

Chapter 459 Oregon Public Employees Retirement System

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DIVISION 1

PROCEDURAL RULES

459-001-0000

Notice of Proposed Rule

Prior to adoption, amendment or repeal of any rule, the Public Employees' Retirement System (PERS) shall give notice of the intended action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360, at least 21 days prior to the effective date.

(2) By mailing notice to persons on the PERS mailing list established pursuant to ORS 183.335(7) at least 28 days before the effective date of the rule.

(3) By mailing or furnishing notice to the following publications:

- (a) Associated Press;
- (b) Daily Journal of Commerce;
- (c) Northwest Labor Press;
- (d) Capitol Press Room.

(4) By mailing or furnishing notice to the following persons, organizations and publications at least 28 days before the effective date of the rule:

- (a) Oregon Public Employees Union;
- (b) Oregon Education Association;
- (c) Association of Oregon Counties;
- (d) League of Oregon Cities;
- (e) Oregon School Board Association;
- (f) Confederation of Oregon School Administrators;
- (g) Association of Engineering Employees of Oregon;
- (h) Local Government Personnel Institute;
- (i) American Federation of State, County and Municipal Employees;

Employees;

- (j) Oregon State Firefighters Council;
- (k) Board of Public Safety Standards and Training;
- (l) Oregon Association of Chiefs of Police;
- (m) Oregon Federation of Teachers, Education and Health Professionals;

- (n) Oregon School Employees Association;
- (o) Oregon Community College Association;
- (p) Oregon State Sheriffs Association;
- (q) Oregon State System of Higher Education;
- (r) Oregon Council of Police Associations;
- (s) Special District Association of Oregon;

(5) By mailing a Notice of Rulemaking and a copy of the proposed rule(s) to the Director of the Department of Administrative Services and, to the extent identified, affected participating public employers in the System.

Stat. Auth.: ORS 183.335 & ORS 237.263

Stats. Implemented:

Hist.: PER 13, f. & ef. 10-26-76; PER 4-1981, f. & ef. 1-15-81; PER 1-1982, f. 11-22-82, ef. 1-1-83; PERS 3-1994, f. & cert. ef. 5-10-94

459-001-0005

Model Rules of Procedure

The Attorney General's Model Rules of Procedure under the Administrative Procedures Act, effective September 15, 1997, are adopted as rules of procedure of the Public Employees Retirement Board, except as modified by other rules of the Board.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Public Employees'

Retirement System.]

Stat. Auth.: ORS 183.341 & ORS 238.650

Stats. Implemented: ORS 238.005 - ORS 238.715 & ORS 237.410 - ORS 237.620

Hist.: PER 11, f. 4-18-72, ef. 5-1-72; PER 12, f. 3-14-74, ef. 4-11-74; PER 13, f. & ef. 10-26-72; Renumbered from 459-030-0005; PER 2-1978, f. & ef. 11-2-78; PER 1-1980, f. & ef. 2-15-80; PER 1-1986, f. & ef. 7-7-86; PERS 2-1990, f. & cert. ef. 1-8-90; PERS 1-1992, f. & cert. ef. 1-14-92; PERS 4-1994, f. & cert. ef. 5-10-94; PERS 3-1995, f. 11-14-95, cert. ef. 11-15-95; PERS 1-1998, f. & cert. ef. 3-16-98

459-001-0010

Filing Papers

(1) All petitions, written requests, documents, or other papers required to be filed with, or which a person desires to submit to the Board or the Director, shall be personally delivered or mailed to Director of the Public Employees' Retirement System, 200 S.W. Market Street, Suite 700, Portland, OR 97201, or Box 73, Portland, OR 97207.

(2) Filing shall be effective upon personal service or actual receipt in the office of the Director.

Stat. Auth.: ORS 183 & ORS 237.263

Stats. Implemented:

Hist.: PER 11, f. 4-18-72, ef. 5-1-72; PER 12, f. 3-14-74, ef. 4-11-74; Renumbered from 459-030-0010; PER 3-1981, f. & ef. 1-15-81; PERS 4-1990, f. & cert. ef. 3-26-90

459-001-0015

Conduct of Meetings of the Board

(1) Meetings of the Board shall be conducted by and shall be under the control of the Chair of the Board. In the Chair's absence, the Vice Chair shall preside. In the absence of both the Chair and the Vice Chair, the Board shall designate, by a majority vote, one of its members to preside.

(2) At the commencement of the Board meeting, any member of the public wishing to be heard on an item on the agenda shall advise the Chair of that person's name, address, and affiliation. Such person(s) may be heard at the discretion of the Chair.

(3) The Chair may set reasonable time limits for oral presentation by members of the public, and may exclude or limit cumulative, repetitious, or immaterial matter.

(4) The Chair, or any member of the Board, shall have the right to question or examine any member of the public making a presentation at the board meeting. The Chair may permit others to examine such persons.

(5) No rebuttal or additional statements by any member of the public shall be permitted by the Chair, unless allowed by the Chair.

(6) If the number of persons wishing to be heard on a scheduled agenda item exceeds the number the Chair believes can be reasonably accommodated during the time available to the Board for the meeting, the Chair may require persons wishing to be heard to submit their views by written statements rather than orally. With the approval of the majority of the Board, the Chair may also schedule a special hearing on the subject at a future time and date before a Hearings Officer designated by the Chair. If such special hearing is scheduled by the Chair, the designated Hearings Officer shall reduce witness statements to a condensed written report and provide it to members of the Board on or before a date set by the Chair.

(7) The Chair may, where practicable, receive all physical and documentary evidence presented by members of the public permitted to be heard at a Board meeting. Exhibits shall be marked and shall identify the person offering the exhibit. Exhibits shall be preserved by the System for one year, or at the discretion of the Chair, returned to the person offering the exhibit.

(8) A verbatim oral, written, or mechanical record shall be made of all meetings of the Board, or, in the alternative, a record in the form of minutes of the Board.

(9) Members of the public wishing to be heard by the Board on subjects not scheduled on the agenda may be heard at the discretion of the Chair.

(10) The Board may exclude members of the public from an executive session of a meeting of the Board to the extent permitted by ORS 192.660.

(11) No final action may be taken by the Board in an executive session. When an executive session is held in conjunction with a public session, the Board shall return to public session before taking a final action.

(12) A notice of an executive session that is not held in conjunction with a public session shall inform the public and interested persons of time and place at which a public session will be held to make a final or formal decision.

(13) Representatives of the news media shall be allowed to attend an executive session of a Board meeting other than those held under ORS 192.660(1)(d). The Board requires that all discussion and information provided in an executive session be undisclosed unless disclosure is specifically authorized by the Board.

(14) No person shall smoke any cigar, cigarette, or tobacco in any form in any meeting of the Board.

Stat. Auth.: ORS 192.610 - ORS 192.710 & ORS 237.263

Stats. Implemented:

Hist.: PER 1-1978, f. & ef. 9-1-78; PERS 5-1994, f. & cert. ef. 5-10-94

459-001-0025

Delegation to Director and Staff

(1) The Director is hereby authorized to take all action necessary or desirable to administer the system including but not limited to:

- (a) Design application and other forms;
- (b) Act on any application for refund of contributions; crediting service, correction of records, retirement for disability or service, and death benefits and allowances;
- (c) Calculate and authorize payment of refunds, allowances or benefits except as provided in OAR Chapter 459, Division 15;
- (d) Require medical, vocational or other professional examinations of disability retirement benefits applicants and recipients;
- (e) Reinstate persons from disability retirement upon the Director's determination that disability does not exist; and
- (f) Initially review, grant or deny petitions for reconsiderations. The Director may deny any petition:

(A) Which does not contain the information required in OAR 459-001-0040(2); or

(B) Regarding which there is no bona fide dispute of material fact, the pertinent statutes and rules are clear in their application to the facts and there was no material administrative error.

(g) Define and settle administrative and court litigation.

(2) The Director may refer any matter to the Board or to a hearings officer for a contested case or other hearing.

(3) The Director is hereby authorized to delegate to subordinates the authority to take any action on the Director's behalf.

Stat. Auth.: ORS 237.263

Stats. Implemented:

Hist.: PERS 4-1990, f. & cert. ef. 3-26-90

459-001-0030

Review of Staff Actions and Determination

(1) Any person may file with the Director a request for review of a staff action or determination. Except as provided for in ORS 237.210 or in Board rules on disability retirement, staff actions or determination that are subject to review under this rule include but are not limited to:

- (a) Establishing membership;
- (b) Determining service credit and final average salary;
- (c) Refund of contributions;
- (d) Eligibility for benefits; or
- (e) Computation of benefits. The request shall be filed within 60 days following the date of the staff action or determination. Late requests may be considered only if facts constituting good cause are alleged in the request.

(2) A request for review of a staff action or determination shall set forth:

- (a) A description of the staff action or determination for

which review is requested;

(b) A short statement of the manner in which the action is alleged to be in error;

(c) A statement of facts that are basis of the request;

(d) Reference to applicable statutes, rules or court decisions upon which the person relies;

(e) A statement of the relief the request seeks;

(f) A request for review.

(3) The Director shall delegate the request for review to the Division Administrator responsible for the specific action of staff described in the request. The Division Administrator may either grant or deny the request for review within 30 days of filing.

(4) The Division Administrator may deny any request made pursuant to this rule:

(a) Which does not contain the information required under section (2) of this rule; or

(b) Regarding which, in the Division Administrator's view, there is no bona fide dispute of material fact, the pertinent statutes and rules are clear in their application to the facts, and there was not a material administrative error.

(5) If the request for review is granted, the Division Administrator shall issue a written determination after:

(a) Considering the request;

(b) Directing staff to reconsider; or

(c) Directing staff to schedule an informal hearing.

(6) If the request for review is denied or the Division Administrator's determination is not the relief sought, a person may request a review of the Division Administrator's determination by the Director by filing the request within 30 days of the date of the Division Administrator's denial or determination. The request shall contain the information required under section (2) of this rule.

(7) The Director may either grant or deny the request for review of the Division Administrator's determination within 30 days of filing. If the request is granted, the Director shall issue a written determination after:

(a) Considering the Division Administrator's determination;

(b) Directing the staff to reconsider; or

(c) Directing the staff to schedule an additional informal hearing.

(8) In lieu of issuing a written determination, the Director may direct the staff to schedule a formal contested case hearing. Such hearing shall be conducted in accordance with OAR 459-001-0035.

(9) The Director may deny any request:

(a) Which does not contain the information required under section (2) of this rule; or

(b) Regarding which, in the Director's view, there is no bona fide dispute of material fact, the pertinent statutes and rules are clear in their application to the facts, and there was no material administrative error. Any other request for review shall be granted by the Director.

(10) If a request is denied by either a Division Administrator or the Director because it does not contain the information required under section (2) of this rule, a person shall have one opportunity to correct that deficiency and resubmit a request for review within 30 days of date of denial.

(11) If a request is denied or the Director's determination is not the relief sought by the requester, and the Director did not cause a contested case hearing to be scheduled, a person may file with the Board a request for a contested case hearing pursuant to OAR 459-001-0035.

Stat. Auth.: ORS 237.263

Stats. Implemented:

Hist.: PERS 4-1990, f. & cert. ef. 3-26-90; PERS 5-1990, f. & cert. ef. 12-3-90

459-001-0035

Contested Case Hearing

(1) To obtain review of any determination by the Director, for which a contested case hearing has not been held, party shall file with the Board a petition for a contested case hearing. The petition shall be filed within 30 days following the date of the

Director's determination. Late petitions may be considered only if facts constituting a good cause are alleged in the petition:

- (a) The petition shall set forth:
 - (A) A description of the determination for which review is requested;
 - (B) A short statement of the manner in which the determination is alleged to be in error;
 - (C) A statement of facts that are the basis of the petition;
 - (D) Reference to applicable statutes, rules or court decisions upon which the petitioner relies;
 - (E) A statement of the action the petition seeks;
 - (F) A request for a hearing.

(b) The Board may either grant or deny a petition for a contested case hearing within 30 days of filing. The petition may be denied if it does not contain the information required under subsection (a) of this section. If the petition for hearing is granted, the Board shall order the staff to schedule a formal contested case hearing.

(2) The hearing shall be conducted in accordance with the Model Rules of Procedure.

(3) The Hearings Officer's proposed order becomes final 90 days following service upon the petitioner, the Director and the Board through the Director. Objections may be filed by the Director or the petitioner within 30 days of service. If the Board determines additional time is necessary to review a proposed order and issue an amended order, the Board may extend the time after which the proposed order will become final in accordance with ORS 183.464(3).

(4) Pursuant to ORS 183.464(3), the Board may reject the order directing the Hearings Officer to conduct further proceedings and prepare an amended order within the time specified by the Board.

Stat. Auth.: ORS 237.263
Stats. Implemented:
Hist.: PERS 4-1990, f. & cert. ef. 3-26-90

**459-001-0040
Petitions for Reconsideration**

(1) Prior to initiating any judicial review of a final order in a contested case, a party shall file with the Board a petition for reconsideration. The petition shall be filed within 30 days following the date the order becomes final. Late petitions may be considered only if facts constituting good cause are alleged in the petition.

- (2) The petition shall set forth:
 - (a) A short statement of the manner in which the final order is alleged to be in error;
 - (b) Reference to applicable statutes, rules or court decisions on which the party relies;
 - (c) A suggested alternative form of order;
 - (d) A request for reconsideration.

(3) The Board shall either grant or deny a petition for reconsideration within 30 days of filing. A petition may be denied if it does not contain the information required under section (2) of this rule. If the petition for reconsideration is granted, the Board may:

- (a) Affirm the original order; or
- (b) Reconsider and issue an amended order.

(4) If the petition is granted and the Board reconsiders, the Director shall submit written argument on the merits of the petition for Board consideration.

(5) Written argument from petitioner shall be submitted together with the petition. The Board may schedule oral argument in its discretion.

Stat. Auth.: ORS 237.263
Stats. Implemented:
Hist.: PERS 4-1990, f. & cert. ef. 3-26-90

DIVISION 5

GENERAL PROVISIONS/ADMINISTRATION

**459-005-0001
Definitions, Generally**

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

(1) "Board" shall have the same meaning as the Public Employees Retirement Board in ORS 238.630.

(2) "PERS" and "system" shall have the same meaning as the Public Employees Retirement System in ORS 238.600.

(3) "Fund" shall have the same meaning as the Public Employees Retirement Fund in ORS 238.660.

(4) "Staff" means the employees of the Public Employees Retirement System as provided for in ORS 238.645.

(5) "Public employer" shall have the same meaning as provided in ORS 238.005(9).

(6) "Participating employer" means a public employer who has one or more employees who are active members of PERS.

(7) "Member" shall have the same meaning as provided in ORS 238.005(7).

(8) "Judge member" shall have the same meaning as provided in 238.500(3). For purposes of this chapter, active, inactive, and retired membership of a judge member shall have the same meaning as ORS 238.005(7)(b), (c), and (d), respectively.

(9) "Police Officer" shall have the same meaning as provided in ORS 238.005(14).

(10) "Firefighter" shall have the same meaning as provided in ORS 238.005(16).

(11) "Legislator" means a person elected or appointed to the Oregon Legislative Assembly who has elected to participate in PERS pursuant to ORS 238.015(6) as a member of the Oregon Legislative Assembly as provided in ORS 238.068.

(12) "General service member" means membership in PERS as other than a judge member, a police officer, a firefighter, or a legislator.

(13) "Elected official" means a person who is a public official holding an elective office or an appointive office with a fixed term for the state or for a political subdivision of the state who has elected to participate in PERS pursuant to ORS 238.015(6).

(14) "Tier One member" means a member who established in the system before January 1, 1996, as defined in ORS 238.430(2).

(15) "Tier Two member" means a member who established in the system on or after January 1, 1996, in accordance with ORS 238.430.

(16) "Employment" is compensated service to a participating employer as an employee whose:

(a) Period or periods of employment shall mean the actual hours of compensated service with a participating employer as an employee; and

(b) Compensated service shall include, but is not limited to, paid vacation, paid sick leave, or other paid leave.

(17) "Employee" shall have the same meaning as provided in ORS 238.005(5) and shall be determined in accordance with OAR 459-010-0030.

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

(b) The term "employee" does not include:

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

(B) An individual who performs services for a public employer as a contractor in an independently established business, or as an employee of that contractor.

(C) A person providing volunteer service to a public employer without compensation for hours of service as a volunteer, except for volunteer firefighters who establish membership in accordance with ORS 238.015(7).

(18) "Volunteer" means a person who performs a service for a public employer as other than an employee, an independent con-

tractor or employee of an independent contract, and who receives no compensation for the service performed and there is not an expectation by the employer for any continuity of service performed.

(19) "Casual employee" means a person whose employment is at irregular, unscheduled interval.

(20) "Seasonal employee" means a person whose employment is characterized as recurring for defined periods that are natural divisions of the employer's business cycle or services.

(21) "Emergency employee" means a person employed on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency.

(22) "Independent Contractor" means an individual or business entity that is not subject to the direction and control of the employing entity as determined in accordance with OAR 459-010-0032.

(23) "Calendar month" means the Julian Calendar beginning with the first calendar day of a month through the last calendar day of that month.

(24) "Year" means any twelve consecutive calendar months.

(25) "Calendar year" has the same meaning as ORS 238.005(2).

(26) "School year" has the same meaning as ORS 238.005(13).

(27) "Salary", "remuneration" and "compensation" shall have the same meaning as provided in ORS 238.005(11).

(a) For a Tier One member, the lump sum payment for accrued vacation pay shall be considered salary:

(A) In determining employee and employer contributions.

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

(b) For a Tier Two member, the lump sum payment for accrued vacation payment.

(A) Shall be considered salary in determining employee and employer contributions.

(B) Shall not be considered salary in determining final average salary for the purpose of calculating PERS benefits.

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

(a) Sick leave programs;

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

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

(29) "FAS" and "final average salary" shall have the same meaning as provided in:

(a) ORS 238.005(15) for all PERS Tier One members;

(b) ORS 238.435(2) for all PERS Tier Two members; or

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

(30) "Creditable service" shall have the same meaning as provided in ORS 238.005(4).

(31) "Retirement credit" shall have the same meaning as provided in ORS 238.005(10).

(32) "Regular account" shall have the same meaning as individual account as provided in ORS 238.250.

(33) "Annuity" shall have the same meaning as provided in ORS 238.005(1).

(34) "Variable annuity" shall have the same meaning as provided in ORS 238.260.

(35) "Before-tax" contributions means member contributions

made pursuant to ORS 238.200 or 238.515 which a participating employer has elected to "pick up," assume or pay in accordance with ORS 238.205 and 238.515(b). "Before-tax" contributions are not included in the member's taxable income for purposes of state or federal income taxation at the time paid to PERS. "Before-tax" contributions are included in computing FAS and in computing the employer's contributions paid to PERS.

(36) "After-tax" means:

(a) Member contributions made pursuant to ORS 238.200 or 238.515 which a participating employer has not elected to "pick up," assume or pay in accordance with ORS 238.205 and 238.515(b). "After-tax" contributions are included in the member's taxable income for purposes of state or federal income taxation at the time paid to PERS. "After-tax" contributions are included in computing FAS and in computing the employer's contributions paid to PERS.

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

(37) "Member cost" means the after-tax member contributions and payments made to PERS.

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

(39) "Ad hoc" means one-time for a specific purpose, case, or situation without consideration of a broader application.

(40) "Vested" means a PERS member's absolute right to a service retirement allowance, as described in ORS 238.300 to 238.315, when the member becomes eligible to receive a service retirement allowance under ORS 238.280. A member shall be "vested" in a PERS service retirement allowance when the member has made contributions to the member's PERS account in each of five calendar years.

(a) The member does not need to contribute:

(A) In five (5) consecutive calendar years; and/or

(B) In each calendar month of a calendar year.

(b) As an example: A member may become vested in three years and two months of membership in PERS as follows:

(A) The member is hired June 1 and establishes membership in PERS the succeeding December 1 and makes a contribution to PERS from the member's December 31 paycheck. The member has made a contribution in part of one calendar year.

(B) The member makes a contribution(s) to PERS in each of the three succeeding calendar years, whether as a 12-month, a 10-month, or a 9-month employee; and

(C) The member terminates employment with all participating employers at the end of January of the fourth succeeding year and makes a contribution from the January paycheck.

(D) The member has now made contributions in parts of five (5) calendar years.

(c) An inactive member who is not vested shall lose membership in PERS in accordance with ORS 239.095.

(41) "Good cause" means a cause beyond the reasonable control of the person. "Good cause" exists when it is established by satisfactory evidence that factors or circumstances are beyond the reasonable control of a rational and prudent person of normal sensitivity, exercising ordinary common sense.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - ORS 238.715

Hist.: PERS 2-1998, f. & cert. ef. 3-16-98

**459-005-0005
Amendments to Retirement Law**

Any increase in service or disability retirement benefits established by amendment of the Retirement Law shall apply to retired members as of the effective date of such amendment, unless otherwise specifically provided by law.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238

Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered

from 459-010-0085

459-005-0030**Payments of Sums to Persons Entitled Thereto**

Retirement allowances, contribution refunds, or any other sums shall be paid directly to any one thereto entitled under the provisions of the Retirement Law, regardless of any claim maintainable against such sum thereafter in the hands of the recipient.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238

Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0140

459-005-0055**Actuarial Equivalency Factors**

(1) Pursuant to ORS 238.630(3)(g), the Board's consulting actuary shall perform an Actuarial Equivalency Study following the completion of any Experience Study, pursuant to ORS 238.605, that results in a change in the mortality or interest assumption used to fund PERS. Such Actuarial Equivalency Study shall review the assumptions and the actuarial factors used to:

(a) Convert account balances to monthly allowances;

(b) Convert the standard form of benefit (ORS 238.300) to elective options with various survivorship features (ORS 238.305); and

(c) Reduce service retirement allowances for early retirement (ORS 238.280)

(2) The consulting actuary's report on the Actuarial Equivalency Study shall be presented to the Board not later than 90 days, or as soon as practicable thereafter, following the Board's formal acceptance, at a regularly scheduled meeting of the Board, of an Experience Study that results in a change in the mortality or interest assumption used to fund PERS.

(3) The consulting actuary's report shall recommend to the Board assumptions, factors and the rationale for any recommended changes to the actuarial equivalency factors used by the Public Employees' Retirement System (System).

(4) The Board shall adopt, reject, or modify and adopt as modified the consulting actuary's recommended changes to the actuarial equivalency factors used by the System within 60 days of receipt of the actuary's report on the Actuarial Equivalency Study, or as soon as practicable thereafter, at a regularly scheduled meeting of the Board.

(a) Any changes to the System's actuarial equivalency factors shall be on the date established by the Board upon adoption of the changes. Upon adopting any changes, the Board shall establish the date those changes are effective.

(b) All changes to the System's actuarial equivalency factors shall be prospective only for that portion of an allowance attributable to service as an active member beginning on or after the effective date of the change.

(5) Notwithstanding subsection (4)(b) of this rule, for members who established membership in PERS before January 1, 1999, as described in Oregon Laws 1995, Chapter 654, Section 2, the Board shall not change a factor that would produce a lower periodic or single benefit payment, and any change of factor(s) shall apply to the total allowance payable.

(6) For members who establish membership in PERS on or after the date designated in section (5) of this rule:

(a) Benefits shall be based on the set of actuarial equivalency factors in effect for each segment of a member's active membership in PERS effective with the date of each new set of actuarial equivalency factors.

(b) The calculation of benefits using different sets of actuarial equivalency factors as described in subsection (4)(b) of this rule shall be as follows:

(A) For benefit calculations based on the Full Formula method (ORS 238.300(1)) and (2)(a):

(i) The pension portion of the calculation which is provided by employer contributions shall use the Service Pro-Rate Method defined in section (7) of this rule; and

(ii) The annuity portion of the calculation which is provided

by employee contributions shall use the Segment With Interest Method as defined in section (7) of this rule.

(B) For benefits based on the Money Match calculation (ORS 238.300(2)(b)(A)), the annuity which is provided by employer contributions shall use the Segment With Interest Method as defined in section (7) of this rule and that annuity shall be matched by a like annuity provided by employer contributions.

(7) For purposes of this rule:

(a) "Service Pro-Rate Method" means that a benefit is pro rated based on an active member's service time before and after an event.

(b) "Segment With Interest Method" means the member's ultimate account balance at retirement is allocated into segments based on when the contributions were made.

Stat. Auth: ORS 238.630 & 238.650

Stats. Implemented: ORS 238.630(3)(g)

Hist.: PERS 1-1993, f. 4-14-93, cert. ef. 5-1-93; PERS 6-1996, f. 8-13-96, cert. ef. 1-1-99

459-005-0100**Definitions - Power of Attorney**

The words and phrases used in OAR 459-005-0100 to 459-005-0160, shall have the same meaning given them in ORS Chapter 238. Specific and additional terms are defined as follows unless context requires otherwise:

(1) "PERS" shall have the same meaning as the Public Employees' Retirement System in ORS 238.600.

(2) For the purposes of OAR 459-005-0100 to 459-005-0160, the term "member" means a PERS member as defined in ORS 238.005(7), the beneficiary of a PERS member, an alternate payee as defined in 238.465, or the beneficiary of an alternate payee.

(3) "Power of Attorney Document" means a document creating and expressly granting certain powers of attorney from a member to another named individual or individuals such that under the terms and conditions set forth in the document, the named individual or individuals may act on behalf of and in the name of the member. **Exhibit 1** "Special Power of Attorney for PERS," form number 45922-55, is available from the Public Employees Retirement System.

(4) "Attorney-in-Fact" means one or more named individuals appointed by a member in a Power of Attorney Document to act on behalf of and in the name of the member under the terms and conditions set forth in the Power of Attorney Document. If more than one individual is appointed Attorney-in-Fact, the document shall stipulate whether the individuals must act collectively or may act separately.

(5) "Alternate Attorney-in-Fact" means a named individual appointed by a member to serve as an Attorney-in-Fact, under certain terms and conditions set forth in the Power of Attorney Document, in the event another individual also appointed by the member is unable or unwilling to perform as Attorney-in-Fact in the first instance.

(6) "Substitute Attorney-in-Fact" means a named individual appointed by an Attorney-in-Fact under authority contained in the Power of Attorney Document to serve in place of the Attorney-in-Fact.

[ED. NOTE: The Exhibit(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - ORS 238.715

Hist.: PERS 7-1996, f. & cert. ef. 11-12-96

459-005-0110**Designation of Power of Attorney**

(1) No person may act as an Attorney-in-Fact for a member of PERS with respect to PERS matters unless the Power of Attorney Document appointing such person meets the requirements set forth in this rule. The Power of Attorney Document shall be in written form and shall contain express language:

(a) Granting the member's power of attorney with respect to the member's financial matters generally to a named individual or individuals, or

(b) Granting the member’s power of attorney with respect to the member’s PERS benefits to a named individual or individuals. A special power of attorney under this subsection may, but need not, be in the form of Exhibit 1.

(2) Every document granting a power of attorney shall contain:

(a) The member’s notarized signature, which notary information must appear on the same page as the member’s signature; and

(b) The signature and address of the Attorney-in-Fact and the Alternate Attorney-in-Fact, if any. The requirement of this subsection will also be satisfied if the document is accompanied by an example signature and address of the Attorney-in-Fact and any Alternate Attorney-in-Fact.

(3) A photocopy of a complete Power of Attorney Document may be filed with PERS, if the applicable notary information is clearly legible. PERS may accept original documents, and shall not be responsible for the safekeeping or return of any original document.

(4) A member of PERS may designate an Alternate Attorney-in-Fact in the Power of Attorney Document. The individual(s) who is to serve as Alternate Attorney-in-Fact must be expressly named in the document and the circumstances under which the Alternate Attorney-in-Fact may act must be expressly stated. PERS may rely upon an affidavit submitted by an Alternate Attorney-in-Fact as conclusive proof of the existence of the circumstance that authorizes the Alternate Attorney-in-Fact to act.

(5) PERS shall not accept a Power of Attorney Document that has a specific expiration date. To be acceptable, the Power of Attorney Document must be for an indefinite duration.

[ED. NOTE: The Exhibit(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - ORS 238.715

Hist.: PERS 7-1996, f. & cert. ef. 11-12-96

459-005-0120

Effective Date of Power of Attorney

(1) A document that grants or revokes a power of attorney will be effective as to PERS matters upon receipt by PERS, if the document meets the requirements set forth in OAR 459-005-0110 or 459-005-0130, as applicable.

(2) If the document does not meet the requirements of OAR 459-005-0110 or 459-005-0130, as applicable, PERS will attempt to notify a member or Attorney-in-Fact within 30 days after receipt of a document that grants or revokes a power of attorney. If PERS fails to notify the member that the document does not meet such requirements within the period of time set forth in this section, the document shall nevertheless be inoperative as to PERS matters.

(3) If a Power of Attorney Document was executed over ten years prior to the date such document is filed with PERS, and there is a request to take any action by the Attorney-in-Fact named or provided for in such document, the document will be effective with respect to PERS only if the Attorney-in-Fact files an affidavit with PERS, in a form which PERS in its sole discretion deems satisfactory, affirming the continued validity of the Power of Attorney Document.

(4) For the purpose of this rule, the term Attorney-in-Fact includes any Alternate or Substitute Attorney-in-Fact.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - ORS 238.715

Hist.: PERS 7-1996, f. & cert. ef. 11-12-96

459-005-0130

Revocation of Power of Attorney

A Power of Attorney Document filed with PERS shall be revoked upon the occurrence of the earliest of the following events:

(1) A written revocation is filed with PERS containing the notarized signature of the member. The notary information must be on the same page as the signature of the member. A photocopy of the revocation of a power of attorney may be filed with PERS if

the notary information is clearly legible. PERS may accept an original document, and PERS shall not be responsible for the safekeeping or return of any original document;

(2) A Power of Attorney Document is filed with PERS which:

(a) Bears a date that is later than any Power of Attorney Document previously filed with PERS; and

(b) Complies with the requirements set forth in OAR 459-005-0110.

(3) PERS receives notification of the death of the member.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - ORS 238.715

Hist.: PERS 7-1996, f. & cert. ef. 11-12-96

459-005-0140

Permissible Actions Under A Power of Attorney

(1) After receipt by PERS of a Power of Attorney Document meeting the requirements set forth in OAR 459-005-0110 and 459-005-0120, both the member and the member’s designated Attorney-in-Fact may execute any document required by PERS or perform any PERS related business that falls within the scope of the powers granted by the member in the Power of Attorney Document.

(2) Unless otherwise limited in a Power of Attorney Document, the document shall be construed as granting the power:

(a) To designate beneficiaries;

(b) To select payment options; or

(c) To make health insurance coverage decisions.

(3) If the power to appoint a substitute Attorney-in-Fact is exercised by an Attorney-in-Fact, such appointment must be evidenced by a written document submitted to PERS containing:

(a) The notarized signature of the Attorney-in-Fact, which notary information must appear on the same page as the Attorney-in-Fact’s signature;

(b) Words expressly granting all, or a portion of, the powers held by the Attorney-in-Fact under the Power of Attorney Document to a named individual as the Substitute Attorney-in-Fact; and

(c) The signature and address of the Substitute Attorney-in-Fact.

(4) A Power of Attorney Document submitted to PERS that meets the requirements of OAR 459-005-0110 shall be conclusive evidence of the intent of the member to grant a power of attorney in accordance with the express provisions of the submitted Power of Attorney Document, subject to OAR 459-005-0120(3).

(a) PERS shall be entitled to rely upon a submitted Power of Attorney Document until it is revoked as provided in OAR 459-005-0130, without liability of PERS for actions taken by PERS at the request of the designated Attorney-in-Fact, or Substitute Attorney-in-Fact, if applicable, under such unrevoked Power of Attorney Document.

