

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;
- (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, as adopted and effective October 3, 2001, are adopted as rules of procedure of the Public Employees Retirement Board, except as modified by other rules of the Board, to be effective on January 1, 2002.

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

Stat. Auth.: ORS 183.341 & ORS 238.650

Stats. Implemented: ORS 238.005 – ORS 238.715 & ORS 237.410 – 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; PERS 4-2000, f. & cert. ef. 7-14-00; PERS 11-2001, f. 12-14-01, cert. ef. 1-1-02

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459-001-0010

Filing Papers

(1) Notwithstanding OAR 459-005-0210, all petitions, written requests, documents or other papers, related to the appeal of a staff or Board action, that are 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 the Director of the Public Employees Retirement System, 11410 SW 68th Parkway, Tigard, OR 97223-8680, or P.O. Box 23700, Tigard, OR 97281-3700.

(2) A filing shall be effective upon personal service or actual receipt in the office of the Director in accordance with OAR 459-005-0220.

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; Renumbered from 459-030-0010; PER 3-1981, f. & ef. 1-15-81; PERS 4-1990, f. & cert. ef. 3-26-90; PERS 6-2000, f. & cert. ef. 9-28-00

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) Request for review. Any person or public employer may file with the Director a request for review of a staff action or determination. Except as provided for in ORS 238.450 or in Board rules on disability retirement, oral or written 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;

(e) Computation of benefits; or

(f) Penalty for late reporting.

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) Informal conferences. Informal conferences are available as an alternative means that may achieve resolution of any matter under review. A request for an informal conference does not relieve a person of the requirements for timely filing of a review request.

(3) Criteria for request. A request for review of a staff action or determination shall be in writing and 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; and

(f) A request for review.

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(4) Denial of request. The Director, or an administrator appointed by the Director, may deny any request made pursuant to this rule:

(a) Which does not contain the information required under section (3) 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 not a material administrative error.

(c) The denial of the request shall be made within 45 days of receipt of the member's request.

(5) If a request is denied by the Director, or an administrator appointed by the Director, because it does not contain the information required under section (3) of this rule, a person shall have one opportunity to correct that deficiency and resubmit a request for review within 45 days of the date of denial.

(6) Approval of request. If the request for review is granted, the Director, or an administrator appointed by the Director, shall issue a written determination within 45 days of receipt of the member's request after:

(a) Considering the request;

(b) Directing staff to reconsider; or

(c) Directing staff to schedule an informal hearing.

(7) Contested case hearing. 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.

(8) 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.

(9) Extension of deadline. Any 45-day deadline within this rule may be extended upon request in writing for an additional 45 days. Additional time may be requested, but shall only be granted upon approval by both parties.

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; PERS 10-2001, f. 12-14-01, cert. ef. 1-1-02

459-001-0035

Contested Case Hearing

(1) Request for a contested case hearing. To obtain review of any determination by the Director, for which a contested case hearing has not been held, the party shall file with the Board a petition for a contested case hearing. The petition shall be filed within 45 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.

(2) Informal conferences. Informal conferences are available as an alternative means that may achieve resolution of any matter under review. A request for an informal conference does not relieve a person of the requirements for timely filing of a request for a contested case hearing.

(3) Criteria for request. The petition for a contested case hearing shall be in writing and 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; and

(f) A request for a hearing.

(4) Contested case hearing. The Board shall respond to a petition for a contested case hearing within 15 days of filing and shall order the staff to schedule a formal contested case hearing.

(5) The hearing shall be conducted in accordance with the Attorney General's Model Rules of Procedure.

(6) Proposed order. The Hearings Officer's proposed order becomes final 90 days following service upon the petitioner, the Director and the Board through the Director. Objections to the pro-

posed order by the Director or the petitioner must be filed with the Hearing Officer within 45 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).

(7) In accordance with the Attorney General's Model Rules of Procedure, the Board may reject the order and direct the Hearings Officer to conduct further proceedings and prepare an amended order within the time specified by the Board.

(8) Extension of deadline. Any 45-day deadline within this rule may be extended upon request in writing for an additional 45 days. Additional time may be requested, but shall only be granted upon approval by both parties.

Stat. Auth.: ORS 237.263

Stats. Implemented:

Hist.: PERS 4-1990, f. & cert. ef. 3-26-90; PERS 10-2001, f. 12-14-01, cert. ef. 1-1-02

459-001-0040

Petitions for Reconsideration

(1) Request for a petition for reconsideration. Prior to initiating any judicial review of a final order in a contested case, a party may file with the Board a petition for reconsideration. If the party chooses to file a petition, it shall be filed within 45 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) Criteria for request. The petition for reconsideration shall be in writing and 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; and

(d) A request for reconsideration.

(3) Board action. The Board shall either grant or deny a petition for reconsideration within 45 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) Staff action. If the petition is granted and the Board reconsiderers, the Director shall submit written argument on the merits of the petition for Board consideration.

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

(6) Extension of deadline. Any 45-day deadline within this rule may be extended upon request in writing for an additional 45 days. Additional time may be requested, but shall only be granted upon approval by both parties.

Stat. Auth.: ORS 237.263

Stats. Implemented:

Hist.: PERS 4-1990, f. & cert. ef. 3-26-90; PERS 10-2001, f. 12-14-01, cert. ef. 1-1-02

459-001-0090

Statement of Intention and Understanding

Unless specifically expressed to the contrary, no rule adopted by the Board, nor the amendment or revocation of an existing rule, after the effective date of this rule is intended to or shall be construed or relied upon to create any contractual right.

Stat. Auth.: 238.650

Stats. Implemented: ORS 237.410 - 237.637, 238.005 - 238.715 & 243.401 - 243.507

Hist.: PERS 8-2002, f. & cert. ef. 6-13-02

DIVISION 5

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 contractor 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

(1) Any changes in benefit calculation or any benefit enhancement established by legislative amendment that affects the Public Employees Retirement System shall apply to members or their beneficiaries, or alternate payees or their beneficiaries, whose effective date of benefits is on or after the effective date of the amendment, unless otherwise specifically provided by law.

(2) Any increase in service or disability retirement benefits, to or on account of any person who has retired as a member of the system, established by amendment to law affecting the Public Employees Retirement System shall apply to either retired members or their beneficiaries, or alternate payees or their beneficiaries, as of the first of the calendar month following the effective date of such amendment, unless otherwise specifically provided by law.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - ORS 238.585

Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0085; PERS 11-1998, f. & cert. ef. 12-17-98

459-005-0010

Public Employees Retirement Fund, A Trust

(1) The purpose of ORS 238.660 is to ensure that the Public Employees Retirement Fund (PERF) is for the exclusive benefit of PERS members and the members' beneficiaries. If any other provision of an OAR imposes a requirement (s) upon the PERF contrary to ORS 238.660, ORS 238.660 and this rule shall prevail and be the controlling factor for any Board or staff action.

(2) Pursuant to ORS 238.660, the PERF is a trust fund, separate and distinct, for the sole and exclusive use of the members and their beneficiaries as set forth in ORS 238.005 to 238.750 and ORS 237.950 to 237.980, unless otherwise specifically provided by law. All moneys, regardless of source, paid into the PERF, are to be used exclusively for the purposes set forth in ORS 238.005 to 238.750 and 237.950 to 237.980, unless otherwise specifically provided by law. All moneys and income earned thereon shall remain in the PERF except:

(a) As otherwise provided in ORS 238.005 to 238.750 and 237.950 to 237.980; or

(b) For any laws of the State of Oregon specifically authorizing the investment of moneys from the PERF for the purposes enhancing the value of the PERF.

(3) The State of Oregon, any political subdivision of the State of Oregon, any municipal or public corporation, any instrumentality thereof, and any agency created by two or more political subdivisions shall have no proprietary interest in PERF or any contributions made to PERF and may not claim or reclaim any contributions other than provided for in ORS 238.660.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.660

Hist.: PERS 11-1998, f. & cert.ef. 12-17-98

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.

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(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 employee 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 & ORS 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(s) or agent(s) such that under the terms and conditions set forth in the document, the named individual(s) or agent(s) may act on behalf of and in the name of the member.

(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.

(7) "Agent" means a person or entity entrusted with another's business and acting under a power of attorney.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - ORS 238.715

Hist.: PERS 7-1996, f. & cert. ef. 11-12-96; PERS 4-1999, f. & cert. ef. 10-11-99

459-005-0110

Designation of Power of Attorney

(1) No person may act as an Attorney-in-Fact, or an agent by a power of attorney, for a member of PERS with respect to PERS matters unless the Power of Attorney Document appointing such person(s) or agent(s) meets the requirements set forth in this rule.

(2) The Power of Attorney Document shall be in written form and may be either on forms furnished by PERS or in a format approved by PERS. The Power of Attorney Document 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(s) or agent(s); or

(b) Granting the member's power of attorney with respect to the member's PERS benefits to a named individual(s) or agents(s).

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

(a) The member's notarized signature:

(A) Notary information must appear on the same page as the member's signature; or

(B) Notary information is clearly an integral part of the document granting power of attorney.

(b) The signature and address of the Attorney-in-Fact and the Alternate Attorney-in-Fact, if any, or an agent. 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, or an agent.

(4) 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.

(5) 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.

(6) 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.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - ORS 238.715

Hist.: PERS 7-1996, f. & cert. ef. 11-12-96; PERS 4-1999, f. & cert. ef. 10-11-99

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

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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

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

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

459-005-0210

Transmittal of Reports and Documents

Except for the transmission of a remittance, a payment, a remittance advice or a payment advice as provided in OAR 459-005-0215, reports and documents sent to PERS shall be transmitted as follows:

(1) Unless otherwise provided for in this rule, reports or documents may be transmitted to PERS or the Deferred Compensation Program in person or by use of:

- (a) The United States Postal Service (USPS);
- (b) A private express carrier as defined in ORS 293.660(2);
- (c) Telephonic facsimile communication (fax);
- (d) Electronic mail through the Internet (e-mail) or;
- (e) By use of the PERS web site on the Internet;
- (f) Other sources approved by the Director for the transmission of reports or documents.

(2) The following original documents shall be accepted by PERS or the Deferred Compensation Program only if transmitted in person, by use of USPS or by private express carrier:

(a) Any PERS and Deferred Compensation Program reports and documents that require notarization.

(b) Contracts and Agreements pertaining to the merger or integration of other retirement systems into PERS.

(c) Any request by a member for confidential information under provisions of ORS 192.502(11).

(d) Subpoenas, garnishments, summons, and other legal documents that require service on PERS. These documents will not be accepted unless they are served in accordance with applicable law.

(3) The following standards shall be observed when transmitting any report or document to PERS or the Deferred Compensation Program by fax. Failure to comply with these standards shall result in the PERS or the Deferred Compensation Program not accepting the report or document:

(a) Any report or document requiring signature shall be signed prior to being transmitted by fax.

(b) Any report or document transmitted by fax shall be on forms furnished by PERS or the Deferred Compensation Program or substitute forms previously approved by PERS or the Deferred Compensation Program, respectively.

(c) Any PERS or Deferred Compensation Program report or form shall be completed as required in PERS instructions.

(d) The entire text of the report or document must be transmitted and must be legible. Both sides of any two-sided PERS or Deferred Compensation Program form are to be faxed.

(e) For a report or document that requires accompanying documentation, all components shall be transmitted together as one transmission.

(4) PERS or the Deferred Compensation Program may require the original, or a certified copy of the original, where a question of authenticity arises.

(5) Only documents that do not require a signature, and requests for information regarding PERS or the Deferred Compensation Pro-

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gram, not otherwise protected under provision of 192.502, may be transmitted by e-mail through the Internet.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - ORS 238.750

Hist.: PERS 6-1999, f. & cert. ef. 11-22-99

459-005-0215

Transmittal of Remittances or Payments

(1) For the purpose of this rule:

(a) A "remittance" means the transfer of funds from a participating employer to the Public Employees Retirement Fund (PERF) which includes:

(A) The contributions of both employer and employee members required in ORS 238.200 to 238.230 used to fund PERS benefits;

(B) A PERS invoice for employee and/or employer contributions and associated late penalties;

(C) Any lump sum transfer of funds in satisfaction of an employer liability and;

(D) Other contributions to the PERF.

(b) An "employer payment" means the transfer of funds from an employer to PERS for other than the PERF which includes, but is not limited to:

(A) Contributions to the Deferred Compensation Program;

(B) Administrative fees or;

(C) Other employer liabilities.

(c) A "member payment" means the transfer of funds from a member to the PERF for the purchase of service credit in PERS, restoration of a member's account or the satisfaction of an invoice for over payment of PERS benefits, other than administrative fees associated with a purchase or invoice.

(d) A "remittance advice" means an itemized statement on PERS-approved form(s) that describes a remittance.

(e) An "employer payment advice" means an itemized statement approved by PERS that describes an employer payment.

(f) A "member-payment advice" means the copy of a PERS-prepared itemized statement of the member cost(s) for a purchase of service credit, the restoration of a member's account or an invoice for over payment of PERS benefits.

(g) An "advice document" means the document referred to in subsections (d), (e) or (f) of this section

(2) The transmission of a remittance, an employer payment or a member payment shall be accompanied by a remittance advice or a payment advice, respectively.

(3) The transmission of a remittance, an employer payment or a member payment to PERS shall be as follows:

(a) The United States Postal Service (USPS);

(b) A private express carrier as defined in ORS 283.660(2);

(c) Other electronic funds transfer methods approved in advance by PERS.

(4) A remittance or an employer payment shall be returned to the employer and shall be subject to late penalties, when applicable, if transmitted, without the corresponding advice document.

(5) A remittance or an employer payment shall be returned to the employer and shall be subject to late penalties, when applicable, if transmitted, with or without the corresponding advice document, to any PERS office or other address not currently designated by PERS.

(6) An advice document that is not accompanied by the transfer of funds, such as a corrected or supplemental remittance advice, may be transmitted as provided in section (3) of this rule or by use of:

(a) Telephone facsimile communication (fax);

(b) Electronic mail (e-mail) through the Internet or;

(c) By use of the PERS web site on the Internet.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - ORS 238.750

Hist.: PERS 6-1999, f. & cert. ef. 11-22-99

459-005-0220

Receipt Date for Reports, Documents, and Remittances

(1) As used in this rule, "private express carrier" shall have the same meaning as in ORS 293.660(2).

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

(3)(a) Except as provided for in sections (3), (4), and (5) of this rule, any report or document required by PERS shall be deemed filed and received based on the receipt stamp affixed to the report or document when received by PERS.

(b) A remittance or payment and a remittance advice or a payment advice, as described in OAR 459-005-0215, shall be deemed filed and received as provided in sections (4), (5) and (6) of this rule.

(4) Any report, document, remittance or payment required by PERS which is:

(a) Transmitted through the United States Postal Service (USPS) or by private express carrier, shall be deemed filed or received on the date shown by the post office cancellation mark or other record of transmittal;

(b) Lost in transmission through USPS or by a private express carrier, shall be deemed filed and received on the date it was mailed or deposited for transmittal if the sender:

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

(B) Files with PERS a duplicate of the lost report, document, or remittance, in accordance with the requirements specified in OAR 459-005-0210; and

(C) Satisfies the requirements of paragraphs (A) and (B) of this subsection within thirty (30) days after PERS notifies the sender in writing of its failure to receive the report, document, or remittance.

(5) For purposes of this rule:

(a) "Settlement date" is the date on which the participating Depository Financial Institution (DFI) or its correspondent is scheduled to be debited or credited by the Federal Reserve.

(b) "Pay date" means the date inscribed on a pay check or settlement date if paid by EFT, whichever is the later.

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

(7) Any report or document that PERS will accept by telephonic facsimile communication (fax) as provided in OAR 459-005-0210 or 459-005-0215 which is:

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

(b) Lost in transmission through a fax communication shall be deemed filed and received when originally transmitted if the sender can establish by affidavit the proof of sending and correct addressing, together with a copy of any activity report from the sender's fax device, and a duplicate of the original report or document.

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

(9) A report, document, remittance, or payment shall be transmitted in accordance with the provisions of this rule and OAR 459-005-0215 prior to midnight of the date due to be considered by PERS as received timely.

(10) Any report or document that PERS will accept by e-mail transmission as specified in OAR 459-005-0210(5) which is:

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

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

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

Stat. Auth.: ORS 238.650

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Stats. Implemented: ORS 238.005 - ORS 238.750
Hist.: PERS 6-1999, f. & cert. ef. 11-22-99

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) Upon request by the State Board of Higher Education, (OSSHE), the Public Employees Retirement System (PERS) shall determine the appropriate employer contribution rate to an Optional Retirement Plan (ORP) based on the tier of benefits that an employee would otherwise be eligible for had the employee not elected to participate in an ORP 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) 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).

(3)(a) Pursuant to ORS 238.105, a former PERS member may elect to obtain a restoration of membership rights in PERS within one year after being employed by OSSHE whether or not the employee elects to participate in an ORP.

(b) If a former member restores membership rights under ORS 238.105, that restoration shall establish the tier of benefits the member is entitled to under ORS 238.430, and the corresponding employer contributions as provided in sections (1) and (2) of this rule.

(c) If a former PERS member participating in an ORP restores membership rights under ORS 238.105, PERS shall determine and advise OSSHE of the appropriate employer contribution rate to an ORP based on the tier of benefits the member has restored.

(4)(a) In the event a former PERS member participating in an ORP restores membership rights under ORS 238.105 and the former member had not made contributions to PERS during each of five calendar years, the member shall be subject to the provisions of ORS 243.800(6)(a) and (7), and would have no rights to Tier One benefits from PERS.

(b) In the event a former PERS member participating in an ORP restores membership right under ORS 238.105 and the former mem-

ber has made contributions to PERS during each of five calendar years, the member shall be subject to the provisions of ORS 243.800(6)(b) and (7).

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.105 & ORS 243.775

Hist.: PERS 3-1996, f. & cert. ef. 6-11-96; PERS 1-1999, f. & cert. ef. 5-13-99

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, ORS 243.775 & ORS 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:

(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, 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) A transfer of a member's PERS account to an alternative retirement plan established under provisions of ORS 353.250 shall be in compliance with all applicable Internal Revenue Code provisions and related Treasury regulation governing qualified pension plans. The transfer may occur only if the alternative retirement plan:

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

(b) Is 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) Is 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, 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; PERS 2-1999, f. & cert. ef. 5-13-99

459-005-0506

Plan Compliance with Federal Statutes and Regulations

(1) The purpose of administrative rules OAR 459-005-0500 to 459-005-0799 is to assure compliance with applicable federal statutes and regulations for governmental retirement plans qualified under the Internal Revenue Code (IRC) Section 401(a), and to implement ORS 238.630(3)(h) by establishing limits on contributions and benefits under the Public Employees Retirement System (PERS), ORS Chapter 238.

