compensation Advisory Committee is entitled to compensation and expenses as provided in ORS 292.495.
- (5) The Deferred Compensation Advisory Committee shall select one of its members as chairperson and another as vice chairperson, for such terms and with duties and powers necessary for the performance of the functions of such offices as the committee determines.
- (6) A majority of the members of the committee constitutes a quorum for the transaction of business.
- (7) The Deferred Compensation Advisory Committee may meet at a place, day and hour determined by the committee. The committee also may meet at other times and places specified by the call of the chairperson or of a majority of the members of the committee. [1991 c.618 §10; 1997 c.179 §19; 1999 c.406 §1]

OAR 459-050-0025

Deferred Compensation Advisory Committee

- (1) The seven members of the Deferred Compensation Advisory Committee provided for under ORS 243.505, shall be subject to the following qualifications and limitations:
 - (a) Each member shall be a participant in a deferred compensation plan established under ORS 243.401 to 243.507, and shall have knowledge of the Program.
 - (b) Four members shall be participants in the state deferred compensation plan.
 - (c) Two members shall be participants in a local government deferred compensation plan.
 - (d) One member shall be a retired deferred compensation plan participant.

(e) No two members may be employed by the same state agency or local government except that a member who transfers employment to the employer of another member may continue to serve on the Advisory Committee, but only for the balance of the term of appointment of the transferring member.

(f) No member may serve more than two consecutive full terms.

(g) No member may be an employee of PERS during the term of appointment.

(2) The Advisory Committee shall study and advise the Board on all aspects of the Program, including but not limited to:

(a) The Program fee structure and procedures;

(b) State and federal legislative issues relative to the administration of deferred compensation plans;

(c) The administration of the catch-up and the financial hardship provisions in Section 457 of the Internal Revenue Code;

(d) Ways and means to inform and educate eligible employees about the Program;

(e) The expressed desires of eligible employees as to the Program; and

(f) The actuarial characteristics of eligible employees.

(3) Upon the request of the OIC, the Advisory Committee shall study and advise the Board on the following:

(a) Investment programs, including options and providers; and

(b) Information furnished by the OIC or the State Treasurer concerning the types of available investments, the respective balance of risk and return of each investment, and the administrative costs associated with each investment.

(4) The Advisory Committee shall meet at least four times during a calendar year.

(5) A majority of the Advisory Committee shall constitute a quorum for transacting business. However, the Advisory Committee may establish such other procedures for conducting business that it deems necessary.

(6) Pursuant to the Public Meetings Law, ORS 192.610 to 192.690, the Deferred Compensation Manager shall distribute to the Advisory Committee, and other interested parties, an agenda for a regular meeting a reasonable time prior to the meeting.

(7) Nominations of candidates for the Advisory Committee shall be made as follows:

(a) Notice of a position on the Advisory Committee expected to become vacant upon the expiration of a term of appointment shall be published not later than April 15 of each calendar year.

(b) Persons interested in serving on the Advisory Committee must apply in writing to the Manager not later than May 15 following the publication of a vacancy.

(c) The Manager shall review the written applications of interested persons for completeness, accuracy, and satisfaction of the minimum requirements of the vacant position on the Advisory Committee.

(d) A committee consisting of the Manager and two members of PERS executive or managerial staff designated by the PERS Executive Director shall review the acceptable applications and recommend to the Board candidates for appointment to the Advisory Committee that:

(A) Reflect a cross section of state agencies, participating local governments, and classification levels;

(B) Reflect a mixture of expertise, knowledge, and experience useful to the Advisory Committee;

(C) Appear to have a sincere interest in the Program; and

(D) Appear to be willing and able to work in a group setting to review and recommend policies governing the Program.

(e) In the event of a vacancy for an unexpired term, the Manager may select applications from the most recent list of interested persons established under subsection (c) of this section and the applications of other persons as deemed appropriate for consideration. A committee consisting of the Manager and two members of PERS executive or managerial staff designated by the PERS Executive Director shall review the selected applications and recommend to the Board candidates for appointment to the Advisory Committee. The appointment shall be immediately effective for the remainder of the unexpired term. If no candidate is recommended or appointed, the vacancy must be filled under the provisions of subsections (a) through (d) of this section.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.505

Hist.: PERS 2-1993, f. & cert. ef. 9-23-93; PERS 2-1995, f. 10-13-95, cert. ef. 11-1-95; PERS 5-2000, f. & cert. ef. 8-11-00; PERS 3-2007, f. & cert. ef. 1-23-07; PERS 11-2014, f. & cert. ef. 7-25-14



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May 27, 2016

TO: Members of the PERS Board
FROM: Kyle J. Knoll, Chief Administration Officer
SUBJECT: 2017-19 Agency Budget Development and Strategic Update

PERS is finalizing preparations to submit its 2017-19 Agency Request Budget (ARB) in the 2017 legislative session. Once the Board approves submission at its July 29, 2016 meeting, the Department of Administrative Services' Chief Financial Office (DAS/CFO) will review that request and incorporate it into the Governor's Budget.