(b) PERS shall also be entitled to rely upon a submitted Power of Attorney Document after the death of the member until PERS receives notice of the member’s death. PERS shall have no liability for action taken by it at the request of the Attorney-in-Fact or Substitute Attorney-in-Fact after the member’s death and before PERS has been notified of the member’s death.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - ORS 238.715

Hist.: PERS 7-1996, f. & cert. ef. 11-12-96

459-005-0150

Effective Date of Power of Attorney Rules

OAR 459-005-0100 to 459-005-0140 shall be effective on the date they are adopted by the Public Employees’ Retirement Board (Board), and shall govern any documents submitted to PERS on or after the date these rules are adopted by the Board for the purpose of effecting the appointment of an Attorney-in-Fact or revoking a power of attorney after such date, or until amended or repealed by the Board.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - ORS 238.715

Optional Retirement Plans

459-005-0310

Date of Participation and Transfer of Employee Funds to an Optional Retirement Plan - OSSHE

(1) The effective date of an election by an administrative or academic employee of the Oregon State System of Higher Education (OSSHE) to participate in an optional retirement plan authorized under ORS 243.775 shall be on or after the date of the notification by OSSHE to the Public Employees' Retirement System (PERS) of an employee's election.

(2) The date of transfer of a member's PERS account to an optional retirement plan shall be the first working day of the calendar month following the date of the notification by OSSHE to PERS of the employee's election to participate in an optional retirement plan authorized under ORS 243.775.

(3) For purposes of sections (1) and (2) of this rule, the date of notification shall be the date on which PERS headquarters receives the written notification of the election to participate in an optional retirement plan under ORS 243.775.

(4) For the purposes of this rule, "member's PERS account" means:

(a) The member's individual account in the fund as defined in ORS 238.250; and

(b) The member's account in the Variable Annuity Account in the Fund as defined in ORS 238.260.

Stat. Auth: ORS 238.650

Stats. Implemented: ORS 243.775

Hist.: PERS 3-1996, f. & cert. ef. 6-11-96

459-005-0320

Employer Contributions to an Optional Retirement Plan - OSSHE

(1) The employer contributions required of the State Board of Higher Education to be paid to an optional retirement plan as provided for in ORS 243.775(9) shall be based on the tier of benefits that the employee would otherwise participate in with the Public Employees' Retirement System (PERS) had the employee not elected to participate in the optional retirement plan as follows:

(a) If the employee was eligible for benefits under Tier One, the applicable employer contributions that are actuarially determined to fund Tier One benefits; or

(b) If the employee was eligible only for Tier Two benefits, the applicable employer contributions that are actuarially determined to fund Tier Two benefits.

(2) Upon notification from the State Board of Higher Education to PERS of an employee's election to participate in an optional retirement plan, PERS shall notify the State Board of Higher Education of the applicable benefit tier to use for determining the employer contribution to an optional retirement plan.

(3) For purposes of this rule, an employee is eligible for:

(a) Tier One benefits if the person establishes membership in PERS before January 1, 1996, as described in ORS 238.430(2).

(b) Tier Two benefits if the person establishes membership in PERS on or after January 1, 1996, as described in ORS 238.430(2).

(4)(a) Within the first 6 months of employment by the Oregon State System of Higher Education, a former PERS member may elect to obtain a restoration of membership rights in PERS pursuant to ORS 238.105. Following a redeposit under ORS 238.105, a member may elect to begin participation in an optional retirement plan in accordance with ORS 243.775(3)(c).

(b) If a member restores membership rights under ORS 238.105, that restoration shall establish the tier of benefits the member is entitled to and the corresponding employer contributions as provided in sections (1) and (3) of this rule.

Stat. Auth: ORS 238.650

Stats. Implemented: ORS 243.775

Hist.: PERS 3-1996, f. & cert. ef. 6-11-96

459-005-0350

Membership Status of Persons in Concurrent Employment Eligible to Participate in an Optional or Alternative Retirement Plan

(1) For the purpose of this rule, concurrent employment means employment with two or more different employers participating in the Public Employees' Retirement System (PERS) at the same time.

(2) If a person employed by the State System of Higher Education or by the Oregon Health Sciences University is concurrently employed by another PERS participating employer, eligibility for PERS membership shall be based on the following:

(a) If the person elects to participate in an optional retirement plan offered by the State Board of Higher Education under ORS 243.775, or an alternative retirement plan offered by the Oregon Health Sciences University under ORS 353.250(3), and concurrent employment with all other PERS participating employers normally requires less than 600 hours in a year, the person:

(A) Shall not be eligible to establish membership in PERS as an employee of the State System of Higher Education or the Oregon Health Sciences University, and

(B) Shall not be eligible to establish membership in PERS as an employee of the other concurrent PERS employer or employers.

(b) If the person elects to participate in an optional retirement plan offered by the State Board of Higher Education under ORS 243.775, or an alternative retirement plan offered by the Oregon Health Sciences University under ORS 353.250(3), and concurrent employment with all other PERS participating employers normally requires 600 hours or more in a year, the person:

(A) Shall not be eligible to establish membership in PERS as an employee of the State System of Higher Education or the Oregon Health Sciences University; and

(B) Shall establish membership in PERS as an employee of the other concurrent PERS employer or employers.

(3) A member of PERS who is concurrently employed and establishes PERS membership under the provisions of paragraph (2)(b)(B) of this rule shall not be eligible to have the member's account transferred to an optional or an alternative retirement plan as described in ORS 243.775(6) and (7).

(4) For purposes of this rule, an employee who is eligible for PERS membership shall be eligible for:

(a) Tier One benefits if the person establishes membership in PERS before January 1, 1996, as described in ORS 238.430(2).

(b) Tier Two benefits if the person establishes membership in PERS on or after January 1, 1996, as described in ORS 238.430(2).

Stat. Auth: ORS 238.650

Stats. Implemented: ORS 238.015, 243.775 & 353.250(3)

Hist.: PERS 3-1996, f. & cert. ef. 6-11-96

459-005-0370

Date of Participation and Transfer of Employee Funds to an Alternative Retirement Plan - OHSU

(1) For the purposes of this rule, a "member's PERS account" means the member's individual account in the Fund as defined in ORS 238.250, and the member's account in the Variable Annuity Account in the Fund as defined in ORS 238.260.

(2) If an employee elects to participate in an alternative retirement plan authorized under ORS 353.250(3):

(a) Unless otherwise agreed upon, the effective date of an election to participate in an alternative retirement plan shall be certified by OHSU to PERS within thirty (30) days of that effective date.

(b) If the employee is a member of PERS, and is eligible for and elects to transfer the balance of the member's account in PERS to the alternative retirement plan, OHSU shall forward a copy of that election together with the certification required in subsection (a) of this section.

(c) In the event an eligible employee is disabled or deceased and an election to participate in an alternative retirement plan has not been signed by the employee, the employee shall be deemed

to be an active member of PERS, if all other conditions of ORS 238.015 are met.

(3) In accordance with ORS 238.015(11):

(a) An employee who is serving a six-month waiting period as described in ORS 238.015 shall establish active membership in PERS in accordance with ORS 238.015 unless PERS receives notification of an election to participate in an alternative retirement plan prior to the completion of that six-month waiting period.

(b) Notwithstanding subsection (a) of this section, if PERS receives a notification of an election to participate in an alternative retirement plan, active membership in PERS shall cease as of the effective date of the election.

(4) A PERS member electing to participate in an alternative retirement plan, authorized under ORS 353.250(3), and who is not concurrently an active member of PERS with another PERS participating employer, may petition PERS to have the member's account in PERS transferred directly to an alternative retirement plan.

(a) A transfer of a member's account as provided in this section shall be transferred directly to the alternative retirement plan by PERS and shall not be made available to the employee while remaining in the employ of OHSU.

(b) A transfer of a member's PERS account as provided in subsection (a) of this section shall not include any reserves of any PERS participating employer.

(5) A PERS member electing to participate in an alternative retirement plan who has not separated from service in any position at OHSU shall be not be eligible to withdraw the member's account in PERS, except as provided in section (4) of this rule.

(6) The alternative retirement plan established under provisions of ORS 353.250(3) shall:

(a) Be a qualified plan under the Internal Revenue Code;

(b) Be capable of accepting funds transferred under provisions of section (4) of this rule without the transfer being treated as a taxable event under the Internal Revenue Code; and

(c) Be willing to accept those transfers.

(7) The date of distribution of a member's PERS account to an alternative retirement plan, authorized under ORS 353.250(3), as provided for in section (4) of this rule shall be the later of:

(a) The first of the calendar month following the date of receipt by PERS of a copy of the election if such copy is received by PERS on or before the fifteenth of a calendar month; or

(b) The first of the second calendar month following the date of receipt by PERS of a copy of the election if such copy is received on or after the sixteenth of a calendar month.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.015 & ORS 353.250(3)

Hist.: PERS 5-1998, f. & cert. ef. 5-22-98

459-005-0525

Ceiling on Compensation for Purposes of Contributions and Benefits

(1) The purpose of this rule is to assure compliance of the Public Employees Retirement System (PERS) with **Internal Revenue Code (IRC) Section 401(a)(17)** relating to the limitation on annual compensation allowable for determining contributions and benefits under ORS 237.001 to 237.315.

(2) Definitions:

(a) A "participant" shall mean an active or inactive member of PERS.

(b) An "eligible participant" shall mean a person who first establishes membership in PERS before January 1, 1996.

(c) A "noneligible participant" shall mean a person who first establishes membership in PERS after December 31, 1995.

(d) "Annual compensation" shall be compensation paid as defined in ORS 237.003 (11) and 237.075.

(e) For purposes of this rule, an "employer" shall mean the state, a political subdivision of the state, or an instrumentality created by two or more political subdivisions.

(3) For eligible participants, the limit set forth in **IRC Section 401(a)(17)** shall not apply for purposes of determining the

amount of employee or employer contributions that may be paid into PERS, and for purposes of determining benefits due under ORS 237.001 to 237.315. The limit on annual compensation for eligible participants shall be no less than the amount which was allowed to be taken into account for purposes of determining contributions or benefits under ORS 237.001 to 237.315 as in effect on July 1, 1993.

(4) For noneligible participants, the annual compensation taken into account for purposes of determining contributions or benefits under ORS 237.001 to 237.315 shall be measured on a calendar year basis, and shall not exceed \$150,000 per calendar year beginning in 1996.

(a) This limitation on annual compensation will be indexed by cost-of-living adjustments in subsequent years as provided in **IRC Section 401(a)(17)(B)**.

(b) A noneligible participant employed by two or more agencies or instrumentalities of a PERS participating employer in a calendar year, whether concurrently or consecutively, shall have all compensation paid by the employer combined for determining the allowable annual compensation under this rule.

(c) The employer shall monitor wages and contributions to assure that reports and remitting are within the limits established by this rule and IRC Section 401(a)(17).

(5) For a noneligible participant, Final Average Salary under ORS 237.003(15) shall be calculated based on the amount of compensation that is allowed to be taken into account under this rule.

(6) Notwithstanding sections (4) and (5) of this rule, if the Final Average Salary as defined in ORS 237.003(15)(b) is used in computing a member's retirement benefits, the annual compensation shall be based on compensation paid in a 12-month period beginning with the earliest calendar year used in determining the 36 months of wages paid. For each 12-month period, annual compensation shall not exceed the amount of compensation that is allowable under this rule for the calendar year in which the 12-month period begins.

(7) Creditable service, as defined in ORS 237.003(4), shall be given for each month that an active member is paid salary or wages and allowable contributions have been remitted to PERS, or would be remitted but for the annual compensation limit in IRC Section 401(a)(17).

(8) In computing the allowable annual compensation for noneligible participants, the family aggregation rules of **IRC Section 414(q)(6)**, as modified by **IRC Section 401(a)(17)(A)**, shall apply.

(9) With Respect to noneligible participants, the annual compensation limit in **IRC Section 410(a)(17)** shall also apply for purposes of the nondiscrimination requirements of **IRC Section 410(a)(4)** and the nondiscriminatory compensation requirements of **IRC Section 414(s)(3)**.

Stat. Auth: ORS 237.251(3)(h), 237.263 & IRC Section 401 (a) (17)

Stats. Implemented: ORS 237.251

Hist.: PERS 4-1995, f. 11-14-95, cert. ef. 12-1-95

DIVISION 7

EARNINGS AND INTEREST DISTRIBUTION

459-007-0001

Definitions

For purposes of Division 007 the following words shall have the following meanings:

(1) "Board" shall have the same meaning as provided in OAR 459-005-0001(1).

(2) "PERS" shall have the same meaning as provided in OAR 459-005-0001(2).

(3) The "effective date of retirement" means the first of the calendar month following the last day worked as an active member or the first of the calendar month in which an application for a service retirement is filed with the Public Employees Retirement System (PERS) whichever is the later.

(4) The "time of retirement" and "date of retirement" shall

have the same meaning as the effective date of retirement in section (2) of this rule.

(5) The "date of distribution" is the date inscribed on the check, warrant, or electronic transfer issued to the member or on behalf of the member, to the beneficiary of the member or on behalf of the member's beneficiary, or to an alternate payee or on behalf of the alternate payee.

(6) "Individual member accounts" and "member's individual account" shall have the same meaning as provided in ORS 238.250.

(7) The "member's account in the Variable Annuity Account" shall have the same meaning as provided in ORS 238.260.

(8) "In-service death" of an active member shall have the same meaning as provided in ORS 238.395.

(9) "Member" shall have the same meaning as provided in OAR 459-005-0001(7).

(10) "Tier One" shall have the same meaning as provided in OAR 459-005-0001(14).

(11) "Tier Two" shall have the same meaning as provided in OAR 459-005-0001(15).

(12) "Fund" shall have the same meaning as provided in OAR 459-005-0001(3).

(13) "Earnings" shall mean all income to the Fund from investments and other sources, but shall not include member or employer contributions.

(14) "Date of withdrawal calculation" shall mean the first of the calendar month in which PERS receives the completed documents required of the member who is requesting a withdrawal of the member's individual account balance and the member's account in the Variable Annuity Account, if member participated in the Variable Annuity, or the first of the calendar month in which PERS receives the required notice of separation from the member's former employer(s), whichever is the later.

(15) "Assumed earnings rate" shall mean the actuarial assumed rate of return on investments as approved by the Board for the most recent actuarial valuation.

(16) The "latest year-to-date calculation" means the distribution factor calculated by staff on a monthly basis using market value of investments supplied by the Oregon State Treasury. Separate distribution factors are calculated for the Variable Annuity Account and for Tier Two members' individual accounts. These factors provide for the prorata distribution of year-to-date earnings to a member's account in the Variable Annuity Account, and to a Tier Two member's individual account.

(17) "Is available" and "if available" refer to the period between January 1 and February 28 of each calendar year when no "latest year-to-date calculation" is available.

(18) The "effective date of benefits" for a disability retirement allowance, means the first of the calendar month following the last day the member actually performed work, or the first of the calendar month following the last day the member received salary or paid leave, exclusive of the cash payoff for accrued vacation or compensatory time, whichever is the later.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238

Hist.: PER 8, f. 12-15-55; PER 4-1980(Temp), f. 11-26-80, ef. 12-1-80; PER 1-1984(Temp), f. & ef. 6-29-84; PER 2-1984(Temp), f. & ef. 9-26-84; PER 1-1985, f. & ef. 3-22-85; PERS 1-1995, f. 9-12-95, cert. ef. 1-1-96; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0135(1); PERS 6-1998, f. & cert. ef. 5-22-98, Renumbered from 459-007-0010

459-007-0010 [Renumbered to 459-007-0001]

459-007-0015

Distribution of Earnings on Underpayment of Estimated Benefits

In accordance with ORS 238.455(5), earnings credited to an underpayment of either Tier One or Tier Two estimated benefits shall be simple interest, prorated from date of underpayment to date of distribution by PERS of the underpaid amount based on the rate credited to the respective tier in the Fund for the prior calendar year.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.455

Hist.: PERS 6-1998, f. & cert. ef. 5-22-98

459-007-0020

Statutory Limitation on the Crediting of Earnings

No earnings shall be credited to any payment from the Fund unless specifically provided for in ORS Chapter 238 and OAR Chapter 459, Divisions 007 and 009.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238

Hist.: PER 8, f. 12-15-55; PER 4-1980(Temp), f. 11-26-80, ef. 12-1-80; PER 1-1984(Temp), f. & ef. 6-29-84; PER 2-1984(Temp), f. & ef. 9-26-84; PER 1-1985, f. & ef. 3-22-85; PERS 1-1995, f. 9-12-95, cert. ef. 1-1-96; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0135(2); PERS 6-1998, f. & cert. ef. 5-22-98

459-007-0030

Distribution of Earnings for Active and Inactive Members

(1) Unless otherwise specified in this division, the crediting of earnings to a Tier One member's individual account and the application of earnings or losses to a Tier One member's account in the Variable Annuity Account shall be made on a calendar year basis as of December 31 of each calendar year.

(2) For Tier One members, earnings shall be credited to all active and inactive Tier One member individual accounts, based on the balance in each account at the end of that calendar year.

(a) The earnings credited to Tier One members' individual accounts in the Fund shall be the greater of the actual earnings available for distribution less deductions provided by law or the Board's assumed earnings rate.

(b) Earnings or losses shall be applied to the active or inactive Tier One members' accounts in the Variable Annuity Account at the end of each calendar year based on the actual net earnings or losses in the Variable Annuity Account in the Fund at calendar year end.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.250 & ORS 238.255

Hist.: PER 8, f. 12-15-55; PER 4-1980(Temp), f. 11-26-80, ef. 12-1-80; PER 1-1984(Temp), f. & ef. 6-29-84; PER 2-1984(Temp), f. & ef. 9-26-84; PER 1-1985, f. & ef. 3-22-85; PERS 1-1995, f. 9-12-95, cert. ef. 1-1-96; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0135(3); PERS 9-1998, f. 5-22-98, cert. ef. 1-1-2000

459-007-0040

Distribution of Earnings for Withdrawal of Member's Account - Tier One

For withdrawal of contributions of a terminated Tier One member, not eligible for a retirement allowance, during a period for which no annual distribution of earnings has been made, earnings shall be credited to date of distribution as follows:

(1) Earnings on a Tier One member's individual account balance shall be credited as follows:

(a) If earnings for the calendar year prior to the effective date of withdrawal calculation have not been credited to the Tier One member's individual account as of December 31 of that prior year, earnings shall be credited for that year based on the greater of the latest year-to-date calculation, or the Board's assumed earnings rate, for that year.

(b) Earnings credited for the calendar year of the Tier One member's effective date of withdrawal calculation shall be based on:

(A) The latest year-to-date calculation for that year as of the first of month of the effective date of withdrawal, if available; or

(B) The Board's assumed earnings rate, prorated from January 1 to first of the month of the effective date of withdrawal, whichever is the greater; and

(C) The Board's assumed earnings rate, prorated from first of the month of the effective date of withdrawal to the date of distribution.

(2) If a Tier One member is participating in the Variable Annuity Account, earnings or losses of the Variable Annuity

Account shall be applied to the Tier One member's account in the Variable Annuity Account on a calendar year basis as follows:

(a) If earnings or losses for the calendar year prior to the effective date of withdrawal calculation have not been applied to the Tier One member's account in the Variable Annuity Account as of December 31 of that year, earnings or losses for that year shall be applied based on the latest year-to-date calculation for that year.

(b) Earnings or losses for the calendar year of the effective date of withdrawal calculation shall be applied based on:

(A) The latest year-to-date calculation for that year, if available, as of the first of the month of the effective date of withdrawal calculation. Earnings to be credited to the adjusted balance of the Tier One member's account in the Variable Annuity Account in the Fund from the effective date of withdrawal calculation to date of distribution shall be prorated based on the Board's assumed earnings rate.

(B) In the event that no calendar year-to-date calculation is available, the Board's assumed earnings rate, prorated from January 1 to the date of distribution.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.265

Hist.: PER 8, f. 12-15-55; PER 4-1980(Temp), f. 11-26-80, ef. 12-1-80; PER 1-1984(Temp), f. & ef. 6-29-84; PER 2-1984(Temp), f. & ef. 9-26-84; PER 1-1985, f. & ef. 3-22-85; PERS 1-1995, f. 9-12-95, cert. ef. 1-1-96; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0135(5); PERS 9-1998, f. 5-22-98, cert. ef. 1-1-2000

459-007-0050

Distribution of Earnings for a Deceased Active or Inactive Member - Tier One

When death of an active and inactive Tier One member occurs during a period for which no annual distribution of earnings has been made, earnings shall be credited to date of distribution as follows:

(1) Earnings on a Tier One member's individual account balance shall be credited as follows:

(a) If earnings for the calendar year prior to the first of the month of the Tier One member's death have not been credited to the Tier One member's individual account as of December 31 of that prior year, earnings shall be credited for that year based on the greater of the latest year-to-date calculation, or the Board's assumed earnings rate, for that year.

(b) Earnings credited for the calendar year of the Tier One member's death shall be based on the greater of:

(A) The latest year-to-date calculation as of the first of the month of the Tier One member's death, if available; or

(B) The Board's assumed earnings rate, prorated from January 1 to the first of the month of the Tier One member's date of death.

(2) If a Tier One member was participating in the Variable Annuity Account, earnings or losses of the Variable Annuity Account shall be applied to the Tier One member's account in the Variable Annuity Account on a calendar year basis as follows:

(a) If earnings or losses for the calendar year prior to the first of the month of the Tier One member's death have not been applied to the Tier One member's account in the Variable Annuity Account as of December 31 of that year, earnings or losses available for distribution to Tier One members participating in the Variable Annuity Account for that year shall be applied based on the latest year-to-date calculation for that year.

(b) Earnings or losses for the calendar year of the Tier One member's death shall be applied based on:

(A) The latest year-to-date calculation for that year as of the first of the month of the Tier One member's death, if available; or

(B) In the event that no calendar year-to-date calculation is available, the Board's assumed earnings rate, prorated from January 1 to the first of the month of the member's death.

(c) Upon applying the earnings or losses as provided in subsections (b)(A) and (b)(B) of this section, the adjusted balance of the deceased member's account in the Variable Annuity Account shall be transferred to the member's individual account in the

Fund, as of the first of the month in which death occurs.

(3) Earnings on the deceased Tier One member's account, including the transferred amount of the Tier One member's adjusted account in the Variable Annuity Account as provided in subsection (2)(c) of this rule from the first of the month of the Tier One member's death to the date of distribution shall be simple interest prorated for that period on the basis of the Board's assumed earnings rate."

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.390, ORS 238.430 & ORS 238.435

Hist.: PER 8, f. 12-15-55; PER 4-1980(Temp), f. 11-26-80, ef. 12-1-80; PER 1-1984(Temp), f. & ef. 6-29-84; PER 2-1984(Temp), f. & ef. 9-26-84; PER 1-1985, f. & ef. 3-22-85; PERS 1-1995, f. 9-12-95, cert. ef. 1-1-96; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0135(6); PERS 9-1998, f. 5-22-98, cert. ef. 1-1-2000

459-007-0060

Distribution of Earnings on the Employer Death Benefit - Tier One

Earnings on the employer death benefit provided for in ORS 238.395 shall be prorated simple interest credited from the first of the month of the date of the Tier One member's death to date of distribution based on the Board's assumed earnings rate as of the first of the month of the Tier One member's death.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.395, ORS 238.430 & ORS 238.435

Hist.: PER 8, f. 12-15-55; PER 4-1980(Temp), f. 11-26-80, ef. 12-1-80; PER 1-1984(Temp), f. & ef. 6-29-84; PER 2-1984(Temp), f. & ef. 9-26-84; PER 1-1985, f. & ef. 3-22-85; PERS 1-1995, f. 9-12-95, cert. ef. 1-1-96; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0135(7); PERS 9-1998, f. 5-22-98, cert. ef. 1-1-2000

459-007-0070

Distribution of Earnings For Service Retirement, General - Tier One

When a service retirement of a Tier One member occurs during a period for which no annual distribution of earnings has been made, earnings shall be credited to the effective date of retirement as follows:

(1) Earnings on a Tier One member's individual account balance shall be prorated on a calendar year basis as follows:

(a) If, as of the effective date of retirement, earnings for the prior calendar year have not been credited to the Tier One member's individual account as of December 31 of that prior year, earnings shall be credited for that prior year based on the greater of the latest year-to-date calculation, or the Board's assumed earnings rate, for that year.

(b) Earnings credited to the Tier One member's individual account for the calendar year of the effective date of retirement shall be based on the greater of:

(A) The latest year-to-date calculation as of the effective date of retirement for that year, if available; or

(B) The Board's assumed earnings rate, prorated from January 1 to the effective date of retirement. This rate shall apply if no calendar year-to-date calculation is available.

(2) If a Tier One member is participating in the Variable Annuity Account at time of retirement, earnings or losses shall be applied to the Tier One member's account in the Variable Annuity Account on a calendar year basis as follows:

(a) If earnings or losses for the calendar year prior to the effective date of retirement have not been applied to the Tier One member's account in the Variable Annuity Account as of December 31 of that year, earnings or losses for that year shall be applied based on the latest year-to-date calculation for that year.

(b) Earnings or losses on the Tier One member's account in the Variable Annuity Account for the calendar year of the effective date of retirement shall be applied based on:

(A) The latest year-to-date calculation for that year as of the effective date of retirement, if available; or

(B) In the event that no calendar year-to-date calculation is available, the Board's assumed earnings rate, prorated from January 1 to the effective date of retirement.

(3) In accordance with ORS 238.260(9), if a Tier One member who is participating in the Variable Annuity Account at time of retirement elects to:

(a) Transfer the value of the Tier One member's account in the Variable Annuity Account, upon applying the earnings or losses as provided in section (2) of this rule, the adjusted balance of the Tier One member's account in the Variable Annuity Account shall be transferred to the Tier One member's individual account in the Fund, as of the effective date of retirement.

(b) Retain the Tier One member's account in the Variable Annuity Account, future earnings or losses shall be applied in accordance with ORS 238.260(10).

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.260, ORS 238.300, ORS 238.305 & ORS 238.315

Hist.: PER 8, f. 12-15-55; PER 4-1980(Temp), f. 11-26-80, ef. 12-1-80; PER 1-1984(Temp), f. & ef. 6-29-84; PER 2-1984(Temp), f. & ef. 9-26-84; PER 1-1985, f. & ef. 3-22-85; PERS 1-1995, f. 9-12-95, cert. ef. 1-1-96; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0135(8); PERS 9-1998, f. 5-22-98, cert. ef. 1-1-2000

459-007-0080

Distribution of Earnings for Service Retirement, Single Payment of a Tier One Member's Account

Notwithstanding OAR 459-007-0070, if a Tier One member elects to receive a single payment under provisions of ORS 238.305 (2) and (3) during a period for which no annual distribution of earnings has been made, earnings shall be credited as follows:

(1) Earnings on a Tier One member's individual account balance shall be prorated on a calendar year basis as follows:

(a) If earnings for the calendar year prior to the effective date of retirement have not been credited to the Tier One member's individual account as of December 31 of that prior year, earnings shall be credited for that year based on the greater of the latest year-to-date calculation, or the Board's assumed earnings rate, for that year.

(b) Earnings credited to the Tier One member's individual account for the calendar year of the effective date of retirement shall be based on the greater of:

(A) The latest year-to-date calculation as of the effective date of retirement for that year, if available; or

(B) The Board's assumed earnings rate, prorated from January 1 to the effective date of retirement.

(C) Earnings on the value of the Tier One member's individual account following the effective date of retirement, and to date of distribution, shall be based on the Board's assumed earnings rate, prorated from the effective date of retirement to the date of distribution of the single payment."

(2) If a Tier One member is participating in the Variable Annuity Account at time of retirement, earnings or losses shall be applied to the Tier One member's account in the Variable Annuity Account on a calendar year basis as follows:

(a) If earnings or losses available for distribution for the calendar year prior to the effective date of retirement have not been applied to the Tier One member's account in the Variable Annuity Account of December 31 of that year, earnings or losses for that year shall be applied based on the latest year-to-date calculation for that year.

(b) Earnings or losses for the calendar year of the effective date of retirement shall be applied based on:

(A) The latest year-to-date calculation as of the effective date of retirement for that year if available; or

(B) In the event that no calendar year-to-date calculation is available, the Board's assumed earnings rate, prorated from January 1 to the effective date of retirement.

(c) Earnings on the value of a Tier One member's participation in the Variable Annuity program following the effective date of retirement, and to date of distribution, shall be based on the Board's assumed earnings rate, prorated from the effective date of retirement to the date of distribution.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.260, ORS 238.300, ORS 238.305 & ORS 238.315

Hist.: PER 8, f. 12-15-55; PER 4-1980(Temp), f. 11-26-80, ef. 12-1-80; PER 1-1984(Temp), f. & ef. 6-29-84; PER 2-1984(Temp), f. & ef. 9-26-84; PER 1-1985, f. & ef. 3-22-85; PERS 1-1995, f. 9-12-95, cert. ef. 1-1-96; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0135(9); PERS 9-1998, f. 5-22-98, cert. ef. 1-1-2000

459-007-0090

Distribution of Earnings for Service Retirement, Payment of Member's Account in Two or More Installments - Tier One

Notwithstanding 459-007-0070, if a Tier One member elects to receive installment payments under provisions of ORS 238.305(2) and (3) during a period for which no annual distribution of earnings has been made, earnings shall be credited as follows:

(1) Earnings on a Tier One member's individual account balance shall be on a calendar year basis as follows:

(a) If earnings for the calendar year prior to the effective date of retirement have not been credited to the Tier One member's individual account as of December 31 of that prior year, earnings shall be credited for that year based on the greater of the latest year-to-date calculation, or the Board's assumed earnings rate, for that year.

(b) Earnings credited to the Tier One member's individual account for the calendar year of the effective date of retirement shall be based on the greater of:

(A) The latest year-to-date calculation as of the effective date of retirement for that year, if available; or

(B) The Board's assumed earnings rate, prorated from January 1 to the effective date of retirement.

(2) If a Tier One member is participating in the Variable Annuity Account at time of retirement, earnings or losses shall be applied to the Tier One member's account in the Variable Annuity Account on a calendar year basis as follows:

(a) If earnings or losses available for distribution to Tier One members participating in the Variable Annuity Account for the calendar year prior to the effective date of retirement have not been applied to the Tier One member's account in the Variable Annuity Account as of December 31 of that year, earnings or losses for that year shall be applied based on the latest year-to-date calculation for that year.

(b) Earnings or losses for the calendar year of the effective date of retirement shall be applied based on:

(A) The latest year-to-date calculation as of the effective date of retirement for that year, if available; or

(B) In the event that no calendar year-to-date calculation is available, the Board's assumed earnings rate, prorated from January 1 to the effective date of retirement.

(c) In accordance with ORS 238.305(3)(e), upon applying the earnings or losses as provided in subsections (a) and (b) of this section, and prior to the distribution of the first installment, the adjusted balance of the Tier One member's account in the Variable Annuity Account shall be transferred to the Tier One member's individual account in the Fund as of the effective date of retirement.

(3) The basis for crediting earnings on a Tier One member's individual account balance for the calendar year in which the initial installment is paid shall be:

(a) The Tier One member's account balance as of the effective date of retirement, including:

(A) The adjusted balance of the Tier One member's account in the Variable Annuity Account in the Fund as transferred in accordance with subsection (2)(c) of this rule, if the member had participated in the Variable Annuity Account as of the effective date of retirement; but

(B) Less earnings distributed to the member's individual account in the Fund under subsection (1)(b) of this rule; and

(C) Less the amount of the initial installment paid that year.

(b) The factor which is the greater of:

(A) The difference between the latest year-to-date calculation as of the effective date of retirement, and the final year-to-date

calculation for that year, ending December 31; or

(B) The Board's assumed earnings rate in effect for that year, prorated from the effective date of retirement through December 31 of that year.

(c) A comparison of earnings to be distributed shall be made using:

(A) The Tier One member's individual account of the effective date of retirement excluding the distributions under subsection (1)(b) of this rule, and excluding the adjusted balance of the Tier One member's account in the Variable Annuity Account in the Fund as transferred in accordance with subsection (2)(c) of this rule, if the member had participated in the Variable Annuity Account as of the effective date of retirement, using the Board's assumed earnings rate, in effect as of the effective date of retirement, prorated from January 1 to the effective date of retirement; and

(B) The Tier One member's individual account as of December 31 as defined in subsection (3)(a) of this rule and the Board's assumed earnings rate, in effect for that year, prorated from the effective date of retirement through December 31 of that year.