(2) Definitions in general for OAR 459-005-0500 to 459-005-0799:

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

(b) "Employment" means service as an employee as defined in OAR 459-005-0001(17).

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

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

(e) "Defined contribution plan (DC)" means a plan which provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account.

(f) "Defined benefit plan (DB)" means a plan which is not a defined contribution plan.

Stat. Auth.: ORS 238.630(3)(h), ORS 238.305 & ORS 238.650

Stats. Implemented: ORS 238

Hist.: PERS 5-1999, f. & cert. ef. 11-15-99

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 contribution and benefits under ORS chapter 238.

(2) Definitions:

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

(b) An "eligible participant" shall mean a person who first becomes a member of PERS before January 1, 1996.

(c) A "noneligible participant" shall mean a person who first becomes a member of PERS after December 31, 1995.

(d) "Annual compensation" shall mean "salary," as defined in ORS 238.005(20) and 238.205, paid to the member during a calendar year or other 12-month period, as specified in this rule.

(e) For the purposes of this rule, an "employer" shall mean a "public employer" as defined in ORS 238.005(17).

(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 chapter 238. 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 former 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 Chapter 238 shall be measured on a calendar year basis, and shall not exceed \$ 200,000 per calendar year beginning in 2002.

(a) The 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) PERS participating employers shall monitor annual compensation 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 238.005(8) shall be calculated based on the amount of compensation that is allowed to be taken into account under this rule.

(6) Notwithstanding section (4) and (5) of this rule, if the Final Average Salary as defined in ORS 238.005(8) is used in computing a noneligible participant's retirement benefits, the annual compensation shall be based on compensation paid in a 12-month period beginning with the earliest calendar month used in determining the 36 months of salary 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 238.005(5), shall be given for each month that an active member is paid salary or wages

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and allowable contributions have been remitted to PERS, or would be remitted but for the annual compensation limit in IRC Section 410(a)(17).

Stat. Auth.: ORS 238.630 & ORS 238.650

Stats. Implemented: ORS 238

Hist.: PERS 4-1995, f. 11-14-95, cert. ef. 12-1-95; PERS 5-1999, f. & cert. ef. 11-15-99; PERS 11-2002, f. & cert. ef. 7-17-02

459-005-0530

Limitation for Employers with Multiple Retirement Plans — for Contributions and Distributions Before January 1, 2000

(1) **Defined Benefit Plans.** For purposes of OAR 459-005-0535, Annual Benefit Limitation and, before January 1, 2000, for purposes of section (3) of this rule, all defined benefit plans of an employer, including plans that have been terminated, shall be treated as one defined benefit plan.

(2) **Defined Contribution Plans.** For purposes of OAR 459-005-0545, Annual Addition Limitation and, before January 1, 2000, for purposes of section (3) of this rule, all defined contribution plans of an employer, including plans that have been terminated, shall be treated as one defined contribution plan.

(3) **Combined Plan Limitation.** If any member also participates in a defined contribution plan maintained by the same employer, the sum of the defined benefit plan fraction and the defined contribution plan fraction for any calendar year before the 2000 calendar year shall not exceed 1.0.

(a) **Defined Benefit Plan Fraction.** For purpose of this section, the defined benefit fraction is a fraction with the following numerator and denominator:

(A) The numerator is the member's projected annual benefit under the plan, determined as of the close of the year.

(B) The denominator is the lesser of the following amounts:

(i) The product of 1.25, multiplied by the applicable dollar limitation for the calendar year, as defined in OAR 459-005-0535, Annual Benefit Limitation; or

(ii) Before January 1, 1995, the product of 1.4 multiplied by the member's 100 percent (100%) of compensation limitation under IRC Section 415(b)(1)(B) for the calendar year.

(b) **The Defined Contribution Plan Fraction.** For purposes of this section, the defined contribution plan fraction is a fraction with the following numerator and denominator:

(A) The numerator is the sum of the annual additions to the member's account as of the close of the calendar year; and

(B) The denominator is the sum of the lesser of the following amounts determined for the calendar year and for each prior calendar year of service with the employer:

(i) The product of 1.25, multiplied by the dollar limitation in effect under IRC Section 415(c)(1)(A) for that calendar year; or

(ii) The product of 1.4, multiplied by the member's 25 percent (25%) of compensation limitation under IRC Section 415(c)(1)(B) for the calendar year.

(4) **Employer.** For purposes of the limitations in this rule, OAR 459-005-0535, Annual Benefit Limitation, and OAR 459-005-0545, Annual Addition Limitation, all employers required to be aggregated under IRC Section 414(b) or (c), as modified by IRC Section 415(h), shall be treated as a single employer.

(5) **Reduction in Benefit to Comply With Limitations.** If benefits or contributions under another retirement plan, when combined with the benefits under PERS, exceed the limitations in this rule, the benefits under PERS shall be reduced to the extent of the excess and the benefits or contributions under the other plan shall stand.

(6) **Retroactive Application.** Except as otherwise provide in this rule, this rule shall be applied retroactively to January 1, 1987.

Stat. Auth.: ORS 238.630 & ORS 238.650

Stats. Implemented: ORS 238.005 - ORS 238.715

Hist.: PERS 5-1999, f. & cert. ef. 11-15-99

459-005-0535

Annual Benefit Limitation

(1) **Applicable Law.** This administrative rule shall be construed consistently with the requirements of the Internal Revenue Code (IRC) Section 415(b) and the Treasury regulations and Internal Revenue Service rulings and other interpretation issued thereunder.

(2) **Annual Benefit Limitation.** The benefits payable to any member for a calendar year, when expressed as an annual benefit, shall not exceed the applicable dollar limitation for that year.

(3) **Applicable Dollar Limitation.** For purposes of this rule, the "applicable dollar limitation" for each calendar year is the limitation in effect under IRC Section 415(b)(1)(A), with the adjustment described as follows:

(a) **Cost-of-Living Adjustments.** The limitation under IRC Section 415(b)(1)(A) shall be adjusted for cost of living in accordance with IRC Section 415(d).

(b) **Reduction for Retirement Before Age 62.** Except as otherwise provided in the paragraphs (A), (B), and (C) of this subsection, if the member's benefit begins before the member reaches 62 years of age, the applicable dollar limitation shall be adjusted as provided for in IRC Section 415(b)(2)(C).

(A) This reduction shall not apply to any member who has at least 15 years of creditable service as a full-time employee of a police department or fire department which is organized and operated by the state or a political subdivision of the state to provide police protection, firefighting services, or emergency medical services for any area within the jurisdiction of the state or political subdivision.

(B) This reduction shall not apply to disability retirement allowances or death benefits.

(C) This reduction shall not apply to any portion of a member's annual benefit that is derived from contributions to purchase service credit, as defined in OAR 459-005-0540, Permissive Service Credit.

(c) **Reduction for Less than 10 Years of Membership.** Except as provided in paragraphs (A) and (B) of this subsection, if the member has less than 10 years of active membership in PERS, the applicable dollar limitation shall be reduced as provided for under IRC Section 415(b)(5)(A).

(A) For the purposes of this section, a member with less than one year of active membership shall be treated as having one year of active membership.

(B) The reduction under this section shall not apply to disability retirement allowances or death benefits.

(d) **Increase for Retirement After Age 65.** If the member's benefit begins after the member reaches 65 years of age, the applicable dollar limitation shall be increased as provided for under IRC Section 415(b)(2)(D).

(4) **Annual Benefit.** For purposes of this rule, the "annual benefit" is the benefit payable to a member under ORS chapter 238 for a calendar year, excluding any benefit payable under ORS 238.485 to 238.492, and adjusted as described in this section.

(a) **Excludable Benefits.** The annual benefit shall not include the portion of the member's benefit that is attributable to:

(A) After-tax member contributions, other than member payment to purchase permissive service credit as defined in OAR 459-005-0540, Permissive Service Credit;

(B) Rollover contributions, if such contributions are permitted; and

(C) A transfer of assets from another qualified retirement plan.

(D) Purchases of permissive service credit, as defined in OAR 459-005-0540, Permissive Service Credit, if all of the member's payments to purchase permissive service credit are treated as annual additions for purposes of OAR 459-005-0545, Annual Addition Limitation.

(b) **Adjustment to Straight Life Annuity.** The member's benefit shall be adjusted to an actuarially equivalent straight life annuity beginning at the same age. For purposes of this adjustment, the following values are not taken into account:

(A) The value of a qualified spouse joint and survivor annuity to the extent that the value exceeds the sum of: the value of a straight life annuity beginning on the same day, and the value of any post-retirement death benefits that would be payable even if the annuity was not in the form of a joint survivor annuity.

(B) The value of benefits that are not directly related to retirement benefits, such as pre-retirement disability benefits and post-retirement medical benefits.

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(C) The value of post-retirement cost of living increases, to the extent they do not exceed the increase provided under IRC Section 415(d) and Treasury Regulation Section 1.415-5.

(5) Interest Rates. The following interest rates shall apply for purposes of adjusting the applicable dollar limitation under section (3) of this rule and the annual benefit under section (4) of this rule.

(a) For purposes of reducing the applicable dollar limitation for retirement before 62 years of age under subsection (3)(b) of this rule, the interest rate shall be the greater of five percent or PERS' assumed earnings rate.

(b) For purposes of determining the portion of a member's benefits attributable to after-tax member contributions under paragraph (4)(a)(A) of this rule, the interest rate shall be the greater of 5 percent or the PERS' assumed earnings rate.

(c) For purposes of adjusting the member's annual benefits under section (4) of this rule (other than the adjustment for after-tax member contributions), the interest rate shall be the greater of five percent or PERS' assumed earnings rate.

(d) For purposes of increasing the applicable dollar limitation for retirement after 65 years of age under subsection (3)(d) of this rule, the interest rate shall be the lesser of five percent or PERS' assumed earnings rate.

(6) Mortality Table. For purposes of adjusting the applicable dollar limitation and annual benefit under sections (3) and (4) of this rule, the mortality table used shall be:

(a) Before January 1, 2000, the table adopted by the board for calculating actuarially equivalent forms of benefits.

(b) Effective January 1, 2000, the table prescribed by the Internal Revenue Service.

(7) Retroactive Application. Except as provided below, the provisions of this rule shall be applied retroactively to January 1, 1987. The amendments adopted in 2002 shall be effective as of January 1, 2002.

Stat. Auth.: ORS 238.630 & ORS 238.650

Stats. Implemented: ORS 238.005 - ORS 238.715

Hist.: PERS 5-1999, f. & cert. ef. 11-15-99; PERS 3-2000, f. & cert. ef. 3-10-00; PERS 11-2002, f. & cert. ef. 7-17-02

459-005-0540

Permissive Service Credit

(1) General Rule. If a member makes one or more after-tax contributions to PERS to purchase permissive service credit, then all such contributions by the member must satisfy one of the following limitations:

(a) The annual benefit limitation under OAR 459-005-0535, Annual Benefit Limitation, determined by treating the accrued benefit derived from all of the member's contributions to purchase permissive service credit as part of the member's annual benefit; or

(b) The annual addition limitation under OAR 459-005-0545, Annual Addition Limitation, determined by treating all of the member's contributions to purchase permissive service credit annual additions.

(2) Definition of Permissive Service Credit. "Permissive service credit" means service credit that satisfies the requirements in subsection (a) of this section and is not excluded under subsection (b) of this section.

(a) Permissive service credit generally means service credit that:

(A) Is recognized by PERS as the retirement credit for purposes of calculating a member's benefits;

(B) Has not previously been credited to the member; and

(C) Is credited to the member only if the member makes a voluntary additional contribution in an amount calculated under the terms of the plan, which does not exceed the amount necessary to fund the benefit attributable to the purchased service credit.

(b) Notwithstanding subsection (a) of this section, "permissive service credit" does not include:

(A) Previously forfeited service that is reinstated under ORS 238.105 or 238.115;

(B) Periods of military service that are purchased under ORS 238.156; or

(C) Periods of nonqualified service that do not satisfy the requirements in section (3) of this rule.

(3) Nonqualified Service. Nonqualified service purchased by a member shall be treated as permissive service credit only if the member purchases no more than five years of nonqualified service, and the member has at least five years of active membership before purchasing the nonqualified service. For this purpose, "nonqualified service" means any service other than the following:

(a) Military service (other than military service purchased under ORS 238.156);

(b) Service as an employee with one of the following employers, provided that the employee does not receive a retirement benefit from the same service under another plan:

(A) A governmental employer;

(B) A public, private, or sectarian school that provides elementary or secondary education; or

(C) An association of governmental employees.

(4) Retroactive Application. The provisions of this rule shall be applied retroactively to January 1, 1998.

Stat. Auth.: ORS 238.630 & ORS 238.650

Stats. Implemented: ORS 238.005 - ORS 238.715

Hist.: PERS 5-1999, f. & cert. ef. 11-15-99

459-005-0545

Annual Addition Limitation

(1) Applicable Law. This administrative rule shall be construed consistently with the requirements of the Internal Revenue Code (IRC) Section 415(c) and the Treasury regulations and Internal Revenue Service rulings and other interpretations issued thereunder.

(2) Annual Addition Limitation. Except as otherwise provided in this rule, no member's annual additions to PERS for any calendar year (after 2001) shall exceed the lesser of the following amounts:

(a) \$40,000 (as adjusted by the Internal Revenue Service for cost of living); or

(b) One hundred percent of the member's compensation for the calendar year (as defined in IRC Section 415(c)(3)).

(3) Annual Additions. For purposes of this rule, the "annual additions" have the same meaning as under IRC Section 415(c)(2).

(4) Permissive Service Credit. The following special rules shall apply with respect to purchases of permissive service credit, as defined in OAR 459-005-0540, Permissive Service Credit:

(a) If a member's after-tax contributions to purchase permissive service credit are included in the member's annual additions under section (3) of this rule, the member shall not be treated as exceeding the 100 percent of compensation limitation under subsection (2)(b) of this rule solely because of the inclusion of such contributions.

(b) With respect to any eligible participant, the annual addition limitation in section (2) of this rule shall not be applied to reduce the amount of permissive service credit to an amount less than the amount that could be purchased under the terms of the plan as in effect on August 5, 1995. As used in this subsection, the term "eligible participant" includes any individual who is or will become an active member before January 1, 2000.

(5) Purchase of Service in the Armed Forces Under ORS 238.156. If a member makes a payment to PERS to purchase retirement credit for service in the Armed Forces pursuant to ORS 238.156(3)(c), the following special rules shall apply for purposes of applying the annual addition limitation in section (2) of this rule:

(a) The payment shall be treated as an annual addition for the calendar year to which it relates;

(b) The payment shall not be treated as an annual addition for the calendar year in which it is made; and

(c) The member shall be treated as having received the following amount of compensation for the period of service in the Armed Forces to which the payment relates:

(A) The amount of compensation the member would have received from a participating employer had the member not been in the Armed Forces; or

(B) If the amount in paragraph (A) of this subsection is not reasonably certain, the member's average compensation from the participating employer during the 12-month period immediately preceding the period of service in the Armed Forces (or, if shorter, the

period of employment immediately preceding the period of service in the Armed Forces).

(6) Retroactive Application. Except as otherwise provided in this rule, the provisions of this rule shall be applied retroactively to January 1, 1987.

Stat. Auth.: ORS 238.630 & ORS 238.650

Stats. Implemented: ORS 238.005 - ORS 238.715

Hist.: PERS 5-1999, f. & cert. ef. 11-15-99; PERS 11-2002, f. & cert. ef. 7-17-02

459-005-0560

Required Minimum Distributions, Generally

(1) Applicable Law. Distributions under the Public Employees Retirement System (PERS) shall be made in accordance with Internal Revenue Code (IRC) Section 401(a)(9), including IRC Section 401(a)(9)(G), and the Treasury regulations and Internal Revenue Service rulings and other interpretations issued thereunder, including Proposed Treasury Regulation Section 1.401(a)(9)-2. The provisions of this administrative rule and any other statute or administrative rule reflecting the required minimum distribution requirements of IRC Section 401(a)(9) shall override any distribution options that are inconsistent with IRC Section 401(a)(9).

(2) Distributions to Members. Each member's entire benefit under PERS shall be distributed to the member, beginning no later than the required beginning date, over the member's lifetime (or the joint lives of the member and a designated beneficiary), or over a period not extending beyond the member's life expectancy (or the joint life expectancies of the member and a designated beneficiary).

(a) Required Beginning Date. For purposes of this section, the "required beginning date" is April 1 of the calendar year after the later of the following:

- (A) The calendar year in which the member reaches age 70; or
- (B) The calendar year in which the member retires.

(b) Designated Beneficiary. For purposes of this section, a "designated beneficiary" means any individual designated as a beneficiary by the member. If the member designates a trust as a beneficiary, the individual beneficiaries of the trust shall be treated as designated beneficiaries if the trust satisfies the requirement set forth in Proposed Treasury Regulation Section 1.401(a)(9)-1, Q&A-D-5.

(c) Calculation of Life Expectancies. For purposes of this section, life expectancies shall not be recalculated after the initial determination.

(d) Limitations on Benefit Changes. Notwithstanding ORS 238.305(4) and 238.325(2), a retired member who has had a required beginning date shall not change a beneficiary designation, benefit option election, or any other designation or election under ORS 238.305(1), (2), or (3).

(e) Limitations on Conversion of Joint Annuity to Single Life Annuity Following Divorce. Notwithstanding ORS 238.305(5) and 238.325(3), a retired member who has had a required beginning date may not elect to convert a joint and survivor annuity under Option 2A or 3A to a single life annuity by reason of the member's divorce from the joint annuitant.

(f) Limitations on Survivor Annuity Elections. Except as otherwise required by a domestic relation order under ORS 238.465, if a member elects a 100 percent (100%) joint and survivor annuity (Option 2 or 2A under ORS 238.305(1)) and designates a nonspouse beneficiary who is more than ten years younger than the member, the benefit shall be actuarially adjusted to provide for a reduced survivor annuity benefit to the extent necessary to comply with federal requirement for qualified retirement plans.

(g) Limitation on Period-Certain Annuity Election. If a member elects a 15-year certain option (Option 4 under ORS 238.305(1)), and attains age 84 or older during the calendar year in which the benefits commence, the benefit shall be actuarially adjusted to provide for a shorter payout period to the extent necessary to comply with federal requirement for qualified retirement plans.

(3) Distributions to Beneficiaries of Retired Members. If a retired member dies after benefits payments have begun or are required to begin under section (2) or this rule, any death benefits shall be distributed at least as rapidly as under the distribution method being used at the member's death.

(4) Distributions to Beneficiaries of Active and Inactive Members. If an active or inactive member dies before benefit payments have begun or are required to begin under section (2) of this rule, any death benefits shall be distributed by December 31 of the calendar year that contains the fifth anniversary of the member's death, except as provided in the following:

(a) Distributions to Designated Beneficiaries. The five-year rule shall not apply to any death benefit that is payable to a member's designated beneficiary, if:

(A) The benefit is distributed over the designated beneficiary's lifetime or over a period not extending beyond the designate beneficiary's life expectancy; and

(B) The distributions begin no later than December 31 of the calendar year that contains the first anniversary of the member's death.