PERS' draft 2017-19 ARB is developed to align with the Governor's 10-Year Strategic Plan of Improving Government by focusing on improving customer service metrics and strengthening the agency's technology infrastructure. A draft of the full 2017-19 ARB will be presented for approval at the PERS Board's July 29, 2016 meeting.

This update provides some context for that decision by summarizing our progress on implementing the policy packages approved for the current biennium, providing an overview of PERS' Current Service Level budget as projected for 2017-19, and identifying policy packages PERS is proposing for the 2017-19 biennium.

STATUS REPORT ON 2015-17 POLICY OPTION PACKAGES IMPLEMENTATION

The following packages were approved as part of the agency's original Legislatively Adopted Budget for the current 2015-17 biennium:

Package 021 – Phase-In Program Package Approval for three FTE Limited Duration Positions

This package provided the continued support of the Strunk/Eugene Overpayment Recovery project that was approved by the Legislative Emergency Board in May 2012. Three limited duration positions were approved to continue the collection efforts in the 2015-17 biennium.

These staff members process payments and maintain repayment plans with more than 20,499 benefit recipients while monitoring more than 3,200 invoices that were assigned to third-party collectors. The three staff continues to be necessary for the remainder of the current biennium and for 2017-19, consistent with the project plan that provided the basis for the Emergency Board's previous approval. The staff may also be necessary in the 2019-21 biennium to maintain the repayment plans and monitor the collection efforts.

Package 101 – “Current Service Metrics Staffing Request” Permanent Positions

This package converted four limited duration positions in the Operations Division to permanent positions to maintain current service delivery levels in the Call Center. The Call Center staff is the principle source by which members receive adequate information to allow them to make decisions about the benefit programs administered by PERS. Since 2008, call volume has increased, driven by two factors: (1) legislative discussions about, and enactments of, PERS plan changes that could significantly impact benefits on different populations, depending on the change; and (2) an increasing percentage of members eligible to retire. Conclusively resolving these 2013-15 limited duration positions as permanent positions in 2015-17 allowed PERS to establish a correct current

service level baseline for future operations and planning; the positions were part of the agency's base staffing needs. This package also established a permanent position in the Benefits Preparation Section to support and increase service levels for the OPSRP retirement workload.

Package 102 – “Fully Integrating IAP Administration into the PERS ORION System”

This package established three limited duration positions in the Information Services Division. This package is the beginning of Phase III of a three-phase project. When the project is completed in December 2018, all aspects of the Individual Account Program (IAP) administration will have been transferred to PERS and over \$2.2 million in annual costs for an outside third-party administrator (TPA) will have been eliminated. The split administration between PERS and the TPA creates fundamental, structural problems (handoffs between PERS and the TPA, redundant staff work, and constant reconciliation of records between the two systems) which lead to lengthy processing time and occasional errors. PERS currently administers major components of the IAP. Eliminating the TPA will enhance PERS' ability to better execute its mission to “pay the right person the right benefit at the right time.”

Package 103 – “Enhanced Staffing for the Data Verification Unit”

Senate Bill 897 (2009) allows members within two years of their earliest retirement date to request a data verification, which “locks down” the specified elements of the data used to ultimately calculate their benefit. Once “locked,” employers and members may not modify the data. This program took effect in July 2011. This package established seven permanent positions in the Operations Division to expand the Data Verification Unit from five staff to twelve staff permanent staff. The permanent staff will allow PERS to improve service levels as well as decrease the accumulated backlog.

CURRENT SERVICE LEVEL BUDGET

Building the agency's 2017-19 requested budget starts with establishing our Current Service Level (CSL) budget. The CSL is the calculated cost of continuing the agency's base 2015-17 budget (i.e., without including any of the approved non-permanent policy option packages) into the next biennium at current levels. The CSL budget carries forward the agency's permanent positions and supporting services, allowing for projected cost increases such as inflation. PERS is refining and preparing to submit the CSL budget to DAS/CFO at the end of May 2016. The CSL budget will be audited and confirmed by DAS/CFO in June 2016, after which PERS will add in the costs for its proposed 2017-19 policy option packages.