(C) Earnings distributed under subsection (1)(b) of this rule;

(D) The Tier One member's individual account of December 31 using the difference between the latest year-to-date calculation as of the date of the annual installment and the final year-to-date calculation for that year ending December 31.

(d) The greater of the results calculated under paragraph (A) and (B) of subsection (3)(c) or paragraphs (C) and (D) of subsection (3)(c) of this rule or paragraph (B) of subsection (3)(c) of this rule shall be credited to the remaining balance of the Tier One member's individual account as of December 31 of that year.

(4) The factor for crediting earnings on the remainder of a Tier One member's account for calendar years subsequent to the year of retirement shall be determined on a calendar year end basis and shall be the greater of:

(a) The difference between:

(A) the latest year-to-date calculation as of the date of the annual installment, and the final year-to-date calculation of that year ending December 31; or

(B) the Board's assumed earnings rate in effect for that year.

(b) A comparison of earnings to be distributed shall be made using:

(A) The Tier One member's individual account as of the date of the subsequent annual installment, including earning distributed under section (3) of this rule, using the Board's assumed earnings rate, in effect for that year, prorated from January 1 to the date of the annual installment; and

(B) The Tier One member's individual account as of December 31 of the year of the subsequent annual installment using the Board's assumed earnings rate, in effect for that year, prorated from the date of the annual installment through December 31 of that year; or

(C) The Tier One member's individual account as the date of the subsequent annual installment, including earning distributed under section (3) of this rule using the latest year-to-date calculation as of the date of the annual installment; and

(D) the Tier One member's individual account as of December 31 using the difference between the latest year-to-date calculation as of the date of the annual installment and the final year-to-date calculation for that year ending December 31.

(e) The greater of the results calculated under paragraphs (A) and (B) of subsection (4)(b) or paragraphs (C) and (D) of subsection (4)(b) of this rule shall be credited to the remaining balance of the Tier One member's individual account as of December 31 of that year.

(5) The final installment shall include the remaining balance of the Tier One member's individual account including earnings credited at year end under sections (3) and (4) of this rule plus earnings to be credited as follows:

(a) If earnings on the balance of the Tier One member's individual account for the calendar year prior to the year of the final installment have not been credited to the Tier One member's individual account, earnings shall be credited based on the greater of

the latest year-to-date calculation or the Board's assumed earnings rate, for the prior calendar year, in the manner specified by section (4) of this rule; and

(b) Earnings for the calendar year of the final installment shall be credited based on the greater of the latest year-to-date calculation, or the Board's assumed earnings rate as of the date of the final installment, prorated from January 1 to the date of distribution of the final installment.

Stat. Auth.: ORS 238.305(3)(c) & ORS 238.650

Stats. Implemented: ORS 238.260, ORS 238.300, ORS 238.305 & ORS 238.315

Hist.: PER 8, f. 12-15-55; PER 4-1980(Temp), f. 11-26-80, ef. 12-1-80; PER 1-1984(Temp), f. & ef. 6-29-84; PER 2-1984(Temp), f. & ef. 9-26-84; PER 1-1985, f. & ef. 3-22-85; PERS 1-1995, f. 9-12-95, cert. ef. 1-1-96; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0135(10); PERS 9-1998, f. 5-22-98, cert. ef. 1-1-2000

459-007-0100

Distribution of Earnings for Disability Retirement - Tier One

When a disability retirement of a Tier One member occurs during a period for which no annual distribution of earnings has been made, earnings shall be credited to the effective date of benefits as follows:

(1) Earnings on a Tier One member's individual account balance shall be prorated on a calendar year basis as follows:

(a) If earnings for the calendar year prior to the effective date of benefits have not been credited to the Tier One member's individual account as of December 31 of that prior year, earnings shall be credited for that year based on the greater of the latest year-to-date calculation, or the Board's assumed earnings rate, for that year.

(b) Earnings credited to the Tier One member's individual account for the calendar year of the effective date of benefits shall be credited to the effective date of benefits based on the greater of:

(A) The latest year-to-date calculation as of the effective date of benefits for that year, if available; or

(B) The Board's assumed earnings rate, prorated from January 1 to the effective date of benefits.

(2) If a Tier One member is participating in the Variable Annuity Account at the time of disability retirement, earnings or losses shall be applied to the Tier One member's account in the Variable Annuity Account on a calendar year basis as follows:

(a) If earnings or losses for the calendar year prior to the effective date of benefits have not been applied to the Tier One member's account in the Variable Annuity Account as of December 31 of that year, earnings or losses for that year shall be applied based on the latest year-to-date calculation for that year.

(b) Earnings or losses on the Tier One member's account in Variable Annuity Account for the calendar year of the effective date of benefits shall be applied based on:

(A) The latest year-to-date calculation for that year if available; or

(B) In the event that no calendar year-to-date calculation is available, the Board's assumed earnings rate, prorated from January 1 to the effective date of benefits.

(3) In accordance with ORS 238.260(9), if a Tier One member who is participating in the Variable Annuity Account at time of disability retirement elects to:

(a) Transfer the value of the Tier One member's account in the Variable Annuity Account, upon applying the prorated earnings or losses as provided in section (2) of this rule, the adjusted balance of the Tier One member's account in the Variable Annuity Account shall be transferred to the Tier One member's individual account in the Fund, as of the effective date of benefits.

(b) Retain the Tier One member's account in the Variable Annuity Account, future earnings or losses shall be applied in accordance with ORS 238.260(10).

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.320 - ORS 238.330

Hist.: PER 8, f. 12-15-55; PER 4-1980(Temp), f. 11-26-80, ef. 12-1-80; PER 1-1984(Temp), f. & ef. 6-29-84; PER 2-1984(Temp), f. & ef. 9-26-84; PER 1-

1985, f. & ef. 3-22-85; PERS 1-1995, f. 9-12-95, cert. ef. 1-1-96; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0135(11); PERS 9-1998, f. 5-22-98, cert. ef. 1-1-2000

459-007-0110

Distribution of Earnings at Loss of Membership - Tier One

In the event a Tier One member loses membership under ORS 238.095(2) during a period for which no annual distribution of earnings has been made, earnings shall be credited to the former member's account to the first of the calendar month following the month a member loses membership as follows:

(1) Earnings on a Tier One member's individual account balance, upon loss of membership, shall be credited as follows:

(a) If earnings for the calendar year prior to the date of loss of membership have not been credited to the Tier One member's individual account as of December 31 of that prior year, earnings shall be credited for that year based on the greater of the latest year-to-date calculation, or the Board's assumed earnings rate, for that year.

(b) Earnings to be credited for the calendar year of the Tier One member's date of loss of membership, shall be based on the greater of:

(A) The latest year-to-date calculation as of as of the first of the month of the date of loss of membership for that year, if available; or

(B) The Board's assumed earnings rate, prorated from January 1 to the first of the month following the date of loss of membership.

(2) If a former Tier One member is participating in the Variable Annuity Account, earnings or losses of the Variable Annuity Account shall be applied to the Tier One member's account in the Variable Annuity Account on a calendar year basis as follows:

(a) If earnings or losses for the calendar year prior to the date of loss of membership have not been applied to the Tier One member's account in the Variable Annuity Account as of December 31 of that year, earnings or losses for that year shall be applied based on the latest year-to-date calculation for that year.

(b) Earnings or losses for the calendar year of the date of loss of membership shall be applied as of the end of the calendar month of the date of loss of membership based on:

(A) The latest year-to-date calculation as of the first of the month of the date of loss of membership, if available.

(B) In the event that no calendar year-to-date calculation is available, the Board's assumed earnings rate, prorated from January 1 to the first of the calendar month following the date of loss of membership.

(3) Upon loss of membership in PERS, as described in ORS 238.095(2), an individual ceases being a member of PERS, and shall no longer be treated as member under ORS chapter 238 and there shall not be any future earnings credited following loss of membership forfeits all rights as a member of PERS.

(a) The account of the former member in the Fund, shall have earnings credited as provided in section (1) of this rule within 30 days following loss of membership.

(b) The account of the former member in the Variable Annuity Account in the Fund, with earning and loses applied as provided in section (2) of this rule, shall be deemed transferred to the individual account in the Fund of the former member, and that transfer shall occur within 30 days following loss of membership.

(c) There shall be no distribution of earnings or losses for any period following the end of the calendar month in which the individual is no longer a member of PERS.

(d) A request for a withdrawal of the account of a former member shall be the amount credited to the former member upon loss of membership in PERS as provided in sections (1) and (2) of this rule.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.095 & ORS 238.435

Hist.: PERS 9-1998, f. 5-22-98, cert. ef. 1-1-2000

459-007-0210

Distribution of Earnings for Active and Inactive Members -

Tier Two

(1) Unless otherwise specified in this division, the application of earnings or losses to a Tier Two member's individual account and the Tier Two member's account in the Variable Annuity Account shall be made on a calendar year basis as of December 31 of each calendar year.

(2) For Tier Two members, earnings or losses, except as otherwise provided in this division, shall be applied to all active and inactive Tier Two individual member accounts at the end of each calendar year based on the actual net earnings or losses available for distribution to Tier Two active and inactive members, each respective calendar year. Earnings or losses shall be applied to the active or inactive Tier Two members' accounts in the Variable Annuity Account at the end of each calendar year based on the actual net earnings or losses in the Variable Annuity Account in the Fund at calendar year end.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.250, ORS 238.255, ORS 238.430 & ORS 238.435

Hist.: PERS 7-1998, f. & cert. ef. 5-22-98

459-007-0220

Distribution of Earnings for Withdrawal of Member's Account - Tier Two

For withdrawal of contributions of a terminated Tier Two member, not eligible for a retirement allowance, during a period for which no annual distribution of earnings or losses has been made, earnings or losses shall be applied to the Tier Two member's account to date of distribution as follows:

(1) Earnings or losses available for distribution to Tier Two member shall be applied to a Tier Two member's individual account on a calendar year basis as follows:

(a) If earnings or losses for the calendar year prior to the effective date of withdrawal calculation have not been applied to the Tier Two member's individual account as of December 31 of that year, earnings or losses for that year shall be applied based on the latest year-to-date calculation for that year.

(b) Earnings or losses for the calendar year of the effective date of withdrawal calculation shall be applied based on:

(A) The latest year-to-date calculation as of the date of withdrawal calculation, if available; or

(B) In the event that no calendar year-to-date calculation is available, the Board's assumed earnings rate, prorated from January 1 to the date of withdrawal calculation.

(c) Earnings to be credited to the adjusted balance of the Tier Two member's individual account from date of withdrawal calculation to date of distribution shall be prorated based on the Board's assumed earnings rate.

(2) If a Tier Two member is participating in the Variable Annuity Account, earnings or losses of the Variable Annuity Account shall be applied to the Tier Two member's account in the Variable Annuity Account on a calendar year basis as follows:

(a) If earnings or losses for the calendar year prior to the effective date of withdrawal calculation have not been applied to the member's account in the Variable Annuity Account as of December 31 of that year, earnings or losses for that year shall be applied based on the latest year-to-date calculation for that year.

(b) Earnings or losses for the calendar year of the effective date of withdrawal calculation shall be applied based on:

(A) The latest year-to-date calculation for that year, if available; or

(B) In the event that no calendar year-to-date calculation is available, the Board's assumed earnings rate, prorated from January 1 to date of withdrawal calculation.

(c) Earnings to be credited to the adjusted balance of the Tier Two member's account in the Variable Annuity Account in the fund from date of withdrawal calculation to date of distribution shall be prorated based on the latest year-to-date calculation as of the date of distribution, if available, or the Board's assumed earnings rate if the latest year-to-date calculation is not available.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.65, ORS 238.430 & ORS 238.435

459-007-0230

Distribution of Earnings for a Deceased Active or Inactive Member - Tier Two

When death of an active or inactive Tier Two member occurs during a period for which no annual distribution of earnings or losses has been made, earnings or losses shall be applied as follows:

(1) Earnings or losses on a Tier Two member's individual account balance shall be applied on a calendar basis as follows:

(a) If earnings or losses for the calendar year prior to the month of the Tier Two member's death have not been applied to the Tier Two member's individual account as of December 31 of the prior year, earnings or losses shall be applied for that year based on the latest year-to-date calculation for that year.

(b) If earnings or losses for the calendar year of the Tier Two member's death have not been applied to the Tier Two member's individual account, earnings or losses shall be applied based on:

(A) The latest year-to-date calculation for that year as of the first of the month of the Tier Two member's death, if available; or

(B) In the event that no calendar year-to-date calculation is available, the Board's assumed earnings rate, prorated from January 1 to the first of the month of the Tier Two member's death.

(2) If the Tier Two member was participating in the Variable Annuity Account, the earnings or losses of the Variable Annuity Account shall be applied to the Tier Two member's account in the Variable Annuity Account on a calendar basis as follows:

(a) If earnings or losses for the calendar year prior to the first of the month of the Tier Two member's death have not been applied to the Tier Two member's account in the Variable Annuity Account as of December 31 of that year, earnings or losses to be applied to Tier Two members participating in the Variable Annuity Account for that year shall be based on the latest year-to-date calculation for that year.

(b) Earnings or losses for the calendar year of the Tier Two member's death shall be applied based on:

(A) The latest year-to-date calculation for that year as of the first of the month of the member's death, if available; or

(B) In the event that no calendar year-to-date calculation is available, the Board's assumed earnings rate, prorated from January 1 to the first of the month of the member's death.

(c) Upon applying the earnings or losses as provided in subsections (b)(A) and (b)(B) of this section, the adjusted balance of the deceased member's account in the Variable Annuity Account shall be transferred to the member's individual account in the Fund, as of the first of the month in which death occurs.

(3) Earnings or losses on the deceased Tier Two member's account, including the transferred amount of the Tier Two member's adjusted account in the Variable Annuity Account as provided in subsection (2)(c) of this rule, from the first day of the month of the Tier Two member's death to date of distribution shall be simple interest prorated based on the Board's assumed earnings rate.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.390, ORS 238.430 & ORS 238.435

Hist.: PERS 7-1998, f. & cert. ef. 5-22-98

459-007-0240

Distribution of Earnings on the Employer Death Benefit - Tier Two

Earnings on the employer death benefit provided for in ORS 238.395 shall be prorated simple interest credited from the first of the month of the date of the Tier Two member's death to date of distribution based on the Board's assumed earnings rate as of the first of the month of the Tier Two member's death.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.395, ORS 238.430 & ORS 238.435

Hist.: PERS 7-1998, f. & cert. ef. 5-22-98

459-007-0250

Distribution Of Earnings For Service Retirement, General -

Tier Two

When a service retirement of a Tier Two member occurs during a period for which no annual distribution of earnings or losses has been made, earnings or losses shall be applied to the effective date of retirement as follows:

(1) Earnings or losses on a Tier Two member's individual account balance shall be applied on a calendar year basis as follows:

(a) If, as of the effective date of retirement, earnings or losses for the prior calendar year have not been applied to the Tier Two member's individual account as of December 31 of that prior year, earnings or losses available for distribution to Tier Two members for that year shall be applied based on the latest year-to-date calculation for that year.

(b) Earnings or losses applied to the Tier Two member's individual account for the calendar year of the effective date of retirement shall be applied based on:

(A) The latest year-to-date calculation for that year as of the effective date of retirement, if available; or

(B) In the event that no calendar year-to-date calculation is available, the Board's assumed earnings rate, prorated from January 1 to the effective date of retirement.

(2) If a Tier Two member is participating in the Variable Annuity Account at time of retirement, earnings or losses shall be applied to the Tier Two member's account in the Variable Annuity Account on a calendar year basis as follows:

(a) If earnings or losses for the calendar year prior to the effective date of retirement have not been applied to the Tier Two member's account in the Variable Annuity Account as of December 31 of that year, earnings or losses for that year shall be applied based on the latest year-to-date calculation for that year.

(b) Earnings or losses for the calendar year of the effective date of retirement shall be applied based on:

(A) The latest year-to-date calculation for that year as of the effective date of retirement, if available; or

(B) In the event that no calendar year-to-date calculation is available, the Board's assumed earnings rate, prorated from January 1 to the effective date of retirement.

(3) In accordance with ORS 237.197(9), if a Tier Two member who is participating in the Variable Annuity Account at time of retirement elects to:

(a) Transfer the value of the Tier Two member's account in the Variable Annuity Account, upon applying the prorated earnings or losses as provided in subsection (2)(b) of this rule, the adjusted balance of the member's account in the Variable Annuity Account shall be transferred to the Tier Two member's individual account in the Fund, as of the effective date of retirement.

(b) Retain the Tier Two member's account in the Variable Annuity Account, future earnings or losses shall be applied in accordance with ORS 237.197(10).

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.260, ORS 238.300, ORS 238.305 & ORS 238.315

Hist.: PERS 7-1998, f. & cert. ef. 5-22-98

459-007-0260

Distribution of Earnings for Service Retirement, Single Payment of a Member's Account - Tier Two

Notwithstanding OAR 459-007-0250, if a Tier Two member elects to receive a single payment under provisions of ORS 238.305 (2) and (3) during a period for which no annual distribution of earnings has been made, earnings or losses shall be applied as follows:

(1) Earnings or losses on a Tier Two member's individual account balance shall be applied to the Tier Two member's individual account on a calendar year basis as follows:

(a) If earnings or losses available for distribution to Tier Two members for the calendar year prior to the effective date of retirement have not been applied to the Tier Two member's individual account as of December 31 of that prior year, earnings or losses shall be applied for that year based on the latest year-to-date calculation for that year.

(b) Earnings or losses applied to the Tier Two member's individual account for the calendar year of the effective date of retirement shall be applied based on:

(A) The latest year-to-date calculation as of the effective date of retirement for that year, if available; or

(B) In the event that no calendar year-to-date calculation is available, the Board's assumed earnings rate, prorated from January 1 to the effective date of retirement.

(C) Earnings on the value of the Tier Two member's individual account following the effective date of retirement, and to date of distribution, shall be based on the Board's assumed earnings rate, prorated from the effective date of retirement to the date of distribution of the single payment.

(2) If a Tier Two member is participating in the Variable Annuity Account at time of retirement, earnings or losses shall be applied to the member's account in the Variable Annuity Account on a calendar year basis as follows:

(a) If earnings or losses available for distribution to the Tier Two members participating in the Variable Annuity Account for the calendar year prior to the effective date of retirement have not been applied to the Tier Two member's account in the Variable Annuity Account of December 31 of that year, earnings or losses for that year shall be applied based on the latest year-to-date calculation for that year.

(b) Earnings or losses for the calendar year of the effective date of retirement shall be applied based on:

(A) The latest year-to-date calculation as of the effective date of retirement for that year, if available; or

(B) In the event that no calendar year-to-date calculation is available, the Board's assumed earnings rate, prorated from January 1 to the effective date of retirement.

(c) Earnings on the value of a Tier Two member's participation in the Variable Annuity program following the effective date of retirement, and to date of distribution, shall be prorated for that period on the basis of the Board's assumed earnings rate, prorated from the effective date of retirement to the date of distribution.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.260, ORS 238.300, ORS 238.305 & ORS 238.315

Hist.: PERS 7-1998, f. & cert. ef. 5-22-98

459-007-0270

Distribution Of Earnings For Service Retirement, Payment of Member's Account In Two Or More Installments - Tier Two

Notwithstanding 459-007-0250, if a Tier Two member elects to receive installment payments under provisions of ORS 238.305(2) and (3) during a period for which no annual distribution of earnings has been made, earnings shall be credited as follows:

(1) Earnings or losses on a Tier Two member's individual account balance shall be applied to the Tier Two member's individual account on a calendar year basis as follows:

(a) If earnings or losses available for distribution to Tier Two members for the calendar year prior to the effective date of retirement have not been applied to the Tier Two member's individual account as of December 31 of that prior year, earnings or losses for that year shall be applied based on the latest year-to-date calculation for that year.

(b) Earnings or losses on the Tier Two member's individual account for the calendar year of the effective date of retirement shall be applied based on:

(A) The latest year-to-date calculation as of the effective date of retirement for that year, if available; or

(B) In the event that no calendar year-to-date calculation is available, the Board's assumed earnings rate, prorated from January 1 to the effective date of retirement.

(2) If a Tier Two member is participating in the Variable Annuity Account in the Fund at time of retirement, earnings or losses shall be applied to the member's account in the Variable Annuity Account on a calendar basis as follows:

(a) If earnings or losses available for distribution to Tier Two

members participating in the Variable Annuity Account for the calendar year prior to the effective date of retirement have not been applied to the Tier Two member's account in the Variable Annuity Account as of December 31 of that year, earnings or losses for that year shall be applied based on the latest year-to-date calculation for that year.

(b) Earnings or losses for the calendar year of the effective date of retirement shall be applied based on:

(A) The latest year-to-date calculation as of the effective date of retirement for that year if available; or

(B) In the event that no calendar year-to-date calculation is available, the Board's assumed earnings rate, prorated from January 1 to the effective date of retirement.

(c) In accordance with ORS 238.305(3)(e), upon applying the earnings or losses as provided in subsections (a) and (b) of this section, and prior to the distribution of the first installment, the adjusted balance of Tier Two member's account in the Variable Annuity Account shall be transferred to the Tier Two member's individual account in the Fund as of the effective date of retirement.

(3) Earnings shall be credited to the initial installment using the Board's assumed earnings rate prorated from the effective date of retirement to the date of disbursement of the initial installment. Earnings so credited shall be added to and made a part of the initial installment.

(4) Earnings or losses to be applied to a Tier Two member's individual account balance for the calendar year in which the initial installment is paid shall be calculated as follows:

(a) For the purpose of applying earnings or losses to the Tier Two member's individual account, the account balance as of December 31 of the calendar year of the effective date of retirement shall include:

(A) The Tier Two member's individual account balance as of the effective date of retirement; and

(B) The Tier Two member's account in the Variable Annuity Account in the Fund as transferred in accordance with subsection (2)(c) of this rule, if the member had participated in the Variable Annuity Account as of the effective date of retirement, but shall not include:

(C) Earnings or losses distributed to the member's individual account in the Fund under subsection (1)(b) of this rule; and

(D) The amount of the initial installment paid that year.

(b) Earnings or losses for the remainder of the year of the effective date of retirement shall be calculated as follows: The Tier Two member's individual account as of December 31, as defined in subsection (a) of this section, shall be multiplied by the difference between the latest year-to-date calculation as of the date of the annual installment and the final year-to-date calculation for that year ending December 31.

(c) The earnings or losses calculated under subsection (b) of this section shall be applied to the remaining balance of the Tier Two member's individual account as of December 31 of that year.

(5) Earnings or losses to be applied to the remainder of a Tier Two member's individual account for calendar years subsequent to the year of retirement shall be calculated as follows:

(a) The Tier Two member's individual account as of the date of the subsequent annual installment, including earnings or losses distributed under section 4 of this rule multiplied by the latest year-to-date calculation as of the date of the annual installment; and

(b) The Tier Two member's individual account as of December 31 multiplied by the difference between the latest year-to-date calculation as of the date of the annual installment and the final year-to-date calculation for that year ending December 31.

(c) The result of the calculations in subsections (a) and (b) of this section shall be applied to the Tier Two member's individual account as of December 31 of that year.

(6) The final installment shall include the remaining balance of the Tier Two member's individual account including earnings or losses applied at year end under section (3) and (4) of this rule plus earnings or losses to be applied as follows:

(a) If earnings or losses for the calendar year prior to the year

of the final installment have not been applied to the Tier Two member's individual account, earnings or losses shall be applied based on the latest year-to-date calculation for the prior calendar year, in the manner specified by section (4) or this rule; and

(b) Earnings or losses for the calendar year of the final installment shall be applied based on:

(A) The latest year-to-date calculation as of the date of the final installment, if available; or

(B) If there is no latest year-to-date calculation available, the Boards assumed earnings rate prorated from January 1 to the date of distribution of the final installment.

Stat. Auth.: ORS 238.305(3)(c) & ORS 238.650

Stats. Implemented: ORS 238.260, ORS 238.300, ORS 238.305 & ORS 238.315

Hist.: PERS 7-1998, f. & cert. ef. 5-22-98

459-007-0280

Distribution of Earnings for Disability Retirement - Tier Two

When a disability retirement of a Tier Two member occurs during a period for which no annual distribution of earnings or losses has been made, earnings or losses shall be applied to the effective date of benefits as follows:

(1) Earnings or losses on a Tier Two member's individual account balance shall be applied on a calendar year basis as follows:

(a) If earnings or losses for the calendar year prior to the effective date of benefits have not been applied to the Tier Two member's individual account as of December 31 of that prior year, earnings or losses available for distribution to Tier Two members for that year shall be applied based on the latest year-to-date calculation.

(b) Earnings or losses applied to the Tier One member's individual account for the calendar year of the effective date of benefits shall be based on:

(A) The latest year-to-date calculation as of the effective date of benefits for that year, if available; or

(B) In the event that no calendar year-to-date calculation is available, the Board's assumed earnings rate, prorated from January 1 to the effective date of benefits.

(2) If a Tier Two member is participating in the Variable Annuity Account at time of disability retirement, earnings or losses shall be applied to the Tier Two member's account in the Variable Annuity Account on a calendar year basis as follows:

(a) If earnings or losses for the calendar year prior to the effective date of benefits have not been applied to the Tier Two member's account in the Variable Annuity Account as of December 31 of that year, earnings or losses for that year shall be applied based on the latest year-to-date calculation for that year.

(b) Earnings or losses on the Tier Two member's account in the Variable Annuity Account for the calendar year of the effective date of benefits shall be applied based on:

(A) The latest year-to-date calculation as of the effective date of benefits for that year, if available; or

(B) In the event that no calendar year-to-date calculation is available, the Board's assumed earnings rate, prorated from January 1 to the effective date of benefits.

(3) In accordance with ORS 238.260(9), if a Tier Two member who is participating in the Variable Annuity Account at time of disability retirement elects to:

(a) Transfer the value of the Tier Two member's account in the Variable Annuity Account, upon applying the prorated earnings or losses as provided in section (2) of this rule, the adjusted balance of the Tier Two member's account in the Variable Annuity Account shall be transferred to the Tier Two member's individual account in the Fund, as of the effective date of benefits.

(b) Retain the Tier Two member's account in the Variable Annuity Account, future earnings or losses shall be applied in accordance with ORS 238.260(10).

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.320 - ORS 238.330

Hist.: PERS 7-1998, f. & cert. ef. 5-22-98

459-007-0290

Distribution of Earnings At Loss of Membership - Tier Two

In the event a Tier Two member loses membership under ORS 238.095(2) during a period for which no annual distribution of earnings has been made, earnings or losses shall be applied to the former member's account to the first of the calendar month following the month a member loses membership as follows:

(1) Earnings or losses available for distribution to a Tier Two member's individual account balance, upon loss of membership, shall be applied as follows:

(a) If earnings or losses for the calendar year prior to the date of loss of membership have not been applied to the Tier Two member's individual account as of December 31 of that prior year, earnings or losses shall be applied based on the latest year-to-date calculation available for that year.

(b) Earnings or losses to be applied for the calendar year of the Tier Two member's date of loss of membership shall be applied as of the end of the month of the date of loss of membership based on:

(A) The latest year-to-date calculation as of the first of the month of the date of loss of membership, if available.

(B) In the event that no calendar year-to-date calculation is available, the Board's assumed earnings rate, prorated from January 1 to the first of the calendar month following the date of loss of membership.

(2) If a former Tier Two member is participating in the Variable Annuity Account, earnings or losses of the Variable Annuity Account shall be applied to the Tier Two member's account in the Variable Annuity Account on a calendar year basis as follows:

(a) If earnings or losses for the calendar year prior to the date of loss of membership have not been applied to the Tier Two member's account in the Variable Annuity Account as of December 31 of that year, earnings or losses for that year shall be applied based on the latest year-to-date calculation for that year.

(b) Earnings or losses for the calendar year of the date of loss of membership shall be applied as of the end of the calendar month of the date of loss of membership based on:

(A) The latest year-to-date calculation as of the first of the month of the date of loss of membership, if available.

(B) In the event that no calendar year-to-date calculation is available, the Board's assumed earnings rate, prorated from January 1 to the first of the calendar month following the date of loss of membership.

(3) Upon loss of membership in PERS, as described in ORS 238.095(2), an individual ceases being a member of PERS, and shall no longer be treated as a member under ORS chapter 238 and there shall not be any future earnings or losses applied following loss of membership.

(a) The account of the former member in the Fund, shall have earnings credited as provided in section (1) of this rule within 30 days following loss of membership.

(b) The account of the former member in the Variable Annuity Account in the Fund, with earning and losses applied as provided in section (2) of this rule, shall be deemed transferred to the individual account in the Fund of the former member, and that transfer shall occur within 30 days following loss of membership.

(c) There shall be no distribution of earnings or losses for any period following the end of the calendar month in which the individual is no longer a member of PERS.

(d) A request for a withdrawal of the account of a former member shall be the amount credited to the former member upon loss of membership in PERS as provided in sections (1) and (2) of this rule.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.095

Hist.: PERS 7-1998, f. & cert. ef. 5-22-98

DIVISION 9

PUBLIC EMPLOYER

459-009-0020

Public Employer

(1) A “public employer” shall have the same meaning as that term is given in ORS 238.005(9) and shall include all public school districts and educational service districts.

(2) The employing entity (public employer) is that entity having the final authority to direct and control an individual in the performance of assigned work or duties. This authority may be active or reserved; expressed or implied. In determining who is the employing entity, the following factors shall be used:

(a) Who has or had the authority to select and engage the employee;

(b) Who has or had the power of dismissal; and

(c) Who has or had the authority and responsibility for directing and/or supervising the individual’s work and for controlling the individual’s conduct at work.

(3) The source of payment for labor or services is not of itself a controlling factor in deciding the identity of the employer.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005(9) & ORS 238.205

Hist.: PERS 7-1992, f. & cert. ef. 11-9-92; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0034

459-009-0050

Payment of Cost Estimates

A public employer entering the system established by ORS 238.600 will not be charged for any cost estimates prepared by the regular office staff of the Retirement System, but shall pay only the cost of estimates computed for it in advance by the actuaries employed by the Public Employees’ Retirement Board.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.015

Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0120

459-009-0100

Payroll Deduction Reports

(1) Unless otherwise agreed upon between the Retirement Board and the employer, the employer shall transmit the amount of employee contributions (payroll deductions and employer pick-up) for the pay period together with the corresponding employer contributions, to the Retirement Board so that it shall be received not later than 15 days after each pay date.

(2) Unless otherwise agreed upon between the Retirement Board and the employer, the employer shall transmit to the Retirement Board, not later than the 15th day of each January, on forms furnished by the Board or in an equivalent (compatible) format, an itemized statement of all employee contributions (payroll deductions and employer pick-up) for the preceding calendar year.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.200 & ORS 238.225

Hist.: PER 8, f. 12-15-55; PER 1-1981, f. & ef. 1-15-81; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0130

459-009-0110

Penalty

(1) Failure of any public agency to submit reports or remittances of contributions, within the time limit specified, will make the agency liable for penalties at the rate of one percent for each month or fraction thereof during which the agency is delinquent. The total contributions due on a delinquent report, or the total amount of a delinquent remittance, whichever is greater, shall be subject to such penalty.

(2) Such penalty may be waived by the Board upon the agency petition demonstrating unavoidable delay or unintentional error.

(3) Such penalty shall not be waived by the Board repeatedly for any agency except upon showing of highly unusual circumstances evidencing no agency responsibility for the delay or error.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.705

Hist.: PER 11-1981, f. & ef. 11-23-81; PERS 1-1996, f. & cert. ef. 3-26-96;

459-009-0120

Employer Recordkeeping for Multiple Qualified Retirement Plans

(1) The purpose of this rule is to implement ORS 238.630(5) by establishing the record retention and reporting requirements of employers participating in the Public Employees’ Retirement System (PERS) that are necessary to assure PERS continued compliance with the limitations on contributions and benefits in **Section 415 of the Internal Revenue Code (IRC)**.