(b) Notwithstanding subsection (a) of this section, if the designated beneficiary is the member's surviving spouse:

(A) The commencement of distributions under subsection (a)(B) of this section may be delayed until December 31 of the calendar year in which the member would have reached age 70; and

(B) If the surviving spouse dies after the member's death but before the distributions to the spouse have begun, the rules of this section shall apply to any death benefit payable to any contingent beneficiary as if the spouse were the member. Notwithstanding the foregoing, however, this subsection shall not apply to any death benefit payable to a surviving spouse of the deceased member's surviving spouse.

(5) Retroactive Application. The provisions of this rule shall be applied retroactively to January 1, 1987.

Stat. Auth.: ORS 238.630 & ORS 238.650

Stats. Implemented: ORS 238.005 - ORS 238.715

Hist.: PERS 5-1999, f. & cert. ef. 11-15-99

459-005-0590

General Provisions and Applicability Date — Direct Rollovers

(1) OAR 459-005-0590 to 459-005-0599 apply to direct rollover distributions made on or after January 1, 1993.

(2) Notwithstanding any provision to the contrary in ORS chapter 238 or any administrative rule of the Public Employees Retirement Board other than OAR 459-005-0590 to 459-005-0599, a distributee may elect, in accordance with OAR 459-005-0599, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(3) The direct rollover rule OAR 459-005-0590 to 459-005-0599 shall be interpreted and administered in accordance with Code Section 401(a)(31) and any applicable regulations and administrative rulings thereunder.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - ORS 238.715

Hist.: PERS 11-1998, f. & cert. ef. 12-17-98

459-005-0591

Definitions — Direct Rollovers

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

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

(2) A "direct rollover" means the payment of an eligible rollover distribution by PERS to an eligible retirement plan specified by the distributee.

(3) A "distributee" includes a PERS member, the surviving spouse of a deceased PERS member, and the current or former spouse of a PERS member who is the alternate payee under a domestic relations order that satisfies the requirements of ORS 238.465 and the rules adopted thereunder.

(4) An "eligible retirement plan" means any one of the following:

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

(b) An annuity plan described in Code Section 403(a) that accepts the distributee's eligible rollover distribution;

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(c) A qualified trust described in Code Section 401(a), but only if it is a defined contribution plan that accepts the distributee's eligible rollover distribution;

(d) An eligible deferred compensation plan described in Code Section 457(b) which is maintained by an eligible employer described in Code Section 457(e)(1)(A);

(e) An annuity contract described in Code Section 403(b) that accepts the distributee's eligible rollover distribution.

(5) An "eligible rollover distribution" means any distribution of all or any portion of a distributee's PERS benefit, except that an eligible rollover distribution shall not include:

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

(b) Any distribution to the extent that it is a required or minimum distribution under Code Section 401(a)(9).

(6) A "recipient plan" means an eligible retirement plan that is designated by a distributee to receive a direct rollover.

(7) The provisions of this rule shall be applicable as of the calendar year beginning January 1, 2002.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - ORS 238.715

Hist.: PERS 11-1998, f. & cert. ef. 12-17-98; PERS 1-2002(Temp), f. & cert. ef. 1-11-02 thru 6-28-02; PERS 3-2002, f. & cert. ef. 3-26-02

459-005-0595

Limitations — Direct Rollovers

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

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

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

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

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - ORS 238.715

Hist.: PERS 11-1998, f. & cert. ef. 12-17-98

459-005-0599

Election Procedures — Direct Rollovers

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

(a) A statement that the distributee has the right to consider the decision of whether or not to elect a direct rollover for at least thirty (30) days after the notice is provided;

(b) An explanation of the default rule set forth in section (5) of this rule;

(c) An explanation of the notice and election rules for periodic payments that are eligible rollover distributions.

(2) Except as otherwise provided in sections (4) and (6) of this rule, an eligible rollover distribution shall not be paid, either to the distributee or to a recipient plan, less than thirty (30) days or more than ninety (90) days after the distributee has been provided with the written explanation described in section (1) of this rule.

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

(A) Member's full name;

(B) Member's social security number;

(C) Percentage of amount eligible for transfer (whole percent), or the dollar amount (in whole dollars);

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

(E) Name and complete mailing address of recipient plan.

(b) The election shall include or be accompanied by a statement by the recipient plan's plan administrator that the plan will accept the direct rollover for the benefit of the distributee.

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

(5) If a distributee fails to affirmatively elect to make or not to make a direct rollover within at least 30 and no more than 90 days after notice is provided as described in section (1) of this rule, PERS shall pay the eligible rollover distribution directly to the distributee.

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

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

(a) The date inscribed on check or warrant; or

(b) The date of an electronic transfer/transaction.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - ORS 238.715

Hist.: PERS 11-1998, f. & cert. ef. 12-17-98

459-005-0600

Precedence for Reductions or Deductions of Benefit Payment

(1) The order of priority for reductions of or deductions from a benefit payment is as follows:

(a) Adjustment for an overpayment or erroneous payment of benefit;

(b) Withholding for federal and state income taxes, and other current taxes;

(c) Withholding for premium payment of a PERS sponsored health insurance plan;

(d) Withholding in response to support liens in accordance with ORS 238.445;

(e) Withholding in response to Internal Revenue Service (IRS) liens;

(f) Adjustment due to a divorce decree or other court order;

(g) Other voluntary withholdings authorized by the Board and elected by the member or beneficiary of the member.

(2) The adjustments for recovery of improperly made overpayments or erroneous payments take precedence over other reductions or deductions.

Stat. Auth.: ORS 238.715(9) & ORS 238.650

Stats. Implemented: ORS 238.005 - ORS 238.715

Hist.: PERS 14-1998, f. & cert. ef. 12-17-98

459-005-0610

Recovery of Overpayments

In accordance with ORS 238.715, this rule sets forth the criteria and process for the recovery of overpayments and erroneous payments made by PERS. It is the policy of the Board to implement wherever possible, and if cost effective, a one hundred percent (100%) recovery of all overpayments and erroneous payments. Staff shall attempt recovery of overpayments and erroneous payments in the most efficient method available and in the least amount of time possible.

(1) Definitions:

(a) "Overpayment" means a payment, or series of payments, that is in excess of the amount a member, beneficiary, or other person is entitled to under ORS chapter 238;

(b) "Improperly made payment" or "erroneous payment" means any payment, or series of payments made from the Public Employees Retirement Fund, that has been made in error, including a payment to a person or entity that is not entitled to receive the payment;

(c) "Fraudulent" means making a false representation to a person or entity with the intent that the other person or entity will act on that representation to his or her damage;

(d) "Intentional" means that an individual acts or fails to act with the conscious objective of:

- (A) Causing a result;
- (B) Acting in a manner prohibited by law or regulation; or
- (C) Failing to act in a manner required by law or regulation.

(e) "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;

(f) "Monthly payment" means any gross pension, annuity, service or disability retirement allowance, death benefit, or other benefit under ORS chapter 238 that is paid monthly to or on behalf of a member, a member's beneficiary, an alternate payee or the beneficiary of an alternate payee, or a combination of the aforementioned;

(g) "Lump-sum payment" means any gross distribution of a benefit under ORS chapter 238, or any other law directing PERS to make a benefit payment, including a retroactive adjustment, that is not paid monthly to or on behalf of a member, a member's beneficiary, an alternate payee or the beneficiary of an alternate payee;

(h) "Lump-sum installments" paid in accordance with ORS 238.305(3) shall have the same meaning as lump-sum payment in subsection (g) of this section;

(i) "Deduction" means the subtraction of a specified amount, on a pre-tax basis, from any distribution by PERS;

(j) "Reduction" means an actuarial calculation of ongoing monthly benefit payments from PERS that permanently lessens the amount of each benefit payment;

(k) "Payee" means:

(A) A member, a trust established by the member, the member's estate;

(B) A member's beneficiary, a trust established by the member's beneficiary, the estate of the member's beneficiary;

(C) An alternate payee, as defined in OAR 459-045-0001(9), a trust established by an alternate payee, or the estate of an alternate payee;

(D) The beneficiary of an alternate payee, a trust established by the beneficiary of an alternate payee, or the estate of the beneficiary of an alternate payee; and

(E) Any other recipient of a payment by PERS of a benefit payable.

(2) Notification to a payee of an overpayment or erroneous payment shall include:

- (a) Invoice for overpayment or erroneous payment;
- (b) Explanation of the overpayment or erroneous payment;
- (c) Methods for repayment or collection of overpayment or erroneous payment;

(d) Appeal rights under OAR 459-001-0030;

(e) The Board's right to assess interest, penalties and costs of collection; and

(f) That the recovery process begins with the mailing of the notice and invoice.

(3) Voluntary methods, as approved by PERS, for the recovery of an overpayment or erroneous payment of a PERS benefit shall be as follows, in priority order, and shall effect a one hundred percent (100%) recovery within two years from the date of mailing notice and invoice:

(a) A one hundred percent (100%) repayment of amount owed in a single payment upon receipt of an invoice from PERS;

(b) In the event a payee is entitled to receive a lump-sum payment as described in subsections (g) and (h) of section (1) of this rule:

(A) A deduction of one hundred percent (100%) of the amount owed to PERS from the lump-sum payment;

(B) A deduction of one hundred percent (100%) of the amount owed to PERS from one or more future lump-sum installments.

(c) In the event there is no lump-sum payment due the payee, a deduction of a specified amount of not less than ten percent (10%) from future monthly payments for a period not to exceed two years that will satisfy in full the PERS invoice;

(d) A repayment schedule of monthly remittances for a period not to exceed two years that will satisfy in full the PERS invoice.

(4) If the payee does not agree to a voluntary method of recovery under section (3) of this rule, PERS shall, if possible, use one of the following involuntary methods for the recovery of an overpayment or erroneous payment and shall effect a one hundred percent (100%) recovery within two years from the date of mailing notice and invoice:

(a) A deduction of one hundred percent (100%) of the amount owed at the time of any future lump-sum payment as described in subsection (1)(g) of this rule;

(b) A deduction of a specified amount of not more than ten percent (10%) from current and future monthly payments to a payee until the overpayment or erroneous payment is recovered, not to exceed two years;

(c) In the event a payee is entitled to receive two or more installments as described in subsection (1)(h) of this rule:

(A) A deduction of one hundred percent (100%) of the amount owed to PERS, less amounts recovered under subsection (b) of this rule, from the next annual lump-sum installment.

(B) A deduction of one hundred percent (100%) of the amount owned to PERS, less amounts recovered under subsection (b) of this rule, from one or more lump-sum installments.

(5) If the overpayment or erroneous payment cannot be recovered under sections (3) and (4) of this rule, PERS may implement one of the following actions as appropriate to maximize recovery and minimize costs for PERS and the Trust:

(a) A deduction of a specific amount of not more than 10% from current and future monthly payments from PERS to a payee until the overpayment or erroneous payment is recovered;

(b) An actuarially determined reduction, not to exceed 10%, to current and future payments from PERS; such actuarial reduction to repay the full amount of the overpayment or erroneous payment;

(c) Seek restitution of the overpayment or erroneous payment by using the services of an outside collection agency; or

(d) Any other remedy available to the Board under applicable law.

(6) The base or original benefit payment used to calculate cost-of-living adjustments, ad hoc increases, or other benefit increases shall not be altered by an actuarial reduction provided for in subsection (5)(b) of this rule.

(7) In the event that PERS determines that an overpayment or erroneous payment was the result of a fraudulent or intentional act of the person who received the payment(s), the staff shall assess the person who received the payment:

(a) All costs incurred by PERS in recovering the overpayment or erroneous payment, including attorney fees, and fees assessed by an outside collection agency;

(b) Interest in an amount equal to one percent (1%) per month on the balance of the overpayment or erroneous payment until that payment is fully recovered.

(8) The Board authorizes the Director, or the Director's designee, to waive:

(a) The interest and costs of collection associated with the recovery of an overpayment or erroneous payment for good cause shown;

(b) The recovery of any overpayment or erroneous payment if the total amount of overpayments or erroneous payments is less than \$50;

(c) The two-year limitation on deductions in sections (3) and (4) of this rule.

(9) Recovery of an overpayment or erroneous payment shall not be effected if PERS has not initiated recovery of those payments within six years after the date the overpayment or erroneous payment was made. PERS initiates recovery on the date it mails the notification required by section (2) of this rule.

(10) The recovery of an overpayment or an erroneous payment shall take precedence over other deductions or reductions as set forth in OAR 459-005-0600.

Stat. Auth.: ORS 238.715(9) & ORS 238.650

Stats. Implemented: ORS 238.715
Hist.: PERS 14-1998, f. & cert. ef. 12-17-98

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

459-007-0015

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 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

459-007-0025

Crediting Earnings To Member Lump Sum Payments In The Fund

(1) *Definitions.*

(a) *Definition of member lump sum payment.*

(A) "Member lump sum payment" means any payment that:

(i) Is not regularly scheduled;

(ii) Is not paid as a percentage of salary; and

(iii) The contributor has control over the timing or whether to make the payment.

(B) Member lump sum payments include, but are not limited to:

(i) Retirement credit purchases.

(ii) Voluntary redeposit, as defined in ORS 238.105.

(iii) P & F Unit purchases, as defined in ORS 238.440(2).

(iv) A member's account balance that is transferred through an integration under ORS 238.680.

(C) *Exclusions.* The definition of member lump sum payment as used in this rule excludes all payments made in the 90 day period before and after the effective date of retirement or benefits.

(b) *Definition of Actual Distributable Earnings.* "Actual distributable earnings" means earnings based on the change of value of the PERS portfolio, less deductions allowed by law, during the period the payment is held. Actual distributable earnings may be negative.

(c) *Definition of Gain-Loss Reserve.* "Gain-Loss Reserve" will have the same meaning as provided in ORS 238.670(3).

(d) *Definition of Regular Account.* "Regular account" means the account established for each active and inactive member, excluding any amount of the member in the Variable Annuity Account established under ORS 238.260.

(2) *Crediting of earnings.* Tier One. Earnings on a Tier One member's lump sum payment will be based on the number of days held from the date of receipt through December 31 or the effective date of retirement or benefits, whichever occurs first, and will be the greater of:

(a) *Actual distributable earnings:*

(A) For the month in which the payment is received. The latest-year-to-date Tier One factor as of the first of the calendar month following the date of the payment less the latest-year-to-date Tier One factor as of the first of month in which the payment is received

divided by the number of calendar days in the month the payment is received times the number of days beginning with the date received through the end of the calendar month the payment is received, plus

(B) For the remainder of the year. The difference between the Tier One factor for the calendar year or the effective date of retirement or benefits, and the latest-year-to-date Tier One factor as of the first of the calendar month following the date the payment was received; or

(b) *Assumed earnings rate.* The Board's assumed earnings rate prorated from the date of receipt of the payment through the end of the calendar year or the effective date of retirement or benefits, whichever occurs first.

(3) *Crediting of earnings, Tier Two.* Earnings on a Tier Two member's lump sum payment will be based on the change of value of the PERS portfolio from the date of receipt through December 31 or the effective date of retirement or benefits, whichever occurs first, as follows:

(a) For the month in which the payment is received. The latest-year-to-date Tier Two factor as of the first of the calendar month following the date of the payment less the latest-year-to-date Tier Two factor as of the first of month in which the payment is received divided by the number of calendar days in the month the payment is received times the number of days beginning with the date received through the end of the calendar month payment is received, plus

(b) For the remainder of the year. The difference between the Tier Two factor for the calendar year or the effective date of retirement or benefits, and the latest-year-to-date Tier Two factor as of the first of the calendar month following the date the payment was received.

(4) The portion of a member lump sum payment as described in section (1)(a) of this rule that represents employer contributions and interest and which are subsequently credited to an employer account(s) in the Fund will be credited with earnings or losses in the same manner as the member's lump sum payment as stated in this rule.

(5) *Gain-Loss Reserve Obligation.* A Gain-Loss Reserve obligation will be applied only to the member lump sum payment that represents the Tier One member's integration account balance (section (1)(a)(B)(iv) of this rule) if:

(a) Tier One earnings available for distribution fall below the assumed earnings rate in the year in which the payment is received or the following calendar year; and

(b) The member lump sum payment or payments exceed \$500,000 in a calendar year, with the initial \$500,000 being exempt from the obligation.

(6) If the Gain-Loss Reserve obligation is required under section (5) of this rule, it will be recovered from any future period earnings available for distribution to the member's regular account that are in excess of the assumed earnings rate. The obligation is calculated as follows:

(a) The member lump sum payment minus the initial \$500,000 for the calendar year; multiplied by

(b) The difference between the assumed earnings rate and the Tier One actual distributable earnings for the period of:

(A) The year in which the payment is received: From the date of receipt through December 31; and

(B) The following year: From January 1 through December 31.

(c) The obligation will not exceed the assumed earnings rate times the amount in (6)(a) for the period of the obligation.

(7) If the member lump sum payment is received between January 1 through January 15:

(a) The Gain-Loss Reserve obligation will apply only to the year in which the payment is received; and

(b) Earnings will be credited to the member as if the payment had been part of the member account as of January 1 of that year."

Stat. Auth: ORS 238.650

Stats. Implemented: ORS 238

Hist.: PERS 9-2000, f. 12-15-00 cert. ef. 1-1-01

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 the greater of:

(A) The latest year-to-date calculation for that year as of the effective 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 One 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 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.

(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 withdrawal calculation.

(c) 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.

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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. 1-1-00; PERS 1-2000, f. & cert. ef. 1-7-00

459-007-0050

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

When death of an active or 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) For a Tier one member whose date of death is on or after January 1, 2000:

(a) 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:

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

(ii) 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.

(b) 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:

(i) 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

(ii) 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.

(c) 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.

(2) Tier One members whose date of death is prior to January 1, 2000, shall receive earnings as follows:

(a) In accordance with the provisions of this rule in effect as of the date of the Tier One member's death through December 31, 1999. Earnings so calculated shall be credited to the deceased Tier One member's account as of December 31, 1999.

(b) Earnings on the deceased Tier One member's adjusted account as provided in subsection (a) of this section from January 1, 2000, 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 38.430 & 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. 1-1-00; PERS 1-2000, f. & cert. ef. 1-7-00

459-007-0060

Distribution of Earnings on the Employer Death Benefit — Tier One

(1) For a Tier One member whose death is on or after January 1, 2000, 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.

(2) For a Tier One member whose date of death is prior to January 1, 2000, earnings on the employer death benefit provided for in ORS 238.395 shall be credited as follows:

(a) In accordance with the provision of this rule in effect as of the date of the Tier One member's death through December 31, 1999. Earnings so calculated shall be credited to the employer death benefit as of December 31, 1999.