At this time, the agency's estimated CSL for 2017-19 (which includes 374 permanent positions) looks to be about:

\$ 71.8 million	Personal Services (Employee Compensation / Benefits)
29.8 million	Services & Supplies (Business Operations Expenditures)
1.3 million	Capital Outlay (Equipment with Initial Value of \$5,000 or more)

\$ 102.9 million	TOTAL

For comparison, PERS' Legislatively Approved Budget for the 2015-17 biennium (including the increase budget limitation of \$12,607,587 in Senate Bill 5701 (February 2016) is:

\$ 69.3 million	Personal Services (Employee Compensation/Benefits)
32.6 million	Services & Supplies (Business Operations Expenditures)
1.1 million	Capital Outlay (Equipment with Initial Value of \$5,000 or more)
3.5 million	Unscheduled (Approved, but not available until certain criteria are met)

\$106.5 million TOTAL

POLICY OPTION PACKAGES FOR 2017-19 AND STRATEGIC INITIATIVES

Consistent with furthering the agency's mission and in support of its Vision and Core Values, staff is developing business cases for the following proposals that would form the basis for policy option packages in the 2017-19 budget cycle:

- \$2,757,596 increase in limitation and the establishment of three permanent positions to complete the third phase of the IAP Administration project and continue funding three positions as permanent full-time positions.

This proposed policy package is aligned with PERS' 2015-20 Strategic Plan initiative, Member Services and Communications, in the focus area of Quality Delivery Methods by enhancing Online Member Services and modernizing PERS' website to be compatible with common interfaces.

In addition, this project will increase Data Reliability, another 2015-20 Strategic Plan initiative, by consolidating IAP data and providing a query process that is more efficient and less complex.

Lastly, this project addresses the 2015-20 Strategic Plan initiative for Information Governance, Security, and Technology in two focus areas - Information Governance and Agile Technology System.

- \$6,401,008 increase in limitation and the establishment of three permanent positions for technology modernization and a case management solution that will provide modernized solutions that maintain current service levels, are more efficient in managing pension plan changes, and enhance member services while maintaining the overall cost per member to administer benefits.

This proposed policy package is aligned with PERS' 2015-20 Strategic Plan initiative Information Governance, Security, and Technology in the focus area of Agile Technology System by resolving missing functionality and key technical debt issues affecting ORION's administration, performance, maintainability, and sustainability.

In addition, this package will also align with PERS' 2015-20 Strategic Plan initiative, Member Services and Communications, by providing solutions in the focus area of Quality Delivery Methods by leveraging mobile devices and social media.

- \$1,151,166 increase in limitation and the establishment of three permanent positions to create and support a PERS Cyber Security team which will be responsible for developing, implementing, and managing PERS Cyber Security Program.

This proposed policy package is aligned with PERS 2015-20 Strategic Plan initiative of Information Governance, Security, and Technology in the focus area of Information Security. This program will enhance PERS' Information Security Management System which establishes an information risk assessment and treatment process and develops a formal Information Security Organization Structure. More importantly, the program meets one of PERS' Operating Principles: Information Security. PERS is constantly vigilant in safeguarding confidential information.

If approved, these three Policy Option Packages would increase the agency's expenditure limitation by a total of \$10,309,700 to \$113,209,770 for the 2017-19 biennium, a 6.3% increase over the 2015-17 budget.

C.4 Attachment 1 – 2017-19 Policy Option Packages Business Case Summaries

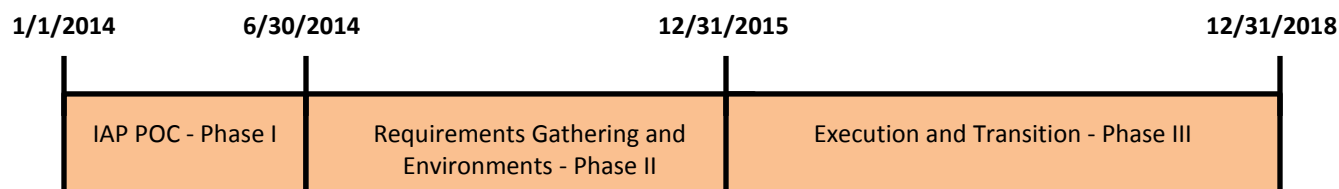
Individual Account Program (IAP) Administration Project Business Case

The IAP was created in August 2003 by the Oregon Legislature as a benefit cost allocation measure with the mandate that the program be operational four months later in January 2004. At that time, PERS contracted with a third-party administrator (TPA) to administer the program. In 2006, the PERS Board adopted a remediation plan for the IAP to align with PERS' annual contribution reconciliation and earnings crediting processes. The TPA was unable to provide complete functionality to administer all aspects of the IAP after remediation. Manual processes and workarounds for IAP annual earnings crediting were created to fill the functionality gap. These manual processes still exist today.