(2) For purposes of this rule:

(a) A “qualified retirement plan” is an employees’ trust as described in **IRC Section 401(a)** which is exempt from federal taxation under **IRC Section 501(a)**.

(b) “Wages” means remuneration paid by the employer in a calendar year for federal income tax withholding purposes under **IRC Section 3401**.

(c) “Annual benefit payable” means the benefit, funded by employer contributions, an employee is entitled to receive by virtue of the employee having attained the age at which the employee is eligible to receive a retirement benefit under the terms of a qualified defined benefit plan other than PERS, which is payable annually in the form of a straight life annuity. Notwithstanding ORS 238.205, employer contributions shall include all employee contributions picked up by an employer under **IRC, Section 414(h)**.

(d) The “projected annual benefit” is the annual benefit payable, as defined in subsection (c) of this section, with the exception that it is determined by using the following assumptions:

(A) The member will continue employment with the PERS participating employer until reaching the age when eligible to begin full retirement benefits, under the terms of a plan other than PERS;

(B) The member’s compensation will remain unchanged in determining the full retirement benefit under paragraph (A) of subsection (d) of this section; and

(C) All other relevant factors used to determine retirement benefits under a plan other than PERS for the calendar year under consideration will remain constant/static for all future calendar years.

(3) All PERS participating employers that have ever offered one or more qualified retirement plans other than PERS shall maintain the following records:

(a) For a qualified defined contribution retirement plan(s), an employer participating in PERS who has ever offered one or more qualified defined contribution retirement plans shall maintain the following records for each employee who is a PERS member for such plan(s) the employee has ever been enrolled in:

(A) A copy of the periodic actuarial valuation report(s) and a copy of the annual statement, given to each PERS member who is also participating in another qualified retirement plan sponsored by the employer, which reflects:

(i) The employer contributions to the employee’s account in that plan,

(ii) The employee’s contributions to the employee’s account in that plan, exclusive of rollover contributions and payment of previously withdrawn contributions, and

(iii) Any addition to the employee’s account in that plan of forfeitures from other participants of the plan.

(B) A copy of federal W-2 reporting, showing wages, as defined in subsection (2)(b) of this rule, for each PERS member who is also participating in another qualified retirement plan sponsored by the employer.

(b) For a qualified defined benefit retirement plan(s), an employer participating in PERS who has ever offered one or more qualified defined benefit retirement plans other than PERS shall maintain the following records for each employee who is a PERS member for each plan the employee has ever been enrolled in:

(A) The plan document with all amendments, actuarial reports, and payroll and personnel records that are used to determine and substantiate the amount of the annual benefit payable as

defined in subsection (2)(c) of this rule.

(B) The plan document with amendments, actuarial reports, and payroll and personnel records that are used to determine and substantiate the amount of the projected annual benefit, as defined in subsection (2)(d) of this rule.

(C) A Copy of federal W-2 reporting, showing wages, as defined in subsection (2)(b) of this rule, for each PERS member who is also participating in another qualified retirement plan sponsored by the employer.

(4) Unless otherwise agreed upon:

(a) The records identified in subsection (a) of section (3) of this rule shall be retained indefinitely beginning with calendar year 1989.

(b) The records identified in subsection (b) of section (3) of this rule shall be retained for the current year and three consecutive years immediately preceding the current year.

(c) A staff request for a copy of records or information retained by the employer shall be transmitted to PERS on forms furnished by PERS or in the format required by PERS within 30 working days of the post mark of the request.

(5) For all members who file an application for a service retirement allowance, staff may request the employer transmit to PERS a copy of or information from one or more of the records specified in section (3) or (6) of this rule as required in section (4) of this rule.

(6) Notwithstanding OAR 459-009-0110 and sections (4) and (5) of this rule, all PERS participating employers shall report annually on forms furnished by PERS or in a format required by PERS the following information pertaining to a calendar year, not later than March 1 of the succeeding calendar year:

(a) Each PERS member's wages, as defined in subsection (2)(b) of this rule,

(b) Any other information requested by staff pertaining to the records that are required to be maintained by this rule.

(7) Notwithstanding OAR 459-009-0100 and sections (4) and (5) of this rule, all PERS participating employers who have ever offered one or more qualified retirement plans other than PERS shall report annually on forms furnished by PERS or in the format required by PERS the following information pertaining to a calendar year, not later than March 1 of the succeeding calendar year:

(a) The amount of the employer contributions on behalf of each PERS member made to another qualified defined contribution retirement plan, as described in paragraph (3)(a)(A)(i) of this rule;

(b) The amount of employee contributions made to another qualified defined contribution retirement plan, as described in paragraph (3)(a)(A)(ii) of this rule;

(c) The amount of forfeitures added to each PERS member's account in another qualified defined contribution retirement plan(s), as described in paragraph (3)(a)(A)(iii) of this rule;

(d) The amount of employee after-tax contributions made to another qualified defined benefit retirement plan, as described in subsection (3)(b) of this rule;

(e) The amount of annual benefit payable to each PERS member from another qualified defined benefit retirement plan in the form of a straight life annuity, as described in paragraph (3)(b)(A) of this rule, and the present value (lump sum) amount to fund that straight life annuity;

(f) The amount of projected annual benefit for each PERS member from another qualified defined benefit retirement plan in the form of a straight life annuity, as described in paragraph (3)(b)(B) of this rule, and the present value (lump sum) amount necessary to fund that straight life annuity, and

(g) Any other information requested by staff pertaining to the records that are required to be maintained by this rule.

(8) Participating employers shall be informed of the annual reporting format(s) not later than September of each calendar year for the report(s) due for that calendar year in the succeeding year.

(9) Any participating employer negligent in retaining documents and records, or delinquent in making records or information available, as required by this rule shall be subject to the sanctions provided for in ORS 238.705.

Stat. Auth: ORS 238.630(5), 238.705 & 238.650

Stats. Implemented: ORS 238.630

Hist.: PERS 4-1995, f. 11-14-95, cert. ef. 12-1-95; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-005-0505

459-009-0130

Invoicing for Delinquent Employee Contributions

When required to invoice for employee contributions, or employer "pick-up" of employee contributions, (ORS 238.205), on wages paid in previous calendar years, or allocated to such years pursuant to ORS 238.005(11)(b):

(1) For Tier One members, an amount equal to the earnings actually distributed for Tier One members for those years shall be added to the Tier One member's individual account and the amount charged to the employer.

(2) For Tier Two members, an amount equal to the amount actually distributed for Tier Two members for those years shall be added to the Tier Two member's individual account and charged to the employer.

(3) For both Tier One and Tier Two members participating in the Variable Annuity, an amount equal to the amount actually distributed to members participating in the Variable Annuity for those years shall be added to the member's account in the Variable Annuity account in the Fund and charged to the employer.

Stat. Auth: ORS 238.650

Stats. Implemented: ORS 238.200 & 238.705

Hist.: PER 8, f. 12-15-55; PER 4-1980(Temp), f. 11-26-80, ef. 12-1-80; PER 1-1984(Temp), f. & ef. 6-29-84; PER 2-1984(Temp), f. & ef. 9-26-84; PER 1-1985, f. & ef. 3-22-85; PERS 1-1995, f. 9-12-95, cert. ef. 1-1-96; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0135(4); PERS 10-1998, f. & cert. ef. 6-17-98

459-009-0200

Employer "Pick-Up" of Employee Contributions

On and after July 1, 1979, participating employers may, in lieu of employee contributions required by ORS 238.200, voluntarily agree to "pick-up", assume or pay the uniform 6 percent contributions as provided by enrolled House Bill 5077, Section 3(1), 1979 Regular Session, on behalf of such employer's participating member employees, on the following terms and conditions:

(1) The employer's agreement to "pick-up", assume or pay its employees' contributions must be evidenced by a written employment policy or agreement, which may be a collective bargaining agreement.

(2) The employer's employment policy or agreement to "pick-up", assume or pay its employees' contributions must uniformly apply to all employees of the employer, except those employed in certified or recognized appropriate collective bargaining units, the exclusive bargaining representatives of which have considered and rejected the proposed agreement. Nothing in this section shall be construed to require an employer to open or renegotiate a pre-existing collective bargaining agreement or change an employment policy before its normal expiration date.

(3) The employer's policy or agreement must be to "pick-up", assume or pay the full amount of the affected employees' six percent contributions required by enrolled House Bill 5077, Section 3(1), 1979 by the employer on behalf of its employees Regular Session, and not a portion thereof.

(4) The employer's policy or agreement to "pick-up", assume or pay its employees' contributions may be conditioned on the payment being in lieu of a future wage or salary increase or some other employment benefit, but employees' wage or salary rates in effect at the time of the adoption of the policy or agreement may not be reduced as a condition of the employer's payment.

(5) The employer's written employment policy or agreement shall be submitted to the Board for approval no more than 30 days after its effective date. Additional information shall be provided on a form supplied by the Board. If approved by the Board, such policy or agreement shall not be revoked by the employer except with prior written notice to the Board. All costs to correct any errors caused by failure to give required notice shall be borne by the employer.

(6) The full amount of required employee contributions “picked-up”, assumed or paid by the employer on behalf of its employees pursuant to an employment policy or agreement shall be considered as “salary” under ORS 238.005(11) only for the purpose of computing an employee member’s “final average salary” under ORS 238.005(15), and required employer contributions under ORS 238.225, and shall not constitute additional “salary” or “other advantages” under ORS 238.005(11) for the purpose of determining the amount of employee contributions required under ORS 237.071 or any other purpose.

(7) The full amount of required employee contributions “picked-up”, assumed or paid pursuant to an employment policy or agreement shall be added to employees’ individual account balances for their annuities and shall be considered to be employee contributions for all other purposes of ORS Chapter 238.

Stat. Auth.: ORS 238.650
 Stats. Implemented: ORS 238.205
 Hist.: PER 1-1979(Temp), f. & ef. 6-1-79; PER 2-1979, f. & ef. 7-19-79; PER 2-1980, f. & ef. 3-7-80; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0208

DIVISION 10

MEMBERSHIP

459-010-0005

Continuous Service

(1) In computing continuous service, a year shall mean 12 consecutive months as registered on the calendar and, except as otherwise provided, such 12 consecutive months shall be those between the first day of July and the 30th day of June next following. ORS 237.003(3), (5) and 237.107.

(2) During each year for which a year of prior service credit was allowed, an employee must have been employed in a position normally requiring not less than 600 hours of service per year and during the year must have worked not less than the major fraction of the year computed on a monthly, weekly, or daily basis. A major fraction of the year shall be more than 1/2 of the fiscal year regardless of the position held. ORS 237.003(4).

(3) “Continuous Service” as defined in ORS 237.003(3), shall be considered as interrupted for one year if during a major fraction of such year the member is not or has not been employed by a public employer participating in the system, except as provided by ORS 237.091 and 237.093.

(4) Credit for prior service to a political subdivision other than a school district shall be given only to members who are employees of that political subdivision at the time they become members of the system. ORS 237.081(3).

(5) Credit for prior service to the state shall be given only to members who are employees of the state at the time they become members of the system. ORS 237.081(3).

(6) Adjustment of prior service credit by formula permitted to political subdivisions other than school districts shall be made only by adjustment of the number of years of prior service credit granted and not by adjustment of the amount of benefits allowed per year of prior service credit except as provided by ORS 237.081(2), (3) and (4).

Stat. Auth.: ORS 237
 Stats. Implemented:
 Hist.: PER 8, f. 12-15-55

459-010-0010

Leave of Absence

(1) An employee absent on the date that his employer begins to participate in the system on leave officially granted by his employer and so certified by his employer shall be deemed to have become a member of the system on such date.

(2) An official leave of absence for any purpose must have duration specifically stated at the time of granting, must be in writing, and in accordance with the law, rules, and regulations thereto applicable, and must be officially certified to the Retirement Board by the employer granting such leave, in order to be considered bona fide.

ment Board by the employer granting such leave, in order to be considered bona fide.

Stat. Auth.: ORS 237
 Stats. Implemented:
 Hist.: PER 8, f. 12-15-55

459-010-0012

Membership of Community College Employees

(1) For purposes of establishing membership in the system, effective July 1, 1988, an academic employee of a community college who is employed .375 full-time equivalent (FTE) on a 12-month basis or .50 FTE on a 9-month basis is deemed to be employed 600 hours or more in a year. For an academic employee of a community college, a year shall be the 12 month period beginning July 1 and ending the following June 30.

(2) For an academic employee of a community college, an FTE shall be measured against an academic year beginning July 1 in a given year and ending June 30 of the year following.

(3) An academic employee of a community college is an instructor who teaches classes offered for college-approved credit or on a non-credit basis. Librarians, counselors, and aides in non-teaching positions, tutors, or other non-teaching faculty, and classified, professional or nonprofessional support staff are not academic employees for the purposes of ORS 237.017(3); but are subject to the membership requirements under ORS 237.011.

(4) Each community college shall determine who is an academic employee in its employ under this rule. In making that determination, a community college shall consider all disciplines (academic activity) collectively when an employee’s assignment includes multiple disciplines.

(5) For persons concurrently employed in academic positions in two or more community colleges, the combined FTE shall be used in determining eligibility for membership. If the combined FTE is less than the criteria in section (1) of this rule, the combination of hours of service shall be considered in determining eligibility for membership pursuant to ORS 237.011.

(6) For academic employees concurrently employed in an academic and a non-academic position in one or more community colleges, the combination of academic and non-academic duties shall be considered in determining eligibility for membership pursuant to ORS 237.011. For the purposes of this section, a year shall be any consecutive 12-month period.

(7) Employment of retired members of the system in academic or non-academic positions is subject to the limitations in ORS 237.143.

Stat. Auth.: ORS 237.263
 Stats. Implemented:
 Hist.: PERS 3-1992, f. & cert. ef. 5-4-92

459-010-0025

Student Employee

(1) Under ORS 238.015(5), student employees, inmates of a state institution, and aliens on a training or educational visa are not eligible for membership in the system. A participating employer is responsible for determining whether an employee is ineligible for membership in the system because the employee is a student employee, an inmate of a state institution, or an alien on a training or educational visa.

(2) As used in this rule:

(a) The term “school” includes an accredited or certified public or private elementary school, high school, community college, or institution of higher education, or an Oregon education service district, or the Oregon State School for the Deaf or the Oregon State School for the Blind; but

(b) The term “school” does not include:

(A) Private technical, trade or correspondence schools that do not grant educational degrees; and

(B) Course(s) offered by a school that are not applied toward a degree.

(c) The terms “half-time enrolled” or “enrolled half time” mean that a person is enrolled at least 50% of a full-time enrolled status in a school, as defined in subsection (a) of this section, and

as determined by the school in which enrolled.

(3) A participating employer may reasonably designate an employee as a "student employee" if the employee is a person:

(a) Who is enrolled at least half time in a school and whose employment is principally for the purpose of furthering the person's education; or

(b) Whose employment is principally related to the employee's status as a student, e.g. a work-study program.

(4) An employee may be a student employee under the following circumstances:

(a) The employer is a school and the employed person's principal relationship to the school is as at least a half-time enrolled student.

(b) The employer is not a school, but the person employed is enrolled half time in a school and the work performed for the employer is primarily for the purposes of furthering the person's course of study at the school, or is otherwise related to the person's education. For example:

(A) A student intern at the Legislative Assembly who will receive academic credit for the internship is a student employee.

(B) If an employer requires, for reasons legitimately related to the employment of the person, that an employee be at least a half-time enrolled student; the employee is a student employee.

(5) An employee who is also a student shall be eligible for membership in the system if the employee's work for the employer is the principal basis for the employment relationship and is not related to the employee's course of study at a school. For example:

(a) A full-time employee who attends classes outside of working hours for purposes unrelated to the work performed for the employer is not a student employee, except as provided in section (3) of this rule.

(b) A full-time employee who is granted administrative time off to attend class and the course is recommended or authorized by the employer to maintain or improve the employee's job performance is not a student employee.

(c) A full-time employee, or a part-time employee employed in a position which qualifies the employee for active membership in PERS who is taking a course or is enrolled less than half time in a school, is not a student employee, except as provided in section (3) of this rule.

(6) If an employee qualifies as a student employee under section (3) of this rule, the employee may be deemed a student employee during a break between semesters or quarters of study provided that the student employee has declared, or otherwise indicated, the intent to resume at least half-time enrolled status following the break, provided that the break does not exceed an academic quarter or semester, and the employer has a reasonable expectation that the employee shall resume at least a half time enrolled status following the break.

(7) For an employee whose employment relationship with the employer varies from time to time, from that as a student employee to not as a student employee, the majority employment relationship during a school year shall prevail in determining whether an employee is a student employee for that year.

(8) The employer's policy designating a position or an employment relationship as that of a student employee shall be in writing, and shall reflect the following:

(a) The designation is not primarily for the avoidance of PERS contributions; and

(b) The designation shall be in accordance with applicable laws and regulations pertaining to employment practices.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.015(5)

Hist.: PER 8, f. 12-15-55; PERS 8-1998, f. & cert. ef. 5-22-98

459-010-0030

Determination of Employee Status

(1) The term "employee" means an individual who performs services for a public employer other than as a contractor in an independently established business, or as an employee of that contractor.

(2) For the purposes of ORS 237.001 to 237.315, the term

"employee" also includes public officers, whether elected or appointed.

(3) The term "employee" does not include a member of the governing board of a political subdivision unless the individual qualifies for membership under ORS 237.011.

(4) Determination of whether an individual is an employee is made under common-law rules. Under common-law rules, every individual who performs labor or services subject to the direction and control of an employer, both as to what must be done and how it must be done, is an employee. It does not matter that the employer allows the employee discretion and freedom of action, so long as the employer has the legal right to control both the method and the result of the labor or services; resulting in an employee/employer relationship.

(5) If, under the common-law rules, there is an employee/employer relationship, it makes no difference how it is described. It does not matter how the payments are measured, how they are made, or what they are called. It does not matter whether the individual is employed full time or part time. There is no distinction made between classes of employees. Superintendents, executives, managers, supervisors, and other supervisory personnel are all employees.

(6) In applying the common-law rules, the 20-factor test as described in Internal Revenue Service Revenue Ruling 87-41 shall be used in determining whether or not an individual is an employee. The degree of importance of each factor varies depending on the labor or services to be performed and the context in which the labor or services are performed. The 20 factors are:

- (a) Instructions;
- (b) Training;
- (c) Integration;
- (d) Services Rendered Personally;
- (e) Hiring, Supervising, and Paying Assistants;
- (f) Continuing Relationship;
- (g) Set Hours of Work;
- (h) Full Time Required;
- (i) Doing Work on Employer's Premises;
- (j) Order of Sequence Set;
- (k) Oral or Written Reports;
- (l) Payment by Hour, Week, Month;
- (m) Payment of Business and/or Traveling Expenses;
- (n) Furnishing of Tools and Materials;
- (o) Significant Investment;
- (p) Realization of Profit or Loss;
- (q) Working for More than One Employer at a Time;
- (r) Making Service Available to General Public;
- (s) Right to Discharge; and
- (t) Right to Terminate.

Stat. Auth.: ORS 237.003(4) & ORS 237.263

Stats. Implemented:

Hist.: PER 8, f. 12-15-55; PERS 7-1992, f. & cert. ef. 11-9-92

459-010-0032

Independent Contractors

(1) An individual who qualifies as an employee under OAR 459-010-0030 is not an independent contractor. Unless it is clearly established, under this rule, that a person is an independent contractor, that person shall be deemed to be an employee.

(2) An individual or business entity is an independent contractor if the employing entity has the right to control or direct only the result of the labor or services and not the means and methods accomplishing the labor or services. The terms of the contract and the actual arrangement under which labor or services are performed will determine whether an individual or a business entity is subject to direction and control. When the elements of direction and control are present in determining the means and methods of performing labor or service as provided in OAR 459-010-0030, any disclaimers to the contrary are not binding for the purpose of determining an employee/employer relationship by the system.

(3) In determining whether or not an individual is an

independent contractor, the following factors shall be considered. The degree of importance of each factor varies depending on the labor or services to be performed and the context in which the labor or services are performed:

(a) Labor or services are performed only pursuant to written contracts;

(b) The individual or business entity assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance, or liability insurance relating to the labor or services to be provided;

(c) The individual or business entity providing labor or service furnishes the tools, equipment, and supplies necessary for performance of the contracted labor or services; or has a significant investment in the facilities used in performing the labor or services;

(d) Payment for labor or services is made upon completion of the performance of specific portions of the project or is made on the basis of an annual or periodic retainer. Normal expenses incurred as part of providing labor or service are included in the stipulated payment and are not reimbursed by the employing entity as a routine cost of doing business;

(e) The individual or business entity providing labor or services has the authority to hire and fire employees to perform the labor or services. The individual or business entity is not required to perform the labor or services personally; but may subcontract part or all of the labor or services to be performed to another party;

(f) Labor or services are performed for two or more different persons and/or business entities concurrently within a period of one year;

(g) The individual or business entity providing labor or services is responsible for obtaining all assumed business registrations, professional occupation licenses, or certificates required by state law or local government ordinances for the individual or business entity to conduct business;

(h) The individual or business entity actively advertises the availability of the labor or services and represents to the public that the labor and services are to be provided by an independently established business. The following are evidence of "actively advertising":

(A) Commercial advertising or business cards as is customary in operating similar businesses are purchased for the business, or the individual or business entity has a trade association membership;

(B) Telephone listing and service are used for the business that is separate from the personal residence listing and service used by an individual who performs the labor or services.

(i) Federal and state income tax returns in the name of the business or a business Schedule C or farm Schedule F as part of the personal income tax return were filed for the previous year if the individual or business entity performed labor or services as an independent contractor in the previous years.

(4) An individual represented as a Professional Corporation or a sole proprietorship shall qualify as an independent contractor providing the criteria of this rule are met and the elements of direction and control in OAR 459-010-0030 are not present.

(5) For an active member of the system concurrently engaged as an independent contractor, the period or periods of such engagement shall be considered as employment subject to and for the purpose of determining contributions and benefits under the system, but shall not be considered for the purpose of granting prior service credit under ORS 237.081.

(6) For an independent contractor subject to the provisions of section (5) of this rule, the written contract shall specify whether the individual's "member" contributions are to be withheld (ORS 237.071) or picked up by the employing entity (ORS 237.075).

Stat. Auth.: ORS 237.003(4) & ORS 237.263

Stats. Implemented:

Hist.: PERS 7-1992, f. & cert. ef. 11-9-92

459-010-0035

Six Month Qualifying Service

The six months' qualifying service required for establishing membership shall be six months' service (uninterrupted by a total of more than 30 working days during such six months) to the same employer, or concurrent employers, as shown by the payroll of the employer or employers concurrently employing the employee and so certified to the Board.

Stat. Auth.: ORS 237

Stats. Implemented:

Hist.: PER 8, f. 12-15-55

459-010-0040

Payments Valued for Salary and Contributions

The items following are payments valued for salary and contributions:

(1)(a) The term "salary" means the remuneration paid an employee in cash out of the funds of a public employer in return for services rendered to the employer;

(b) Living quarters, board, lodging, fuel, laundry, and other advantages furnished an employee in return for services shall be taken into account and valued for salary and contribution purposes only as determined by the Board and as certified by the employer.

(2)(a) Payments of employee and employer money into a deferred compensation plan are deemed salary paid in each month of deferral;

(b) The amount of participation in a tax-sheltered or deferred annuity is deemed salary paid in each month of participation.

(3)(a) Except as provided in subsection (3)(b) of this rule, the payment of retroactive wages pursuant to a labor or other employment agreement is salary at the time paid;

(b) Retroactive payments made to an employee pursuant to an award by a court or order of or a conciliation agreement with an administration agency charged with enforcing federal or state statute/regulation protecting the employees rights to employment or wages shall be allocated to and deemed paid in the periods in which the work was done or in which it would have been done.

(4) In no case shall salary or other advantages include:

(a) Travel or any other expenses incidental to employer's business which is reimbursed by the employer;

(b) Payments by an employer on behalf of employee (or employee and dependents) for any insurance, for which the employee has no cash option;

(c) Payments made on account of an employees death;

(d) Any lump sum payment for accumulated unused sick leave;

(e) Any accelerated payment of an employment contract for a future period or an advance against future wages;

(f) Any retirement incentive, retirement severance pay, retirement bonus or retirement gratuitous payment.

Stat. Auth.: ORS 237

Stats. Implemented:

Hist.: PER 8, f. 12-15-55; PER 12-1981, f. & ef. 11-23-81

459-010-0045

Annuity

Substitution of:

(1) Acceptability of the annuity which an employee has already commenced to purchase, as provided by ORS 237.011(8), shall be determined by the Retirement Board.

(2) Adequacy of the benefits afforded by the contract for such annuity shall be determined by the employer subject to approval by the Board.

(3) The retirement annuity provided by the Federal Retirement System is considered as an acceptable annuity for an employee participating in that system and desiring to be exempted from contributing to the Public Employees' Retirement Fund, provided the federal annuity is adequate in amount.

(4) In all cases, the agreement for substitution of an annuity must be executed by the employee, his employer, and the Public Employees' Retirement Board.

Stat. Auth.: ORS 237

Stats. Implemented:

Hist.: PER 8, f. 12-15-55

459-010-0055

Withdrawal of Contributions

(1) A member may not withdraw his/her account balance from the Public Employees' Retirement Fund unless the member has terminated from covered public service and requested a refund of contributions prior to reaching earliest service retirement age or unless total retirement allowance upon separation at voluntary retirement age or thereafter, as computed by the Retirement Board in accordance with the non-refund plan is less than \$10 per month, at compulsory retirement age.

(2) A member who has terminated from covered public service and requested a refund of contributions prior to reaching earliest service retirement age must continue to remain absent from the payroll of any participating employer for a full calendar month following the month of separation from such service.

(3) A participating employer may not re-employ or employ a member who has requested and received a refund of contributions prior to such member's earliest retirement age unless:

(a) The member repays the withdrawn contributions in full to the retirement fund prior to the effective date of such employment; or

(b) The effective date of such employment is not earlier than the first of the second calendar month following the month in which the member had previously separated from public service.

(4) If a participating employer re-employs or employs a member in violation of section (3) of this rule, upon written notice by the Board, the employer shall be obligated to the retirement fund for the full amount of the member's withdrawn contributions not repaid, unless:

(a) The participating employer immediately terminates the employment upon discovering or being notified of the member's failure to repay the withdrawn contributions to the retirement fund; or

(b) The full amount of the withdrawn contributions are repaid to the retirement fund by the participating employer from payroll deductions from the member's monthly salary. Such payroll deductions shall be in amounts necessary to effect the repayment within one calendar year, unless a longer period is required so that monthly payroll deductions for this purpose do not exceed 25 percent of the member's net pay.

Stat. Auth.: ORS 237

Stats. Implemented:

Hist.: PER 8, f. 12-15-55; PER 4-1979(Temp), f. & cf. 11-21-79; PER 7-1979(Temp), f. & cf. 12-11-79; PER 3-1980, f. & cf. 5-8-80; PER 2-1981, f. & cf. 1-15-81

459-010-0080

Inactive Member

An inactive member is one who has terminated his regular employment with a participating employer and who has not withdrawn his net accumulations in the Retirement Fund. No contributions by, or on account of, such inactive member shall be accepted by the Board if he is reemployed in a temporary, casual, or emergency position which does not normally require at least 600 hours of service per year.

Stat. Auth.: ORS 237

Stats. Implemented:

Hist.: PER 8, f. 12-15-55

459-010-0115

Term of Appointive Office

The fixed term of an appointive office is the term fixed by statute or municipal charter.

Stat. Auth.: ORS 237

Stats. Implemented:

Hist.: PER 8, f. 12-15-55

459-010-0125

Eligibility of Volunteer Firemen

Upon proper application by the employer, volunteer firemen

as a unit are eligible for membership even though all other employees of that employer are excluded.

Stat. Auth.: ORS 237

Stats. Implemented:

Hist.: PER 8, f. 12-15-55

459-010-0160

Determination of Withdrawing Employer's Liability

In determining the liability to the Public Employees' Retirement System of an employer which has withdrawn from the Public Employees' Retirement System, the Board shall require that:

(1) The current service liability of the withdrawing employer as to the account of any employee who has left its service and has transferred to another covered employer without having obtained a refund of contributions, shall be equal to the portion of such employees account balance chargeable against the withdrawing employer at the time of such withdrawal.

(2) The current service liability as to the account of any employee who had terminated and withdrawn his contributions to the Retirement Fund shall be equal to the amount withdrawn by such employee.

(3) The current service liability as to the account of any employee who elects to continue participation in the Public Employees' Retirement System shall be an amount equal to his account balance at the time of the employer's withdrawal.

(4) The current service liability as to the account of an employee who has terminated, but has not withdrawn his contributions to the fund, shall be an amount equal to the employees account balance at the time of the employer's withdrawal.

(5) In the event any employee referred to in section (1), (2), (3) or (4) of this rule shall, at a later date, lose membership in the Retirement System or lose the right to redeposit contributions withdrawn, further adjustment shall be made in the account of the withdrawing employer.

(6) The prior service liability as to all accounts shall be established by the Board as the amount actuarially determined to be the present value of Prior Service Pensions payable.

Stat. Auth.: ORS 237

Stats. Implemented:

Hist.: PER 8, f. 12-15-55

459-010-0165

Transfer into a New Classification

(1) An employee who transfers from one classification of employment in the Public Employees' Retirement System to another classification shall be considered, for the purpose of contribution rate, compulsory retirement, voluntary retirement, disability retirement or withdrawal, as are all others in the same classification in which the employee is employed at the time of his termination, except that an employee who at the time of his termination was temporarily employed in a classification other than his usual one during a time when he was not required to work in his regular employment, shall be considered as though in his usual classification.

(2) A policeman or fireman who works in the police or fire classification until age 55 or over, then transferring to a miscellaneous classification, shall retain all rights and benefits earned as a policeman or fireman. He shall contribute at the miscellaneous rate applicable to the age at which he last established membership. Benefits earned thereafter as a miscellaneous employee shall be payable in addition to those earned as a policeman or fireman and shall be computed as are the benefits of any miscellaneous employee.

(3) A miscellaneous employee who works in a miscellaneous classification until age 55 or over, then transferring to a policeman or fireman classification, shall retain all rights and benefits earned as a miscellaneous employee. He shall contribute at the policeman and fireman rate applicable to the age at which he last established membership. Benefits earned thereafter as a policeman or fireman shall be payable in addition to those earned as a miscellaneous employee and shall be computed as are the benefits of any policeman or fireman.

Stat. Auth.: ORS 237
 Stats. Implemented:
 Hist.: PER 8, f. 12-15-55

RETIREMENT CREDIT

459-010-0170**Retirement Age and Contribution Rate of One Employed in Two Classes of Service**

(1) A member of the system concurrently employed in two classes of service for one employer shall be deemed to have the voluntary retirement age and the contribution rate of the class in which the major fraction of his working time is required.

(2) A member of the system concurrently employed in two classes of service for more than one employer shall be deemed to have the voluntary retirement age and the contribution rate of each class as though that were his sole employment.

Stat. Auth.: ORS 237
 Stats. Implemented:
 Hist.: PER 8, f. 12-15-55

459-010-0175**Computation of Accumulated Seasonal Employment**

In computing accumulated seasonal employment for the purpose of awarding prior service credit, the total days worked by the employee, as certified by the employer, shall be divided by 260 to obtain the number of years worked. A remainder of more than 130 days shall constitute a major fraction of a year. An employee who in such seasonal employment worked more than 260 days in any one fiscal year shall be credited with only one year of prior service for that year, and the extra days shall not be added to other seasonal employment.

Stat. Auth.: ORS 237
 Stats. Implemented:
 Hist.: PER 8, f. 12-15-55

459-010-0180**Membership of Elected Officer or Fixed Term Officer**

An elected officer or an officer appointed for a fixed term, who establishes membership in the Retirement System, may cancel that membership at the end of a term of his office. If such officer permits more than one deduction to be made from checks issued to him in a subsequent term of office, he shall be considered to have elected to continue participation for the duration of such term of office.