(b) Earnings on the adjusted value of the employer death benefit as provided for in subsection (a) of this section from January 1, 2000, 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 238.395, 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. 1-1-00; PERS 1-2000, f. & cert. ef. 1-7-00

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.

(d) Upon applying the earnings as provided in this section, 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 date of distribution of the single payment.

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. 1-1-00; PERS 1-2000, f. & cert. ef. 1-7-00

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) 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) 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 not included in the initial installment; and

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

(b) The earnings 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 (4)(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 (4)(c) or paragraphs (C) and (D) of subsection (4)(c) of this rule or paragraph (B) of subsection (4)(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.

(5) 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 earnings distributed under section (4) 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 of the date of the subsequent annual installment, including earnings distributed under section (4) 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.

(c) The greater of the results calculated under paragraphs (A) and (B) of subsection (5)(b) or paragraphs (C) and (D) of subsection (5)(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.

(6) The final installment shall include the remaining balance of the Tier One member's individual account including earnings credited at year end under sections (4) and (5) 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 indi-

vidual 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 (5) 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. 1-1-00; PERS 1-2000, f. & cert. ef. 1-7-00

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

(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 Tier Two member's 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 the effective date of withdrawal calculation to date of distribution shall be prorated based on the Board's assumed earnings rate.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.265, ORS 238.430 & ORS 238.435

Hist.: PERS 7-1998, f. & cert. ef. 5-22-98; PERS 1-2000, f. & cert. ef. 1-7-00

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:

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.

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(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 earning rate, prorated from the effective date of retirement to the date of distribution of the single payment.

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(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.

(d) Upon applying the earnings or losses as provided in this section, 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 date of distribution of the single payment.

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; PERS 1-2000, f. & cert. ef. 1-7-00

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 not included in the initial installment; 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 Board's 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

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Stats. Implemented: ORS 238.260, ORS 238.300, ORS 238.305 & ORS 238.315
Hist.: PERS 7-1998, f. & cert. ef. 5-22-98; PERS 1-2000, f. & cert. ef. 1-7-00

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 earnings 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

459-007-0300

Crediting Earnings to Police Officer and Firefighter Unit Income Accounts in the Fund.

(1) **Definitions.** For the purpose of this rule:

(a) "Earnings" means all income to the Fund from investments and other sources, but does not include member or employer contributions.

(b) "Losses" means all reductions to the Fund from investments and other sources and applies only to Tier Two members.

(c) "Police officer and firefighter unit purchase" or "P&F units" has the same meaning as provided in ORS 238.440.

(d) "P&F unit benefit" means an increased benefit that a police officer or firefighter may purchase under ORS 238.440.

(e) "P&F unit income account" means the member's account in the Fund that is used to purchase P&F unit benefits, which includes actuarially determined member additional contributions (ORS 238.440(1)) and earnings or losses.

(f) "Effective date of P&F unit benefits" means the date a member elects to begin receiving their P&F unit benefits.

(g) "Board's assumed earnings rate" means the actuarial assumed rate of return on investments as approved by the Public Employees Retirement Board for the most recent actuarial valuation.

(h) "Latest year-to-date factor" means the distribution factor calculated by staff on a monthly basis using market value of investments supplied by the Oregon State Treasury. These factors provide for the prorata distribution of year-to-date earnings to a member's account. No latest year-to-date factor is available for the period between January 1 to March 1 of each calendar year.

(i) "Actual distributable earnings" means earnings based on the change of value of the PERS portfolio, less deductions allowed by law, during the period the payment is held.

(2) **Crediting annual earnings or losses.** Annual earnings or losses will be credited to the P&F unit income account as follows:

(a) For a Tier One member, in the same manner as provided in OAR 459-007-0030.

(b) For a Tier Two member, in the same manner as provided in OAR 459-007-0210.

(3) **Crediting earnings or losses to a refund.** If the P&F unit income account is refunded under ORS 238.440(4) or (5), earnings or losses will be credited to the P&F unit income account as follows:

(a) For a Tier One member, in the same manner as provided in OAR 459-007-0040(1).

(b) For a Tier Two member, in the same manner as provided in OAR 459-007-0220(1).

(4) **Crediting earnings or losses to a lump sum purchase made within 60 days preceding a member's effective retirement date.**

(a) If a lump sum purchase under ORS 238.440(2) is made and a member elects to begin their P&F unit benefits on the same date as their effective date of retirement or benefits, earnings or losses will not be applied to the lump sum purchase.

(b) If a lump sum purchase under ORS 238.440(2) is made and a member elects to delay their P&F unit benefits to a date after their effective date of retirement or benefits, earnings or losses will be credited to their P&F unit income account as follows:

(A) **Crediting of earnings, Tier One.** Earnings on a Tier One member's lump sum purchase will be based on the number of days held from the date of receipt through December 31 or the effective date of P&F unit benefits, whichever occurs first, and will be the greater of:

(i) Actual distributable earnings:

(I) For the month in which the purchase is received. The latest-year-to-date Tier One factor as of the first of the calendar month following the date of the purchase less the latest-year-to-date Tier One factor as of the first of month in which the purchase is received divided by the number of calendar days in the month the purchase is received times the number of days beginning with the date received through the end of the calendar month the purchase is received, plus

(II) For the remainder of the year. The difference between the Tier One factor for the calendar year or the effective date of P&F unit benefits, and the latest-year-to-date Tier One factor as of the first of the calendar month following the date the purchase was received; or

(ii) Assumed earnings rate. The Board's assumed earnings rate prorated from the date of receipt of the purchase through the end of the calendar year or the effective date of P&F unit benefits, whichever occurs first.

(B) **Crediting of earnings, Tier Two.** Earnings on a Tier Two member's lump sum purchase will be based on the change of value of the PERS portfolio from the date of receipt through December 31 or the effective date of P&F unit benefits, whichever occurs first, as follows:

(i) For the month in which the purchase is received. The latest-year-to-date Tier Two factor as of the first of the calendar month following the date of the purchase less the latest-year-to-date Tier Two factor as of the first of month in which the purchase is received divided by the number of calendar days in the month the purchase is received times the number of days beginning with the date received through the end of the calendar month the purchase is received, plus

(ii) For the remainder of the year. The difference between the Tier Two factor for the calendar year or the effective date of P&F unit benefits, and the latest-year-to-date Tier Two factor as of the first of the calendar month following the date the purchase was received.

(C) Earnings or losses for subsequent years will be credited in the same manner as section (2) until payment begins under section (5) of this rule.

(5) **Crediting earnings or losses to delayed P&F unit benefits.** When a retired member elects to begin receiving P&F unit benefits under ORS 238.440(1) or (2), earnings or losses will be credited to the P&F unit income account, using the effective date of P&F unit benefits, as follows:

(a) For a Tier One member, in the same manner as provided in OAR 459-007-0070(1).

(b) For a Tier Two member, in the same manner as provided in OAR 459-007-0250(1).

(c) Following the crediting of earnings, the amount in the P&F unit income account that is greater than the actuarially determined amount required at the time of retirement to purchase the number of P&F units elected under ORS 238.440(1) will be returned to the member. Earnings will be based on the Board's assumed earnings rate, prorated from the effective date of P&F unit benefits to the date of distribution of the payment.

(6) **Crediting earnings to the P&F unit income account at age 65 and over.** Upon attaining age 65, an election to make additional contributions is cancelled. The P&F unit income account will continue to have earnings or losses credited until the P&F unit earnings end date.

(7) A member's P&F unit earnings end date is the later of:

(a) The first of the calendar month following the date a member reaches age 65; or,

(b) the first of the calendar month following the date a member separates from the service of all participating employers.

(8) If the P&F unit earnings end date happens during a period for which no annual distribution of earnings or losses have been made, earnings or losses will be credited to the P&F unit income account as follows:

(a) **Crediting of earnings, Tier One:**

(A) If earnings for the calendar year prior to the P&F unit earnings end date have not been credited to the Tier One member's P&F unit income account as of December 31 of that prior year, earnings will be credited for that year based on the greater of the latest year-to-date Tier One factor, 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 P&F unit earnings end date, will be based on the greater of:

(i) The latest year-to-date Tier One factor as of the P&F unit earnings end date for that year; or

(ii) The Board's assumed earnings rate, prorated from January 1 to the P&F unit earnings end date.

(b) **Crediting of earnings, Tier Two:**

(A) If earnings or losses for the calendar year prior to the P&F unit earnings end date have not been applied to the Tier Two member's P&F unit income account as of December 31 of that prior year, earnings or losses will be applied based on the latest year-to-date Tier Two factor available for that year.

(B) Earnings or losses for the calendar year of the Tier Two member's P&F unit earnings end date will be applied based on:

(i) The latest year-to-date Tier Two factor as of the P&F unit earnings end date.

(ii) If no calendar year-to-date calculation is available, the Board's assumed earnings rate, prorated from January 1 to the P&F unit earnings end date.

(c) **Refund of the P&F unit income account.** The P&F unit income account will be refunded, as soon as reasonably possible, on or after the first of the calendar month following the P&F unit earnings end date.

Stat. Auth: ORS 238.650

Stats. Implemented: ORS 238.440

Hist.: PERS 8-2000, f. & cert. ef. 12-5-00

459-007-0510 Crediting Earnings to Employer Contribution Accounts in the Fund

(1) For the purpose of this rule:

(a) "Employer contribution account" or "employer contribution accounts" means that portion of the Fund designated by the Board, as a portion of the net assets of the Fund, that is funded by employer contributions which are to be used for the purpose of payment of future retirement and death benefits.

(b) "Benefits In-Force Reserve" means the reserves for pensions accounts and annuities or pensions and annuities as provided in ORS 238.670(2).

(2) The portion of the Fund described in subsection (1)(a) of this rule shall be administered in accordance with ORS 238.660(2) and OAR 459-005-0010.

(3) Earnings shall be credited to amounts transferred from an employer contribution account as of the effective date of each transfer of funds from an employer contribution account to the Benefits In-Force Reserve in the Fund. Such transfer shall occur due to the death of a member, a disability retirement, a service retirement allowance, or any other transfer from an employer contribution account to the Benefits In-Force Reserve.

(a) Earnings to be credited to employer contribution accounts shall be as of the first of the calendar month following the date of transfer.

(b) Earnings to be credited to employer contribution accounts shall be based on the same method for determining the rate of earnings that is used to credit earnings to member accounts upon the death or retirement of a member.

(c) The crediting of earnings will occur as of a year-end closing on a retroactive basis.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238

Hist.: PERS 3-1999, f. & cert. ef. 7-27-99

459-007-0520

Distribution of Earnings or Losses to Employer Contribution Accounts in the Fund

(1) For the purpose of this rule:

(a) "Employer contribution account" or "employer contribution accounts" shall have the same meaning as provided in OAR 459-007-0510(1)(a).

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

(c) "Benefits In-Force Reserve" means the reserves for pensions accounts and annuities as provided in ORS 238.670(2).

(d) "OIC" shall have the same meaning as the Oregon Investment Council in ORS 293.706.

(e) "Oregon Equity Fund (OEF)" means that portion of the Fund that the OIC has directed to be invested by domestic equity managers as defined in ORS 293.741.

(f) Distribution rates are defined as follows:

(A) "Tier Two rate" means the actual net investment earnings or losses of the Fund, including deductions provided by law, for that calendar year, divided by net assets of the Fund as of the date of the calculation. The Tier Two rate does not include earnings or losses, or net assets attributable to that portion of an employer contribution account as defined in subsection (4)(a), or the earnings or losses, or net assets of the Variable Annuity Account;

(B) "OEF rate" means the rate used to distribute annual earnings or losses to active and inactive member accounts in the Variable Annuity Account; and

(C) "Tier One rate" means the Board adopted rate of earnings to be distributed to Tier One individual member accounts, to the portion of the employer contribution accounts that are attributable to Tier One members, and to the Benefits In-Force Reserve in the Fund attributable to retired Tier One members.

(2) Unless otherwise specified in this division, the crediting of earnings or losses to employer contribution accounts shall be made on a calendar year basis as of December 31 of each calendar year.

(3) The crediting of earnings or losses to all employer contribution accounts shall be based on the balance in each account at the end of that calendar year, but excluding:

(a) Earnings or losses credited under OAR 459-007-0510 for that calendar year; and

(b) Contributions by an employer other than those calculated based on salary as defined in ORS 238.005(11).

(4) The Board, on an annual basis, shall determine for each participating employer the amount of earnings or losses to be credited to each respective employer contribution account as follows:

(a) The portion of an employer contribution account, attributable to the total of active and inactive member account balances of the employer that are in the Variable Annuity Account in the Fund, shall be credited with earnings or losses at the OEF rate.

(b) The portion of an employer contribution account receiving Tier Two earnings or losses will be calculated as follows:

(A) After deducting the account balances used in subsection (4)(a) of this rule from the employer contribution account, the remaining portion of an employer contribution account will be multiplied by the relative percentage of active and inactive Tier Two member account balances of the employer, excluding the account balances used in subsection (4)(a) of this rule, divided by the total active and inactive member account balances of the employer in the Fund, excluding the account balances used in subsection (4)(a) of this rule.

(B) The portion of the employer contribution account calculated in paragraph (4)(b)(A) of this rule shall receive earnings or losses at the Tier Two rate.

(c) The remaining portion of an employer contribution account shall receive earnings at the rate adopted by the Board for Tier One members.

(5) The Board, on an annual basis, shall report to the Oregon Investment Council the portion of all employer contribution accounts as defined in subsection (4)(a). At the same time the Board shall request the Oregon Investment Council to consider this amount, and the impact of this rule in its investment allocation decisions.

(6) The provisions of this rule shall be applicable as of the calendar year ending December 31, 1999.

Stat. Auth: ORS 238.650

Stats. Implemented: ORS 238.005 - ORS 238.715

Hist: PERS 2-2000, f. & cert. ef. 3-10-00; PERS 4-2001, f. & cert. ef. 6-15-01

459-007-0530

Crediting Earnings To Employer Lump Sum Payments In The Fund

(1) *Definitions.*

(a) *Definition of employer lump sum payment.* "Employer lump sum payment" means any employer payment that:

(A) Is not regularly scheduled;

(B) Is not paid as a percentage of salary; and

(C) The contributor has control over the timing or whether to make the payment.

(b) *Definition of Gain-Loss Reserve.* "Gain-Loss Reserve" will have the same meaning as provided in ORS 238.670(3).

(c) *Definition of employer contribution account.* "Employer contribution account" means that portion of the Fund designated by the Board, as a portion of the net assets of the Fund, that is funded by employer contributions which are to be used for the sole benefit of members of the trust with the purpose of paying future retirement and death benefits.

(d) *Definition of Regular Account.* "Regular account" means the account established for each active and inactive member, excluding any amount of the member in the Variable Annuity Account established under ORS 238.260.

(e) *Definition of Tier One portion.* "Tier One portion" means the portion of an employer lump sum payment that is attributable to the relative percentage of the employer's Tier One members' regular account balances divided by the total of the employer's PERS members' regular account balances.

(f) *Definition of Tier Two portion.* "Tier Two portion" means the portion of an employer lump sum payment that is attributable to the relative percentage of the employer's Tier Two members' regular account balances divided by the total of the employer's PERS members' regular account balances.

(g) *Definition of Actual Distributable Earnings.* "Actual distributable earnings" means the earnings based on the change of value of the PERS portfolio, less deductions allowed by law, during the

period the payment is held. Actual distributable earnings may be negative.

(2) *Crediting of earnings*, Tier One. Earnings on the Tier One portion of the employer's lump sum payment will be based on the number of days held from the date of receipt through December 31 and will be the greater of:

(a) *Actual distributable earnings*: (A) For the month in which the payment is received. The latest-year-to-date Tier One factor as of the first of the calendar month following the date of the payment less the latest-year-to-date Tier One factor as of the first of month in which the payment is received divided by the number of calendar days in the month the payment is received times the number of days beginning with the date received through the end of the calendar month the payment is received, plus

(B) For the remainder of the year. The difference between the Board adopted Tier One rate for the calendar year and the latest-year-to-date Tier One factor as of the first of the calendar month following the date the payment was received; or

(b) *Assumed earnings rate*. The Board's assumed earnings rate prorated from the date of receipt of the payment through the end of the calendar year.

(3) *Crediting of earnings*, Tier Two. Earnings on the Tier Two portion of the employer's lump sum payment will be based on the change of value of the PERS portfolio from the date of receipt through December 31 as follows:

(a) For the month in which the payment is received. The latest-year-to-date Tier Two factor as of the first of the calendar month following the date of the payment less the latest-year-to-date Tier Two factor as of the first of month in which the payment is received divided by the number of calendar days in the month the payment is received times the number of days beginning with the date received through the end of the calendar month payment is received, plus

(b) For the remainder of the year. The difference between the Board adopted Tier Two rate for the calendar year and the latest-year-to-date Tier Two factor as of the first of the calendar month following the date the payment was received.

(4) *Gain-Loss Reserve Obligation*. A Gain-Loss Reserve obligation will be applied to the Tier One portion of the employer lump sum payment that exceeds the amount needed to pay the unfunded actuarial liability, which is determined by the most recent valuation, if:

(a) Tier One earnings available for distribution fall below the assumed earnings rate in the year in which the payment is received or the following calendar year; and

(b) The Tier One portion of the employer lump sum payment or payments exceed \$500,000 in a calendar year, with the initial \$500,000 being exempt from the obligation.

(5) If the Gain-Loss Reserve obligation is required under section (4) of this rule, it will be recovered from any future period earnings available for distribution to the related employer contribution account that are in excess of the assumed earnings rate. The obligation is calculated as follows:

(a) The Tier One portion of the employer lump sum payment minus the initial \$500,000 for the calendar year; multiplied by

(b) The difference between the assumed earnings rate and the Tier One actual distributable earnings for the period of:

(A) The year in which the payment is received: From the date of receipt through December 31; and

(B) The following year: From January 1 through December 31.

(c) The obligation will not exceed the assumed earnings rate times the amount in (5)(a) for the period of the obligation.

(6) If the employer lump sum payment is received between January 1 through January 15:

(a) The Gain-Loss Reserve obligation will apply only to the year in which the payment is received; and

(b) Earnings will be credited to the employer as if the payment had been part of the employer contribution account as of January 1 of that year."

Stat. Auth: ORS 238.650

Stats. Implemented: ORS 238

Hist.: PERS 9-2000, f. 12-15-00 cert. ef. 1-1-01

459-007-0900

Crediting Earnings To Integration Lump Sum Payments In The Fund

(1) *Definitions*.

(a) *Definition of an integration lump sum payment*. "Integration lump sum payment" means any funds received from an employer as the transfer of any prior plan assets under ORS 238.680, excluding any member account balances.

(b) *Definition of Gain-Loss Reserve*. "Gain-Loss Reserve" will have the same meaning as provided in ORS 238.670(3).