PERS explored several options to address the shortcomings of the current IAP administration. Based on several factors, PERS chose to bring IAP administration in house and to support it with internal resources. Initial project approval was granted from the 2013 Legislature, with further approval and funding for Phase I (Proof of Concept), Phase II (Planning), and Phase III (Execution/Transition - through June 2017) coming in 2015 and 2016 sessions. Phase III is currently in progress and planned to be completed in December 2018.

Phase I and II have been completed. Phase III is partially funded through June 2017. PERS is requesting \$2,757,596 for the 2017-2019 biennium to complete Phase III of the IAP Administration project.

High Level Timeline for IAP Administration Project



2015-2019 Financials

	Approved 15-17	Anticipated 15-17	Shortfall 15-17	Anticipated 17-19	Shortfall 17-19
Personnel Services	\$ 513,076.00	\$ 257,000.00	\$ 256,076.00	\$ 559,401.00	\$ (559,401.00)
Services and Supplies	\$ 694,325.00	\$ 2,180,000.00	\$ (1,485,675.00)	\$ 1,998,195.00	\$ (1,998,195.00)
Capital Outlay	\$ 500,000.00	\$ 500,000.00	\$ -	\$ -	\$ -
Software Licensing	\$ 33,000.00	\$ 33,000.00	\$ -	\$ -	\$ -
External QA	\$ 173,998.00	\$ 200,000.00	\$ (26,002.00)	\$ 200,000.00	\$ (200,000.00)
Subtotals	\$ 1,914,399.00	\$ 3,170,000.00	\$ (1,255,601.00)	\$ 2,757,596.00	\$ (2,757,596.00)
Total Anticipated Phase 3 Cost		\$ 5,927,596.00			
Total Shortfall		\$ (4,013,197.00)			

Summary of Requested Funds for the 2017-19 Biennium

Personnel Services (3 permanent FTE)	\$559,401
Services and Supplies (increase to IT Professional Services)	\$1,998,195
External QA	\$200,000
Total request for 2017-2019	\$2,757,596

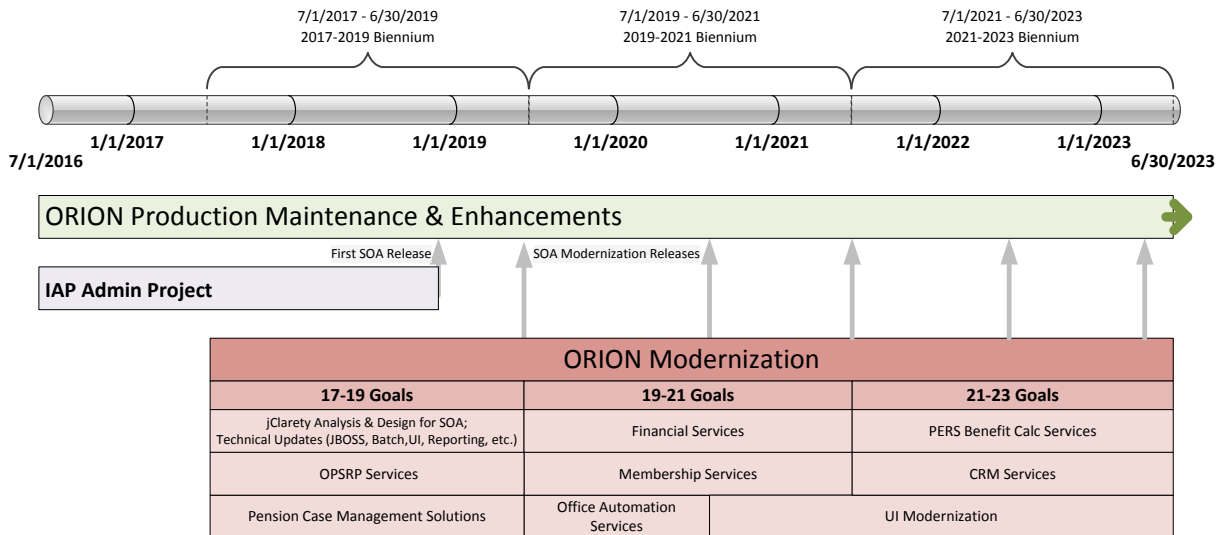
Technology Modernization Business Case

The agency's 2015-2020 Strategic Plan has a goal to provide an Agile Technology System that improves IT efficiency and responsiveness to business operational changes. The objective is to resolve functionality and technical debt deficiencies that affect system administration, performance, maintainability, and sustainability. The Oregon Retirement Information Online Network (ORION) is the agency's enterprise IT system and application that supports the agency's operations. This business case shows the value of normalizing ISD's current service level budget to allow adequate, steady resources to enhance member services, modernize the technology platform, and address functional inefficiencies in ORION to preserving our investment in this automated solution.