Stat. Auth.: ORS 237
 Stats. Implemented:
 Hist.: PER 8, f. 12-15-55

459-010-0205**Retention of Membership by School Employees**

Any school employee who completes a school year, who is then absent the next five school years, but returns to school employment at the beginning of the sixth school year, or reaches early voluntary retirement age prior to the beginning of the sixth school year, shall be deemed to have retained membership in the Public Employees' Retirement System, provided, however, that this preservation of membership is contingent upon the confirmation of this rule by the 49th Legislative Assembly.

Stat. Auth.: ORS 237
 Stats. Implemented:
 Hist.: PER 8, f. 12-15-55

459-010-0210**All Prior Rules Superseded**

These rules supersede all rules of the Public Employees' Retirement Board, relating to the Public Employees' Retirement System, heretofore filed with the Secretary of State.

Stat. Auth.: ORS 237
 Stats. Implemented:
 Hist.: PER 8, f. 12-15-55

459-011-0050**Forfeiture and Restoration of Service Rights**

(1) A member who leaves the service of all participating employers and who withdraws the amount standing to his credit forfeits all his rights, including prior service rights. ORS 238.095(1); 238.265.

(2) Any such person who reenters the service of any participating employer within five years of the date of his previous termination may, at any time during the six months immediately following the date of his re-employment, repay the amount previously withdrawn, and the effective date of the reinstatement of his membership at his former rate of contribution shall be the first day of the pay period following the date of repayment of the amount withdrawn. Thereafter employee and employer contributions to the Retirement Fund are required and all rights in the system which were forfeited by the withdrawal shall be restored.

Stat. Auth.: ORS 238.650
 Stats. Implemented: ORS 238.105
 Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0060

459-011-0100**Credit for Service in Armed Forces**

(1) To qualify for credit for service in the Armed Forces, an employee shall actively reenter the employ of the former employer within one year from the date of his honorable discharge, except that certificated teachers who within one year from date of honorable discharge sign a contract to teach in the State of Oregon and who fulfill the terms of the contract so signed, shall be deemed to have returned to the service of the employer within one year from the date of honorable discharge; provided, further, that an employee who reports for work to the former employer within one year from the date of his honorable discharge, and who at that time is given an official leave of absence by the employer, so certified to the Retirement Board by the employer, shall be deemed to have complied with the provisions of this rule. ORS 238.155.

(2) Former state employees returning to service with any state department and former school personnel returning to school service with any public school district in this state will be deemed to have returned to the service of the employer. ORS 238.155.

(3) The cost of prior service credit granted for military service shall be charged to the state if the employee returns to the service of the state, to the school districts of the state if he returns to the service of a school district, or to the political sub-division by which he is reemployed upon return from service in the Armed Forces.

Stat. Auth.: ORS 238.650
 Stats. Implemented: ORS 238.155
 Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0015

459-011-0110**Limited Service Credit for Time Spent in Armed Forces**

Neither the return of an employee to the service of the public employer by which he was employed at the time of entering the service of the Armed Forces of the United States, nor his making a lump sum payment of contributions to the Retirement Fund covering the period of his absence in such service shall be construed as entitling such employee to service credit for his time spent in service in the Armed Forces.

Stat. Auth.: ORS 238.650
 Stats. Implemented: ORS 238.155
 Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0155

459-011-0200**Re-Establishment of Membership**

No employee of the Federal Cooperative Extension Service or any other service for an employer participating in the system

DIVISION 11

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which mandates participation in the federal Civil Service Retirement System (CSRS) or Federal Employees' Retirement System (FERS), who cancels membership in the Public Employees' Retirement System pursuant to ORS 238.015(9)(b) or (c) may thereafter repay into the retirement fund the amount withdrawn upon cancellation, or in any other manner re-establish a right to benefits canceled by the withdrawal.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.015(9)
Hist.: PER 8, f. 12-15-55; PERS 6-1992, f. & cert. ef. 11-9-92; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0020

**459-011-0500
Accumulated Unused Sick Leave**

(1) Pursuant to ORS 238.350, a public employer may request that one or more groups of its employees be compensated for accumulated unused sick leave in the form of increased retirement benefits. The request, in writing and accompanied by certified copy of the public employer's governing body's official action, shall be effective not earlier than the first of the calendar month following date of the official action by the public employer.

(2) The Board shall determine the monetary value of 1/2 of the accumulated unused sick leave by the following procedure:

(a) For retiring employees not subject to ORS 238.350(1)(b), the hourly rate used to establish the monetary value of the unused sick leave shall be determined by dividing the monthly final average salary by 173.3 hours, multiplying this hourly rate times 1/2 of all accumulated unused sick leave hours reported, and adding this value to the final average salary calculation;

(b) For retiring employees subject to ORS 238.350(1)(b), the hourly rate used to establish the monetary value of the unused sick leave shall be determined by dividing the salary in the final contract of employment by the number of contract hours, multiplying this hourly rate times 1/2 of all unused sick leave hours reported for employment as described in ORS 238.350(1)(b) and adding this value to the final average salary calculation;

(c) The monetary value of the unused sick leave for retiring employees described in ORS 238.350 (1)(b) who were employed under contracts for 12 months or earned 96 hours of sick leave in any of the three or less years used in determining final average salary will be valued as provided in subsection (a) of this section.

(3) Upon an employee's termination of employment from any PERS covered position, a public employer shall report the amount of accumulated unused sick leave on forms furnished by the Board. The public employer shall transmit the forms to the Board and provide a legible copy of the form or a facsimile thereof to each terminated employee immediately following final payment of salary. For PERS purposes, accumulated unused sick leave cannot exceed an accrual of more than eight hours per month worked less usage.

(4) To be eligible for the use of unused sick leave pursuant to ORS 238.350, a member must have been in the employ of a public employer and in a covered group on or after the effective date of an employer's election to extend the use of accumulated unused sick leave. A member retiring with and effective retirement date the same as the effective date of the election is deemed an employee on the effective date of the election if the member was employed during the month proceeding the effective date of the employer's election.

Stat. Auth.: ORS 238.350 & ORS 238.650
Stats. Implemented: ORS 238.350
Hist.: PER 3-1982(Temp), f. & ef. 12-13-82; PERS 1-1990(Temp), f. & cert. ef. 1-3-90; PERS 3-1990; f. & cert. ef. 2-12-90; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0158

DIVISION 13

RETIREMENT BENEFITS

**459-013-0040
Documentary Evidence**

(1) In order to receive retirement benefits, each member of the system shall furnish to the Retirement Board reasonably satisfactory evidence as to his or her date of birth.

(2) In order for a member to receive benefits under option No. 2 or 3, the Retirement Board must be furnished with reasonably satisfactory evidence as to the beneficiary's date of birth.

(3) Any documentary evidence or photostatic copies thereof, submitted to the Retirement Board as proof of date of birth shall become the property of the board and will not be returned under any circumstances (naturalization or citizenship papers may be submitted for the inspection of the Board after which they will be returned).

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238
Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0065

**459-013-0060
Payment of Retirement Benefits**

Retirement benefits shall be payable in equal monthly payments as of the last day of each month:

(1) A member's retirement allowance shall accrue from the effective date of his retirement. Should he die during a calendar month for which he would have received a service or disability retirement allowance had he lived that entire month, and after the first payment was normally due, benefits computed to the date of his death on the basis of 30 days constituting a month shall be payable as follows (ORS 238.390(3)):

(a) Under the non-refund plan, accrued benefits are payable to the administrator or executor of the estate of the deceased member;

(b) Under the Refund Annuity plan, accrued benefits other than the annuity portion of the allowance are payable to the administrator or executor of the estate of the deceased member. When electing payment of benefits under the Refund Annuity plan, a retiring member of the system may designate any person to receive any balance remaining in his account at the time of death;

(c) Under options No. 2 and 3, accrued benefits are payable to the administrator or executor of the estate of the deceased member, and benefits to the member's beneficiary, if surviving, shall accrue from the date of the death of the member. Retirement allowances payable to the surviving beneficiary of a deceased member under options No. 2 and 3 shall cease with the allowance payable for the last full calendar month of such beneficiary's life.

(2) At any time before the first payment on account of his service allowance becomes normally due, a member of the system who has retired under option No. 2 or 3 may designate new beneficiaries or revoke previous designations by giving written notice to the Retirement Board, but no revocation or new designation shall be effective until received by the Public Employees' Retirement Board. A beneficiary named under option No. 2 or 3 must have an insurable interest in the life of the member.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.300 & ORS 238.305
Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0070

**459-013-0110
Eligibility for Early Benefits**

Any member who is 55 or older (police officers and firemen, age 50 or older; certificated teachers, age 45 or older) may terminate employment with all participating employers and become eligible for reduced service benefits, including prior service pension, upon attaining age 60 (police officers and firemen, age 55; certificated teachers, age 50), by filing his written application with the Retirement Board for such benefits. His benefit account shall be established on the first day of the month in which the application is received by the Retirement Board or the first day of the month following the date of separation, whichever is the later, and in no case shall be retroactive to an earlier date.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.280

Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0090

DIVISION 14

DEATH BENEFITS

459-014-0030

Designation of Beneficiary

(1) No person may be designated as a beneficiary to receive the balance in a member's account in the Retirement Fund in the event of the member's death before retirement, unless facts show that such person has an insurable interest in the life of the member. ORS 238.390.

(2) An insurable interest in the life of a member is an interest whether pecuniary, or one of affection or dependency based on reasonable grounds for expectation of benefit or advantage from continuation of the life of the member and arising out of the relationship between the member and the possessor of such interest, whether the relationship be one of affinity, consanguinity, or debtor and creditor. It is not necessary that the insurable interest continue until the death of the member in order to qualify the beneficiary to receive such payments as may otherwise be due to him.

(3) A member may designate a new beneficiary or revoke a previous designation by giving written notice to the Retirement Board, but no revocation or new designation shall be effective until received by the Public Employees' Retirement Board. (Forms will be furnished by the Board upon request.)

(4) When a member designates a new beneficiary or beneficiaries, such action shall annul and revoke all prior designations.

(5) The right of a beneficiary to receive the balance in a member's account in the Retirement Fund shall not be deemed nullified or waived by any agreement or property settlement between the member and the beneficiary, or on behalf of either of them, which does not specifically mention such right and waive it on the part of the beneficiary or vacate and set aside the designation of said beneficiary by such member.

Stat. Auth.: ORS 238

Stats. Implemented: ORS 238.390

Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0075

459-014-0100

Distribution in Event of Death

In the event that a member of the system dies before retiring, with no surviving next of kin as described by ORS 238.390(2), and without having designated a beneficiary, the amount of money credited to his account at the time of his death shall be paid to the executor or the administrator of his estate. Interest or other earnings shall not be credited thereto after the death of the member except as provided by law. If his estate is not probated, such amount shall be held by the Board in a suspense account not to exceed ten years, pending administration or the appearance of next of kin. Thereafter, it shall be subject to the laws of this state governing escheats.

Stat. Auth.: ORS 238.390 & ORS 238.650

Stats. Implemented: ORS 238.390

Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0150

DIVISION 15

DISABILITY RETIREMENT ALLOWANCES

459-015-0005

Purpose

(1) The Legislative Assembly has established within the Public Employees' Retirement System (PERS) a program for early retirement by reason of disability. If a member meets the eligibility requirements, the member can draw disability retirement

benefits using creditable service time as though the member had continuously worked for a PERS participating employer through normal retirement age. Disability retirement is an expedited retirement benefit due to disability and based on each individual's particular length of service and creditable service time.

(2) Total disability is required, not partial disability. The Legislative Assembly has adopted rigorous criteria for eligibility to draw disability retirement benefits: a member must be disabled to such an extent that the member is "unable to perform any work for which qualified" (ORS 237.171(1), (3) and OAR 459-015-0010(4)). A member who is unable to perform his or her usual job but is able and qualified to do other work, does not meet the eligibility criteria; except as provided for in OAR 459-015-0045. (Emphasis added)

(3) A member fails to meet the eligibility criteria for a PERS disability retirement allowance if the member is able to perform any work for which qualified. The PERS disability retirement program is solely intended to provide benefits to those members who are unable to work because they are disabled and cannot perform any work for which they are qualified.

Stat. Auth.: ORS 183.310 - ORS 183.550, ORS 237.171 & ORS 237.263

Stat. Implemented:

Hist.: PERS 2-1992, f. & cert. ef. 1-14-92

459-015-0010

Criteria for Granting and Denying Disability Retirement Allowances; Initial Determination

(1) Medical documentation is required by the staff. Each disability retirement applicant shall supply any treating or consulting physician's examination reports requested by the staff. The staff may adopt a treating or consulting physician's medical examination report or have the applicant examined by one or more physicians selected by the staff. No disability retirement allowance shall be granted unless the diagnosis of injury or disease is supported by a written report, or reports, prepared by one or more physicians based on a medical examination or examinations. The Board may deny any application or discontinue any disability retirement allowance in the case of any person who refuses to submit to any medical examination or supply a completed application or review form.

(2) Extended Duration. Each eligible applicant shall be "incapacitated for an extended duration" (ORS 237.171(1), (3)). An "extended duration" means at least 90 consecutive days.

(3) A physician means a medical doctor, a doctor of osteopathy, a doctor of oral surgery, a chiropractic doctor, a naturopathic doctor, or a doctor of psychology practicing only within the purview of their license issued by the designated authority of a state. All claims of a disability shall be supported by at least one physician's report of physical examination. In addition, a disability retirement applicant shall be required to furnish the following:

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

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

(4) To demonstrate that he or she is "unable to perform any work for which qualified", an eligible applicant shall document how the injury or disease impairs the applicant's ability to perform. The standard is subjective (that is, whether the applicant is actually incapacitated) not objective (that is, whether a "normal" member would have been incapacitated by the same events):

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

- (A) Previous employment experience;
- (B) Formal education;
- (C) Formal training;
- (D) Transferable skills;
- (E) Age; and
- (F) Physical or mental impairment.

(b) In determining what work for which a member is qualified, the staff may request a vocational evaluation be done by a

vocational consultant who is fully certified under paragraphs (A) and (B) of this subsection at PERS expense:

(A) Full certification as a vocational consultant requires a Master's Degree in vocational rehabilitation; or a Master's Degree in a field related to vocational rehabilitation, and one year of experience in performing vocational evaluations or developing individualized return-to-work plans; or a Bachelor's Degree and two years of such experience. All degrees must have been earned at an accredited institution;

(B) Regardless of these requirements, an individual will be considered fully certified if accredited as a "Certified Rehabilitation Counselor (CRC)" by the Commission on Rehabilitation Counselor Certification; as a "Certified Insurance Rehabilitation Specialist (CIRS)" by the Certified Insurance Rehabilitation Specialist Commission; or a "Certified Vocational Evaluation Specialist (CVE)" or a "Certified Work Adjustment Specialist (CWA)" by the Commission on Certification of Work Adjustment and Vocation Evaluation Specialist.

(c) Any work means a suitable job which the applicant is physically capable of performing and is substantially similar to the former job in compensation, location and duration;

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

(5) Duty Disabilities. Applicants with less than ten years of PERS qualified employment must establish that they are members of PERS and were disabled on the job; the applicant's disability must arise out of and in the course of the applicant's employment (ORS 237.171(2)):

(a) In performance of duty: Each duty disability retirement applicant shall establish that the claimed disability was "sustained while in the actual performance of duty" (ORS 237.171(1)). That means that the injury or disease was initially caused, aggravated or accelerated by the performance of the member's duties in the employment of a participating public employer, not that the job is merely a contributing factor. The job must be the material contributing cause of the injury or disease. Performance of duty includes whatever an employee may be directed, required or reasonably expected to do in connection with his or her employment, and not solely the duties peculiar to his or her position;

(b) Pre-existing condition or disease: Although a pre-existing condition or disease may contribute to the result, the on-the-job injury or disease must be the efficient, dominate and proximate cause of the duty disability.

(6) Non-Duty Disabilities. Eligible applicants must have eight years, six months and one day of PERS creditable service that when added to any six-month waiting period, prior service credit or service credit pursuant to an integration totals a minimum of ten years of PERS qualified employment (ORS 237.171(6)).

(7) Withdrawal of PERS member's account. Disability retirement allowances are available only to PERS members (ORS 237.171(1), (3)). PERS membership is terminated by withdrawal of the member's account balance (ORS 237.109(1)). Therefore, former PERS members who have withdrawn their accounts are not eligible to receive PERS disability retirement allowances.

Stat. Auth.: ORS 183.310 - ORS 183.550, ORS 237.171, ORS 237.191 & ORS 237.263

Stats. Implemented:

Hist.: PERS 2-1992, f. & cert. ef. 1-14-92; PERS 4-1992, f. & cert. ef. 5-4-92

459-015-0015

Commencement of Disability

The effective date of disability retirement shall be the date determined by the staff according to applicable statutes and administrative rules, but a disability retirement allowance shall not in any event begin in any month in which the member received salary or paid leave benefits from a participating employer, exclusive of the cash pay-off of accrued vacation or compensatory time.

Stat. Auth.: ORS 183.310 - 183.550, 237.171 & 237.263

Stats. Implemented:

Hist.: PER 8, f. 12-15-55; PERS 2-1992, f. & cert. ef. 1-14-92; Renumbered from 459-010-0100

459-015-0020

Application Required

(1) No disability retirement allowance shall be paid unless the member files a timely and complete application with the staff.

(2) Application shall be made on forms prescribed by the staff. The staff may require the member to provide any information that the staff considers necessary to determine the applicant's eligibility for a disability retirement allowance.

(3) Application may be made by a member or the member's authorized representative. A representative shall submit to the staff written proof of the representative's authority; such as, a power of attorney, guardianship or conservatorship appointment.

(4) Upon the filing of an application for a disability retirement benefit, the applicant must authorize the staff to notify the applicant's employer(s) of such application. Upon the filing of an application, the staff shall notify the applicant's current or most recent employer of the filing. Additionally, the staff may request of an employer information pertaining to current or previous employment.

(5) When an employee member is disabled due to injury or disease, the member may make application immediately after the last day worked even though the member may be on a paid leave or on an official leave of absence without pay. No application will be accepted which predates the last day the member was actually on the job.

(6) An application shall be considered filed in a timely manner when received by PERS as follows:

(a) For a member who is disabled due to injury or disease and is not separated from membership, the member must file an application for a disability retirement allowance within five calendar years of the last day worked; even though the member may continue on a paid leave or on an official leave of absence without pay. The disabling condition must be continuous from the date the member last worked to the date the application is filed;

(b) For a member who is disabled due to injury or disease, is separated from all service entitling the member to membership in the system and has not withdrawn the amount credited to the account of the member in the system, the member must file an application for a disability retirement allowance within five calendar years of the date of separation. The termination of employment must be due to the disability and the disabling condition must be continuous from the date the member last worked to the date of application and the separation must be continuous from the date of separation to the date the application is filed;

(c) For a member who is disabled due to injury or disease after the date of separation from all service entitling the member to membership in the system and has not withdrawn the amount credited to the account of the member in the system, the member must file an application for a disability retirement allowance within six months after the date of separation. The disabling condition must be continuous from the date of onset to the date of application and the separation must be continuous from the date of separation to the date the application is filed.

(7) In determining the effective date of a disability retirement allowance, the staff may allow up to 60 months of benefits retroactive from the date the application is filed with PERS, but in no case earlier than the day following the last day worked or the last day of paid leave, whichever is later.

(8) For purposes of this rule, the term "separation from all service entitling the member to membership in the system" means the last day worked (physically on the job), the last day of paid leave, or the last day of an official leave of absence, whichever is the later.

(9) When making application for a PERS disability retirement allowance, the applicant shall authorize any physician, health practitioner, hospital, clinic, pharmacy, employer, employment agency, or government agency to release and disclose to the PERS staff, or independent physicians and vocational consultants retained by staff, any information within their records or knowledge, including that information otherwise protected under federal or state law, regarding the applicant's health and employment

which relates solely to the applicant’s claim of disability and inability to perform any work for which qualified. When filing an application for disability retirement allowance, the applicant shall complete and sign a consent form which specifically authorizes the release and disclosure of such information.

Stat. Auth.: ORS 183.310 - ORS 183.550, ORS 237.171, ORS 237.191 & ORS 237.263

Stats. Implemented:

Hist.: PERS 2-1992, f. & cert. ef. 1-14-92

**459-015-0025
Application Processing — Independent Examinations and Appeals**

(1) Following the timely filing of a completed application, the staff may select one or more physicians and may select one or more vocational consultants to examine the applicant at PERS’ expense:

(a) The staff shall inform the applicant, not less than ten days prior to a scheduled examination, of the identity of the physician(s) or vocational consultant(s) selected to examine applicant, together with location, date and time, by certified mail, return receipt requested;

(b) If the applicant fails to meet the scheduled appointment or fails to reschedule the examination within five days of notification, PERS will not reschedule an examination at PERS’ expense unless the applicant can demonstrate good cause for having failed to meet the scheduled appointment or reschedule the appointment as required. Good cause includes, but is not limited to: Physical or mental incapacitation preventing the member from meeting or rescheduling the examination; failure of staff to notify member by certified mail, return receipt requested; A death in the member’s immediate family; or the death of the member. Good cause does not include: a member’s refusal to attend the scheduled appointment; a member’s refusal to accept certified mail; or a member’s failure to meet the appointment with no reason provided;

(c) When the staff requires an applicant to travel to be examined by a physician, vocational consultant, or other professional, the system shall reimburse the applicant’s reasonable transportation costs based on the least costly alternative and on availability. Travel by private vehicle shall be compensated at the rate applicable to travel by unrepresented state employees on state business. Transportation by railroad, bus or other public carrier shall be paid only upon presentation of receipts from the providers. Lodging and subsistence shall be allowed only when a stop-over is necessary and shall be paid at the rate applicable to unrepresented state employees traveling on state business. Reimbursements will be reduced by the amount of any penalty assessed PERS because of a member’s failure to meet a scheduled appointment.

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

(a) If the Director accepts a disability claim, the staff shall notify the applicant and the applicant’s employer of such approval;

(b) If the staff’s recommendation is to deny the application, the staff shall issue an initial denial letter by certified mail, return receipt requested, prior to the Director’s action. This letter shall advise the applicant that additional information to substantiate the claim, or a request for an extension of 30 days to present additional information, may be submitted to the staff in writing within 30 days of the date of the letter.

(3) Following the issuance of an initial denial letter, staff shall review any additional information submitted in a timely manner:

(a) If the additional information results in a recommendation to approve the application, staff shall resubmit the application to the Director with its recommendation;

(b) If the additional information does not result in a recom-

mendation to approve the application, staff shall issue a final denial letter by certified mail, return receipt requested;

(c) If no additional information is received, staff shall issue a final denial letter by certified mail, return receipt requested.

(4) A final denial letter shall provide the applicant with notification of the right to request a contested case hearing as provided for in OAR 459-015-0030 and 459-001-0035.

(5) The Staff shall notify the most recent employer of the acceptance or the denial of an application for a disability retirement allowance, a request for review of the Director’s determination, and the Director’s final action. Such notification shall not contain any information of a confidential nature.

(6) The Director shall produce a summary of activity pertaining to PERS’ disability retirement applications for Board review and comment at each of its regularly scheduled meetings.

Stat. Auth.: ORS 183.310 - ORS 183.550, ORS 237.171, ORS 237.191 & ORS 237.263

Stats. Implemented:

Hist.: PERS 2-1992, f. & cert. ef. 1-14-92; PERS 5-1992, f. & cert. ef. 5-4-92

**459-015-0030
Hearings on Denial or Discontinuance of Disability Retirement Allowances**

(1) A final denial of an application for disability benefits, or any decision discontinuing a previously granted disability retirement allowance may be reviewed in a contested case hearing.

(2) A contested case hearing may be requested by a member by filing with the Board a written request as provided for in OAR 459-001-0035.

(3) The contested case hearing shall be heard before a hearings officer designated by the Board and conducted in accordance with the Attorney General’s Model Rules of Procedure as adopted by OAR 459-001-0005. The member may represent himself or be represented by legal counsel. An Assistant Attorney General will appear at the hearing to assist the staff in presenting its position, and to assist in the development of a complete hearing record.

(4) Following the hearing, the hearings officer shall prepare or direct one of the parties to prepare a Proposed Findings of Fact, Conclusions of Law and Order and serve it on the parties. The hearings officer’s proposed order will become final 90 days following service upon the petitioner, the Director and the Board through the Director, unless objections are filed as provided in this rule. Objections may be filed by the Director or the petitioner within 30 days of service. If the Board determines additional time is necessary to review a proposed order and issue an amended order, the Board may extend the time after which the proposed order will become final in accordance with ORS 183.464(3).

(5) In accordance with OAR 459-001-0040, prior to initiating any judicial review of a final order, an applicant shall file with the Board a petition for reconsideration.

(6) Any disputed claim concerning a disability retirement allowance or discontinuance of such allowance may be voluntarily settled on a lump-sum basis subject to recommendation of the assigned Assistant Attorney General and final approval of the Board. Settlements approved by the Board shall be paid upon receipt of a “Release and Covenant Not to Sue” signed by the applicant and his or her attorney, if any.

Stat. Auth.: ORS 183.310 - ORS 183.550, ORS 237.171 & ORS 237.263

Stats. Implemented:

Hist.: PER 6-1979(Temp), f. & ef. 11-21-79; PER 3-1980, f. & ef. 5-8-80; PERS 2-1992, f. & cert. ef. 1-14-92; Renumbered from 459-001-0020

**459-015-0035
Evidence — Contested Case Hearings**

(1) Applicant’s documentary evidence:

(a) At least 30 days before the scheduled hearing, the applicant shall file with the hearings officer and serve upon the assigned Assistant Attorney General a copy of each document proposed to be introduced in evidence. Failure to comply may constitute grounds to deny admission of the document at hearing. Unless cross-examination is requested of the document preparer or custodian, within 20 days prior to hearing, a timely served and

filed document may be offered subject to the same standards and received with the same effect as oral testimony;

(b) To develop a record that is necessary and appropriate and to achieve fairness, the hearings officer has the discretion to admit documents/reports not filed and served within 30 days of a hearing unless the party opposing the admission demonstrates that the admission is prejudicial. The hearings officer will also have the discretion to allow for cross-examination and rebuttal evidence not requested precisely in accordance with the rules.

(2) If cross-examination is requested of the document preparer or custodian as provided in subsection (1)(a) of this rule, and the requestor is informed within ten days prior to the hearing that the requested witness will not appear for cross-examination, the document may be received in evidence if the hearings officer determines that it does not prevent the creation of a complete and accurate record upon which the Board will be able to make a well informed determination in the matter.

Stat. Auth.: ORS 183.310 - ORS 183.550, ORS 237.171, ORS 237.191 & ORS 237.263

Stats. Implemented:

Hist.: PERS 2-1992, f. & cert. ef. 1-14-92

459-015-0040

Proof of Case — Contested Case Hearings

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

(2) Standards of Proof:

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

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

(3) Professional opinions:

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

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

(c) The hearings officer shall have the discretion to give more weight to the testimony (findings and opinions) of the treating, the examining, or the consulting physician as the facts indicate.

Stat. Auth.: ORS 183.310 - ORS 183.550, ORS 237.171, ORS 237.191 & ORS 237.263

Stats. Implemented:

Hist.: PERS 2-1992, f. & cert. ef. 1-14-92

459-015-0045

Notification — Return to Work

(1) The Public Employees' Retirement Board allows return to work as follows (ORS 237.187(3)):

(a) A member receiving a disability retirement allowance, who has not been medically released for any work for which qualified, may return to work in a PERS qualified position for a 90 day trial period without losing disability retirement status. Benefits will not be paid during the trial period. Wages paid during the 90 day trial period are excluded from the definition of salary/wages for purposes of computing PERS contributions or determining PERS retirement benefits unless the member continues the employment beyond 90 days. The disability retirement allowance will be reinstated at the end of the 90 day period, or sooner, if the member is unable to continue employment due to the disabling injury or illness as confirmed by medical documentation;

(b) A member receiving a disability retirement allowance who has not been medically released for any work for which qualified, may return to work with a PERS participating employer in a position not qualified for PERS membership. Income earned by the member is not subject to PERS contributions. The monthly disability retirement allowance shall be adjusted by any earned or paid income which, when added to the disability retirement allowance, exceeds the gross monthly salary earned or paid at the time of retirement for disability;

(c) A member receiving a disability retirement allowance who has not been medically released for any work for which qualified, may be employed by other than a PERS participating employer. The monthly disability retirement allowance shall be adjusted by any earned or paid income which, when added to the disability retirement allowance, exceeds the gross monthly salary earned or paid at the time of retirement for disability.

(2) A member receiving a disability retirement allowance who returns to work under subsection (1)(b) and/or (c) of this rule and continues that employment for a period exceeding six full calendar months is deemed to be performing work for which qualified and benefits shall be terminated as of the beginning of the seventh calendar month.

(3) Exclusive of section (2) of this rule, a member receiving a disability retirement allowance who has not been medically released for any work for which qualified, but is medically approved for therapeutic employment, may return to work. Employment under this section shall be within the constraints prescribed by an attending or consulting physician. The monthly disability retirement allowance shall be adjusted by any earned or paid income as provided for in subsections (1)(b) and (c) of this rule.

(4) A member's disability retirement allowance shall be terminated if the member has been medically released for any work for which qualified.

(5) A member receiving a disability retirement allowance shall notify PERS in writing of the member's reemployment within 30 days of such reemployment.

(6) The Board may require medical examination reports for any member receiving a disability retirement allowance who is reemployed.

(7) If a member returns to work as provided in subsection (1)(b) or (c) or section (3) of this rule, the member shall report monthly to PERS the amount of any earned or paid income. Upon the request by PERS a member shall provide PERS with a copy of the member's federal income tax returns, together with copies of IRS forms W-2.

(8) If a member returns to work as provided in subsection (1)(b) or (c) or section (3) of this rule and the member has reached normal retirement age, the member is no longer required to report any earned or paid income and the member's disability retirement allowance shall no longer be adjusted by any amount of earned or paid income.

(9) A disability retirement allowance shall not be discontinued solely by reason of the retired member entering a training or vocational rehabilitation program.

Stat. Auth.: ORS 183.310 - ORS 183.550, ORS 237.171, ORS 237.191, ORS 237.187 & ORS 237.263

Stats. Implemented:

Hist.: PERS 2-1992, f. & cert. ef. 1-14-92

459-015-0050

Periodic Reviews

(1) Members receiving disability retirement allowances are subject to periodic reviews of their disabled status. The reviews may be either medical or vocational in nature. The staff shall establish review dates for each member receiving a disability retirement allowance. Upon review, the staff may accept treating or consulting physician reports or may require independent medical or vocational examinations. The staff may discontinue immediately the disability retirement allowance of any person who refuses to provide current medical evidence or refuses to submit to an examination.

(2) Periodic reviews, investigations and examinations to determine a member's continued disability retirement allowance will be waived by the staff upon the member reaching normal retirement age.

(3) The Director is hereby authorized to approve or deny the continuance of a disability retirement allowance.

(4) In recommending the continuance or discontinuance of a disability retirement allowance, staff shall follow the procedure established under OAR 459-015-0025(2), (3) and (4).

(5) The Director shall produce a summary of activity pertaining to PERS' continuance or discontinuance of disability retirement allowances for Board review and comment at each of its regularly scheduled meetings.

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

Stat. Auth.: ORS 183.310 - ORS 183.550, ORS 237.171, ORS 237.191 & ORS 237.263

Stats. Implemented:

Hist.: PERS 2-1992, f. & cert. ef. 1-14-92; PERS 5-1992, f. & cert. ef. 5-4-92

459-015-0055

Selection of Benefit Option and Commencement of Allowance

(1) Upon filing a written application for disability retirement allowance, the member shall make a preliminary designation of beneficiary and a preliminary selection of benefit option. The designation and selection shall be effective only upon the Board's approval of the application for disability retirement allowance.