(c) *Definition of employer contribution account*. "Employer contribution account" means that portion of the Fund designated by the Board, as a portion of the net assets of the Fund, that is funded by employer contributions which are to be used for the sole benefit of members of the trust with the purpose of paying future retirement and death benefits.

(d) *Definition of Regular Account*. "Regular account" means the account established for each active and inactive member, excluding any amount of the member in the Variable Annuity Account established under ORS 238.260.

(e) *Definition of Tier One portion*. "Tier One portion" means the portion of an integration lump sum payment that is attributable to the relative percentage of the employer's integrating Tier One members' regular account balances divided by the total of the employer's integrating members' regular account balances.

(f) *Definition of Tier Two portion*. "Tier Two portion" means the portion of an integration lump sum payment that is attributable to the relative percentage of the employer's integrating Tier Two members' regular account balances divided by the total of the employer's integrating members' regular account balances.

(g) *Definition of Actual Distributable Earnings*. "Actual distributable earnings" means earnings based on the change of value of the PERS portfolio, less deductions allowed by law, during the period the payment is held. Actual distributable earnings may be negative.

(2) *No prior plan assets*. For the purposes of this rule, if the integrating employer's members have no prior plan assets to transfer, the integration contract will state what portion of the integration lump sum payment is attributable to Tier One and Tier Two.

(3) *Crediting of earnings*, Tier One. Earnings on the Tier One portion of the integration lump sum payment will be based on the number of days held from the date of receipt through December 31 and will be the greater of:

(a) *Actual distributable earnings*: (A) For the month in which the payment is received. The latest-year-to-date Tier One factor as of the first of the calendar month following the date of the payment less the latest-year-to-date Tier One factor as of the first of month in which the payment is received divided by the number of calendar days in the month the payment is received times the number of days beginning with the date received through the end of the calendar month the payment is received, plus

(B) For the remainder of the year. The difference between the Board adopted Tier One rate for the calendar year and the latest-year-to-date Tier One factor as of the first of the calendar month following the date the payment was received; or

(b) *Assumed earnings rate*. The Board's assumed earnings rate prorated from the date of receipt of the payment through the end of the calendar year.

(4) *Crediting of earnings*, Tier Two. Earnings on the Tier Two portion of the integration lump sum payment will be based on the change of value of the PERS portfolio from the date of receipt through December 31 as follows:

(a) For the month in which the payment is received. The latest-year-to-date Tier Two factor as of the first of the calendar month following the date of the payment less the latest-year-to-date Tier Two factor as of the first of month in which the payment is received divided by the number of calendar days in the month the payment is received times the number of days beginning with the date received through the end of the calendar month payment is received, plus

(b) For the remainder of the year. The difference between the Board adopted Tier Two rate for the calendar year and the latest-

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year-to-date Tier Two factor as of the first of the calendar month following the date the payment was received.

(5) *Gain-Loss Reserve Obligation.* A Gain-Loss Reserve obligation on the Tier One portion of an integration lump sum payment will be applied if:

(a) Tier One earnings available for distribution fall below the assumed earnings rate in the year in which the payment is received or the following calendar year; and

(b) The Tier One portion of the integration lump sum payment or payments exceed \$500,000 in a calendar year, with the initial \$500,000 being exempt from the obligation.

(6) If the Gain-Loss Reserve obligation is required under section (5) of this rule, it will be recovered from any future period earnings available for distribution to the related employer contribution account that are in excess of the assumed earnings rate. The obligation is calculated as follows:

(a) The Tier One portion of the integration lump sum payment minus the initial \$500,000 for the calendar year; multiplied by

(b) The difference between the assumed earnings rate and the Tier One actual distributable earnings for the period of:

(A) The year in which the payment is received: From the date of receipt through December 31; and

(B) The following year: From January 1 through December 31.

(c) The obligation will not exceed the assumed earnings rate times the amount in (6)(a) for the period of the obligation.

(7) If the integration lump sum payment is received between January 1 through January 15:

(a) The Gain-Loss Reserve obligation will apply only to the year in which the payment is received; and

(b) Earnings will be credited to the employer as if the payment had been part of the employer contribution account as of January 1 of that year.

(8) *Exclusion from the Gain/Loss Reserve obligation.* The Gain-Loss Reserve obligation will not be applied to the Tier One portion of the integration lump sum payment if:

(a) An employer can demonstrate that between January 1, 1998 and September 30, 2000, and for the purpose of integrating a group of employees into PERS:

(A) They have requested or received an actuarial valuation for that group of employees by an Actuary that is acceptable to the Board; or

(B) They have been in active negotiations with that group of employees and as a result have a signed collective bargaining agreement or letter of intent signed by both parties; and

(b) The employer signs an integration contract on or before January 15, 2002. The Director may extend the deadline up to 12 additional months if, in his/her judgment, circumstances beyond the control of the employer have prevented achievement of this requirement.

Stat. Auth: ORS 238.650

Stats. Implemented: ORS 238

Hist.: PERS 9-2000, f. 12-15-00 cert. ef. 1-1-01

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 may be charged for any cost estimates prepared by the regular office staff PERS, and shall pay 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 & ORS 238.620

Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0120; PERS 5-1999, f. & cert. ef. 11-15-99

459-009-0070

Actuarial Pooling of Employer Liability

(1) **Definitions.** Definitions as used in this rule:

(a) "Pooled" or "pooling" means the combining or grouping of public employers participating in PERS for the purposes of determining employer liability for retirement or other benefits under ORS Chapter 238.

(b) "Political subdivision" means any city, county, municipal or public corporation, any other political subdivision as provided in Oregon Law, or any instrumentality thereof, or an agency created by one or more political subdivisions to provide themselves governmental service. Political subdivision does not mean a school district or a community college.

(c) "Local government" shall have the same meaning as in subsection (1)(b) of this rule.

(d) "School district" means a common school district, a union high school district, or an education service district, including chartered schools authorized under Oregon law.

(e) "Liability" or "Liabilities" means any costs assigned by the Board to a specific employer or to a pool of employers to provide PERS benefits.

(f) "Actuarial Surplus" means the excess of the fair market actuarial value of assets over the actuarial liabilities.

(g) "Unfunded Actuarial Liabilities" or "UAL" means the excess of the actuarial liabilities over the fair market actuarial value of assets.

(h) "Transition Unfunded Actuarial Liabilities or Surplus" means the unfunded actuarial liability or actuarial surplus, attributed to an individual employer for the period of time the employer was not participating in a pool, prior to entry into the Local Government Rate Pool or the State and Local Government Rate Pool.

(i) "Consolidation" means the uniting or joining of two or more political subdivisions into a single new successor political subdivision.

(j) "Merger" means the extinguishment, termination and cessation of the existence of one or more political subdivisions by uniting with and being absorbed into another political subdivision.

(2) Two employer pools. In accordance with ORS 238.225 and only for the purposes of determining the amounts that are actuarially necessary to adequately fund the benefits provided by the contributions of PERS participating employers, employers will be pooled as a single employer as follows:

(a) The State and Local Government Rate Pool, which consists of the following employers:

(A) The State of Oregon, excluding the state judiciary under ORS 238.500;

(B) All community colleges; and

(C) All political subdivisions which elect to join the pool; or

(b) The School District Pool, which consists of all school districts of the state.

(3) The Local Government Rate Pool established as of January 1, 2000, and certified by the Board on June 12, 2001, for political subdivisions was dissolved as of December 31, 2001.

(4) **Political subdivision participation.** Political subdivisions may elect to participate in the State and Local Government Rate Pool

by the adoption of a resolution or ordinance by the governing body of the political subdivision and submitting a copy of the resolution or ordinance to the Board. The effective date of the election is established as follows:

(a) If the election is received, in accordance with OAR 459-005-0220, by December 31, 2001, the political subdivision will join the pool effective January 1, 2002. Its liability as a member of the pool, from the effective date of entering the pool, will be based on the actuarial valuation period beginning on January 1, 2002; or

(b) If the election is received, in accordance with OAR 459-005-0220, on or after January 1, 2002, the political subdivision will join the pool effective the first day of the next actuarial valuation period following the date of receipt of the election.

(c) Prior to entering the pool, any unfunded actuarial liabilities or surplus of such employers will be actuarially accounted for as provided in section (9) of this rule.

(d) Participation in the pool, as provided in section (4) of this rule, is irrevocable by the employer.

(e) Political subdivisions that do not elect to participate in the State and Local Government Rate Pool, as provided in section (4) of this rule, shall be regarded as individual employers for actuarial purposes.

(5) **Employer rates.** The basis for any actuarial computation required under ORS 238.225 or this rule will be the actuarial report on PERS prepared in accordance with ORS 238.605.

(6) In determining the amounts to be paid to PERS by a public employer pooled as provided in section (2) of this rule, the PERS consulting actuary will express those amounts as a rate or percentage of PERS covered payroll.

(7) In determining the amounts to be paid to PERS by employer participants in the Local Government Rate Pool, the State and Local Government Rate Pool, and the School District Pool, the PERS Board will issue rate(s) representing the amount necessary to provide benefits as provided in ORS 238.225, for all members of that pooled group. The rates, at a minimum, shall include:

(a) Rates representing the amount necessary to provide benefits as provided in ORS 238.225, for all Tier One and Tier Two police officer and firefighter members of that pooled group.

(b) Rates representing the amount necessary to provide benefits as provided in ORS 238.225, for all Tier One and Tier Two general service members of that pooled group.

(c) In addition to the rate(s) in this section, the State of Oregon will be charged the additional amount necessary to fund the Retiree Health Insurance Premium Account as provided in ORS 238.415(5).

(8) For each participant in the State and Local Government Rate Pool:

(a) Each employer's police officer and firefighter payroll as reported for the actuarial valuation will be multiplied times the rate described in subsection (7)(a) of this rule;

(b) Each employer's general service payroll as reported for the actuarial valuation will be multiplied times the rate described in subsection (7)(b) of this rule.

(c) By dividing the sum of the amounts in subsections (a) and (b) of this section by the employer's total payroll as reported for the actuarial valuation, a composite employer contribution rate is derived, which will be the basis for the employer contributions.

(9) **Unfunded actuarial liabilities or surplus.**

(a) If a political subdivision elected to join the Local Government Rate Pool described in section (3) of this rule, any transition unfunded actuarial liabilities or surplus as of December 31, 1999, will remain part of the actuarial calculation of employer costs for the individual political subdivision, until fully amortized, and will not be pooled with other public employers. However, the political subdivision will continue to be pooled for the purpose of funding the resulting unfunded actuarial liabilities associated with the Local Government Rate Pool from January 1, 2000 to December 31, 2001.

(b) If a political subdivision elects to join the State and Local Government Rate Pool as provided in section (4) of this rule, any transition unfunded actuarial liabilities or surplus as of the day immediately preceding the effective date of entering the pool will remain part of the actuarial calculation of employer costs for each individual politi-

cal subdivision, until fully amortized, and will not be pooled with other public employers in the State and Local Government Rate Pool.

(c) The pooled unfunded actuarial liability or surplus for the community colleges and the State of Oregon as of December 31, 2001, will remain part of the actuarial calculation of employer costs for community colleges and the State of Oregon combined until fully amortized, and will not be pooled with any political subdivision.

(d) Any unfunded actuarial liability or surplus for the State and Local Government Rate Pool that accrues during a valuation period occurring after December 31, 2001, will become part of the actuarial calculation of employer costs for only those employers who participated in the pool during that valuation period.

(e) Any unfunded actuarial liabilities or surplus of individual employers being amortized as provided for in subsection (9)(a), (9)(b) or (9)(c) of this rule, will be amortized based on the Board's adopted assumed earnings rate and amortization period. If at the end of the amortization period a surplus remains, the surplus will continue to be amortized as determined by the Board.

(f) If the PERS Board should change the assumed earnings rate, as it applies to ORS 238.255, in effect at the time of the amortization provided for in subsection (9)(a), (9)(b) or (9)(c) of this rule, the actuary will recalculate the remaining liability or surplus being amortized using the new assumed earnings rate. The amortization period provided in subsection (9)(e) will not change due to this recalculation.

(10) **Employer UAL lump-sum payment.** If an employer elects to make a UAL lump-sum payment to offset the unfunded actuarial liabilities under section (9)(a), (9)(b), (9)(c) or (9)(d) of this rule, or as provided under ORS 238.225(8), the payment shall be made in accordance with ORS 238.225 and OAR 459-009-0084.

(11) **New employers and integrations.** Political subdivisions entering PERS, as provided in ORS 238.015(3), 238.035, or 238.680, will be pooled upon election to join the State and Local Government Rate Pool as follows:

(a) To join the pool upon entering PERS, the election as well as the methods and effective date of entry, must be included in the coverage agreement or contract of integration. If the election is made after the effective date of joining PERS, the political subdivision will join the pool effective the first day of the next actuarial valuation period following the date of receipt of the election.

(b) An election completed by an integrating employer or a partially integrated employer will apply to all current and future groups of employees who are integrated into PERS by the employer. Upon entering the respective pool, any unfunded actuarial liabilities or surplus of such employers will be actuarially accounted for as provided in section (9) of this rule.

(12) **Dissolution of an employer or non-participating employer.** In the event a public employer is dissolved, no longer has PERS eligible employees, or is no longer eligible to participate in PERS, the employer or its successor will be required to make the contributions necessary to fund any remaining unfunded actuarial liability, as provided for in subsection (9)(a), (9)(b) or (9)(c) of this rule, for PERS benefits. The Board will determine the method and amount of funding this unfunded actuarial liability or the return of any surplus, as well as the determination of the employer's successor.

(13) **Consolidation of political subdivisions.** In the event a political subdivision consolidates with another political subdivision, the succeeding employer will determine the status in the pool by election into the pool.

(a) If the succeeding employer has not elected to join the pool as of the effective date of the consolidation, the following will occur:

(A) The pooled and non-pooled assets, liabilities, and employees of the former employers will continue as they were prior to the consolidation;

(B) Any unfunded actuarial liability or surplus of the former employers as of the effective date of the consolidation will be combined and assumed by the succeeding employer;

(C) New hires will not be pooled; and

(D) If the succeeding employer consists of pooled and non-pooled employees, separate payrolls must be maintained for each and reported to PERS.

(E) At any time after the consolidation, the succeeding employer may elect to join the pool and the effective date will be the first day of the next actuarial valuation period following the date of receipt of an election.

(b) If the succeeding employer elects to join the pool as of the effective date of the consolidation, the following will occur:

(A) Any non-pooled assets, liabilities, and employees of the former employers will be added to the pool;

(B) Any unfunded actuarial liability or surplus of the former employers as of the effective date of the consolidation will be combined and assumed by the succeeding employer and provided for as in subsection (9)(a) or (9)(b) of this rule; and

(C) New hires will be pooled.

(c) The succeeding employer must join the pool as of the effective date of the consolidation if it consists of only pooled employers. Any unfunded actuarial liability or surplus of the former employers as of the effective date of the consolidation will be combined and assumed by the succeeding employer.

(14) **Merger of political subdivisions.** In the event a political subdivision merges with another political subdivision, the status of the surviving employer in the pool depends on its status prior to the merger.

(a) If the surviving employer was not in the pool and has not elected to join the pool as of the effective date of the merger, the following will occur:

(A) The pooled and non-pooled assets, liabilities, and employees of the former employers will continue as they were prior to the merger;

(B) Any unfunded actuarial liability or surplus of the former employers as of the date of the merger will be transferred to the surviving employer;

(C) New hires will not be pooled; and

(D) If the surviving employer consists of pooled and non-pooled employees, separate payrolls must be maintained for each and reported to PERS.

(E) At any time after the merger, the surviving employer may elect to join the pool and the effective date will be the first day of the next actuarial valuation period following the date of receipt of an election.

(b) If the surviving employer was in the pool as of the effective date of the merger, the following will occur:

(A) Any non-pooled assets, liabilities, and employees of the former employers will be added to the pool as of the effective date of the merger;

(B) Any unfunded actuarial liability or surplus of the former employers as of the effective date of the merger will be transferred to the surviving employer and provided for in subsection (9)(a) or (9)(b) of this rule; and

(C) New hires will be pooled.

(15) In the event of any legal mandates or changes adopted by the Board:

(a) If the change provides for an increased or decreased benefit to police officer and firefighter members, but is not applicable to general service members, the PERS Board will direct the actuary to attribute the cost or savings of the change to the rate indicated in subsection (7)(a) of this rule.

(b) If the change provides for an increased or decreased benefit to general service members, but is not applicable to police officer or firefighter members, the PERS Board will direct the actuary to attribute the cost or savings of the change to the rate indicated in subsection (7)(b) of this rule.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.225 & ORS 238.605

Hist: PERS 1-2001, f. & cert. ef. 2-21-01; PERS 3-2001(Temp), f. & cert. ef. 4-19-01 thru 9-30-01; PERS 5-2001 f. & cert. ef. 9-21-01; PERS 6-2001(Temp), f. & cert. ef. 9-24-01 thru 12-31-01; PERS 8-2001, f. & cert. ef. 12-14-01; PERS 10-2002, f. & cert. ef. 7-15-02

459-009-0084

Unfunded Actuarial Liability Lump-Sum Payments by Employers Participating in an Actuarial Group

Purpose. The purpose of this rule is to establish procedures and requirements pursuant to ORS 238.225 for the adjustment of employ-

er contribution rates when an unfunded actuarial liability lump-sum payment is made by an individual public employer participating in an actuarial group.

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

(a) "Unfunded Actuarial Liability Lump-Sum Payment" means any employer payment:

(A) That is not regularly scheduled;

(B) That is not paid as a percentage of salary;

(C) That is made for the express purpose of reducing the employer's unfunded actuarial liability; and

(D) Where the employer has control over the timing or whether to make the payment.

(b) "Unfunded Actuarial Liability" or "UAL" means the excess of the actuarial liability over the actuarial value of assets.

(c) "Employer Contribution Account" means that portion of the Fund designated by the Board, as a portion of the net assets of the Fund, that is funded by employer contributions which are to be used for the sole benefit of members of the trust with the purpose of paying future retirement and death benefits.

(d) "Fair Value UAL" means the unfunded actuarial liability calculated using the fair value of assets rather than the smoothed actuarial value of assets used in the most recent actuarial valuation of PERS.

(e) "Transition Unfunded Actuarial Liabilities" means the unfunded actuarial liabilities attributed to an individual employer for the period prior to entry into the Local Government Rate Pool, or the State and Local Government Rate Pool if the employer did not participate in the Local Government Rate Pool.

(2) **Lump-sum payment amount.** If an individual employer elects to make a UAL lump-sum payment under this rule, the payment must be at least 25 percent of the individual employer's UAL calculated under section (5) of this rule or \$1 million, whichever is less. Alternatively, an employer may elect to pay 100 percent of the individual employer's UAL calculated under section (5) of this rule.