Because of the historical pace of change to the PERS plan, Oregon's system has one of the highest complexity scores among 72 leading global pension systems as reported by CEM Benchmarking, a comprehensive research firm on pension administration. As a consequence of this complexity, maintaining PERS' Information Technology similarly requires customized solutions to mirror the system's administration. Storing, organizing, and flexibly relating to the massive data that PERS receives results in constantly evolving technology needs. Technology solutions to this complexity are expensive, but promote efficiencies and internal controls that are essential for an enterprise that must process financial transactions for hundreds of thousands of members, beneficiaries, and employers. To meet these stakeholders' demands for an agile, accessible, and accurate IT solution, PERS must constantly evolve its technology platform.

The current Enterprise Application Section (EAS) staffing level, including contractors, manages high priority ORION Maintenance & Enhancement changes and the IAP Administration Project. To meet business demands for additional enhancements and ORION modernization will require resources above current staffing levels, mixing core competencies from our internal staff with upgraded functionalities provided by vendors.

Hi-Level Timeline for ORION Technology Modernization



Summary of Requested Funds for the 2017-19 Biennium

Personal Services (3.00 permanent FTE)	\$607,452
Services & Supplies (Increase to IT Professional Services)	\$5,492,581
Other Services & Supplies (Includes Pension Case Management maint. licenses)	\$77,825
Capital Outlay (Pension Case Management Tool)	\$223,150
TOTAL Request for 2017-2019	\$6,401,008

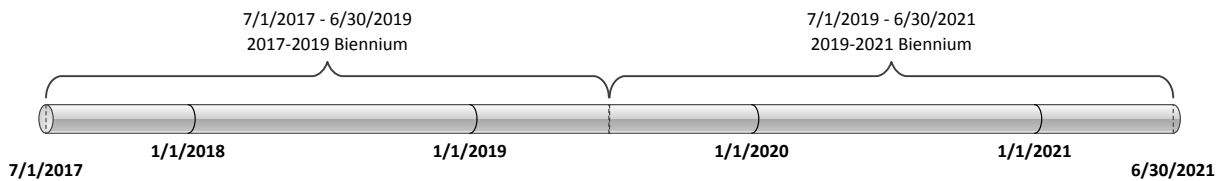
Cyber Security Business Case

As highlighted in PERS’ 2015-2020 Strategic Plan, information governance, security, and technology are core to delivering on our mission to “pay the right person the right benefit at the right time.” When we dive deeper and speak about information security, or cyber security in today’s vernacular, we are focused on the protection of information from a wide range of threats to ensure business continuity, minimize risk, and maximize return on investments and business opportunities. Therefore, cyber security is comprised of implementing suitable controls, including policies, procedures, organization structures, and software and hardware functions. These controls need to be established, implemented, monitored, and improved, where necessary, to ensure that the agency’s specific security and business objectives are met.

While PERS maintains a Cyber Security function, it is fragmented, there is not enough focus on end-user awareness training, it lacks operational accountability, and is often viewed as an afterthought when developing or implementing new technologies. Therefore, PERS is seeking to create a Cyber Security team, which will be responsible for developing, implementing, and managing PERS’ Cyber Security Program.

Finally, this program is aligned with PERS 2015-2020 Strategic Plan initiative of Information Governance, Security, and Technology in the focus area of Information Security. The Cyber Security Program enhances PERS’ Information Security Management System, which establishes an information risk assessment and treatment process, and the development of a formal Information Security Organizational Structure.

Hi-Level Timeline for Cyber Security Program



PERS Cybersecurity Program	
17-19 Goals	19-21 Goals
Privileged Account Management (PAM) w/ multi-factor authentication	Secure member access and mobility
Identity and Access Management	Enhanced Security Analytics Tools
Application Security Analysis Tools & Enhanced Physical Monitoring	Database Audit and Protection Tools

Summary of Requested Funds for the 2017-19 Biennium

Personal Services	\$636,781
Services & Supplies	\$214,385
Capital Outlay	\$300,000
TOTAL Request for 2017-2019	\$1,151,166