(2) Within 90 days following the Board's approval of the application for disability retirement allowance, the member may change the designation of beneficiary or the selection of benefit option by filing written notice with the staff.

(3) The payment of the disability retirement allowance shall commence within ten days following receipt by the staff of all of the following items, but not earlier than the first of the month following the 90 consecutive day period of incapacitation or the first full calendar month following final payment by employer of any wages or paid leaves:

(a) From the member:

(A) Confirmation of Benefit Option Selection;

(B) Birth Proof for member;

(C) Birth Proof for beneficiary if a joint survivor option is elected.

(b) From the employer:

(A) Separation for Disability Retirement form; or

(B) Separation from PERS Covered Employment form.

Stat. Auth.: ORS 183.310 - ORS 183.550, ORS 237.171, ORS 237.181, ORS 237.191 & ORS 237.263

Stats. Implemented:

Hist.: PERS 2-1992, f. & cert. ef. 1-14-92

459-015-0060

Reduction Due to Workers' Compensation Payment

(1) For the purposes of this rule:

(a) A "Tier Two member" means an employee who establishes membership in PERS on or after January 1, 1996, as described in ORS 238.430.

(b) "Monthly workers' compensation payment" means any gross payment paid in a calendar month on account of temporary total disability or permanent total disability under the provisions of ORS Chapter 656; regardless of whether the condition on which the worker's compensation claim is based is related to the condition on which the PERS disability retirement claim is based. A monthly workers' compensation payment:

(A) Shall include:

(i) Weekly gross payments;

(ii) Semi-monthly gross payments;

(iii) Monthly gross payments; and

(iv) That portion of a lump sum payment of a workers' compensation disability claim that is expressly designated as compensation for temporary total disability or permanent total disability.

(B) Shall not include:

(i) Payments for medical services;

(ii) Payments for vocational training;

(iii) Reemployment assistance payments; and

(iv) Any payment based on an employee's waiver of all rights to, and includes no payment for, a temporary total disability or a permanent total disability claim.

(C) Shall be based on the date that payment is issued, and shall not be allocated to any period other than the month payment is issued.

(c) "Monthly disability retirement allowance" means the PERS gross disability retirement allowance payable under the benefit option elected by the member prior to any deductions.

(d) "Monthly salary" means salary as defined in ORS 238.005(11)(a) that is earned in the last full calendar month of employment prior to date of disability.

(e) "Date of disability" shall have the same meaning as provided in OAR 459-015-0015.

(2) PERS staff shall request of the Workers Compensation Division documentation of the portion of a lump sum settlement that is made on account of a temporary total disability or a permanent total disability.

(3) In the event a Tier Two member is eligible to receive a PERS disability retirement allowance, the allowance shall be reduced by the amount by which the combined monthly benefits payable from both PERS and any monthly worker's compensation payment on account of temporary total disability or permanent total disability exceed the monthly salary of the member at time of disability.

(4) A Tier Two member who is eligible to receive a disability retirement allowance shall report immediately to PERS the receipt or the award of any monthly worker's compensation payment as described in section (1)(b) of this rule.

(5) In the event a Tier Two member receives one or more monthly worker's compensation payment(s) while also receiving a disability retirement allowance as described in OAR 459-015-0015, but PERS is not notified of the worker's compensation payment until after making one or more disability retirement allowance payments:

(a) PERS shall recalculate the disability retirement allowance, taking the monthly worker's compensation payments into account; and

(b) PERS shall invoice the member for, or recover under ORS 238.715, any overpayment of PERS benefits.

(6) A Tier Two member's PERS disability retirement allowance:

(a) Shall first be calculated in accordance with ORS 238.435(5) and this rule prior to determining any reduction to the PERS disability retirement allowance under ORS 238.330(3).

(b) Any reduction under ORS 238.330(3) shall be made to the adjusted PERS disability retirement allowance established under ORS 238.435(5) and this rule.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.435(5) & ORS 238.330(3)

Hist.: PERS 3-1998, f. & cert. ef. 3-16-98

DIVISION 16

POLICE OFFICERS AND FIRE FIGHTERS

459-016-0100

Purchase of Additional Units of Income by a Policeman or Fireman

The additional contributions of a policeman or fireman who is purchasing additional units of income to be payable upon retirement after age 60 but prior to age 65, who retires before age 60, either voluntarily or because of disability, shall remain in his account, earning interest, until he reaches age 60, at which time those contributions will purchase additional income actuarially computed. The employee contributions in these instances will purchase less than a ten dollar unit and the benefit purchased by the

employer shall be reduced to the same amount as the employee benefit. If death occurs after voluntary retirement or disability retirement, but prior to age 60, the unit account shall be refunded to the named beneficiary in a lump sum.

Stat. Auth.: ORS 237.650

Stats. Implemented: ORS 238.440

Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0200

DIVISION 17

REEMPLOYED RETIRED MEMBERS

459-017-0060

Reemployment of Retired Members

(1) Definitions: for the purposes of this rule:

(a) An employee shall have the same meaning as provided in OAR 459-009-0100;

(b) An independent contractor shall have the same meaning as provided in OAR 459-009-0110;

(c) A person providing volunteer service without compensation for the hours of service as a volunteer is not an employee;

(d) Employment is compensated service to a participating employer as an employee;

(e) Period or periods of employment shall mean the actual hours of compensated service with a participating employer as an employee;

(f) Compensated service shall include, but is not limited to, paid vacation, paid sick leave, or other paid leave.

(2) A retired member of the system, receiving a service retirement allowance, may be employed by a participating employer without loss of benefits and a participating employer may employ a retired member provided:

(a) The period or periods of employment by one or more public employers participating in the system shall not exceed 599 hours in a calendar year;

(b) The period or periods of employment by one or more state agencies of any person employed in a management service position as described in ORS 240.212, or in an unclassified service position, as described in ORS 240.205 (1) to (5), shall not exceed 1,039 hours in a calendar year;

(c) The period or periods of employment by one or more school districts, as described in ORS 330.005, and/or education service districts, of any person employed as a "school superintendent" shall not exceed 1,039 hours in a calendar year. For the purposes of this rule, "school superintendent" means the highest ranking administrative officer in a school district or a superintendent of an education service district employed under ORS 334.225; or

(d) A retired member is receiving old age, survivors or disability benefits under the federal Social Security Act, employment is limited to the total number of hours at a specified hourly rate of pay, that does not exceed the maximum allowed for receipt of the full amount of Social Security benefits the retired member is entitled to;

(e) The combined period of employment under subsections (a), (b), and (c) of this section shall not exceed 1,039 hours in a calendar year;

(f) The limitation shall be the greater of subsections (a), (b), and (c) of this section, or the number of hours allowed before losing Social Security benefits as provided in subsection (d) of this section;

(g) Limitations on employment in this section shall be based on the number of hours employed after retiring and not on any position(s) held prior to retiring.

(3) A participating employer may be required to certify to PERS that an employee has not been employed by that employer a greater number of hours than allowed in ORS 238.082 and this rule. In addition, a participating employer may be required to make available to PERS, business and employment records to substantiate the actual number of hours employed as an employee.

(4)(a) If a retired member is reemployed within the limitations of ORS 238.082 and section (2) of this rule, but the period or periods of employment subsequently exceeds those limits, PERS shall terminate the member's benefits as of the first of the calendar month following the date the limits were exceeded. If employment were to continue in excess of the limits, the member shall reestablish active membership in accordance with ORS 238.078 the first of the calendar month following the date the limits were exceeded;

(b) If a reemployed retired member reestablishes active membership pursuant to ORS 238.078 as described in subsection (a) of this section, the member shall not be entitled to receive a service retirement allowance during any period of employment after reestablishing active membership.

(5) A retired member who qualifies for reemployment without loss of benefits under section (2) of this rule shall continue to receive a service retirement allowance and the status of the individual as a retired member shall not be affected.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.078 & ORS 238.082

Hist.: PERS 1-1994, f. 3-29-94, cert. ef. 4-1-94; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0182

DIVISION 20

OLD-AGE AND SURVIVORS INSURANCE

459-020-0005

Remitting of Employer and Employee Contributions

(1) Unless otherwise agreed upon between the Retirement Board and the employer, the employer shall transmit the amount of employee and employer social security contributions together with Remittance Advice to the Retirement Board as follows (date postmarked by U.S. Postal Service is deemed date received if sent through the U.S. Postal Service).

For Pay Dates:	Send so That Total Contributions will be Received Not Later Than:
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1st through 15th	22nd of that month;
16th through month-end	7th of following month.

(2) Should the due date occur on a legal Oregon holiday, a Saturday or Sunday, the due date will be the next business day.

(3) The provisions of this rule apply only to calendar years prior to 1987.

Stat. Auth.: ORS 237.460 & ORS 237.470

Stats. Implemented:

Hist.: PER 9, f. 12-15-55; PER 3-1979(Temp), f. & ef. 11-21-79; PER 3-1980, f. & ef. 5-8-80; PER 1-1983(Temp), f & ef. 8-5-83; PERS 2-1983, f. & ef. 1-1-84; PERS 6-1994, f. & cert. ef. 8-9-94

459-020-0010

Annual Report of Earnings

(1) Unless agreed upon between the Retirement Board and the employer, the employer shall transmit to the Retirement Board in acceptable format, one copy of an annual wage report/listing and the designated copy Form W-3 S&L (furnished by the board), original and duplicate, so that they shall be received not later than 31 days following the end of the calendar year.

(2) Unless agreed upon between the retirement board and the employer, the employer shall file pursuant to Federal Regulations Form W-2 and W-3 S&L by February 28 following the end of each calendar year. Failure to meet this deadline shall cause the delinquent employer to be subject to penalties as otherwise provided in Oregon statutes and administrative rules.

(3) The provisions of this rule apply only to calendar years prior to 1987.

Stat. Auth.: ORS 237.470 & ORS 237.480

Stats. Implemented:

Hist.: PER 9, f. 12-15-55; PER 9-1981, f. & ef. 3-5-81; PER 2-1982, f. 11-22-

82, ef. 1-1-83; PERS 6-1994, f. & cert. ef. 8-9-94

459-020-0012

Quarterly Reconciliation of Social Security Reporting

(1) Unless otherwise agreed upon between the Retirement Board and the employer, the employer shall transmit on forms furnished by the Board (PERS 45910-13) the Social Security Quarterly Reconciliation, original and duplicate, so it shall be received not later than 25 days following the end of the calendar quarter.

(2) The provisions of this rule apply only to calendar years prior to 1987.

Stat. Auth.: ORS 237.470 & ORS 237.480

Stats. Implemented:

Hist.: PER 8-1981, f. & ef. 3-5-81; PERS 6-1994, f. & cert. ef. 8-9-94

459-020-0015

Collection of Pro Rata Share of Expenses

The Board shall collect from each participating public agency its respective pro rata share of expenses incurred in administering this Act (ORS 237.410 to 237.520, inclusive). For purposes of this recovery of expenses, the fiscal period shall be the calendar quarter and all expenses paid during a calendar quarter shall be prorated to each employer on the basis of the number of employees reported on the employer's quarterly report form for the quarter. For this purpose, the scheduled payments for amortizing the amounts loaned to the department from the general fund of the State of Oregon and from the Public Employees' Retirement System shall be considered to have been made during a quarter.

Stat. Auth.: ORS 237

Stats. Implemented:

Hist.: PER 9, f. 12-15-55

459-020-0020

Due Date for Administrative Expenses

Payment of the administrative expenses shall be due the Retirement Board no later than 75 days after the end of the calendar quarter for which the invoice is rendered and will be delinquent thereafter.

Stat. Auth.: ORS 237

Stats. Implemented:

Hist.: PER 9, f. 12-15-55

459-020-0025

Penalty

(1) Failure of any public agency to submit reports, remittances of contributions, or remittances of administrative expense, within the time limit specified, will make the agency liable for penalties at the rate of one percent for each month or fraction thereof during which the agency is delinquent. The total contributions due on a delinquent report, or the total amount of a delinquent remittance, whichever is the greater, shall be subject to such penalty.

(2) Such penalty may be waived by the Board upon the agency petition demonstrating unavoidable delay or unintentional error.

(3) Such penalty shall not be waived by the Board repeatedly for any agency except upon a showing of highly unusual circumstances evidencing no agency responsibility for the delay or error.

Stat. Auth.: ORS 237

Stats. Implemented:

Hist.: PER 9, f. 12-15-55; PER 5-1979(Temp), f. & ef. 11-21-79; PER 8-1979(Temp), f. & ef. 12-11-79; PER 3-1980, f. & ef. 5-8-80; PER 10-1981, f. & ef. 11-23-81

459-020-0030

Board May Request Information

As may be found necessary, the Board, in writing or on printed form, may request from an employer information that may aid in determining OASI benefits, amount of tax due, possible exclusions from coverage, correct name, Social Security account number, employee-employer relationship, or information requested by the Federal Bureau. After 30 days have elapsed from the date of

the first request for information, the Director of the Board may, without further notice, send a field examiner to the headquarters of the employer to secure the information, and the entire cost of such examination shall be paid by the employer. (Public Law 96-88)

Stat. Auth.: ORS 237

Stats. Implemented:

Hist.: PER 9, f. 12-15-55; PER 7-1981, f. & ef. 3-5-81

459-020-0035

Employer's Records Shall Be Available to Board

When an employer fails to remit or report to the Retirement Board in the manner specified, the Board may without notice send an auditor to the office of the employer to examine the records and to obtain the necessary reports and remittances. The employer shall make its books and records available for such purpose during normal business hours. The entire cost of such examination shall be paid by the delinquent employer.

Stat. Auth.: ORS 237

Stats. Implemented:

Hist.: PER 9, f. 12-15-55

459-020-0040

Determination of Employee Status

In determining whether or not a person was or is an employee of a participating employer, the Retirement Board will consider the following factors:

(1) Who had or has the authority to select and engage the employee.

(2) Who had or has the power of dismissal.

(3) Who had or has the authority and responsibility for directing and supervising the employee's work and for controlling the employee's conduct at work.

(4) From whom did or does the employee receive his compensation.

Stat. Auth.: ORS 237

Stats. Implemented:

Hist.: PER 9, f. 12-15-55

459-020-0045

Extras Valued for Salary Contributions

(1) Living quarters, board, lodging, fuel, laundry, and other advantages furnished an employee in return for their services shall be taken into account and valued for salary contribution purposes only as determined by the Board and as certified to by the employer.

(2) In no case shall such account include items of traveling expense or other expense paid by an employee which is subject to reimbursement.

(3) The provisions of this rule apply only to calendar years prior to 1987.

Stat. Auth.: ORS 237.460 & ORS 237.470

Stats. Implemented:

Hist.: PER 9, f. 12-15-55; PER 5-1981, f. & ef. 3-5-81; PERS 6-1994, f. & cert. ef. 8-9-94

459-020-0050

Governmental Unit Contracting With Board Must Have Legal Status

A political subdivision, instrumentality, or agency, as to which an agreement with the Department of Health and Human Services may be executed by the Public Employees' Retirement Board, is an entity that has legal being and exercises some of the governmental powers or discharges some of the governmental functions of the State of Oregon. (Public Law 96-88)

Stat. Auth.: ORS 237

Stats. Implemented:

Hist.: PER 9, f. 12-15-55; PER 6-1981, f. & ef. 3-5-81

459-020-0055

All Prior Rules Superseded

These rules supersede all rules of the Public Employees'

Retirement Board, relating to the Old-Age and Survivors Insurance Division, heretofore filed with the Secretary of State.

Stat. Auth.: ORS 237
Stats. Implemented:
Hist.: PER 9, f. 12-15-55

DIVISION 30

LOCAL PUBLIC EMPLOYER RETIREMENT PLANS FOR POLICE OFFICERS AND FIRE FIGHTERS

459-030-0000

Definitions

As used in this division:

(1) "Fire Fighter" means persons employed by a city, county or district whose duties involve fire fighting, but does not include volunteer fire fighters;

(2) "Police Officer" includes police chiefs and policemen and policewomen of a city who are classified as police officers by the council or other governing body of the city; sheriffs and those deputy sheriffs whose duties, as classified by the county governing body, are the regular duties of police officers; county adult parole and probation officers, as defined in ORS 181.610, who are classified by the county governing body as police officers pursuant to ORS 237.610 and ORS 237.620; corrections officers as defined in ORS 181.610(2); and employees of districts whose duties, as classified by the governing body of the district, are the regular duties of police officers; but "police officer" does not include volunteer or reserve police officers, or persons considered by the respective governing bodies to be civil deputies or clerical personnel.

(3) "Public Employer" means any city, county or district that employs police officers or fire fighters.

(4) "Valuation Date" means the date set by the Board as of which the retirement benefits under the public employer's retirement plan and under the PERS retirement plan shall be compared.

Stat. Auth.: ORS 237
Stats. Implemented:
Hist.: PERS 1-1989, f. & cert. ef. 12-4-89

459-030-0001

Petition of Public Employer for Exemption of Police Officers and Fire Fighters From Participation in the System

If a public employer provides retirement benefits to its police officers and fire fighters which are equal to or better than the benefits which would be provided to them under the PERS, the public employer may petition the Board for exemption from participation of such employees.

Stat. Auth.: ORS 237
Stats. Implemented:
Hist.: PER 4-1978, f. & ef. 11-2-78; PERS 1-1989, f. & cert. ef. 12-4-89

459-030-0009

Contents of the Petition

(1) A petition for exemption of a public employer shall contain the following information:

(a) The name of the public employer;

(b) For current affected police officers and fire fighters; a list of the names, ages, sex, dates of employment and plan participation, annual employee contributions (withheld or picked up) to the employer's plan for each year of participation beginning in 1973 with total current account balances of employee contributions, if applicable, and total gross salaries paid in each of the three most recent calendar years;

(c) A copy of the plan including each written trust agreement, contract or insurance policy providing retirement benefits to the public employer's police officers and fire fighters;

(d) Such additional information as will assist an actuary retained by the Board in reviewing the retirement benefits to be provided the police officers and fire fighters.

(2) Information provided in the petition shall be current as of

the valuation date.

Stat. Auth.: ORS 237
Stats. Implemented:
Hist.: PER 4-1978, f. & ef. 11-2-78; PER 13-1981, f. & ef. 11-23-81; PERS 1-1989, f. & cert. ef. 12-4-89

459-030-0011

Reexamination of Exemption

(1) Any exemption granted under this division shall continue only so long as the retirement benefits are not increased under PERS and are not decreased under the public employer's plan.

(2) Whenever legislation increasing PERS retirement benefits is adopted, the Board shall set a valuation date and notify each exempt public employer of the valuation date and the deadline for filing a new petition for continued exemption. If a public employer fails to meet the deadline, then the public employer's exemptions shall expire and the public employer shall become a participant in PERS with respect to its police officers and fire fighters retroactive to the valuation date.

(3) Whenever a change decreasing the public employer's retirement benefits is adopted, the public employer shall file with the Board a new petition for exemption. If the public employer fails to file a new petition within 60 days of adoption (or the date the change in retirement benefits takes effect, if later) then the exemptions shall expire and the public employer shall become a participant in PERS with respect to its police officers and fire fighters to that date.

Stat. Auth.: ORS 237
Stats. Implemented:
Hist.: PER 4-1978, f. & ef. 11-2-78; PERS 1-1989, f. & cert. ef. 12-4-89; Renumbered from 459-030-0020

459-030-0015

Actuarial Review

(1) Upon the filing of a petition, the Board shall schedule an actuarial review of the public employer's retirement plan to be conducted by an actuary retained by the Board at the expense of the public employer.

(2) An actuary retained by the Board may require the public employer to provide such additional information as the actuary considers necessary. Failure to provide the actuary with the requested information on a timely basis shall constitute sufficient ground for the Board to dismiss the petition with prejudice.

Stat. Auth.: ORS 237
Stats. Implemented:
Hist.: PER 4-1978, f. & ef. 11-2-78; PER 14-1981, f. & ef. 11-23-81; PERS 1-1989, f. & cert. ef. 12-4-89

459-030-0025

Standards for Review of Police Officers and Fire Fighters Retirement Plans

(1) A determination whether a public employer provides retirement benefits to its police officers and fire fighters which are equal to or better than the benefits which would be provided to them under PERS shall be made as of the valuation date. The Board shall consider the aggregate total actuarial present value of all retirement benefits accrued since July 1, 1973 and project to be accrued after the valuation date by the group of police officers and fire fighters employed on the valuation date by the public employer. The Board shall not require that every retirement benefit for each individual employee be equal to or better than the particular benefit he or she would receive under PERS. The Board shall, however, require that the public employer's retirement plan or plans provide at least eighty percent (80%) of the actuarial present value of projected retirement benefits in each of the major categories of benefits available under PERS, namely: A service retirement; a disability retirement; a death benefit; and vesting.

(2) The Board shall conduct its review based on its current actuarial assumptions for police officers and fire fighters of public employers in PERS.

(3) The Board shall consider the cost of the benefits to be provided and the proportion of the cost being paid by the public

employer and the participating police officers and fire fighters. The Board shall consider whether the benefits to be provided by the employer are funded, and the adequacy of funding. Whether the benefits are provided by contract, trust or insurance, or a combination thereof shall have no effect on the decision to grant or deny the petition.

(4) In considering a public employer's retirement plan provisions the Board shall not value portability of pension credits, tax advantages, and any worker's compensation component of a public employer's plan as determined by the employer.

(5) In valuing PERS benefits the Board shall consider the actuarial present value of future PERS ad hoc benefit increases. A public employer shall be given the option of indicating an intent to match each future PERS ad hoc benefit increase in lieu of evaluating PERS benefits with the ad hoc assumption. A public employer who elects this option and whose plan benefits are in all other respects equal to or better than PERS benefits shall be given an exemption conditioned upon adoption of future PERS ad hoc increases. An employer who fails to adopt an ad hoc increase or who fails to provide written confirmation of adoption within 60 days of request by PERS shall be required to immediately undergo a new valuation utilizing the PERS ad hoc valuation assumption.

(6) Additional actuarial assumptions as shall be needed to evaluate public employer plan provisions shall be considered by the Board's actuary to be consistent with assumptions specified in these rules. Any disputes as to the appropriateness of additional actuarial assumptions shall be resolved by the Board in its sole discretion.

Stat. Auth.: ORS 237

Stats. Implemented:

Hist.: PER 4-1978, f. & ef. 11-2-78; PER 15-1981, f. & ef. 11-23-81; PERS 1-1989, f. & cert. ef. 12-4-89

459-030-0030

Board Action on Petition and Review of Order

(1) Upon receipt of the written actuarial review report and recommendations of staff, the Board at a public meeting without hearing any testimony shall issue an order granting or denying the petition for exemption.

(2) The order shall be final unless:

(a) Within 120 days the public employer amends its plan to comply retroactive to the valuation date or files a written request for an extension. Upon filing of the request, the public employer shall have an additional 60 days to so amend; or

(b) Within 60 days the public employer, the affected public employees, or their labor representative files a petition for rehearing or reconsideration pursuant to OAR 459-001-0010 and 459-001-0040.

Stat. Auth.: ORS 237

Stats. Implemented:

Hist.: PER 4-1978, f. & ef. 11-2-78; PERS 1-1989, f. & cert. ef. 12-4-89

DIVISION 35

HEALTH INSURANCE PROGRAMS

459-035-0000

Policy and Goals

The health insurance plans of the Public Employees' Retirement System (PERS) are established and shall be administered as provided in ORS 238.410, 238.415 and 238.420. The Public Employees' Retirement Board (Board) may enter into one or more contracts with health insurance carriers licensed in the State of Oregon to obtain maximum coverage at minimum costs without sacrificing quality consistent with health insurance needs of eligible retirees, and their spouses or dependents.

Stat. Auth: ORS 238.410 & 238.650

Stats. Implemented: ORS 238.410, 238.415 & 238.420

Hist.: PERS 4-1996, f. & cert. ef. 6-11-96

459-035-0001

Definitions

The words and phrases used in this Division have the same meaning given them in ORS chapter 238. Additional terms are defined as follows unless the context requires otherwise.

(1) "Board" shall have the same meaning as the Public Employees' Retirement Board in ORS 238.630.

(2) "PERS" shall have the same meaning as the Public Employees' Retirement System in ORS 238.600.

(3) "Staff" means the employees of the Public Employees' Retirement System.

(4) "Fund" shall have the same meaning as the Public Employees' Retirement Fund in ORS 238.660.

(5) "PERS member" shall have the same meaning as provided in ORS 238.005(7).

(6) "Creditable service" shall have the same meaning as provided in ORS 238.005(4).

(7) "Qualifying service" means creditable service, as defined in ORS 238.005(4), plus any periods of employment with an employer participating in PERS that are required of the employee before becoming a PERS member.

(8) "Eligible person" means a person who is eligible for coverage under a PERS-sponsored health insurance plan. The conditions for such eligibility are set forth in OAR 459-035-0020.

(9) "Eligible retired member" means an eligible person who is eligible for payments toward the cost of the Medicare Companion Plan from RHIA. The conditions for such eligibility are set forth in OAR 459-035-0030.

(10) "Eligible retired state employee" means an eligible person who is eligible for non-Medicare insurance premium payments from the RHIPA. Conditions for such eligibility are set forth in OAR 459-035-0040.

(11) "Retiree" means a PERS member who is receiving a service or disability retirement allowance or benefit under PERS or who received an optional lump sum payment under ORS 238.315, or a person who is receiving retirement pay or pension calculated under ORS 1.314 to 1.380 (1989 Edition).

(12) "Health insurance" means insurance for health care, as that term is defined in ORS 238.410(1)(c).

(13) "SEBB" means the State Employees' Benefit Board established under ORS 243.115.

(14) "BUBB" means the Bargaining Unit Benefits Board established under ORS 243.235.

(15) "RHIA" means the Retirement Health Insurance Account established under ORS 238.420 to help defray the cost of the Medicare Companion Plan.

(16) "RHIPA" means the Retiree Health Insurance Premium Account established under ORS 238.415 to help defray the cost of PERS-sponsored health plans other than the Medicare Companion Plan.

(17) "Medicare Companion Plan" means a PERS-sponsored health insurance plan for eligible persons who are eligible for and enrolled in **Medicare**

(18) "Carrier" shall have the same meaning as provided in ORS 238.410(1)(a).

(19) "Dependent" means a PERS member's or retiree's dependent child who has never married. For the purpose of this rule a "child" is defined as follows:

(a) A natural child.

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

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

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

(20) A "Plan Year" is the 12-month period beginning January 1 and ending December 31.

(21) "Third Party Administrator" means the individual or organization that the Board contracts with to provide administrative services as specified in the contract.

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

(23) “Pre-existing condition” means a physical or mental condition which was diagnosed or treated or for which medication was prescribed or taken in the six months immediately preceding the effective date of coverage under a health insurance plan sponsored by PERS. A condition is diagnosed whenever a physician tells a person that he or she has that condition or makes an entry to that effect in the person’s medical records. This applies even if the physician is examining or treating the person for a different condition.

Stat. Auth: ORS 238.410 & 238.650
 Stats. Implemented: ORS 238.410, 238.415 & 238.420
 Hist.: PERS 4-1996, f. & cert. ef. 6-11-96

**459-035-0020
 Eligibility, General**

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

- (1) An eligible retiree as defined in OAR 459-035-0010(11).
- (2) An eligible spouse means the spouse of an eligible retiree.
- (3) An eligible dependent means a dependent child as defined in OAR 459-035-0010(22), and satisfies one of the requirements listed in subsections (a), (b), or (c) that follow:
 - (a) The child is less than 19 years of age.
 - (b) The child is less than 24 years of age, and is regularly enrolled and attending school; e.g. an academic, trade or vocational school.

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

- (A) The child is not able to achieve self-support through his or her work due to a developmental disability, mental retardation or physical handicap as verified by a physician and accepted by the carrier, and
 - (B) The incapacity is continuous and began prior to the date the child would otherwise have ceased to be an eligible dependent.
- (4) An eligible surviving spouse or dependent means:
 - (a) The surviving spouse or dependent of a deceased retired PERS member, or
 - (b) The surviving spouse or dependent of a deceased PERS member who was not retired but who was eligible to retire at the time of death, or
 - (c) The surviving spouse or dependent of a deceased retiree who was receiving a retirement payment or benefit, or a pension calculated under ORS 1.314 to 1.380 (1989 Edition), provided that the surviving spouse or dependent was covered under a PERS sponsored health insurance plan at the time of the retiree’s death.

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

(6) In no event shall an eligible person as defined in this rule be entitled to coverage as both a retiree and a spouse or dependent.

Stat. Auth: ORS 238.410 & 238.650
 Stats. Implemented: ORS 238.410, 238.415 & 238.420
 Hist.: PERS 4-1996, f. & cert. ef. 6-11-96

**459-035-0030
 Eligibility, Retirement Health Insurance Account**

This rule describes the requirements for an “eligible retired member” participating in a PERS-sponsored Medicare Companion Plan to be eligible for contributions from the RHIA toward the

cost of premiums for that plan. The amount of the contribution is defined in OAR 459-035-0060. An “eligible retired member” shall include the following:

- (1) A retiree who is enrolled in **Parts A and B of Medicare** and who:
 - (a) Is retired, is receiving a PERS service or disability retirement allowance, and had eight or more years of qualifying service as defined in OAR 459-035-0010(7) at the time of retirement, or
 - (b) Is receiving a PERS disability retirement allowance computed as if he or she had eight years or more of creditable service as defined in ORS 238.005(4).
- (2) A surviving spouse or dependent of a deceased eligible retired member as described in section (1) of this rule, who is enrolled in **Parts A and B of Medicare**, and who:
 - (a) Is receiving a retirement allowance or benefit from PERS, or
 - (b) Was covered under the retired member’s PERS-sponsored health insurance plan and the deceased retired member retired before May 1, 1991.

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

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

Stat. Auth: ORS 238.650
 Stats. Implemented: ORS 238.420
 Hist.: PERS 4-1996, f. & cert. ef. 6-11-96

**459-035-0040
 Eligibility, Retiree Health Insurance Premium Account**

This rule describes the eligibility requirements for an “eligible retired state employee” participating in a PERS-sponsored health insurance plan, exclusive of dental coverage, to be eligible for a contribution from the RHIPA toward the cost of premiums for that health insurance plan. The amount of the contribution is established in OAR 459-035-0050. An “eligible retired state employee” shall include the following:

- (1) A retiree who was a state employee at the time of retirement and who is not eligible for **Medicare**, and who:
 - (a) Is receiving a PERS service or disability retirement allowance or benefit, and had 8 or more years of qualifying service as defined in OAR 459-035-0010(7) at the time of retirement, or
 - (b) Is receiving a PERS disability retirement allowance computed as if the member had eight or more years of creditable service as defined in ORS 238.005(4), and has attained the earliest service retirement age under ORS 238.280.
- (2) A surviving spouse or dependent of a deceased eligible retired state employee, as described in section (1) of this rule, who is not eligible for **Medicare**, and who:
 - (a) Is receiving a retirement allowance or benefit from PERS, or
 - (b) Was covered under the eligible retired state employee’s PERS-sponsored health insurance plan, and the eligible retired state employee retired on or after September 29, 1991.

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

(4) If both an eligible surviving spouse and an eligible surviving dependent are receiving benefits at the same time under the 15-year certain optional form of benefit payment (ORS 238.305

Option 4), only the eligible surviving spouse shall be entitled to contributions from the RHIPA unless the surviving spouse, in writing, waives the contribution in favor of the eligible surviving dependent.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.415

Hist.: PERS 4-1996, f. & cert. ef. 6-11-96

459-035-0050

Contribution Payment From Retiree Health Insurance Premium Account for Eligible Retired State Employees Not Eligible for Medicare

This rule establishes the procedure for determining the amount of contribution that will be paid from the Retiree Health Insurance Premium Account (RHIPA) (ORS 238.415) on behalf of an eligible retired state employee under age 65, as described in OAR 459-035-0040, who is enrolled in a health insurance plan sponsored by PERS.