(3) **Requirements.** In order to make a UAL lump-sum payment, an employer must enter into an agreement with PERS for pre-payment of actuarial services and comply with the process described in sections (4) through (9) of this rule.

(4) **Initiating UAL lump-sum payment process.** At least 30 calendar days prior to the date the employer intends to make a UAL lump-sum payment, the employer shall notify the PERS Actuarial Services Coordinator in writing that it intends to make a UAL lump-sum payment. The notification shall specify:

(a) The amount of the intended lump-sum payment;

(b) Whether the intended payment is to be for 100 percent of the individual employer's calculated UAL; and

(c) No more than two potential dates for the payment. PERS staff shall notify the employer within five business days of receipt of the notification if the notification is incomplete or the process cannot be completed by the intended dates of the UAL lump-sum payment.

(5) **Calculation of the individual employer's UAL.** Upon receipt of a complete notification and verification of payment to the actuary for actuarial services, PERS staff shall request the PERS consulting actuary to calculate:

(a) 100 percent of the employer's share of the UAL for the actuarial group in which the employer is participating. This calculation shall be:

(A) Based on the fair value UAL of the actuarial pool in which the employer participates from the most recent actuarial valuation;

(B) Based on the PERS-covered salary, as a proportion of the pool, reported by the employer for the year of most recent actuarial valuation; and

(C) Adjusted to reflect the effect of time from the most recent actuarial valuation to the intended dates of payment, using generally recognized and accepted actuarial principles and practices.

(b) The effect of the following UAL lump-sum payment amounts on the individual employer's contribution rate using the one or two potential dates for payment specified by the employer in its notification in section (4) above:

(A) 100 percent of the individual employer's UAL calculated in subsection (5)(a) of this rule;

(B) The UAL lump-sum payment amount specified by the employer in its notification, if provided; and

(C) The minimum amount of the UAL lump-sum payment under section (2) of this rule.

(6) **Notification of calculation.** PERS staff shall notify the employer in writing of the results of the individual employer's calculation in section (5) above, including the effective dates for the reduced employer contribution rates based on the one or two potential dates for payment. In addition, PERS shall send the employer a notification describing risks and uncertainties associated with the calculation of the individual employer's UAL.

(7) **Notification of UAL lump-sum payment.** The employer or its agent shall notify the PERS Actuarial Services Coordinator in writing at least three business days prior to making a UAL lump-sum payment. This notification shall be in addition to the notification in section (4) of this rule and shall specify the amount of the payment and the date it intends to make the payment.

(8) **Method of payment.** A UAL lump-sum payment must be made by either electronic transfer or check payable to the Public Employees Retirement System.

(9) **Receipt of UAL lump-sum payment.** In order to adjust the employer contribution rate to that reported by PERS in section (6) of this rule, PERS must receive the correct funds no later than five business days after the corresponding intended date of the UAL lump-sum payment specified in the notification described in section (7) of this rule.

(a) If the UAL lump-sum payment is received by PERS on or before the intended date specified in the notification described in section (7) of this rule or within the five business days following the intended date, the new employer contribution rate will be effective for payrolls dated on or after :

(A) The date specified in the notification; or

(B) The first of the month following receipt of the UAL lump-sum payment by PERS, whichever is later.

(b) If the UAL lump-sum payment is received by PERS more than five business days after the intended payment date, the employer's contribution rate shall be adjusted in the next actuarial valuation based on the date of receipt of the UAL lump-sum payment.

(c) If the UAL lump-sum payment received is other than any amount specified in the notification under section (7) of this rule, the employer's contribution rate shall be adjusted to that rate in which the payment amount fully funds using the actuarial calculation in subsection (5)(b) of this rule.

(d) If the UAL lump-sum payment received is less than the minimum amount described in section (2) of this rule, the funds will be returned to the employer and no adjustment will be made to the employer contribution rate.

(e) Nothing in this rule shall be construed to prevent the Board from:

(A) Adjusting employer contribution rates based upon the date of receipt of funds or errors in the notification described in section (6) of this rule; or

(B) Taking action pursuant to ORS 238.225(1).

(10) **Actuarial treatment of the UAL lump-sum payment.** For actuarial purposes, the UAL lump-sum payment made by the employer shall first be applied to any transition unfunded actuarial liabilities. The remainder of the payment shall offset any pooled unfunded actuarial liabilities and shall be treated as pre-funded contributions and additional assets for the payment of obligations of the employer under ORS chapter 238, rather than as a reduction of those obligations.

(a) The UAL lump-sum payment shall be held in a UAL Lump-Sum Account for the benefit of the employer making the UAL lump-sum payment. On an annual basis the PERS consulting actuary shall notify PERS staff of the amount of pre-funded contributions held in the UAL Lump-Sum Account that are to be amortized for that year.

(b) After earnings or losses have been credited for the year, the amount amortized shall be transferred from the UAL Lump-Sum Account to the Employer Contribution Account of the actuarial group in which the employer is participating.

(11) **Crediting earnings or losses.** For the purposes of this rule, UAL Lump-Sum Accounts shall be credited with all interest and

other income received from investment of the account funds during the calendar year, less any amounts withheld from earnings for administrative expenses under ORS 238.610 or paid into the reserve account established under ORS 238.670(1).

(12) Nothing in this rule shall be construed to convey to an employer making a UAL lump-sum payment any proprietary interest in the Public Employees Retirement Fund or in the UAL lump-sum payment made to the fund by the employer.

(13) **Effective date of rule.** This rule shall apply to all UAL lump-sum payments initiated on or after the effective date of this rule.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.225

Hist.: PERS 5-2002(Temp), f. & cert. ef. 5-24-02 thru 9-30-02; PERS 13-2002, f. & cert. ef. 9-11-02

459-009-0085

Unfunded Actuarial Liability Lump-Sum Payments by Employers Not Participating in an Actuarial Group

Purpose. The purpose of this rule is to establish procedures and requirements pursuant to ORS 238.225 for the adjustment of employer contribution rates when an unfunded actuarial liability lump-sum payment is made by an individual public employer not participating in an actuarial group.

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

(a) "Unfunded Actuarial Liability Lump-Sum Payment" means any employer payment:

(A) That is not regularly scheduled;

(B) That is not paid as a percentage of salary;

(C) That is made for the express purpose of reducing the employer's unfunded actuarial liability; and

(D) Where the employer has control over the timing or whether to make the payment.

(b) "Unfunded Actuarial Liability" or "UAL" means the excess of the actuarial liability over the actuarial value of assets.

(c) "Employer Contribution Account" means that portion of the Fund designated by the Board, as a portion of the net assets of the Fund, that is funded by employer contributions which are to be used for the sole benefit of members of the trust with the purpose of paying future retirement and death benefits.

(d) "Fair Value UAL" means the unfunded actuarial liability calculated using the fair value of assets rather than the smoothed actuarial value of assets used in the most recent actuarial valuation of PERS.

(e) "Transition Unfunded Actuarial Liabilities" means the unfunded actuarial liabilities attributed to an individual employer for the period prior to entry into the Local Government Rate Pool, or the State and Local Government Rate Pool if the employer did not participate in the Local Government Rate Pool.

(2) **Lump-sum payment amount.** If an employer elects to make a UAL lump-sum payment under this rule, the payment must be at least 25 percent of the employer's UAL calculated under section (5) of this rule or \$1 million, whichever is less. Alternatively, an employer may elect to pay 100 percent of the employer's UAL calculated under section (5) of this rule.

(3) **Requirements.** In order to make a UAL lump-sum payment, an employer must enter into an agreement with PERS for pre-payment of actuarial services and comply with the process described in sections (4) through (9) of this rule.

(4) **Initiating UAL lump-sum payment process.** At least 30 calendar days prior to the date the employer intends to make a UAL lump-sum payment, the employer shall notify the PERS Actuarial Services Coordinator in writing that it intends to make a UAL lump-sum payment. The notification shall specify:

(a) The amount of the intended lump-sum payment;

(b) Whether the intended payment is to be for 100 percent of the employer's calculated UAL; and

(c) No more than two potential dates for the payment. PERS staff shall notify the employer within five business days of receipt of the notification if the notification is incomplete or the process cannot be completed by the intended dates of the UAL lump-sum payment.

(5) Calculation of an employer's UAL. Upon receipt of a complete notification and verification of payment to the actuary for actuarial services, PERS staff shall request the PERS consulting actuary to calculate:

(a) 100 percent of the employer's UAL. This calculation shall be:

(A) Based on the fair value UAL from the most recent actuarial valuation; and

(B) Adjusted to reflect the effect of time from the most recent actuarial valuation to the intended dates of payment, using generally recognized and accepted actuarial principles and practices.

(b) The effect of the following UAL lump-sum payment amounts on the employer's contribution rate using the one or two potential dates for payment specified by the employer in its notification in section (4) above:

(A) 100 percent of the employer's UAL calculated in subsection (5)(a) of this rule;

(B) The UAL lump-sum payment amount specified by the employer in its notification, if provided; and

(C) The minimum amount of the UAL lump-sum payment under section (2) of this rule.

(6) Notification of calculation. PERS staff shall notify the employer in writing of the results of the employer's calculation in section (5) above, including the effective dates for the reduced employer contribution rates based on the one or two potential dates for payment. In addition, PERS shall send the employer a notification describing risks and uncertainties associated with the calculation of the individual employer's UAL.

(7) Notification of UAL lump-sum payment. The employer or its agent shall notify the PERS Actuarial Services Coordinator in writing at least three business days prior to making a UAL lump-sum payment. This notification shall be in addition to the notification in section (4) of this rule and shall specify the amount of the payment and the date it intends to make the payment.

(8) Method of payment. A UAL lump-sum payment must be made by either electronic transfer or check payable to the Public Employees Retirement System.

(9) Receipt of UAL lump-sum payment. In order to adjust the employer contribution rate to that reported by PERS in section (6) of this rule, PERS must receive the correct funds no later than five business days after the corresponding intended date of the UAL lump-sum payment specified in the notification described in section (7) of this rule.

(a) If the UAL lump-sum payment is received by PERS on or before the intended date specified in the notification described in section (7) of this rule or within the five business days following the intended date, the new employer contribution rate will be effective for payrolls dated on or after:

(A) The date specified in the notification; or

(B) The first of the month following receipt of the UAL lump-sum payment by PERS, whichever is later.

(b) If the UAL lump-sum payment is received by PERS more than five business days after the intended payment date, the employer's contribution rate shall be adjusted in the next actuarial valuation based on the date of receipt of the UAL lump-sum payment.

(c) If the UAL lump-sum payment received is other than any amount specified in the notification under section (7) of this rule, the employer's contribution rate shall be adjusted to that rate in which the payment amount fully funds using the actuarial calculation in subsection (5)(b) of this rule.

(d) If the UAL lump-sum payment received is less than the minimum amount described in section (2) of this rule, the funds will be returned to the employer and no adjustment will be made to the employer contribution rate.

(e) Nothing in this rule shall be construed to prevent the Board from:

(A) Adjusting employer contribution rates based upon the date of receipt of funds or errors in the notification described in section (6) of this rule; or

(B) Taking action pursuant to ORS 238.225(1).

(10) Actuarial treatment of the UAL lump-sum payment. For actuarial purposes, the UAL lump-sum payment made by the

employer shall first be applied to any transition unfunded actuarial liabilities. The remainder of the payment shall be treated as pre-funded contributions and additional assets for the payment of obligations of the employer under ORS chapter 238, rather than as a reduction of those obligations.

(a) The UAL lump-sum payment shall be held in a UAL Lump-Sum Account for the benefit of the employer making the UAL lump-sum payment. On an annual basis the PERS consulting actuary shall notify PERS staff of the amount of pre-funded contributions held in the UAL Lump-Sum Account that are to be amortized for that year.

(b) After earnings or losses have been credited for the year, the amount amortized shall be transferred from the UAL Lump-Sum Account to the Employer Contribution Account.

(11) Crediting earnings or losses. For the purposes of this rule, UAL Lump-Sum Accounts shall be credited with all interest and other income received from investment of the account funds during the calendar year, less any amounts withheld from earnings for administrative expenses under ORS 238.610 or paid into the reserve account established under ORS 238.670(1).

(12) Nothing in this rule shall be construed to convey to an employer making a UAL lump-sum payment any proprietary interest in the Public Employees Retirement Fund or in the UAL lump-sum payment made to the fund by the employer.

(13) Effective date of rule. This rule shall apply to all UAL lump-sum payments initiated on or after the effective date of this rule.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.225

Hist.: PERS 5-2002(Temp), f. & cert. ef. 5-24-02 thru 9-30-02; PERS 13-2002, f. & cert. ef. 9-11-02

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; Renumbered from 459-010-0132

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

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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), ORS 238.705 & ORS 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 & ORS 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 Remitting of Employee Contributions

(1) Except as provided in ORS 238.200(1)(b), a participating employer shall remit to PERS in accordance with OAR 459-009-0100 six percent (6%) of gross salary and wages for each active member employed as required in ORS 238.200(1)(a). Unless otherwise agreed to as provided for in sections (2) or (3) of this rule, the employer shall withhold and remit the required contributions on an after-tax basis as defined in OAR 459-005-0001(36), and shall be known as "member paid after-tax contributions (MPAT)".

(2) In accordance with Internal Revenue Code (IRC) Section 414(h), and under provision of ORS 238.205(2), participating employers may voluntarily agree to assume or pay the six percent employee contribution on behalf of its employees, and shall be known as "employer paid pre-tax contributions (EPPT)". The employer assumption or payment of the uniform six percent employee contributions shall be subject to the following terms and conditions:

(a) The employer's employment agreement(s) to assume or pay the contributions must be evidenced by a certified copy of the employer's policy established by statute, charter, ordinance, administrative rule, executive order, collective bargaining agreement, or other written employment policy or agreement. The employer's employment policy(s) or agreement(s) shall specify:

(A) That the required PERS employee contribution of six percent of salary is deemed to be "picked up" for purposes of IRC Section 414(h)(2) and is assumed or paid for purposes of ORS 238.205(5)(b);

(B) That the employees do not have the option of receiving the assumed amount directly;

(C) That employee compensation shall not be reduced and that the employer shall provide the additional amounts necessary to make the employee contributions; and

(D) That the employer's employment policy(s) or agreement(s) is not retroactive in its application.

(b) The employer's employment policy(s) or agreement(s) to assume or pay employee contributions shall not 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.

(c) The employer's employment policy(s) or agreement(s) must be to assume or pay the full amount, and not a portion thereof, of the affected employees' six percent contributions required by ORS 238.200.

(d) The employer's policy(s) or agreement(s) may apply to all its employees or some of its employees. If it applies only to some employees, it shall apply uniformly to all employees of the public employer who are employed in similarly situated positions, such as, but not limited to:

(A) The chief executive officer or administrative head of a public employer.

(B) Management personnel, as defined by the public employer, not otherwise covered by a collective bargaining agreement.

(C) Confidential personnel, as defined by the public employer, not otherwise covered by a collective bargaining agreement.

(D) Administrative personnel, as defined by the public employer, not otherwise covered by a collective bargaining agreement.

(E) Personnel covered by a collective bargaining agreement.

(F) Other personnel, whether full time, part time, temporary, or as a substitute, who are not covered by a collective bargaining agreement.

(3) In accordance with IRC Section 414(h) and under provision of ORS 238.205(3), participating employers may voluntarily agree to "pick-up" the employee contributions withheld, and such picked-up contributions shall be known as "member paid pre-tax contributions (MPPT)". The employer "pick-up" of the uniform six percent employee contribution shall be subject to the following terms and conditions:

(a) The employer's agreement(s) to "pick-up" the contributions must be evidenced by a certified copy of the employer's policy established by statute, charter, ordinance, administrative rule, executive order, collective bargaining agreement, or other written employment policy or agreement. The employer's policy(s) or agreement(s) shall specify:

(A) That the required PERS employee contribution of six percent of salary is deemed to be "picked up" for purposes of IRC, Section 414(h)(2) and ORS 238.205(5)(a);

(B) That the employees do not have the option of receiving the picked-up amount directly;

(C) That employee compensation shall be reduced by the amount necessary to make the employee contributions; and

(D) That the employer's policy(s) or agreement(s) is not retroactive in its application.

(b) The employer's employment policy(s) or agreement(s) to "pick-up" employee contributions withheld shall not be construed to require an employer to open or re-negotiate a pre-existing collective bargaining agreement or change an employment policy before its normal expiration date.

(c) The employer's policy(s) or agreement(s) must be to "pick-up" the full amount, and not a portion thereof, of the affected employees' six percent contributions required by ORS 238.200.

(d) The employer's employment policy(s) or agreement(s) may apply to all its employees, or some of its employees. If it applies to only some of its employees, it shall apply uniformly to all employees of the public employer who are employed in similarly situated positions, such as, but not limited to:

(A) The chief executive officer or administrative head of a public employer.

(B) Management personnel, as defined by the public employer, not otherwise covered by a collective bargaining agreement.

(C) Confidential personnel, as defined by the public employer, not otherwise covered by a collective bargaining agreement.

(D) Administrative personnel, as defined by the public employer, not otherwise covered by a collective bargaining agreement.

(E) Personnel covered by a collective bargaining agreement.

(F) Other personnel, whether full time, part time, temporary, or as a substitute, who are not covered by a collective bargaining agreement.

(4) The notification of the employer's written employment policy(s) or agreement(s) to enter into or to revoke (1) the "pick-up", or (2) to assume or pay contributions on behalf of employees, shall be submitted to PERS for review and approval, and shall become effective on the date the notification is received by PERS. Additional information related to the employer's policy or agreement shall be provided at the request of staff and in the manner required by staff. If approved by PERS, such policy or agreement shall not be revoked by the employer except with prior written notice to PERS. All costs to correct any errors caused by failure to give required notice shall be borne by the employer.

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; PERS 7-1999 f. & cert. ef. 11-22-99

DIVISION 10

MEMBERSHIP

459-010-0000

Purpose and Authority

(1) In accordance with ORS 238.650, membership in PERS shall be administered by PERS under the policies and procedures established by the Board.

(2) The Board adopts the rules of chapter 459, division 010, to define and clarify, and to establish procedures for the efficient administration of membership in PERS in accordance with the provisions of ORS Chapter 238.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238

Hist.: PERS 12-1998, f. & cert. ef. 12-17-98

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) Employer/Employee Agreement. An official leave of absence without pay for any purpose must have the following in order to be considered bona fide:

- (a) An agreement in writing;
- (b) Accordance with the applicable law, rules and regulations;
- (c) The duration specifically stated at the time of granting; and
- (d) Certification to PERS by the employer granting such leave.

(2) Creditable Service. A leave of absence without pay which constitutes the major fraction of a calendar month:

(a) Shall not be used to calculate "years of membership" under ORS 238.300; and

(b) Shall not be used to determine "creditable service" under ORS 238.005(4) or "retirement credit" under ORS 238.005(10).

