

Secretary of State  
Certificate and Order for Filing  
**TEMPORARY ADMINISTRATIVE RULES**  
A Statement of Need and Justification accompanies this form.

2-16

I certify that the attached copies\* are true, full and correct copies of the TEMPORARY Rules adopted on February 16, 2007 by the  
Date prior to or same as filing date

Public Employees Retirement System 459  
Agency and Division Administrative Rules Chapter Number  
Daniel Rivas PO Box 23700, Tigard, OR 97281-3700 503-603-7713  
Rules Coordinator Address Telephone

to become effective February 16, 2007 through August 14, 2007.  
Date upon filing or later A maximum of 180 days including the effective date.

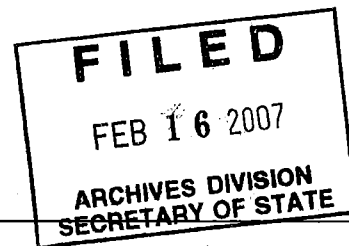
**RULE CAPTION**

Amend direct rollover rules to administer the PERS programs in compliance with federal tax law.  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately, 000-000-0000.  
Secure approval of new rule numbers (Adopted rules) with the Administrative Rules Unit prior to filing

AMEND: OAR 459-005-0591, 459-005-0595, 459-005-0599, 459-050-0090



Stat. Auth.: ORS 238.650 & 243.470

Other Auth.:

Stats. Implemented: ORS 238.005 - 238.715 & 243.401 - 243.507

**RULE SUMMARY**

The recent federal Pension Protection Act of 2006 changed the law on beneficiaries who are eligible to roll over benefit payments. In compliance with our statute's direction to adopt rules to conform the plan to federal tax laws, these rules were developed to implement the changes directed by the new federal law.

Brenda J P Rocklin  
Authorized Signer

Brenda Rocklin  
Printed name

February 16, 2007  
Date

\*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.  
ARC 940-2005

PERS 5-2007 (Temp)

**STATEMENT OF NEED AND JUSTIFICATION**

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Public Employees Retirement System

459

Agency and Division

Administrative Rules Chapter Number

In the Matter of: Amending OAR 459-005-0591, 459-005-0595, 459-005-0599, 459-050-0090

Rule Caption: Amend direct rollover rules to administer the PERS programs in compliance with federal tax law.

Statutory Authority: ORS 238.650 & 243.470

Other Authority:

Stats. Implemented: ORS 238.005 - 238.715 & 243.401 - 243.507

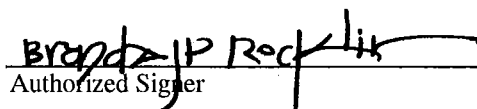
Need for the Temporary Rule(s):

The recent federal Pension Protection Act of 2006 changed the law on beneficiaries who are eligible to roll over benefit payments. In compliance with our statute's direction to adopt rules to conform the plan to federal tax laws, these rules were developed to implement the changes directed by the new federal law.

Documents Relied Upon, and where they are available: ORS 238.650, 243.470, 238.005 - 238.715, and 243.401 - 243.507. These documents are available for public inspection at the Public Employees Retirement System, 11410 SW 68th Parkway, Tigard, OR 97223, during regular business hours, 8:00 AM to 5:00 PM, Monday through Friday.

Justification of Temporary Rule(s):

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

  
Authorized Signer

Brenda Rocklin  
Printed name

February 16, 2007  
Date

**459-005-0591****Definitions -- Direct Rollovers**

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

- (1) "Code" means the Internal Revenue Code of 1986, as amended.
- (2) A "direct rollover" means the payment of an eligible rollover distribution by PERS to an eligible retirement plan specified by the distributee.
- (3) A "distributee" includes a PERS member, the surviving spouse of a deceased PERS member, a non-spouse beneficiary of the member that is a designated beneficiary under IRC 402(c)(11), and the current or former spouse of a PERS member who is the alternate payee under a domestic relations order that satisfies the requirements of ORS 238.465 and the rules adopted thereunder.
- (4) An "eligible retirement plan" means any one of the following:
  - (a) An individual retirement account or annuity described in Code Section 408(a) or (b), but shall not include a Roth IRA as described in Code Section 408A;
  - (b) An annuity plan described in Code Section 403(a) that accepts the distributee's eligible rollover distribution;
  - (c) A qualified trust described in Code Section 401(a) that accepts the distributee's eligible rollover distribution;
  - (d) An eligible deferred compensation plan described in Code Section 457(b) which is maintained by an eligible employer described in Code Section 457(e)(1)(A) and accepts the distributee's eligible rollover distribution.
  - (e) An annuity contract described in Code Section 403(b) that accepts the distributee's eligible rollover distribution.
  - (f) For the purposes of ORS 237.650(3), the individual employee account maintained for a member under the Individual Account Program as set forth under ORS 238A.350(2); and
  - (g) For the purposes of ORS 237.655(2), the state deferred compensation program.
- (5) An "eligible rollover distribution" means any distribution of all or any portion of a distributee's PERS benefit, except that an eligible rollover distribution shall not include:
  - (a) Any distribution that is one of a series of substantially equal periodic payment made no less frequently than annually for the life (or life expectancy) of the distributee or the joint lives (or life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;
  - (b) Any distribution to the extent that it is a required or minimum distribution under Code Section 401(a)(9).
- (6) A "recipient plan" means an eligible retirement plan that is designated by a distributee to receive a direct rollover.
- (7) The provisions of this rule are effective on January 1, 2007.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - 238.715

**459-005-0595****Limitations -- Direct Rollovers**

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

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

(b) A distributee may elect a direct rollover only when his or her eligible rollover distribution(s) during a calendar year is reasonably expected to total \$200 or more.

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

(2)(a) The provisions of subsection (1)(a) apply to any portion of a distribution, including after-tax employee contributions that are not includible in gross income.

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

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

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

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

(3) The provisions of this rule are effective on January 1, 2007.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - 238.715

**459-005-0599**

**Election Procedures -- Direct Rollovers**

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

- (a) A statement that the distributee has the right to consider the decision of whether or not to elect a direct rollover for at least 30 days after the notice is provided;
- (b) An explanation of the default rule set forth in section (5) of this rule;
- (c) An explanation of the notice and election rules for periodic payments that are eligible rollover distributions.

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

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

- (A) Distributee's full name;
- (B) Distributee's social security number;
- (C) Percentage of amount eligible for transfer (whole percent), or the dollar amount (in whole dollars);
- (D) The distributee's account number with recipient plan, if available;
- (E) Name and complete mailing address of recipient plan; and
- (F) If the distributee is a non-spouse beneficiary of the member, the title of the recipient IRA account.

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

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

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

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

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

- (a) The date inscribed on check or warrant; or
- (b) The date of an electronic transfer/transaction to the recipient plan.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - 238.715

## **459-050-0090**

### **Direct Rollover**

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

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

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

(b) "Direct Rollover" means:

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

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

(c) "Distributee" means:

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

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

(C) The surviving spouse of a deceased participant;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) The distributee's full name;

(B) The distributee's social security number;

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

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

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

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

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

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

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

(B) A direct rollover from an eligible retirement plan other than a Deferred Compensation Plan described in Code Section 457(b) must be an eligible rollover distribution. It is the participant's responsibility to determine that the assets qualify for rollover treatment. Any taxes or penalties that are the result of the participant's failure to ascertain that the distributing plan assets qualify

for a direct rollover to a deferred compensation plan described in Code Section 457(b), shall be the sole liability of the distributee.

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

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

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

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

Stat. Auth.: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507