(1) Definitions:

(a) "Health Insurance Premium" means the self-sustaining premium calculated to cover the projected claims and costs incurred by the insurance company for a participant in a health care plan. "Health Insurance Premium" includes retrospective premiums and employee contributions. "Health Insurance Premium" does not include any intentional load to cover dependents or other groups or participants;

(b) "Net to Carrier" means the health insurance premium due to the insurance company. "Net to Carrier" does not include any charges for SEBB, BUBB, or PERS health insurance administration;

(c) "Retrospective Premium" means any additional premium liability that is determined at the end of the plan year, based on any pre-determined formula.

(2) On or before November 1 of each calendar year, staff shall determine the monthly amount available to be paid from the RHIPA on behalf of an eligible retired state employee enrolled in a PERS health insurance plan contracted for under ORS 238.410. In determining the average difference between the health insurance premiums paid by retired state employees under contracts entered into by the Public Employees Retirement Board and the health insurance premiums paid by state employees who are not retired under contracts entered into by SEBB and BUBB (without regard to employees who have opted out of SEBB- or BUBB-sponsored health insurance coverage), the staff shall calculate the change in value of the average of active SEBB and BUBB plans after adjusting for the demographic (age/sex) differences between:

(a) The active employee participants; and

(b) Retired members receiving a subsidy and participating in one of the PERS non-Medicare health insurance plans as follows:

(A) Obtain the average employee participation for each health insurance plan sponsored by SEBB and BUBB for the most recent three month period;

(B) Obtain the health insurance premium for each health insurance plan sponsored by SEBB and BUBB for the plan year next following;

(C) Obtain the average eligible retired state employee participation for each health insurance plan sponsored by PERS for the most recent three month period;

(D) Compute the average health insurance premium for all plans sponsored by SEBB and BUBB pursuant to the following formula:

(i) Step 1. Multiply the average participation in paragraph (A) of this subsection by the health insurance premium in paragraph (B) of this subsection for each plan;

(ii) Step 2. Total the average participation for all plans;

(iii) Step 3. Total the result for all of the calculations in Step 1 of sub-paragraph (i) of this paragraph;

(iv) Step 4. Divide the total in Step 3 of sub-paragraph (iii) of this paragraph by the total in Step 2 of sub-paragraph (ii) of this paragraph.

(E) Compute the change in value of the average active SEBB and BUBB plan pursuant to the following formula:

(i) Step 1. Divide the total in paragraph (C) of this subsection by the total in Step 2 of paragraph (D) of this subsection;

(ii) Step 2. Multiply the average participation for each plan in paragraph (A) of this subsection by the result of Step 1 of sub-paragraph (D)(i) of this subsection for each plan;

(iii) Step 3. Multiply the premium for each plan in paragraph (B) of this subsection by the factor 1.4158. The factor 1.4158 is the estimated ratio of non-Medicare retiree claims cost to active claims cost;

(iv) Step 4. Multiply the result of Step 2 of sub-paragraph (ii) of this paragraph by the result of Step 3 of sub-paragraph (iii) of this paragraph for each plan;

(v) Step 5. Total the results for all of the calculations in Step 4 of sub-paragraph (iv) of this paragraph;

(vi) Step 6. Total the results of the average participation calculations for all plans in Step 2 of sub-paragraph (ii) of this paragraph;

(vii) Step 7. Divide the total premium in Step 5 of sub-paragraph (v) of this paragraph by total average participation as calculated in Step 6 of sub-paragraph (vi) of this paragraph.

(F) The result of Step 7 of sub-paragraph (E)(vii) of this subsection minus Step 4 of sub-paragraph (D)(iv) of this subsection is the maximum monthly amount available to be paid by the PERS on behalf of an eligible retired state employee. Under no circumstances will this amount be less than \$0.

(3) The factor in Step 3 of sub-paragraph (2)(E)(iii) of this rule shall be evaluated no less frequently than every three years.

(4) The monthly amount available established under section (2) of this rule shall be published by November 1 of each calendar year, or as soon as possible thereafter, and shall be effective for the plan year next following for PERS sponsored plans.

(5) In the event an active plan is not to be renewed for a subsequent plan year, the participants shall be deemed to be covered by another existing plan most similar in benefits.

(6) This rule applies to the amount to be paid by PERS for the plan year 1993 and subsequent plan years.

(7) No person eligible for a contribution from the RHIPA as provided for in this rule shall be entitled to a contribution from the RHIA.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.415

Hist.: PERS 8-1992, f. 12-14-92, cert. ef. 12-31-92; PERS 4-1996, f. & cert. ef. 6-11-96; PERS 4-1998, f. & cert. ef. 3-16-98

459-035-0060

Contribution Payment From Retirement Health Insurance Account for Eligible Retired Members Who are Covered by Medicare

This rule establishes the procedure for determining the amount of contribution that will be paid from the RHIA (ORS 238.420) on behalf of an eligible retired member, as described in OAR 459-035-0030, who is enrolled in **Parts A and B of Medicare**.

(1) An amount of \$60 per month or the total monthly premium, whichever is less, shall be paid from the RHIA on behalf of an eligible retired member enrolled in a PERS-sponsored Medicare Companion Plan.

(2) No person eligible for a contribution from the RHIA as provided for in this rule shall be entitled to a contribution from the RHIPA.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.420

Hist.: PERS 4-1996, f. & cert. ef. 6-11-96

459-035-0070

Enrollment

(1) Enrollment requirements of PERS-Sponsored health insurance plans for eligible persons are as follows:

(a) An eligible person must complete all applicable parts of PERS Medical & Dental Insurance Application form, and file the form with the Third Party Administrator. The form must indicate which plan is desired and it must list individually all dependents,

including the spouse, that are to be enrolled. The form can be obtained from the Third Party Administrator or PERS.

(b) An eligible person who is a retiree may enroll:

(A) Within 90 days of the retiree's effective date of retirement.

(B) At any time if covered under another group health insurance plan for 24 consecutive months immediately preceding enrollment, provided that the application for enrollment is filed within 30 days of loss of coverage. Health care coverage under workers' compensation, **Medicare** or any other governmental entitlement program for health care do not qualify as other group health insurance coverage for purposes of this paragraph.

(C) Within 90 days of initial **Medicare** eligibility, if the retiree is enrolled in **Parts A and B of Medicare**.

(D) During an open enrollment period designated by the Board.

(e) Except as provided in subsection (f) of this section, an eligible spouse or dependent must be enrolled at the same time and in the same plan as the eligible retiree.

(d) An eligible surviving spouse or dependent who is enrolled under the deceased retiree's plan at the time of death may continue coverage under that plan, and must complete a Medical & Dental Insurance Application form as soon as possible following the retiree's death.

(e) An eligible surviving spouse or dependent who is not covered under the retiree's plan at the time of the retiree's death, may enroll:

(A) Within 90 days of the retiree's death.

(B) At any time if covered under another group health insurance plan for 24 consecutive months immediately preceding enrollment, provided that the application for enrollment is filed within 30 days of loss of coverage. Health care coverage under workers' compensation, **Medicare** or any other governmental entitlement program for health care do not qualify as other group health insurance plan coverage for purposes of this paragraph.

(C) Within 90 days of initial **Medicare** eligibility, if he or she is enrolled in **Parts A and B of Medicare**.

(D) During an open enrollment period designated by the Board.

(f) A new spouse or dependent may be enrolled:

(A) Within 30 days of becoming a spouse or dependent.

(B) If not enrolled in **Medicare**, only with the same carrier that the eligible retiree is enrolled in.

(C) If enrolled in **Parts A and B of Medicare**, only in the Medicare Companion Plan offered by the same carrier that covers the eligible retiree.

(2) Special enrollment requirements for dental insurance plans:

(a) Only persons who are enrolled in a PERS-sponsored health insurance plan may enroll in a PERS-sponsored dental insurance plan.

(b) Dental insurance coverage is not available to any eligible person unless all family members (the retiree, spouse and dependent(s)) who are enrolled in a PERS-sponsored health insurance plan also enroll in the same PERS-sponsored dental insurance plan

(c) If the retiree, spouse and dependent(s) do not enroll in a PERS-sponsored dental insurance plan when eligible, or later choose to discontinue dental coverage, they will not be allowed to re-enroll in a PERS-sponsored dental insurance plan.

(3) Except as provided in subsections (a) and (b) of this section, the PERS-sponsored health insurance plan may exclude any pre-existing condition described in OAR 459-035-0010(26) unless the eligible person was covered under another group health insurance plan for at least 24 consecutive months immediately before enrolling in the PERS-sponsored health insurance plan.

(a) If the PERS-sponsored health insurance plan selected by the eligible person imposes more stringent limitations, those limitations shall apply.

(b) If application for a **Medicare** Companion Plan is made within 90 days of first becoming eligible for Medicare, pre-existing conditions will not apply.

(c) Specific written information on pre-existing condition limitations may be obtained from the carrier or the Third Party Administrator.

(4) A PERS-sponsored health insurance plan may allow an eligible person to enroll based on proof of good health if the person had not enrolled as provided in section (1) of this rule. A carrier may accept or reject any such enrollment based upon information supplied on a health statement application form. A health statement form shall be completed and signed by the eligible person. If the carrier accepts the enrollment, the pre-existing condition limitations may still apply. Not all carriers will accept an enrollment based on proof of good health. An eligible person should contact the Third Party Administrator for specific written information in this type of situation.

Stat. Auth: ORS 238.410 & 238.650

Stats. Implemented: ORS 238.410, 238.415 & 238.420

Hist.: PERS 4-1996, f. & cert. ef. 6-11-96

459-035-0080

Effective Date of Coverage

(1) For an eligible person who enrolls in a PERS sponsored health insurance plan under the provisions of OAR 459-035-0070, the effective date of coverage shall be the first of the month following receipt of a completed PERS Medical & Dental Insurance Application form but not before the date described as follows:

(a) For an eligible retiree, the latest of the following dates:

(A) The effective date of retirement if enrolled within 90 days of the effective date of retirement.

(B) The termination date of other group health insurance coverage.

(C) For a Medicare Companion Plan, the effective date of enrollment in **Parts A and B of Medicare**.

(D) The date specified in an announcement of a plan change period or an open enrollment period, if applicable.

(E) If required, the date of acceptance of a proof of good health by the carrier.

(b) For an eligible spouse or dependent, the latest of the following dates:

(A) The date the retiree's coverage is effective.

(B) The first of the month following the termination date of other group health insurance coverage.

(C) For a Medicare Companion Plan, the effective date of enrollment in **Parts A and B of Medicare**.

(D) The date specified in an announcement of a plan change period or an open enrollment period, if applicable.

(E) The date of acceptance of a proof of good health by the carrier.

(c) For a new eligible spouse or dependent, the first day of the month following the date the completed enrollment form is filed, except in the following situations:

(A) A newborn child is covered from the moment of birth.

(B) An adopted child is covered from the date he or she is placed in the custody of the eligible retiree.

(d) For an eligible surviving spouse or dependent, the first of the month following the filing of an application for health insurance coverage.

(2) For an eligible person confined in a hospital on the date the plan in which enrolled is to take effect, the effective date shall be the day after such hospital confinement ends.

(3) Coverage shall cease for an eligible person on the earliest of the following dates:

(a) The end of the month of the effective date of notification from the covered person to terminate coverage.

(b) The end of the month for which the last premium is paid.

(c) The end of the month in which a person ceases to be an eligible person, subject to any continuation of coverage rights under state or federal law.

Stat. Auth: ORS 238.410 & 238.650

Stats. Implemented: ORS 238.410, 238.415 & 238.420

Hist.: PERS 4-1996, f. & cert. ef. 6-11-96

459-035-0090

Payment of Premium

(1) An eligible person who elects to participate in a PERS-sponsored health insurance plan shall choose one of the following methods for the payment of premiums for that coverage:

(a) The direct payment method by an electronic transfer of the monthly premium for the PERS-sponsored health insurance plan from an eligible person's bank account to the Third Party Administrator, or

(b) The direct payment method by issuing a check or money order for the monthly premium for the PERS-sponsored health insurance plan to the Third Party Administrator, or

(c) The deduction method wherein PERS shall deduct the monthly premium from the service or disability retirement allowance or other benefit payable to the eligible person and forward the premium to the Third Party Administrator.

(A) The total premium due shall be deducted for the monthly benefit option selected by the eligible person.

(B) If an eligible person's monthly PERS benefits are not sufficient to cover the monthly premium for the PERS-sponsored health insurance plan, the deduction method may not be used.

(2) Administrative costs incurred by PERS for the administration of a PERS-sponsored health insurance plan may be added to the cost of the premium and shall be paid in the same manner as the premium for the health insurance coverage.

(3) If payment is by check or money order, the check or money order must be physically received by the Third Party Administrator on or before the due date.

(4) Failure to make the payment by the due date shall result in termination of a person's health care insurance coverage.

(5) The Third Party Administrator shall promptly forward all premium payments to the appropriate carriers.

Stat. Auth: ORS 238.410 & 238.650

Stats. Implemented: ORS 238.410, 238.415 & 238.420

Hist.: PERS 4-1996, f. & cert. ef. 6-11-96

459-035-0150

Continuation of Insurance Coverage Under COBRA

(1) This rule relates to the continuation of PERS-sponsored health insurance coverage under the federal **Consolidated Omnibus Budget Reconciliation Act of 1985**, as amended (**COBRA**) and ORS 743.600 to 743.602. PERS-sponsored health insurance plans shall provide for continuation of coverage to the extent required by COBRA and ORS 743.600 to 743.602. Nothing in this rule is intended to expand any person's continuation coverage rights under those provisions or any other applicable provision of law.

(2) Any person who is on continuation of coverage under **COBRA** and/or ORS 743.600 to 743.602 shall pay the entire premium for that coverage and shall not be entitled to any contributions from the RHIA or RHIPA. Premium payment shall be made only by check or money order, and the check or money order must be physically received by the Third Party Administrator on or before the due date. Subject to the grace periods required by **COBRA**, failure to make the premium payment by the due date shall result in termination of a person continuation coverage.

Stat. Auth: ORS 238.410 & 238.650

Stats. Implemented: 238.410

Hist.: PERS 4-1996, f. & cert. ef. 6-11-96

459-035-0200

Contracting for Health Insurance Plans

(1) In accordance with ORS 238.410, the Board shall enter into one or more contracts with one or more carriers to provide health insurance coverage to all eligible persons. Such contracts may include health insurance plans that provide:

- (a) Coverage supplemental to **Medicare** coverage,
- (b) Non-Medicare health insurance coverage,
- (c) Health maintenance organization (HMO) coverage, and
- (d) Dental insurance coverage.

(2) The Board shall design the health insurance benefits and develop specifications that assure:

- (a) An emphasis on features based on health care cost con-

tainment.

- (b) Equity for all enrolled members.

(c) Stability through gradual revisions when possible and practicable.

(3) The Board shall periodically review a current contract or contracts to determine whether to modify a current contract or enter into a new contract. Such review shall:

(a) Be based on an ongoing study and investigation of all plans and contracts of coverage.

- (b) Consider the best interests of eligible persons.

(4) The Board shall invite proposals from health insurance carrier, as necessary or desirable, that ensure the plans:

- (a) Are cost effective,
- (b) Provide a broad range of health care services, and

(c) Serve a wide geographic area where eligible persons reside.

(5) The Board shall follow the provisions of ORS chapter 279 as they relate to the advertising for public bids and contracts when publishing a Request For Proposals (RFP). The RFP shall include a description of the selection criteria as follows:

(a) The ability to serve the unique needs of retired Oregon public employees,

- (b) Financial responsibility of respondents,

- (c) Flexibility of the plan(s),

- (d) Range of health care services,

- (e) Service provided to covered members,

- (f) Premium costs, and

- (g) Administrative costs.

(6) The Board's selection process for awarding a contract shall adhere to the following:

(a) The proposals shall be evaluated by an ad hoc selection committee appointed by the Board. Based on its evaluation, the ad hoc selection committee may select respondents for a formal interview.

(b) Each interview shall include time for a brief presentation by a representative(s) of the respondents followed by a question and answer session.

(c) The ad hoc selection committee may select respondents for site visits.

(d) The ad hoc selection committee shall use the responses to the RFP and the information gained from the interviews and site visits for final negotiations and clarifications with selected respondents.

(7) The ad hoc selection committee is advisory only and will make recommendations to the Board. The Board, in turn, will make the final decision on awarding any contract.

Stat. Auth: ORS 238.410 & 238.650

Stats. Implemented: 238.410

Hist.: PERS 4-1996, f. & cert. ef. 6-11-96

459-035-0210

Contracting for Health Insurance Administration and Advisors

The Board may enter into contracts for consulting and administrative services for the administration of PERS-sponsored health insurance plans in accordance with the provisions of OAR Chapter 125, Divisions 020 or 022.

Stat. Auth: ORS 238.410 & 238.650

Stats. Implemented: ORS 238.410

Hist.: PERS 4-1996, f. & cert. ef. 6-11-96

DIVISION 45

DOMESTIC RELATIONS ORDERS

459-045-0000

Authority and Purpose

(1) In accordance with ORS 238.465(3), the provisions of ORS 238.465 (Oregon Laws 1993, Chapter 715) shall be administered by the Public Employees' Retirement System and under the policies and procedures established by the Public Employees'

Retirement Board. To this end, the Board and the staff shall:

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

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

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

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

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

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

Stat. Auth: ORS 238.465(3) & 238.650

Stats. Implemented: ORS 238.465

Hist.: PERS 5-1996, f. & cert. ef. 6-11-96

459-045-0001

Definitions

The words and phrases used in this Division shall have the same meaning given them in ORS Chapter 238. Specific and additional terms are defined as follows unless context requires otherwise.

(1) "Board" shall have the same meaning as the Public Employees' Retirement Board as defined in ORS 238.630.

(2) "PERS" shall have the same meaning as the Public Employees' Retirement System as defined in ORS 238.600.

(3) "Fund" shall have the same meaning as the Public Employees' Retirement Fund in ORS 238.660.

(4) "Staff" means the employees of the Public Employees' Retirement System as provided in ORS 238.645.

(5) "Member" means a person described in ORS 238.005(7) and 238.500(3), and who is the current or former spouse of an alternate payee.

(6) "Alternate payee" means a spouse or former spouse of a PERS member, who is awarded a portion of the member's PERS benefits by a court.

(7) "Member's PERS account" means:

(a) The member's individual account in the Fund as defined in ORS 238.250, and

(b) The member's account in the Variable Annuity Account in the Fund as defined in ORS 238.260.

(c) The accounts described in subsections (a) and (b) of section consist of:

(A) Member before-tax contributions paid to PERS under ORS 238.200,

(B) Member after-tax contributions paid to PERS under ORS 238.205, and

(C) Interest and earnings credited to each of the accounts described in paragraphs (A) and (B) of this subsection.

(d) Shall apply only to an active or an inactive member, and shall not apply to a retired member.

(8) "PERS funds" means the member's PERS account as defined in section (7) of this rule and the member's vested interest in employer contributions paid into the Fund in accordance with ORS 238.225, but shall not include:

(a) Employer contributions for police and fire benefit units pursuant to ORS 238.440.

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

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

(10) "Alternate payee's award" is the portion of a member's

PERS account or of the member's PERS funds awarded to an alternate payee by a court order, and may include the creation of a separate account in the Fund in the name of the alternate payee.

(11) "Member Release" means a written statement that is signed by a member and received by staff authorizing the release of information, and directing to whom and where information is to be sent:

(a) Pertaining to the member's PERS account,

(b) Pertaining to the member's interest in the Fund, or

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

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

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

(a) Pertaining to the alternate payee's interest in the member's PERS account or member's vested interest in the Fund,

(b) Pertaining to the alternate payee's account and benefit information if a separate account has been created in the name of the alternate payee, or

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

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

(13) A "Member Release" and an "Alternate Payee Release" shall include a valid subpoena or court order requiring PERS to provide information to someone other than the member or the alternate payee.

(14) "Vested" or "vesting" means an employee retains rights of membership in the System if the employee has made contributions to the Fund in each of 5 calendar years as set forth in ORS 238.265 or is within 5 years of earliest retirement age, whichever occurs first. Whether or not a member is considered to be vested shall be determined solely by ORS 238.265 regardless of any language that may be contained in any type of court order received by PERS.

(15) "Separation from service" means the member separates from PERS covered employment due to death, service retirement, disability retirement, or termination of employment for which the requirements set forth in ORS 238.265 have been met.

(16) "Service retirement" shall have the same meaning as provided in ORS 238.300.

(17) "Disability retirement" shall have the same meaning as provided in ORS 238.320.

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

(19) "Integration" shall have the same meaning as provided in ORS 238.035, 238.680 and 238.690.

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

(21) "The earliest date the member would be eligible to receive retirement" shall have the same meaning as provided in ORS 238.005(17), or ORS 238.280, or the date the member is approved for disability retirement prior to reaching earliest service retirement eligibility.

(22) "PERS Plan Year" means a calendar year beginning January 1, and ending December 31.

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

(24) "Fraction of the benefit" used to allocate expenses and

costs under ORS 238.465(9) means the percentage or ratio of a member's PERS account or member's vested interest in the Fund that is awarded by court decree or order to the alternate payee and the member as of the date of divorce, separation or annulment.

(25) "Court Order" means a court decree or judgment of dissolution of marriage, separation, or annulment, or the terms of any court order or court approved marital property settlement agreement, incident to any court decree or judgment of dissolution of marriage, separation, or annulment.

(26) "Final Court Order" means a court order or judgment that has been signed by a judge, and which shows the stamp of the court clerk or trial court administrator indicating the order is a certified copy of the original record that is on file with the court.

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

Stat. Auth: ORS 238.465(3) & 238.650

Stats. Implemented: ORS 238.465

Hist.: PERS 5-1996, f. & cert. ef. 6-11-96

459-045-0010

Division of Benefits

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

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

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

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

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

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

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

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

(g) A percentage award that is due an alternate payee shall be applied against the member's individual account, and in the Variable Annuity Account in the Fund. Specific dollar amounts awarded to an alternate payee shall be applied against the member's individual account, and in the Variable Annuity Account in the Fund on a pro-rata basis.

(h) Once the value of the alternate payee's award is established, the portion of the award that is attributable to the mem-

ber's account in the Variable Annuity Account in the Fund shall be transferred to the separate account established in the name of the alternate payee, which shall earn a regular or fixed interest rate as established by the Board, from the transfer date to the date benefits are effective for the alternate payee.

(i) Interest on a separate alternate payee account after the division and transfer takes place shall be credited in accordance with OAR Chapter 459, Division 007.

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

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

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

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

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

$$\frac{\text{MCS}}{\text{TCS}} = \text{Ratio of benefits accrued during the marriage.}$$

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

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

(iii) 147 divided by 308 equals 47.7273 percent.

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

$$\frac{\text{MA}}{\text{TA}} = \text{Ratio of benefits accrued during the marriage.}$$

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

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

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

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

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

(ii) 147 months divided by 308 months equals 47.7273 per-

cent multiplied by court awarded percentage of 50 percent equals 23.8637 percent due the alternate payee when benefits become payable.

(c) The alternate payee’s award is not computed until the member or member’s beneficiaries elect to receive funds due to refund, service or disability retirement, or death.

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

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

(b) An alternate payee to elect to have a separate account established in the Fund in the name of the alternate payee.

(c) If an alternate payee elects to have a separate account established in the fund in his or her name regular or fixed interest shall be credited and posted up until the alternate payee elects to receive his or her award in accordance with OAR Chapter 459, Division 007.

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

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

(4) The Payment Division Deduction Method: This method can be used in regard to a member prior to retirement, or in regard to a member who has retired and has started receiving payment. A court order provides an award, which is stated as a flat or set dollar amount, or as a percentage, either directly or pursuant to a formula, that is to be paid to an alternate payee from the service or disability retirement benefit that shall be paid in the future to a member, or that is presently being paid by PERS to a retired member.

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

(b) Under this method an alternate payee’s award shall not be based on the alternate payee’s age or life expectancy.

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

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

(e) If a member has retired and been receiving payment for more than the period allowed in ORS 238.305 (1) PERS shall only allow a change in the beneficiary designation if the option origi-

nally selected by the member allows for a change of beneficiary, regardless of any direction to the contrary that may be contained in a court order.

(f) An alternate payee cannot convert their award to their own separate payment option independent from the member’s.

(g) PERS shall continue to send a separate check in the name of the alternate payee for as long as there is a benefit being paid by PERS to a member or a member’s beneficiary.

(5) A division of benefits must be in accordance with one of the methods described in this rule.

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

(a) “Retirement benefits” means benefits payable on retirement under PERS law for service or disability.

(b) “Refund” means a refund of a member’s PERS account, and includes payment made due to loss of membership under ORS 238.095.

(c) “Death benefits” means benefits that are payable to a beneficiary pursuant to ORS 238.390 and ORS 238.395.

Stat. Auth: ORS 238.465(3) & 238.650

Stats. Implemented: ORS 238.465

Hist.: PERS 5-1996, f. & cert. ef. 6-11-96

459-045-0020

Court Orders

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

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

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

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

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

(a) Certified copy of a final court order, that specifies what PERS is to do in regard to an alternate payee award. All certified copies must be subsequently reviewed and approved by staff as administrable pursuant to ORS 238.005 to ORS 238.715, and OAR Chapter 459, Division 045, before PERS will make a payment to anyone. Staff shall provide a written response as soon as practicable, on whether or not a final court order can be administered by PERS to both the member and the alternate payee, as well as to their attorneys. Case-specific award information shall be provided to attorneys or other representatives of a member or an alternate payee only if a member release or an alternate payee release has been received by PERS, as described in 459-045-0005(11) and (12).

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

(c) If PERS does not receive a final court order within 12 months from the date a draft court order was received by PERS, then PERS shall consider that no award was made to an alternate

payee from the member's PERS funds. There shall be no further obligation or responsibility on PERS to correspond or communicate with any person other than the member and no payment shall be distributed to anyone other than the member or the member's beneficiary(s).

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth: ORS 238.465(3) & 238.650

Stats. Implemented: ORS 238.465

Hist.: PERS 5-1996, f. & cert. ef. 6-11-96

459-045-0030

General Administration

(1) An alternate payee's award is payable to the alternate payee based on the member's eligibility for benefits. For this purpose, a member shall be considered eligible for benefits before separating from service only if he or she would be eligible to receive benefits if he or she separated from service.

(a) If the member or the member's beneficiary is not eligible for retirement, refund, or death benefits, the alternate payee may not apply for or receive payment of his or her award.

(b) A court order may restrict an alternate payee's award to be payable only when the member applies for and receives benefits.

(2) An alternate payee may request to receive a refund of his or her award if:

(a) The member ceases to be an active member of PERS, and

remains an inactive member for a full calendar month following the month in which the member ceased active membership.

(b) The member ceases to be a member of PERS by reason of:

(A) The member electing to receive a refund under ORS 238.095(1), or

(B) The member losing membership in PERS under ORS 238.095(2).

(3) The separate account in the name of the alternate payee shall be credited with interest in accordance with OAR Chapter 459, Division 007 as follows:

(a) To the date of distribution from that separate account provided the member is a vested active or inactive member as provided in ORS 238.425 on the date the member is first eligible for a benefit.

(b) For 60 month period from the date a member who is not vested under provision of ORS 238.425 ceases to be an active member of PERS.

(c) To the date a non-vested member ceases to be a member as provided in ORS 238.095(2).

(4) An alternate payee who receives a refund of his or her account pursuant to subsection (3) of this rule forfeits any and all employer funds that may have been due the alternate payee, matching or otherwise, as is the case for a member who receives a refund of his or her account prior to retirement.

(5) An alternate payee who is awarded a separate account in the Fund in his or her own name shall not be allowed to participate in the Variable Annuity Account in the Fund, as described in ORS 238.260, regardless of whether or not the member participated in the Variable Annuity Account in the Fund.

(6) Separate alternate payee accounts will be administered pursuant to ORS 238.250 and ORS 238.255 if:

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

(b) The member ceased to be a member of PERS under the provisions of ORS 238.095, 238.105, or 238.545, but restored part or all of the forfeited creditable service from before January 1, 1996, under the provisions of ORS 238.115 or 238.105, after January 1, 1996.

(c) All alternate payee separate accounts will be administered pursuant to ORS 238.250 and 238.435, if the provisions of (6) (a) and (b) are not applicable to a member.

(7) An alternate payee who elects to begin receiving his or her award pursuant to a court order that uses the Division Methods described in OAR 459-045-0010 Sections (1) and (2), may select any retirement payment option available to the member, other than a joint and survivor annuity, unless a court order does not contain language that would allow an alternate payee to make any elections. The retirement payment to an alternate payee shall be:

(a) Contingent on the member's eligibility for retirement benefits, regardless of whether or not the member actually retires,

(b) Shall be separate and independent from the member's payment date and payment option, and

(c) Shall be actuarially computed based on the age and life expectancy of the alternate payee.

(8) The alternate payee shall elect to convert the award to one of the following optional forms:

(a) Option Refund Annuity, as described in ORS 238.300, or

(b) Option 1, as described in ORS 238.305 (1), or

(c) Option 4, as described in ORS 238.305 (1), or

(d) The lump-sum payment option, as described in ORS 238.305(2)(a) and (b) and 238.305(3).

(e) Shall not include optional payment forms 2, 2A, 3, or 3A, under ORS 238.305(1) and (2).

(9) An alternate payee whose total award is less than \$30.00 per month under ORS 238.305(1) (Option 1 non-refund plan) shall receive in lieu of any and all allowances or other benefits or form of payment described in Section (8) of this rule, a one time lump-sum payment equal to the actuarial value as of the effective date of the alternate payee's retirement, as is the case for a mem-

ber under ORS 238.315.

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

(11) An alternate payee shall not be entitled to health insurance benefits under ORS 238.410, 238.415, and 238.420 regardless of whether or not a court order awards these benefits to an alternate payee.

(12) An alternate payee shall not be entitled to any benefits derived from the optional purchase of police officer and fire fighter benefit units under 238.440 regardless of whether or not a court order awards these benefits to an alternate payee.

(13) If an alternate payee begins receiving a payment prior to the member, the alternate payee is not entitled to any further increases in retirement credit that the member may earn or become entitled to prior to the member's actual retirement due to continued employment for an employer participating in PERS.

(14) Death benefits payable under a division of PERS benefits pursuant to a court order are as follows:

(a) Alternate payee awards are payable to the alternate payee's beneficiary or estate as provided by ORS 238.390 and 238.395. No benefits shall be payable under ORS 238.395 with respect to an alternate payee, unless the member would have been eligible for death benefits under ORS 238.395 had the member died on the same date as the alternate payee.

(b) If the member predeceases the alternate payee, the alternate payee's award becomes due and payable unless the alternate payee was awarded a separate account in the Fund at the time of the divorce, or at the time a separate account is elected by the alternate payee at the time the member becomes eligible for benefits regardless of whether or not the member or the member's beneficiary(s) actually receives benefits.

(c) If the alternate payee was awarded a separate account in the Fund whether at the time of divorce or at a later date as specifically outlined in a final court order, the alternate payee may elect to receive his or her account in the form of a death benefit under ORS 238.390 and/or ORS 238.395 if the member predeceases the alternate payee before the alternate payee commences receiving benefits, provided that all other applicable conditions for the death benefit are satisfied. If the alternate payee elects a death benefit under ORS 238.390 and/or ORS 238.395, the death benefit shall be in lieu of any refund, retirement, or other benefit. If the alternate payee does not elect a death benefit, he or she shall be eligible to refund the separate account, or to leave the account in the Fund and elect to draw payments under one of the optional forms described in Section (8) of this rule any time on or after the date the member would have reached the earliest retirement age.

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

Stat. Auth: ORS 238.465(3) & 238.650

Stats. Implemented: ORS 238.465

Hist.: PERS 5-1996, f. & cert. ef. 6-11-96

459-045-0040

Requesting Information for Dividing PERS Benefits

(1) PERS shall provide estimates for divorce purposes only upon written request and receipt of a member release. The estimates may be generated by computer or by hand depending on what staff deems most appropriate.

(2) An estimate is not a guarantee or a promise of actual benefits that eventually may become due and payable, and PERS shall not be bound by any estimates it provides.

