



Oregon

Kate Brown, Governor

Public Employees Retirement System

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January 31, 2022

TO: Members of the PERS Board

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

SUBJECT: Adoption of Rules to Implement 2021 Legislation:
 OAR 459-005-0560, *Required Minimum Distributions, Generally*
 OAR 459-009-0130, *Employee Contributions for Prior Periods*
 OAR 459-013-0310, *Payment of Increased Benefits under ORS 238.372 to 238.384*
 OAR 459-014-0045, *Valid Request for Distribution of Pre-Retirement Death Benefits*
 OAR 459-080-0020, *Withdrawal of Individual Accounts*

OVERVIEW

- Action: Adopt rules to implement 2021 legislation.
- Reason: Implement 2021 legislation impacting PERS.
- Policy Issue: None identified.

BACKGROUND

For the purpose of rulemaking, staff have compiled all the amendments to administrative rules necessary to implement several PERS-related bills enacted during the 2021 Oregon Legislative session.

House Bill 2457

House Bill (HB) 2457 became effective September 25, 2021. The bill makes amendments to various chapters of the ORS to update connection dates in conformity with the Internal Revenue Code. It also brings PERS statutes in alignment with the new required minimum distribution (RMD) age of 72, as provided by federal SECURE Act of 2019. The new RMD age has been in effect since January 1, 2020.

The proposed revision of OAR 459-005-0560 amends the rule to clarify that members who reached age 70½ before January 1, 2020 are still subject to the original RMD age of 70½, while for members who were not yet 70½ on January 1, 2020, their RMD age is now 72.

The rule was also amended to clarify that a surviving spouse may delay death benefit distributions until the calendar year when the deceased member would have reached the RMD age. The RMD age for the deceased member should be determined as explained above.

House Bill 2875

HB 2875 became effective September 25, 2021. The bill amends three separate areas of PERS' statutes. First, the bill amended the definition of "firefighter" in ORS Chapters 238 and 238A to

include certain State Fire Marshal employees. Second, the bill amended certain effective dates regarding tax remedy payments. Third, the bill amended loss of membership (LOM) criteria for calendar year 2020 due to the COVID-19 pandemic. Only the tax remedy provisions of the bill require rulemaking.

The proposed revision to OAR 459-013-0310 modifies the effective date for residency status certifications that members may submit to establish eligibility for the tax remedy. The proposed rule also removes references to a December 15 administrative deadline that will be explained in letters provided to affected retirees. Before HB 2875, all residency certifications became effective on January 1 of the calendar year following receipt. After HB 2875, certifications received between January 1 and April 15 of each year are effective no later than the first day of the second calendar month following receipt.

The proposed rule provides that residency certifications received during this period will be effective on the first day of the calendar month following receipt, which is earlier than required by the bill, as staff have determined that this deadline will be the most efficient and feasible to administer. The rule also provides that certifications received on and after April 16 will continue to be effective on January 1 of the calendar year following receipt, as required by statute.

Senate Bill 111

Senate Bill (SB) 111 is effective January 1, 2022. This is a PERS-sponsored bill that presents revisions to certain provisions of SB 1049 (2019) identified by staff through implementation of that bill, and amends the definition of salary for OPSRP members. In addition, the enacted bill includes amendments addressing the OPSRP salary definition, specifically for Oregon Health & Science University (OHSU) and charter schools, and expands the pre-retirement death benefit option for surviving spouses. Specifically, the bill provides the following changes or clarifications:

- Work after retirement provisions of SB 1049 (2019) – clarifies that all early retirees must be absent from all PERS employment for six months to be eligible to work unlimited hours; removes language from the unlimited hour provisions that requires an hourly limit for Social Security recipients until they attain full Social Security age; and equalizes the unlimited hour standard for Tier One/Tier Two and OPSRP members (Tier One/Tier Two elected officials are still limited under the original SB 1049 language).
 - No administrative rule amendments are necessary for these provisions.
- Member redirect provisions of SB 1049 (2019) - clarify that termination of membership on OPSRP Pension withdrawal applies to all OPSRP members, not just vested members; clarify that the new Employee Pension Stability Account (EPSA) is required to be repaid if a member either elects, or is required, to redeposit their member account; clarifies that a member cannot withdraw their Individual Account Program (IAP) account once they attain earliest retirement age, and; requires the member to have a bona fide separation to be eligible to withdraw their IAP account.
 - To implement the new IAP withdrawal provisions, proposed amendments to OAR 459-080-0020 provide a definition of bona fide separation that is consistent with the current administration of Tier One/Two member account withdrawals and

adds the requirement that the member must not have reached earliest retirement age as of the effective date of withdrawal.