(3) Reporting Requirement. Unless otherwise agreed upon by PERS, the employer shall report the following in a format acceptable to PERS:

(a) Any period of leave of absence without pay, which constitutes the major fraction of a calendar month, for each member at the

time the leave begins. The reported period of leave of absence without pay must include an end date.

(b) Any amendment or extension to a previously reported period of leave of absence without pay.

(c) All members on a leave of absence without pay, which constitutes the major fraction of a calendar month, at the time the employer provides an itemized statement of all employee contributions, such as in the annual or pre-annual report.

(4) A PERS member on an official leave of absence without pay is not considered terminated from service with a participating employer.

(5) An employee on an official leave of absence without pay on the date the employer begins to participate in PERS, shall be considered to be an employee on such date for the purpose of determining eligibility for participation in PERS.

(6) A layoff from employment does not constitute a leave of absence without pay.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.300

Hist.: PER 8, f. 12-15-55; PERS 12-1998, f. & cert. ef. 12-17-98; PERS 12-2001, f. 12-14-01, cert. ef. 1-1-02

459-010-0011

Authorized Paid Leave of Absence

(1) Definition of "remuneration in return for services to the public employer." For purposes of ORS 238.005(11)(a), remuneration in return for services to the public employer means:

(a) The employee must be paid by the participating employer for their services;

(b) The employer and employee must lawfully agree, expressly or implicitly, that the payment is for services to the employer; and

(c) The payment must in fact be remuneration for services to the participating public employer.

(2) Paid Leave. For purposes of creditable service as defined in ORS 238.005(4), payments to employees during paid leave shall be considered salary, as defined under ORS 238.005(11), if:

(a) Prior to leave being taken, the employer and employee have lawfully agreed to the terms and conditions of paid leave either through an agreement or pursuant to the employment policies of the employer that are expressly or implicitly accepted by the employee; and

(b) The agreement or policy governing paid leave provides that such leave is:

(A) For a specified period, including a period that may be extended by the employer, which period may be either a specified time or determinable based on the character of the services to be performed;

(B) Subject to approval by the employer; and

(C) Subject to an express, reasonable expectation that the employee will return to the employee's regular duties.

(3) 600 Hour Requirement. For the purposes of ORS 238.005(7)(c), a member is not "inactive" when:

(a) The member is absent from service while on authorized paid leave; and

(b) The member's employment position normally requires 600 or more hours of service to the public employer in a 12 month period.

(4) IRS Requirements. The proposed rule must be consistent with IRS requirements and the agreements specified in this rule are governed by ORS 238.618.

(5) Effective Date. The provisions of this rule shall be prospective and effective on January 1, 2002. Employers shall maintain a record that past employment practices and agreements have been changed to comply with the provisions of this rule. Past employment practices, with respect to paid leaves of absence occurring prior to the effective date of this rule, are recognized as complying with the then requirements, statutes and rules governing PERS.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005, ORS 238.015, ORS 238.025, ORS 238.200

Hist.: PERS 9-2001, f. 12-14-01, cert. ef. 1-1-02

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" shall have the same meaning as provided in ORS 238.005(5) and OAR 459-005-0001.

(2) 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.

(3) If, under the common-law rules, there is an employee/employer relationship, it makes no difference how it is described. It is not controlling whether the employee is called an employee. It is not controlling how the payments are measured, how they are made, or what they are called. It is not controlling 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.

(4) In applying the common-law rules, the 20-factor test as described in Internal Revenue Service 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 238.650

Stats. Implemented: ORS 238.005(5)

Hist.: PER 8, f. 12-15-55; PERS 7-1992, f. & cert. ef. 11-9-92; PERS 12-1998, f. & cert. ef. 12-17-98

459-010-0032

Determination of Independent Contractor Status

(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 if the employing entity has the right to control or direct only the result of the labor or service 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 service to be performed and the context in which the labor or service are performed:

(a) Labor or service 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 per-

formance 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 service 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 service 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 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 person 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 element of direction and control in OAR 459-010-0030 are not present.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005(5)(a)

Hist.: PERS 7-1992, f. & cert. ef. 11-9-92; PERS 12-1998, f. & cert. ef. 12-17-98

459-010-0035

Six-Month Qualifying Service

(1) The six-months' qualifying service required for establishing membership shall be six full calendar months of service (uninterrupted by a total of more than thirty (30) working days during such six months) to the same employer or concurrent employers, beginning the first of the calendar month following the date of employment, or the first of the month in which employment occurred, if such employment occurred on the first of the calendar month or on the first working day of the month, as shown by the payroll records of the employer or employers concurrently employing the employee and so certified to PERS.

(2) Membership in the system shall be established as of the first of the month next following six month's service, as defined in section (1) of this rule, provided that the employee is employed on that date by the same employer or employers concurrently employing the employee during that six months period.

(3) For the purpose of this rule and ORS 238.015, a "full pay period" is defined as a calendar month.

(4) In the event an employee is on a qualified leave of absence under OAR 459-010-0010, the period of absence shall not constitute an interruption of service under Section (1) of this rule. The six-month waiting period shall be extended by the length of the qualified leave of absence.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.015

Hist.: PER 8, f. 12-15-55; PERS 12-1998, f. & cert. ef. 12-17-98

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 employee's 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

459-010-0042

Retroactive Salary Payments

(1) Retroactive payment of salary or wages due a member under the provisions of ORS 238.005(11)(b)(C) shall be allocated to the period(s) when the service was or would have been performed (when earned) for the purposes of determining employee and employer contributions and in computing benefits.

(2) For a Tier One member, a retroactive payment that is not made pursuant to ORS 238.005(11)(b)(C) shall not be allocated to any prior period, but shall be treated as wages on the date when paid, and contributions shall be forwarded only if the member was an active member of PERS on the date of the payment.

(3) For a Tier Two member, a retroactive payment that is not made pursuant to ORS 238.005(11)(b)(C):

(a) Shall be allocated to when earned for purposes of computing final average salary under ORS 238.435(2), exclusive of a lump sum payment for accrued vacation (ORS 238.435(1); and

(b) Shall have contributions forwarded only if the member was an active member of PERS on the date of the payment.

(4) In the event a terminated member is successful in a claim for wrongful discharge and part of the settlement reinstates the terminated member to employment:

(a) A terminated member shall become an active member of PERS in accordance with ORS 238.015;

(b) A terminated member may elect to re-deposit the funds withdrawn as provided in ORS 238.105 or within one year of the date of the settlement, whichever is the later.

(5) If a terminated member elects to redeposit as provided in section (4) of this rule prior to the six-month period in ORS 238.015, the terminated member shall become an active member of PERS of the first of the calendar month following the date of redeposit.

(6) In the event a terminated member is successful in a claim for wrongful discharge and part of the settlement reinstates the member to employment retroactively to date of termination, the retroactive payment of wages shall be subject to both employee and employer contributions, regardless of whether the member received a refund or elects to re-deposit a refund. The retroactive payment of wages shall be allocated to and deemed paid in the period the work would have been done.

Stat. Auth.: ORS 238.005(11) & ORS 238.650

Stats. Implemented: ORS 238.055(11), ORS 238.055(15), ORS 238.200 - ORS 238.230, ORS 238.300 & ORS 238.435

Hist.: PERS 12-1998, f. & cert. ef. 12-17-98

459-010-0045

Substitution of Annuity

(1) A public employer participating in the Public Employees Retirement System may petition the Public Employees Retirement Board to substitute an annuity which an employee has already commenced to purchase as provided by ORS 238.015(8) for all benefits otherwise provided for in ORS Chapter 238.

(2) The benefit adequacy of the substitute annuity shall be determined by the employer. In determining the adequacy of the benefits, the employer shall assure that the substitute annuity provides no less than eighty percent (80%) of the total actuarial present value of what the system would provide, under a service or disability retirement or a death benefit, and vesting for the same period of employment.

(3) A petition for substitution of an annuity by a public employer shall include the following:

(a) A copy of the proposed contract between the employee and the employer for the substitution of an annuity,

(b) A complete description of the annuity to be substituted.

(4) PERS staff shall have PERS' consulting actuary review the public employer's petition to assure:

(a) The documentation that the benefit adequacy meets the standard in section (2) of this rule.

(b) The proposed contract between the employee and the employer is in compliance with state and federal laws and regulations.

(c) The public employer shall bear the costs of the actuarial review.

(5) The Board may require the public employer to provide additional information necessary to confirm the employer's determination of the actuarial present value of benefits to be provided by the substituted annuity.

(6) The retirement annuity provided by the Federal Retirement System is considered as an acceptable annuity for an employee participating in that plan and desiring to be exempted from contributing to PERS, provided the federal annuity is adequate in amount.

(7) In all cases, the agreement for substitution of an annuity must be executed by the employee, the employer, and the [Board] system.

(8) In the event an employee elects to no longer substitute an annuity, the employee, if otherwise eligible, shall become an active member in the system effective with the first of the calendar month following receipt of the employee's written election.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.015(8)

Hist.: PER 8, f. 12-15-55; PERS 12-1998, f. & cert. ef. 12-17-98

459-010-0055

Withdrawal of Contributions

(1) Before normal retirement age a member shall not be eligible to withdraw the member's account balance from the Public Employees Retirement Fund unless the member has:

(a) A severance from employment with all employers participating in PERS and all employers in the same controlled group as a participating employer; and

(b) Requested a refund of the member's account balance prior to reaching earliest service retirement age.

(2) Definitions for the purpose of this rule:

(a) A "controlled group" is a group of employers required to be treated as a single employer for purposes of satisfying the requirements for qualified retirement plans under federal law.

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(b) The term "enters or re-enters the service of an employer participating in the system" shall mean an individual establishes or reestablishes active membership in the system.

(c) The terms "terminated" or "terminated member" shall not include a retired member.

(3) For the member to be entitled to a refund of the member's account in the fund, a member shall have terminated from employment with all participating employers and requested a refund the member's account prior to being eligible for service retirement benefits and shall continue to remain absent from a qualifying position on the payroll of any participating employer for a full calendar month following the month of separation from a qualifying position.

(4) The request for a refund shall include all amounts credited to the member in the Fund. Under no circumstance may a member request a refund of a portion of balance of the member's account in the Fund or the member's account in the Variable Annuity Account, or any combination thereof.

(5) If a participating employer re-employs or employs a member in a qualifying position, who has received a refund of their account in the fund, prior to the first day of the second calendar month following the month in which the member had previously separated from a qualifying position, PERS shall notify the employer that the employer shall be obligated to the Fund for the full amount of the member's refund 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 Fund, and the member shall not be re-employed until the requirements of section (3) of this rule are satisfied;

(b) The member repays the refunded amount in full to the Fund within thirty (30) days following the effective date of such employment; or

(c) The full amount of the refund is repaid to the 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 twenty-five percent (25%) of the member's net pay.

(6) In the event a participating employer employs or re-employs a member who has filed a request for a refund during the requisite period in section (3) of this rule and has failed to notify the system forthwith of the employment, allowing a refund to be made, the employer shall hold PERS harmless for any actual or perceived loss of benefits as a result of the refund.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.265

Hist.: PER 8, f. 12-15-55; PER 4-1979(Temp), f. & ef. 11-21-79; PER 7-1979(Temp), f. & ef. 12-11-79; PER 3-1980, f. & ef. 5-8-80; PER 2-1981, f. & ef. 1-15-81; PERS 5-1999, f. & cert. ef. 11-15-99

459-010-0078

Volunteer Service

(1) "Volunteer Service" means service as a volunteer to a participating employer for which:

(a) There is no remuneration for the service rendered,

(b) There is no employee/employer relationship during such service, as described in OAR 459-010-0030,

(c) There is no requirement of any task or job to be completed, and

(d) There is no agreement or requirement for any specified tenure of service.

(2) Volunteer service shall not be considered:

(a) For determining eligibility for membership in PERS.

(b) For determining active membership in PERS.

(c) For determining limitations on reemployment of retired members of PERS by a participating employer.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - ORS 238.715

Hist.: PERS 12-1998, f. & cert. ef. 12-17-98

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 Firefighters

Upon proper application by the employer, volunteer firefighters as a unit are eligible for membership even though all other employees of that employer are excluded.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.015

Hist.: PER 8, f. 12-15-55; PERS 12-1998, f. & cert. ef. 12-17-98

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

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 Prior Service Credit for Accumulated Seasonal Employment

In computing prior service credit for accumulated seasonal employment, the total days of seasonal employment worked by the employee, as certified by the employer, shall be divided by 260 to obtain the number of years of prior service credit. 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

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prior service for that year, and the extra days shall not be added to other seasonal employment.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 & ORS 238.225

Hist.: PER 8, f. 12-15-55; PERS 12-1998, f. & cert. 12-17-98

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 PERS, may cancel that membership at the end of a term of office by giving written notice to PERS. Such notice shall be filed with PERS within 30 days of the end of the term of office. In the absence of such notice, if an officer contributes to PERS for more than one pay period in a subsequent term of office, the officer shall be deemed to have elected to continue participation for the duration of such term of office.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.015

Hist.: PER 8, f. 12-15-55; PERS 12-1998, f. & cert. ef. 12-17-98

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

DIVISION 11

RETIREMENT CREDIT

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 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.

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(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

(1) Any member who is within five years of the earliest service retirement age may terminate employment with all participating employers and become eligible for reduced service benefits, including prior service pension, on reaching the earliest service retirement age by filing a written application with PERS for such benefits. The member's benefit account shall be established on the first day of the month in which the application is received by PERS 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.

(2) Before normal retirement age, a member shall not be eligible to retire unless the member has a severance from employment with all employers participating in PERS and all employers in the same controlled group as a participating employer. For this purpose, a "controlled group" is a group of employers required to be treated as a single employer for purposes of satisfying the requirements for qualified retirement plans under federal law.

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; PERS 5-1999, f. & cert. ef. 11-15-99

459-013-0260

Effective Date Used in the Establishment of Service Retirement Benefits

(1) A member's service retirement allowance under ORS 238.300 and 238.305 will be established as of the member's effective date of retirement.

(2) A member's effective date of retirement is the first day of the calendar month specified by the member, who is eligible for retirement under the provisions of ORS 238.280 or 238.435(3), on their service retirement application.

(3) The effective date of retirement will be no earlier than:

(a) The first of the calendar month in which an application is received by the Public Employees Retirement System (PERS); or

(b) The first of the calendar month following the date of separation from all employers participating in PERS and in the same controlled group.

(4) For the purpose of this rule, "controlled group" is a group of employers required to be treated as a single employer for the purpose of satisfying the requirements for qualified retirement plans under federal law.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.300 & ORS 238.305

Hist.: PERS 10-2000, f. 12-15-00 cert. ef. 1-1-01

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 rela-

tionship 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) and (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.

(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) and (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

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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) and (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 - ORS 183.550, ORS 237.171 & ORS 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

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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 recommendation 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 repre-

resented 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

(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

459-015-0045

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.

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;

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(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) **Reemployment under ORS 238.082(2).** A retired member of the system, receiving a service retirement allowance, may be employed under ORS 238.082(2) 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 1039 hours in a calendar year; or

(b) If a retired member is receiving old age, survivors or disability benefits under the federal Social Security Act, employment is limited to the greater of 1039 hours in a calendar year or the total number of hours at a specified hourly rate of pay, so that the annual compensation of the retiree does not exceed the following:

(A) For retired members who are 62 through 64 years of age, the limit is \$10,680 for the year 2001, and indexed for future years;

(B) For retired members who are 65 through 69 years of age, the limit is \$25,000 for the year 2001, and indexed for future years; or

(C) Retired members who are 70 years of age or older may work an unlimited number of hours.

(c) Limitations on employment in this section shall be based on the number of hours employed on and after the retired member's effective date of retirement.

(d) Limitations on employment in this section shall apply to all retired members of PERS, including retired members who, upon reemployment, elect to participate in an Optional Retirement Plan under ORS 243.800, or an Alternative Retirement Plan under ORS 353.250(2). However, the limitations on employment in this section

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do not apply if the person meets the requirements under ORS 238.082(3).

(2) A participating employer may be required to certify to PERS that a retired member has not been employed by that employer a greater number of hours than allowed in ORS 238.082(2) and this rule. In addition, the participating employer may be required to make available to PERS, business and employment records to substantiate the actual number of hours a retired member was employed.

(3) **Exceeding the hourly limitation.** If a retired member is reemployed within the limitations of ORS 238.082(2) and section (2) of this rule, but the period or periods of employment subsequently exceeds those limits, the following shall occur if employment continues into the month following the date the limits are exceeded:

(a) PERS shall terminate the retired member's benefits. The last monthly service retirement allowance the member is entitled to shall be for the month in which the limits were exceeded.

(b) 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.

(4) A retired member who qualifies for reemployment without loss of benefits under section (1) 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.

(5) **Reemployment under ORS 238.078.** If a retired member is reemployed by a participating employer under the provisions of ORS 238.078, the following shall occur and will be effective on the date of reemployment:

(a) PERS shall terminate the retired member's benefits. The last monthly service retirement allowance the member is entitled to shall be for the month prior to the first of the calendar month the member is reemployed;

(b) The member shall reestablish active membership; and

(c) If the member has been retired less than six months as of the effective date of reemployment, all retirement benefits received by the member must be repaid to PERS in a lump sum payment before the member can be reemployed.

(6) **Reporting requirement.** The employer shall notify PERS under which statute the retiree is reemployed in a format acceptable to PERS.

(7) The provisions of this rule are not applicable to a person who is not defined as an employee in OAR 459-005-0001.

(8) **Sick Leave.** Accumulated unused sick leave reported by the employer to PERS upon retirement, as provided for in ORS 238.350, shall not be made available to a retired employee returning to work under the provision of sections (1) or (5) of this rule and as provided for in ORS 238.078 and 238.082."

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; PERS 13-1998, f. & cert. ef. 12-17-98; PERS 7-2001, f. & cert. ef. 12-7-01

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 post-marked 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:
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 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,

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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

(1) 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

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quality consistent with health insurance needs of eligible retirees, and their spouses or dependents.

(2) Benefits shall be provided under the Board's health insurance programs by paying out of available funding the Board's costs of health care coverage provided under insurance contract between the Board and insurance carriers.

Stat. Auth.: ORS 238.410 & ORS 238.650

Stats. Implemented: ORS 238.410, ORS 238.415, & ORS 238.420

Hist.: PERS 4-1996, f. & cert. ef. 6-11-96; PERS 5-1999, f. & cert. ef. 11-15-99

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) "PEBB" means the Public Employees' Benefit Board established under ORS 243.061.

(14) "RHIA" means the Retirement Health Insurance Account established under ORS 238.420 to help defray the cost of the Medicare Companion Plan.

(15) "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.

(16) "Medicare Companion Plan" means a PERS-sponsored health insurance plan for eligible persons who are eligible for and enrolled in Medicare.