(3) PERS shall not prepare or provide present value studies.

(4) PERS may provide estimates of future payments due an alternate payee that were awarded to an alternate payee in a final court order only if PERS has received a written request and a signed release from the alternate payee.

(5) Any and all faxed documents or information requests that are sent to PERS shall be followed up by sending a hard copy to PERS, before PERS will provide or send out any information.

(6) In the event a subpoena is necessary for domestic relations purposes, it must be made out to the Oregon Public Employees' Retirement System. The service should be made so as to allow at least three full business days for preparation and travel. Notwithstanding the foregoing, PERS reserves the right to object to any subpoena on the ground that the subpoena fails to provide a reasonable time for preparation and travel, is otherwise unreasonable or oppressive, or that service was improper. Faxed subpoenas are not acceptable even if they are followed up with a hard copy. Subpoenas must be served at the PERS Headquarters office.

(7) PERS must receive a written release from the member or the alternate payee to provide any person including a representative of the member or the alternate payee, any information except as provided for in OAR 459-045-0020(5)(a) and (8).

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

Stats. Implemented: ORS 238.465

Hist.: PERS 5-1996, f. & cert. ef. 6-11-96

459-045-0050

Filing Requirements For Alternate Payees

(1) An alternate payee is required to file for payments from PERS on PERS approved forms. Key forms that must be received before PERS can establish payments for an alternate payee are:

(a) An Alternate Payee Retirement Application form, completed and signed before a notary, and

(b) An Acknowledgment of Receipt of Federal Tax Information on Service Retirements form, completed and signed, and

(c) A Retirement Benefit Distribution Election form, or

(d) An Account Balance Refund Request Packet completed and signed before a notary.

(e) Verification of age of the alternate payee.

(f) Verification of age of the member if required for computation of benefits.

(g) A Notice of Divorce Decree Administrative Fee form, completed and signed, and

(h) An Alternate Payee Election Request and/or Option Release form.

(2) A request for payments must be accompanied by acceptable court documents if not already on file with PERS. If an order already on file states another type of order was to follow, a certified copy of the other court order must be received by PERS. An alternate payee account shall not be established nor shall any payments be made to an alternate payee until PERS has accepted and approved all supporting court documents.

(3) An alternate payee's retirement payments shall be effective the first of the month in which the alternate payee wants payments to start as indicated on the Alternate Payee Retirement Application form, or the first of the month in which the member reaches earliest service retirement age eligibility, whichever is later. The alternate payee cannot elect a retirement date earlier than the first of the month in which the alternate payee retirement application was received by PERS.

(4) If there is a delay in processing, payments that are due the alternate payee shall be retroactive to the effective retirement date of the alternate payee. All retirement dates for alternate payees and members shall be on the first of a month.

(5) Alternate payees must keep PERS aware of their current mailing address at all times by sending it in writing to PERS whenever a change in mailing address occurs.

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

Stats. Implemented: ORS 238.465

Hist.: PERS 5-1996, f. & cert. ef. 6-11-96

459-045-0060

General Assumptions for Computing Benefits

(1) If a final court order allows an alternate payee to elect to begin receiving payment based on the member's earliest eligibility for retirement benefits, the alternate payee's payments shall be computed in accordance with the following assumptions regardless of whether or not the member separates from service and retires:

(a) If the formula in the court order refers to the date of retirement or total creditable service, the date that shall be used shall be the date the alternate payee elects to begin receiving benefits. All PERS retirement effective dates are the first of each calendar month.

(b) For calculation purposes, any final average salary computations shall be based on the three high calendar year salaries of the member prior to the date of the alternate payee's retirement election, if the member has not separated from the service of all participating PERS employers.

(c) For calculation purposes, any final salary computations shall be based on the greater of the average salary per calendar year paid by a public employer to an employee who is an active member of the system for the three calendar years the member was paid the highest salary, or the total salary paid by a public employer to an active member of the system in the last 36 calendar months of active membership before the effective date of retirement for the member, provided the member has actually separated from all PERS covered employment and has filed for retirement benefits.

(d) Alternate payees shall receive no credit for accumulated unused sick leave hours belonging to the member or for any voluntary purchases a member may have available to them if the member is not retiring at the same time the alternate payee elects to begin receiving payment, as these additional retirement credits can only be computed at the time a member actually retires.

(2) If a court order allows an alternate payee to elect to begin receiving payment on or after the member's earliest eligibility for retirement benefits, PERS shall allocate the cost and the increase resulting from a purchase between an alternate payee and a member only if specific language regarding the division of any voluntary purchases that may be available to the member is contained in the final court order and only if:

(a) The effective date of payments is the same for both the alternate payee and the member, and

(b) The final court order is explicit in its direction on how PERS is to allocate the cost of any purchase and increased payment resulting from a purchase between the alternate payee and the member.

(c) If the final court order submitted to PERS does not contain specific language on how PERS is to allocate the cost of any purchase and the increased benefit payment as a result of either a single or multiple purchase between the member and the alternate payee, PERS shall not allocate, or pro-rate, the cost of any purchase or purchases, or the resulting increase in benefit payment between the member and the alternate payee. In the absence of any language to the contrary in regard to purchases, the full cost and amount that is due in regard to a purchase shall be billed solely to the member and the full increase in any benefit payment resulting from a single or multiple purchase shall be paid entirely to the member by PERS.

(3) An alternate payee who is allowed to select his or her own form of payment option may elect to change from the initial option that was chosen to another form of payment option described in OAR 459-045-0030(8), if the election to change options is made in writing and received by PERS within 60 days from the issue date of the first payment made under the initial option that was selected by the alternate payee.

(4) The alternate payee may not cancel the election to receive benefits once the first payment has been generated.

(5) The alternate payee may not apply for benefits due to his or her own disability.

(6) If PERS determines that the payment being made to an alternate payee is in excess of the amount the alternate payee is entitled to PERS shall recover any overpayment in accordance with ORS 238.715, as is the case for any excess payment that is

made to a member.

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

Stats. Implemented: ORS 238.465

Hist.: PERS 5-1996, f. & cert. ef. 6-11-96

459-045-0080

PERS Notifications

(1) PERS is a separate entity from other public employer retirement plans and deferred compensation plans and notification to other plans does not constitute notice to PERS. Similarly, PERS is not responsible for notifying other plans of changes in address, changes in eligibility, or that an application for retirement or refund benefits have been received, or that a PERS member or an alternate payee has died.

(2) PERS shall send written notification acknowledging receipt of a final court order to the submitting party and shall send a copy of the acknowledgment to the other persons named in the court order if mailing addresses are provided.

(3) PERS shall notify an alternate payee of his or her eligibility for payments when a member terminates all PERS covered employment before retiring, or upon the death of a member prior to retirement. It is the alternate payee's responsibility to contact PERS in order to begin receiving payment on or after the date the member has reached earliest retirement age.

(4) PERS shall issue the applicable tax reporting forms directly to the recipient of any funds that are issued by PERS pursuant to a final court order for domestic relations purposes.

(5) PERS shall notify the member and/or the alternate payee of any reduction in benefit payments payable to the member and/or the alternate payee that is made by PERS pursuant to **Section 415 of the Internal Revenue Code** as provided in OAR 459-045-0030(15).

(6) PERS shall process deductions from alternate payee payments for federal and state taxes and other support obligations provided for in ORS 238.445.

(7) PERS shall allocate a member's after tax contributions (member cost) between the member and the alternate payee in accordance with **IRC Section 72(m)(10)** in the same proportion that benefits are divided between the member and the alternate payee as specified in the final court order.

(8) All alternate payees who are awarded a separate account in the Fund in their own name shall receive an annual statement on their account until they have received a refund payment or started receiving retirement or death benefit payments. PERS shall make a reasonable attempt to send the alternate payee an annual statement of account by May 31, for the prior calendar year's activity.

(9) Alternate payees who are awarded payments other than by separate account may request information about their award by sending their request in writing to PERS. Staff shall make a reasonable attempt to provide written information about the award within 90 days of receiving the written request.

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

Stats. Implemented: ORS 238.465

Hist.: PERS 5-1996, f. & cert. ef. 6-11-96

459-045-0090

PERS Administrative Fee

(1) The Board has determined that actual and reasonable administrative expenses incurred by PERS for obtaining data and making calculations will always exceed \$300.00 when PERS establishes a separate alternate payee account under the Pre Retirement Division method or the At The Time of Payment Division method, or when establishing payment for an alternate payee or a member pursuant to a court order that uses the At The Time of Payment Division method. Therefore, PERS shall charge an administrative fee of \$300.00 for the costs related to establishing a separate account in the Fund in the name of the alternate payee, or for establishing payment for an alternate payee or a member pursuant to a court order that uses the Pre Retirement Division or At The Time of Payment Division methods.

(2) If a court order awards a separate account to an alternate

payee pursuant to the Pre Retirement Division Method, then PERS shall allocate expenses and costs under the provisions of ORS 238.465(9), and OAR 459-045-0001(23) and (24).

(3) If a final court order uses the At The Time Of Payment Division method for determining an alternate payee's award, PERS shall allocate the fraction of the benefit awarded to the member and the alternate payee under the provisions of ORS 238.465(9), and OAR 459-045-0001(23). The fraction of the administrative fee that is owed by the alternate payee and the member shall be calculated at the time the alternate payee elects to have a separate account established, or elects to begin receiving a monthly payment.

(a) If the At The Time Of Payment Division Method used the years and months formula described in OAR 459-045-0010(2)(b)(A) then the numerator shall be the creditable service time accrued by the member during the marriage, and the denominator shall be the total creditable service accrued by the member at the time benefits become due and payable to either the member or the alternate payee. To determine the fee owed by the alternate payee, this fraction shall then be multiplied by the percentage awarded to the alternate payee under the final court order, as described in OAR 459-045-0010(2)(b)(C). The remainder of the \$300 administrative fee shall be allocated to the member. Amounts owed by the parties for the administrative fee shall be deducted from the respective parties' benefits when those benefits become payable.

(b) If the At The Time of Payment Division method used the member contributions and interest formula described in OAR 459-045-0010(2)(b)(B) then the numerator shall be the contributions and interest that accrued during the marriage, and the denominator shall be the contributions and interest in the member account balance as of December 31 immediately prior to the alternate payee election date, or the actual member account balance if the member elects to receive benefits at the same time as the alternate payee. To determine the percentage of the fee owed by the alternate payee, this fraction shall then be multiplied by the percentage awarded to the alternate payee under the final court order, as described in OAR 459-045-0010(2)(b)(C). The remainder of the \$300 administrative fee shall be allocated to the member. Amounts owed by the parties for the administrative fee shall be deducted from the respective parties' benefits when those benefits become payable.

(4) The fee that shall be charged for dividing a PERS member's account or benefits shall not be contingent on the number of days it takes for PERS to complete its review of any type of court order that is received by PERS.

Stat. Auth.: ORS 238.465(9) & ORS 238.650

Stats. Implemented: ORS 238.465

Hist.: PERS 5-1996, f. & cert. ef. 6-11-96

DIVISION 50

DEFERRED COMPENSATION

459-050-0000

Purpose and Authority

(1) The Deferred Compensation Program is established by the State of Oregon under ORS 243.400 to 243.507 pursuant to Section 457 of the Internal Revenue Code. ORS 243.400(3) defines the Deferred Compensation Program as a program that has as its purpose the deferral of compensation to eligible employees and the deferral of income taxation on the deferred compensation.

(2) In accordance with ORS 243.410(1) and (2), the Deferred Compensation Program shall be administered by the Public Employees' Retirement Board (Board), and under the policies established by the Board. Such policies are limited to all technical and administrative aspects of the program management, but shall not include investment policy for and the investment of the Deferred Compensation Fund.

(3) In accordance with ORS 243.410(3), Oregon Investment Council (OIC) shall establish and maintain an investment program

and policies for the state deferred compensation moneys consistent with the requirement of ORS 293.721 and 293.726, and to the extent practicable the needs of the Deferred Compensation Program.

(4) Because the duties and powers of the Board and the OIC with respect to the Deferred Compensation Program are complementary, there is a need for coordination and cooperation between the two agencies.

Stat. Auth: ORS 243.410 & Internal Revenue Code, Section 457

Stats. Implemented: ORS 243.400 - 243.507

Hist.: PER 2-1995, f. 10-13-95, cert. ef. 11-1-95

459-050-0005

Policy and Goals of Deferred Compensation Program

The Deferred Compensation Program shall be administered to provide the maximum opportunity for eligible employees to participate in a program allowing participants to defer a portion of their compensation, and thus their federal and state income tax, on the amount deferred, until a time when the participant seeks to withdraw the funds as a supplement to the participant's other retirement and pension benefits. To this end, the Program shall:

(1) Establish and administer an effective and efficient program of administration, either directly, or by contract, that provides for billing service, participant enrollment services, participant accounts, data processing, record keeping and other related services, and which gives due consideration not only to the services provided but also the cost to the participants;

(2) Provide eligible employees, prior to their participation in a deferred compensation plan under the Program, with a written disclosure statement that contains for that plan all of the relevant information, including the probable income and probable safety of the moneys deferred;

(3) Offer general education to participants on how to make personally-based investment choices based on their preferences of deferred compensation plan;

(4) Permit eligible employees who participate in the Program to make changes, when permitted by law and the deferred compensation plan, to withdraw the deferred compensation and any earning on deposit, and, when eligible under a plan or the Program, to select and transfer those funds to other accounts or annuity instruments;

(5) Identify the expressed desires of the diverse group of eligible employees who are deferring compensation until retirement, consistent with the statutory requirements of the Program and communicate those investment needs to the OIC; and

(6) Provide cooperation with and assistance to the OIC and staff of the State Treasurer in structuring, monitoring, and revising an investment program that reasonably meets the needs of eligible employees.

Stat. Auth: ORS 243.410

Stats. Implemented: ORS 243.400 - 243.507

Hist.: PER 2-1995, f. 10-13-95, cert. ef. 11-1-95

459-050-0010

Definitions

The words and phrases used in this Division have the same meaning given them in ORS 243.400 to 243.507 and ORS 293.701 to 293.790. Specific and additional terms are defined as follows unless context requires otherwise.

(1) "Public Employees' Retirement Board" or "Board" means the Public Employees' Retirement Board created by ORS 238.630 and assigned the responsibility for the administration of the Deferred Compensation Program under ORS 243.410.

(2) "Deferred Compensation Administrator" or "Administrator" means the person appointed by the Director to serve as the Administrator of the Deferred Compensation Division of the Public Employees' Retirement System, or the person that the Administrator or the Director has assigned to act on the Administrator's behalf.

(3) "Deferred Compensation Advisory Committee", "Advisory Committee", or "Committee" means the committee established pursuant to ORS 243.505 and appointed by the Board.

(4) "Deferred Compensation Program" or "Program" shall have the same meaning as provided in ORS 243.400(3), OAR 459-050-0000 and 459-050-0005

(5) "Deferred compensation plan" or "plan" means a written agreement between the state and an eligible employee that provides for deferral of compensation of an eligible employee's income for service currently rendered, as defined in ORS 243.400(2).

(6) "Disclosure statement" means the statement, required by ORS 243.450, that describes the probable income and probable safety of money deferred.

(7) "Retired" means an eligible employee:

(a) Who is eligible to retire under the provision of ORS 238.005 to 238.715;

(b) Who has formally applied to receive benefits under ORS 238.005 to 238.715;

(c) Who has given clear notice to the state agency of intent to leave service; and

(d) Who has ceased working for the state agency for a period of not fewer than 30 consecutive days.

(8) "Eligible employee" means a officer or employee of a state agency who elects to participate in a deferred compensation plan established under ORS 243.400 to 243.507, including state officials and officers and employees in the exempt, unclassified and classified service, but does not include individuals:

(a) Engaged as independent contractors, unless otherwise authorized by Oregon law to participate in the Deferred Compensation Program;

(b) Whose periods of employment in emergency work are on an intermittent or irregular basis;

(c) Provided shelter employment or make-work employment by State in employment or industries program maintained for the benefit of such individuals;

(d) Who are inmates of any prison or detention facility operated by the state, local government or by contract with a private sector business;

(9) "OIC" means the Oregon Investment Council created by ORS 293.706.

(10) "Participant" means a person participating in one or more deferred compensation plans under ORS 243.400 to 243.507 and these rules, either through current or past deferrals or compensation.

(11) "Payroll disbursing officer" means the person authorized by the state to disburse moneys in payment of salaries and wages of employees of a state agency.

(12) "Settlement Agreement" means a document in which the Deferred Compensation Division offers and participant accepts payment of deferred compensation, after retirement or termination of employment, either as a lump sum or as a fixed or variable annuity for life or for a specified period.

(13) "Solicitation of offers from vendors" means a notice to potential vendors of investment services prepared by the OIC informing the potential vendor of the needs of the Deferred Compensation Program and notice that the OIC will accept offers from qualified vendors to sign a contract with the State of Oregon providing for the vendors' acceptance of deposits under the terms and conditions of the contract.

(14) "State agency" means every state officer, board, commission, department or other activity of state government.

(15) "Public employer" shall have the same meaning as provided in ORS 238.005(9).

(16) "Vendor" means an entity offering investment or other service related to investment of deferred compensation pursuant to a contract with the State of Oregon.

(17) The "Public Employes' Retirement System" or "PERS" shall have the same meaning as provided in ORS 238.600 and 243.410(2).

Stat. Auth.: ORS 243.410

Stats. Implemented: ORS 243.400 - ORS 243.507

Hist.: PERS 2-1995, f. 10-13-95, cert. ef. 11-1-95; PERS 2-1996, f. 5-14-96, cert. ef. 5-15-96

459-050-0025

Deferred Compensation Advisory Committee

(1) The five members of the Deferred Compensation Advisory Committee (Committee) provided for under ORS 243.505, shall be subject to the following qualification and limitations:

(a) A member shall be a participant in the State of Oregon Deferred Compensation program, and have knowledge of the current program;

(b) At least one member shall be retired from state service;

(c) No two members shall be employed by the same state agency;

(d) No member shall serve more than two consecutive full terms.

(2) The Committee shall study and advise the Public Employes' Retirement Board 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) 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 deferred compensation program;

(e) The expressed desires of "eligible employees" as to the deferred compensation program.

(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 staff of 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 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 Administrator of the Deferred Compensation Division shall distribute to the Advisory Committee members, and other interested parties, an agenda for a regular meeting at least one week prior to the meeting.

(7) The Administrator of the Program shall submit a draft copy of the Advisory Committee minutes to the Board at its next regular meeting which is not less than fifteen working days following each Committee meeting.

(8) Nominations of Candidates for the Advisory Committee shall be made as follows:

(a) Notice of position(s) on the Advisory Committee to become vacant upon the expiration of term of appointment shall be published not later than March 1 of each calendar year;

(b) Persons interested in serving on the Committee must apply in writing to the Administrator of the Deferred Compensation Division not later than May 1 following the publication of any vacancies;

(c) The Administrator of the Deferred Compensation Program shall review the written applications of interested persons for completeness, accuracy and minimum requirements of vacant position on Committee, and forward the acceptable applications to the Board's Deferred Compensation Subcommittee.

(d) The Board's Deferred Compensation Subcommittee shall review the acceptable applications and recommend to the full Board candidates for appointment to the Advisory Committee that.

(A) Reflect a cross section of state agencies and classification level;

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

(C) Appear to have a sincere interest in the deferred compensation 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 of an unexpired term, the Board shall select an appointee from the list of interested persons established following the most recent publication of vacancy to become immediately effective for the remainder of the unexpired term.

Stat. Auth: ORS 243.410 & 243.505

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

459-050-0030

Deferred Compensation Administrator

(1) The Deferred Compensation Administrator (Administrator) shall administer the Deferred Compensation Program (Program) established pursuant to ORS 243.400 to 243.507 consistent with the laws and administrative rules applicable thereto and on the best possible basis with relation to both the welfare of eligible employees and the State of Oregon. To this end, the Administrator may contract for services necessary to the administration of the Program, either independently or in a joint agreement with the OIC or the Oregon State Treasurer.

(2) The Administrator shall prepare and maintain standard forms necessary to the administration of the Program.

(3) The Administrator shall provide forms and procedures for promptly communicating participating employee requests for deferral of compensation to the appropriate public officers.

(4) The Administrator shall provide forms and procedures for promptly communicating employees' requests for types of investment or deposit of funds to the investments record keeper for each investment option selected.

(5) The Administrator shall provide for settlement agreement with employees participating in the deferred compensation program that provides for distributions to those employees or their designated beneficiaries, upon conditions which are consistent with maintaining the tax exempt status of the Program.

(6) The Administrator shall select members of the Financial Hardship Committee established under OAR 459-050-0040.

(7) The Administrator shall obtain disclosure statements concerning the probable safety and probable return of investment of deferred compensation funds for distribution to participants. These disclosure statements shall be given to all employees expressing interest in participating in the deferred compensation program or in changing investments under the Program and shall include, at a minimum:

(a) The probable income and probable safety of the monies deferred, based upon the historical performance of the investment option; and

(b) The fees and costs associated with each investment option or plan, including related administrative costs, insofar as the information is known.

(8) The Administrator shall provide with the disclosure statements a general comparison of investments under the Program, using standard units of comparison, and the following disclaimer:

"Statements about the relative risk and returns of investment options do not represent predictions of how the investments will perform in the future, but rather provide only a general description of the current investment and how it has performed in the past. The disclosure statement and other information provided by the state is not intended to provide individualized investment counseling, but only general information. Employees who participate in the Deferred Compensation Program will be entitled only to the funds that are lawfully credited to their deferred compensation account when those funds are distributed. Participants assume the risk that, at time of such distribution, the deferred compensation investments related to their deferred compensation account may have decreased in value or become valueless."

(9) The Administrator shall undertake a continuing agenda of

educating participants regarding the goals and objectives of the deferred compensation program. As part of this education, the Administrator shall prepare and distribute to eligible employees a written general description of available investment options, including their expected relative risks and returns. This document shall also include a general description of disclosure statements and their purpose in assisting employees in evaluating deferred compensation investments.

(10) The Administrator shall assure that there are regular audits of the deferred compensation program, consistent with generally accepted accounting principles.

(11) The Administrator shall monitor the performance of all deferred compensation investment options offered to eligible employees under the deferred compensation program.

(12) The Administrator shall obtain information concerning pending legislation and such advice as appears necessary to comply with state and federal laws, and administrative rules or regulations applicable to the administration of the Program.

(13) Unless excused by the Director of the Public Employees' Retirement System, the Administrator shall attend all meetings of the Board and of the Advisory Committee. The Administrator shall supply the Board and the Advisory Committee with such information and assistance as they may request.

(14) The Administrator shall prepare an annual report to the Board and the Advisory Committee concerning:

(a) The effectiveness of and any substantial problems with the administration of the deferred compensation program, including but not limited to the method of accepting deposits from payroll disbursing officer, preparing disclosure forms, making investments and deposits of funds as consistent with the request of participants as possible, maintaining accounts and records of deposits and the costs and fees associated with the administration of individual plan, communications with and education of participants, participant elections of investment options and changes in their elections, participants' elections of payment method upon withdrawal from service or retirement, and problems with participants' creditors;

(b) The status of state and federal legislation and laws that may affect the program or require action by the Board;

(c) The performance of all deferred compensation investment options; and

(d) The results of the latest reported audit of the deferred compensation program.

Stat. Auth: ORS 243.410 & Internal Revenue Code, Section 457

Stats. Implemented: 243.400 - 243.507

Hist.: PERS 2-1995, f. 10-13-95, cert. ef. 11-1-95

459-050-0035

Assistance to the Oregon Investment Council and the State Treasurer

The Board, acting through its Deferred Compensation Administrator may provide information, assistance, and guidance to the Oregon Investment Council (OIC) and the State Treasurer as they may request, not limited to the following:

(1) The Administrator may provide the OIC and the staff of the State Treasurer with the Board's findings of the expressed desires of participants and other eligible employees related to investment options.

(2) The Administrator may provide the OIC or the staff of the State Treasurer with such demographic information as they may reasonably request concerning those employees who are participants in the deferred compensation program.

(3) The Administrator may provide the OIC or the staff of the State Treasurer with such assistance as they may reasonably request regarding preparation of specifications for solicitations of offers from vendors of investments for deferred compensation.

(4) The Administrator may provide the OIC or the staff of the State Treasurer with such assistance as they may reasonably request in evaluating responses to the solicitation of offers.

(5) The Administrator in any case may provide the OIC or the staff of the State Treasurer with an opinion concerning how the services offered by responding vendors may affect the admin-

istration of the deferred compensation program.

(6) Subject to Board approval, the Administrator may enter into an intergovernmental agreement pursuant to ORS Chapter 190 to provide administrative services to local governments of the state with respect to other deferred compensation program(s) under ORS 243.410(4).

Stat. Auth.: ORS 243.410

Stat. Implemented: ORS 243.410

Hist.: PERS 2-1995, f. 10-13-95, cert. ef. 11-1-95

459-050-0040

Financial Hardship Committee

(1) The Financial Hardship Committee is established to evaluate requests for distribution of deferred compensation on the basis of claims of unforeseen emergency, in compliance with the **Internal Revenue Code, section 457**. The Financial Hardship Committee shall formally approve or deny each request based on the merits of the request and the standard set forth in applicable US Treasury Regulations.

(2) If a request is approved, the Financial Hardship Committee authorizes the Administrator to release the funds within 30 days of approval.

(3) If a request is denied, the requestor may submit a request for appeal to the Administrator of the Program together with additional documentation.

(4) Total confidentiality shall be applied to all requests submitted.

(5) The Financial Hardship Committee shall consist of not fewer than three persons

(a) One person shall be a staff member of the Deferred Compensation Division of PERS.

(b) Two persons shall be staff members of other PERS divisions.

(6) The Financial Hardship Committee shall meet upon the call of the Administrator of the Deferred Compensation Program.

Stat. Auth.: ORS 243.410 & Internal Revenue Code, Section 457

Stats. Implemented: ORS 243.410

Hist.: PERS 2-1995, f. 10-13-95, cert. ef. 11-1-95

DIVISION 60

PUBLIC RECORDS ADMINISTRATION

459-060-0000

Purpose

This Division of Chapter 459, Oregon Administrative Rules, provides information concerning the disclosure of information from the records of individual members of the Public Employees' Retirement System (PERS). The purpose of the rules of Division 060 is:

(1) To protect the members of PERS from unreasonable invasion of their privacy;

(2) To give members of PERS access to their individual records, unless otherwise prohibited by statute; and

(3) To identify and clarify the circumstances where disclosure of information from a PERS member's records without the member's consent is permissible.

Stat. Auth.: ORS 192.502 & ORS 238.650

Stats. Implemented: ORS 192.410 - ORS 192.505, ORS 237.410 - ORS 237.520, ORS 237.610, - ORS 237.620, ORS 237.950 - ORS 237.980 & ORS 238

Hist.: PERS 8-1996, f. & cert. ef. 11-12-96

459-060-0001

Definitions

The words and phrases used in this Division have the same meaning given them in ORS Chapter 238 and OAR 459-005-0005. Specific and additional terms are defined as follows unless context requires otherwise.

(1) "PERS" shall have the same meaning as the Public Employees' Retirement System in ORS 238.600.

(2) "Staff" means the employees of PERS as provided for in

ORS 238.645.

(3) For the purposes of Division 060, the term "member" means a PERS member as defined in ORS 238.005(7), the beneficiary of a PERS member, an alternate payee as defined in 238.465, or the beneficiary of an alternate payee.

(4) "Medical records" shall mean any reports, letters, or notes containing information regarding the member's health condition (mental or physical), or ability to perform any work.

(5) "Public disclosure" means disclosure of information to any person other than the member or a person that can legally sign for the member.

Stat. Auth.: ORS 192.502 & ORS 238.650

Stats. Implemented: ORS 192.410 - ORS 192.505, ORS 237.410 - ORS 237.520, ORS 237.610, - ORS 237.620, ORS 237.950 - ORS 237.980 & ORS 238

Hist.: PERS 8-1996, f. & cert. ef. 11-12-96

459-060-0020

Confidentiality of Member's Records

(1) An unconditional exemption from public disclosure exists for the following records maintained by PERS for active, inactive and retired members, and former members, and their dependents. Except upon the written authorization of the member or a person that can legally sign for the member, or as otherwise provided in OAR 459-060-0030, PERS shall not release the following information to anyone other than to the affected member or former member, or the surviving dependents of a deceased member or former member:

- (a) Address;
- (b) Telephone number;
- (c) Salary;
- (d) Account balance and investment options;
- (e) Medical and psychological records;
- (f) Divorce decree and related records;
- (g) Designated beneficiary(s);
- (h) Employment history; and
- (i) Other financial and personal information.

(2) The following PERS records are conditionally exempt from public disclosure. PERS may release the following records of an active, inactive or retired member, or a former member of PERS, or their dependents, if to do so would not constitute an unreasonable invasion of privacy and if there is clear and convincing evidence that disclosure is in the public's interest:

- (a) Confirmation of membership in PERS;
- (b) Effective date of retirement;
- (c) Benefit amount (once established);
- (d) Benefit type; e.g., service or disability retirement, a death benefit, or a withdrawal; and
- (e) Date of death.

(3)(a) Subject to subsection (b) of this section, PERS may provide a member's current or former employer with information from the member's records that is otherwise protected from public disclosure to the extent necessary to enable the employer:

(A) To determine whether a retirement plan maintained by the employer (other than PERS) complies with any benefit or contribution limitations or nondiscrimination requirement imposed by applicable federal or state law;

(B) To apply any coordination of benefits requirement contained in any non-PERS benefit plan maintained by the employer;

(C) To perform any necessary account reconciliation following an integration of the employer's retirement plan into PERS.

(b) PERS will not provide the information described in subsection (a) of this section unless the employer demonstrates to the satisfaction of PERS that the information is necessary to accomplish one of the purposes described in paragraphs (A), (B) and (C) of section (3) of this rule and the employer certifies that it will not disclose the information to any third party except to the extent permitted under OAR chapter 459, Division 060.

(4) PERS shall not provide a mailing list of its active, inactive or retired members, or former members, or their dependents to any person or enterprise.

Stat. Auth.: ORS 192.502 & ORS 238.650

Stats. Implemented: ORS 192.410 - ORS 192.505, ORS 237.410 - ORS 237.520, ORS 237.610 - ORS 237.620, ORS 237.950- 237.980 & ORS 238
Hist.: PERS 8-1996, f. & cert. ef. 11-12-96

459-060-0030

Disclosure of Records Without Consent

(1) Records otherwise exempt from disclosure will be released in compliance with a judicial order, or pursuant to a valid subpoena or administrative order, or as necessary to comply with applicable federal and state tax reporting requirements.

(2) In the case of a medical emergency, medical records otherwise exempt from disclosure will be released only to the extent necessary where there is a clear and immediate danger to the well-being of a member, or a former member, or their surviving dependent(s). A medical emergency exists if a person is injured or, because of some other physical or mental condition, the person is unconscious, delirious or otherwise unable to convey consent.

(3) Notwithstanding OAR 459-060-0020, records will be disclosed to the extent required by ORS 192.410 to 192.505.

Stat. Auth.: ORS 192.502 & ORS 238.650
Stats. Implemented: ORS 192.410 - ORS 192.505, ORS 237.410 - ORS 237.520, ORS 237.610 - ORS 237.620, ORS 237.950 - ORS 237.980, & ORS 238
Hist.: PERS 8-1996, f. & cert. ef. 11-12-96

459-060-0050

Request for Benefit Estimate

Unless otherwise required by a judicial order or valid subpoena, or expressly authorized in writing by the affected active or inactive member, as defined in ORS 238.005(7), PERS shall not provide an estimate of a potential service or disability retirement allowance to anyone other than the member.

Stat. Auth.: ORS 192.502 & ORS 238.650
Stats. Implemented: ORS 192.410 - ORS 192.505, ORS 237.410 - ORS 237.520, ORS 237.610, - ORS 237.620, ORS 237.950 - ORS 237.980 & ORS 238
Hist.: PERS 8-1996, f. & cert. ef. 11-12-96