- Employer programs provisions of SB 1049 (2019) - clarifies requirements of application process by removing reference to funds “projected to become” so application cycles can be clearly identified, and removes the misleading “improve the employer’s funded status” from the UAL resolution program language, as pooled employers cannot individually improve their funded status.
 - No administrative rule amendments are necessary for these provisions.
- Coordination of SB 1049 and HB 2417 (both 2019) - clarifies how the new death benefit option provided under HB 2417 will be funded in light of the new EPSA established in SB 1049, and expands the spousal pre-retirement death benefit option to 100% of what the member would receive if the member dies after earliest retirement age.
 - Based on the implementation of the optional spouse death benefit provided for in HB 2417 (2019), staff identified elements of the expanded optional spouse death benefits introduced in SB 111 (2021) that would benefit from clarification in rule. The changes are specific to the benefits provided for in ORS 238 as the OPSRP pre-retirement death benefit is already limited to only spouses and the minimum payment is clearly defined in ORS 238A language.

The proposed rule amendments to OAR 459-014-0045 clarify that in order to be eligible for the optional spouse death benefit under ORS 238.395 the member’s spouse must be the member’s sole beneficiary under ORS 238.390. Additionally, it provides notice to members that PERS will follow the agency’s practice of treating any benefit under \$200/month as an aggregate sum refund.

- Definition of salary for Chapter 238A (OPSRP members) - amends the definition of salary effective January 1, 2020, for OPSRP members so salary earned by a member that is currently non-PERS salary because it is not subject to Oregon State income tax, will still be salary for PERS purposes; specific provisions make the change in salary definition retroactive back to January 1, 2004 for OHSU and charter schools.
 - No administrative rule amendments are necessary for this provision.

Senate Bill 113

SB 113 became effective on June 1, 2021. This is a PERS-sponsored bill that amends ORS 238A.330, 238A.335 and 238A.340 to provide PERS with statutory authority to charge employer earnings on late contributions into the IAP.

The policy and practice of charging employers for earnings on late IAP contributions was formally adopted by the PERS Board upon staff recommendation back in 2006 while establishing rules for the IAP remediation project. However, that adopted policy and practice were not actually reflected in the two administrative rules that were updated at the time (OAR 459-009-0200, Employer Remitting of Employee Contributions and OAR 459-080-0200, IAP Account Adjustments for Earnings or Losses). Additionally, the statutory support for the current agency practice of collecting earnings from employers for late IAP contributions was ambiguous. SB 113 now provides statutory clarity for agency practice.

OAR 459-009-0130 was originally written to only address the administrative process of invoicing employers for required employee contributions under ORS 238.205 and the associated earnings on those contributions due to late payment. The proposed amendments add references to statutory provisions for IAP employee contributions and optional employer contribution. We have also updated the title of this rule from “Employee Contributions for Prior Periods” to “Contributions for Prior Periods” for further clarification.

Lastly, the amendments add a new subsection (2)(b) to address late-submitted contributions under the federal Uniformed Services Employment and Reemployment Rights Act (USERRA). There are special rules for crediting earnings to these contributions and historically PERS has not charged prior-year earnings on late-submitted USERRA contributions. Subsection (2)(b) has been added to make it clear that PERS will also be charging employers for prior-year earnings on late-submitted USERRA contributions for employees returning from uniformed service.

PUBLIC COMMENT AND HEARING TESTIMONY

No rulemaking hearing was held because the PERS building is closed to the public. The public comment period ended on December 23, 2021, at 5:00 p.m. No public comment was received.

LEGAL REVIEW

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

IMPACT

Mandatory: Yes, changes are necessary to bring the rules in line with changes or additions to statute made by the 2021 legislature.

Benefit: Updates the rules to reflect recent legislative changes and provides clarification on the agency’s administration of the plan.

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

RULEMAKING TIMELINE

December 1, 2021	Staff began the rulemaking process by filing a Notice of Rulemaking with the Secretary of State.
December 1, 2021	Secretary of State published the Notice in the Oregon Administrative Rules Database. Notice was sent to employers, legislators, and interested parties. Public comment period began.
December 3, 2021	PERS Board notified that staff began the rulemaking process.
December 23, 2021	Public comment period ended at 5:00 p.m.
January 31, 2022	Board may adopt the rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

BOARD OPTIONS

The PERS Board may:

1. Pass a motion to “adopt the rules to implement 2021 legislation, as presented.”
2. Direct staff to make other changes to the rules or explore other options.

STAFF RECOMMENDATION

Staff recommends the PERS Board choose Option #1.

B.5. Attachment 1 - 459-005-0560, *Required Minimum Distributions, Generally*

B.5. Attachment 2 - 459-009-0130, *Employee Contributions for Prior Periods*

B.5. Attachment 3 - 459-013-0310, *Payment of Increased Benefits under ORS 238.372 to 238.384*

B.5. Attachment 4 - 459-014-0045, *Valid Request for Distribution of Pre-Retirement Death Benefits*

B.5. Attachment 5 - 459-080-0020, *Withdrawal of Individual Accounts*