(17) "Carrier" shall have the same meaning as provided in ORS 238.410(1)(a).

(18) "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.

(19) A "Plan Year" is the 12-month period beginning January 1 and ending December 31.

(20) "Third Party Administrator" means the individual or organization that the Board contracts with to provide administrative services as specified in the contract.

(21) "Medicare" means the federal health care insurance plan established under Title XVIII of the Social Security Act as amended.

(22) "Pre-existing condition clause" means a health insurance benefit plan provision that excludes coverage for services, charges or expenses incurred during a specified period (not to exceed six months) immediately following the effective date of coverage for a condition for which medical advice, diagnosis, care or treatment was recommended or received during the six month period immediately preceding the effective date of coverage.

Stat. Auth.: ORS 238.410 & ORS 238.650

Stats. Implemented: ORS 238.410, ORS 238.415 & ORS 238.420

Hist.: PERS 4-1996, f. & cert. ef. 6-11-96; PERS 15-1998, f. & cert. ef. 12-17-98; PERS 5-1999, f. & cert. ef. 11-15-99

459-035-0010

Standard Retiree Health Insurance Account

(1) ORS 238.410(7) establishes the Standard Retiree Health Insurance Account (SRHIA). The SRHIA shall be used only for the purposes set forth in ORS 238.410(7).

(2) Upon receipt by PERS, all premium payments of eligible person as described in OAR 459-035-0090, Payment of Premium for Retiree Health Insurance, shall be deposited in the SRHIA.

(3) Funds in the SRHIA shall be paid out only as follows:

(a) In accordance with contract(s) with an insurance carrier(s) premiums charged by a carrier for eligible persons' health insurance coverage's, exclusive of amounts contributed to a carrier by PERS on behalf of eligible persons from the RHIA and RHIPA accounts in the Fund, shall be paid to the carrier(s) from the SRHIA.

(b) In accordance with contract(s) entered into by the Board under provision of ORS 238.410(6) administrative costs incurred in administering the PERS health insurance program shall be paid from the SRHIA.

Stat. Auth.: ORS 238.410 & ORS 238.650

Stats. Implemented: ORS 238.410, ORS 238.415 & ORS 238.420

Hist.: PERS 5-1999, f. & cert. ef. 11-15-99

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 459-035-0001(11).

(2) An eligible spouse means the spouse of an eligible retiree.

(3) An eligible dependent means a dependent child as defined in OAR 459-035-0001(18), 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 459-035-0001(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) 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 459-035-0001(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 PEBB 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 PEBB (without regard to employees who have opted out of PEBB - sponsored health insurance coverage), the staff shall calculate the change in value of the average of active PEBB 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 PEBB for the most recent three-month period;

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(B) Obtain the health insurance premium for each health insurance plan sponsored by PEBB 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 PEBB 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 subparagraph (i) of this paragraph;

(iv) Step 4. Divide the total in Step 3 of subparagraph (iii) of this paragraph by the total in Step 2 of subparagraph (ii) of this paragraph.

(E) Compute the change in value of the average active PEBB 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 subparagraph (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 1.6423. The factor 1.6423 is the estimated ratio of non-Medicare retiree claims cost to active claims cost;

(iv) Step 4. Multiply the result of Step 2 of subparagraph (ii) of this paragraph by the result of Step 3 of subparagraph (III) of this paragraph for each plan;

(v) Step 5. Total the results for all of the calculations in Step 4 of subparagraph (iv) of this paragraph;

(vi) Step 6. Total the results of the average participation calculations for all plans in Step 2 of subparagraph (ii) of this paragraph;

(vii) Step 7. Divide the total premium in Step 5 of subparagraph (v) of this paragraph by total average participation as calculated in Step 6 of subparagraph (vi) of this paragraph.

(F) The result of Step 7 of subparagraph (E)(vii) of this subsection minus Step 4 of subparagraph (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 subparagraph (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; PERS 15-1998, f. & cert. ef. 12-17-98; PERS 12-2000(Temp), f. 12-15-00 cert. ef. 1-1-01 thru 6-29-01; PERS 2-2001, f. & cert. ef. 4-12-01

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 ninety (90) days of the retiree's effective date of retirement;

(B) At any time if covered under another group health insurance plan for twenty-four (24) consecutive months immediately preceding enrollment, provided that the application for enrollment is filed within thirty (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 ninety (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.

(c) 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 ninety (90) days of the retiree's death;

(B) At any time if covered under another group health insurance plan for twenty-four (24) consecutive months immediately preceding enrollment, provided that the application for enrollment is filed within thirty (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 ninety (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 thirty (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 459-035-0001(22) unless the eligible person was covered under another group health insurance plan for at least twenty-four (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 ninety (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.

Stat. Auth.: ORS 238.410 & ORS 238.650

Stats. Implemented: ORS 238.410, ORS 238.415 & ORS 238.420

Hist.: PERS 4-1996, f. & cert. ef. 6-11-96; PERS 15-1998, f. & cert. ef. 12-17-98

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 & ORS 238.650

Stats. Implemented: ORS 238.410, ORS 238.415 & ORS 238.420

Hist.: PERS 4-1996, f. & cert. ef. 6-11-96

459-035-0090

Retiree Health Insurance Employee Contributions Account

(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 contributions for that coverage:

(a) The direct payment method by an electronic transfer of the monthly contribution 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 contribution for the PERS-sponsored health insurance plan to the Third Party Administrator; or

(c) The deduction method wherein PERS shall deduct the monthly contribution from the service or disability retirement allowance or other benefit payable to the eligible person and forward the contribution to the Third Party Administrator.

(A) The total contribution 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 contribution for the PERS-sponsored health insurance plan, the deduction method may not be used.

(2) Employee contributions for the PERS-sponsored health insurance plan shall be paid monthly and shall consist of the following:

(a) The premium charged by the carrier for the eligible person's health insurance coverage, less any amount contributed on the eligible person's behalf from the RHIA or RHIPA; and

(b) The eligible person's share of the administrative costs incurred by PERS in administering the health insurance program. The administrative fee shall be determined by the actuary retained by the Board in accordance with applicable law and regulations, applying reasonable actuary standards consistently from year to year.

(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 PERS-sponsored health insurance coverage.

(5) On receipt of an eligible person's contribution, the Third Party Administrator shall deposit the contributions in the Retiree Health Insurance Employee Contributions Account. Amounts deposited in Retiree Health Insurance Employee Contributions Account shall use only to pay health insurance premiums on behalf of eligible persons and the costs incurred by PERS in administering the health insurance program.

Stat. Auth.: ORS 238.410 & ORS 238.650

Stats. Implemented: ORS 238.410, ORS 238.415 & ORS 238.420

Hist.: PERS 4-1996, f. & cert. ef. 6-11-96; PERS 5-1999, f. & cert. ef. 11-15-99

459-035-0100

Employer Contributions for Retiree Health Insurance

(1) Each employer making contributions to the RHIPA under OAR 459-0035-0050 or the RHIA under OAR 459-035-0060 shall, at the time of making the contribution, designate whether the contribution is allocable to the RHIPA or the RHIA.

(2) Any forfeitures of amounts deposited in the RHIA or the RHIPA shall be used to pay the administrative expenses of the health insurance program or to reduce employer contributions to the RHIA and RHIPA on an equitable basis as determined by the Board.

Stat. Auth.: ORS 238.410 & ORS 238.650

Stats. Implemented: ORS 238.410, ORS 238.415 & ORS 238.420

Hist.: PERS 5-1999, f. & cert. ef. 11-15-99

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 pre-

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mium 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 & ORS 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 containment.
- (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 & ORS 238.650

Stats. Implemented: ORS 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 & ORS 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) & ORS 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 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 bene-

fits 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 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) & ORS 238.650

Stats. Implemented: ORS 238.465

Hist.: PERS 5-1996, f. & cert. eff. 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

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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 member'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 subparagraph (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 percent 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 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.

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(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 originally 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 238.395.

Stat. Auth: ORS 238.465(3) & ORS 238.650

Stats. Implemented: ORS 238.465

Hist.: PERS 5-1996, f. & cert. ef. 6-11-96

459-045-0020

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 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), and (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 administerable pursuant to ORS 238.005 to 238.715, and OAR 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) & ORS 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 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 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 member 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 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 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 Code (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 rata 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) & ORS 238.650

Stats. Implemented: ORS 238.465

Hist.: PERS 5-1996, f. & cert. eff. 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) & ORS 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,

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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

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 within PERS for the administration of deferred compensation plans under ORS 243.401 to 243.507 pursuant to Section 457 of the Internal Revenue Code. ORS 243.401(5) defines a deferred compensation plan as a plan established by the state or a local government that has as its purpose the deferral of compensation payable to eligible employees of the state or local government and the deferral of income taxation on the deferred compensation.

(2) In accordance with ORS 243.435, 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 243.421, 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 293.701 to 293.820, 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 243.470
Stats. Implemented: ORS 243.401 - ORS 243.507
Hist.: PER 2-1995, f. 10-13-95, cert. ef. 11-1-95; PERS 5-2000, f. & cert. ef. 8-11-00

459-050-0001

Definitions

The words and phrases used in this Division have the same meaning given them in ORS 243.401 – 243.507 and 293.701 –

293.820. Specific and additional terms are defined as follows unless the context requires otherwise.

(1) "Advisory Committee" means the committee established pursuant to ORS 243.505 and appointed by the Board.

(2) "Alternate Payee" shall have the same meaning as provided in ORS 243.507(9)(a).

(3) "Alternate Payee Account" means a separate account created under ORS 243.507 in the name of an alternate payee pursuant to a court order.

(4) "Alternate Payee's Award" is the portion of a participant's Deferred Compensation account awarded to an alternate payee by a court order, and includes the creation of a separate account in the fund in the name of the alternate payee.

(5) "Alternate Payee Release" means a written statement signed by the alternate payee and received by the Deferred Compensation Program. An alternate payee release may pertain to any of the matters set forth in subsections (5)(a) through (5)(c) below, may authorize the release of information, and direct the Deferred Compensation Program to send information to a named person at a specified address.

(a) Pertaining to the alternate payee's interest in the participant's deferred compensation account;

(b) Pertaining to the alternate payee's account and distribution(s) if a separate account has been created in the name of the alternate payee; or

(c) Pertaining to award information contained in any draft or final court order in regard to the alternate payee on record with the Deferred Compensation Program.

(6) "Board" shall have the same meaning as provided in ORS 243.401(1).

(7) "Committee" shall have the same meaning as provided in section (1) of this rule.

(8) "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.

(9) "Deferred Compensation Account" means the participant's individual account in the Deferred Compensation Program as defined in ORS 243.401(5) that is made up of employee contributions and earnings.

(10) "Deferred Compensation Advisory Committee" shall have the same meaning as provided in section (1) of this rule.

(11) "Deferred Compensation Contract" shall have the same meaning as provided in ORS 243.401(3).

(12) "Deferred Compensation Investment Program" shall have the same meaning as provided in ORS 243.401(4).

(13) "Deferred Compensation Manager" means the person appointed by the Director to serve as the Manager of the Deferred Compensation Program of the Public Employees Retirement System.

(14) "Deferred Compensation Plan" shall have the same meaning as provided in ORS 243.401(5).

(15) "Deferred Compensation Program" means a program established by the State of Oregon and administered under policies established by the Public Employees Retirement Board that has as its purposes the deferral of compensation to eligible employees and the deferral of income taxation on the deferred compensation.

(16) "Disclosure Statement" means the statement, required by ORS 243.450, that describes the probable income and probable safety of money deferred.

(17) "Domestic Relations Order" means a judgment, decree or court order made pursuant to a state's domestic relations law that creates or recognizes the existence of an alternate payee's right, or assigns to an alternate payee the right, to receive all or a portion of a participant's deferred compensation account or benefit payments.

(18) "Draft Court Order" means an Order as described in section (8) above which contains proposed language for the division of a Deferred Compensation Account, and has been prepared but not approved or signed by the court or has not been filed with the court clerk.

(19) "Eligible Employee" shall have the same meaning as ORS 243.401(6) for an employee of the state, or as provided in the plan

description of a local government deferred compensation plan, and shall exclude persons who are inmates of any prison or detention facility operated by the state or local government, and persons who are employed by contract with a private sector business.

(20) "Estimate" means a projection of distributions prepared by staff. An estimate is not a guarantee or promise of actual distributions that eventually may become due and payable.

(21) "Final Court Order" means a court order or judgment that has been signed by a judge and shows the stamp of the court clerk or trial court administrator, indicating the order is a certified copy of the original record on file with the court.

(22) "Fund" shall have the same meaning as provided in ORS 243.401(7).

(23) "Local Government" shall have the same meaning as provided in ORS 243.401(8).

(24) "Local Government Deferred Compensation Contract" means a written contract between a local government and an eligible employee of that local government that provides for deferral of income for service currently rendered, as defined in the established policy of the local government.

(25) "Local Government Deferred Compensation Plan" shall have the same meaning as provided in ORS 243.401(9).

(26) "Manager" shall have the same meaning as provided in section (13) of this rule.

(27) "OIC" means the Oregon Investment Council created by ORS 293.706.

(28) "Participant" means a person defined in either ORS 243.401(10) or 243.401(13) participating in one or more deferred compensation plans under ORS 243.401 to 243.507, either through current or past deferrals or compensation.

(29) "Participant's Release" means a written statement signed by a deferred compensation plan participant and received by the Deferred Compensation Program. A participant's release may pertain to any of the matters set forth in subsections (29)(a) through (29)(c) below, may authorize the release of information, and direct the Deferred Compensation Program to send information to a named person at a specified address.

(a) Pertaining to the participant's deferred compensation account;

(b) Pertaining to the participant's distribution(s); or

(c) Pertaining to award information contained in any draft or final court order in regard to the participant on record with the Deferred Compensation Program.

(30) "Participating Local Government" shall have the same meaning as provided in ORS 243.401(11).

(31) "Payroll Disbursing Officer" means:

(a) The person authorized by the state to disburse moneys in payment of salaries and wages of employees of a state agency; or

(b) The person authorized by a local government to disburse money in payment of salaries and wages of employees of that local government.

(32) "PERS" shall have the same meaning as provided in ORS 243.401(14).

(33) "Plan and Agreement" means a contract between the eligible employee and the plan sponsor which defines the circumstance, responsibilities and liabilities of both parties relating to the participation of the employee in the Deferred Compensation Program.

(34) "Plan Sponsor" means a public employer that establishes an eligible deferred compensation plan as defined in Section 457 of the Internal Revenue Code and which enters into an agreement with PERS to participate in the Deferred Compensation Program.

(35) "Program" shall have the same meaning as provided in section (15) of this rule.

(36) "Public Employees Retirement Board" shall have the same meaning as provided in ORS 243.401(1).

(37) "Public Employer" means the state or a local government as defined in ORS 243.401(8).

(38) "Qualified Domestic Relations Order" or "QDRO" means a domestic relations order that has been reviewed and determined to be qualified by the Deferred Compensation Program Manager.

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(39) "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 Investment 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.

(40) "Staff" means any employee of the Public Employees Retirement System, who has been appointed in accordance with ORS 238.645.

(41) "State Agency" means every state officer, board, commission, department or other activity of state government.

(42) "State Deferred Compensation Plan" shall have the same meaning as provided in ORS 243.401(12).

(43) "Vendor" means an entity offering investment or other service related to investment of deferred compensation pursuant to a contract with the State of Oregon."

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

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - ORS 243.507

Hist.: PER 2-1995, f. 10-13-95, cert. ef. 11-1-95; PERS 5-2000, f. & cert. ef. 8-11-00, Renumbered from 459-050-0010; PERS 13-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-28-02; PERS 9-2002, f. & cert. ef. 6-13-02

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 deferred compensation plan which allows 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 the investment options available through the investment program;

(4) Permit eligible employees who participate in a deferred compensation plan to make changes, when permitted by law and the deferred compensation investment program, to withdraw the deferred compensation and any earnings on deposit, and, when eligible under a plan, 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 243.470

Stats. Implemented: ORS 243.401 - ORS 243.507

Hist.: PER 2-1995, f. 10-13-95, cert. ef. 11-1-95; PERS 5-2000, f. & cert. ef. 8-11-00

459-050-0025

Deferred Compensation Advisory Committee

(1) The seven 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 a deferred compensation plan under ORS 243.401 to 243.507, and have knowledge of the respective current plan.

(b) Four members shall be participants in the state deferred compensation plan.

(c) Two members shall be participants in a local government deferred compensation plan.

(d) One member shall be a retired plan participant.

(e) No two members shall be employed by the same state agency or local government unless a member transfers employment from one employing entity to another and only for the balance of the term of appointment of the member transferring.

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

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

(2) The Committee shall study and advise the Public Employees 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;

(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 Manager of the Deferred Compensation Program 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 Manager 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 Manager of the Deferred Compensation Program not later than May 1 following the publication of any vacancies;

(c) The Manager 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 Investment Oversight Committee.

(d) The Board's Investment Oversight Committee 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, participating local governments, 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 243.470

Stats. Implemented: ORS 243.505

Hist.: PERS 2-1993, f. & cert. ef. 9-23-93; PERS 2-1995, f. 10-13-95, cert. ef. 11-1-95; PERS 5-2000, f. & cert. ef. 8-11-00

459-050-0030

Deferred Compensation Administrator

(1) The Deferred Compensation Manager (Manager) shall administer the Deferred Compensation Program (Program) established pursuant to ORS 243.401 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 Manager 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 Manager shall prepare and maintain standard forms necessary to the administration of the Program.

(3) The Manager shall provide forms and procedures for promptly communicating participating employee requests for deferral of compensation to the appropriate public officers.

(4) The Manager 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 Manager 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 Manager shall approve or deny all applications for a financial hardship distribution as provided in OAR 459-050-0150.

(7) The Manager shall select members of the Financial Hardship Committee established under OAR 459-050-0040.

(8) The Manager 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.

(9) The Manager 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."

(10) The Manager shall undertake a continuing agenda of educating participants regarding the goals and objectives of the Program. As part of this education, the Manager 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 dis-

closure statements and their purpose in assisting employees in evaluating deferred compensation investments.

(11) The Manager shall assure that there are regular audits of the Program, consistent with generally accepted accounting principles.

(12) The Manager shall monitor the performance of all deferred compensation investment options offered to eligible employees under the Program.

(13) The Manager 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.

(14) Unless excused by the Director of the Public Employees Retirement System, the Manager shall attend all meetings of the Board and of the Advisory Committee. The Manager shall supply the Board and the Advisory Committee with such information and assistance as they may request.

(15) The Manager 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 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(s) of the deferred compensation plan(s), and the Deferred Compensation Program.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - ORS 243.507

Hist.: PERS 2-1995, f. 10-13-95, cert. ef. 11-1-95; PERS 5-2000, f. & cert. ef. 8-11-00

459-050-0035

Assistance to the Oregon Investment Council and the State Treasurer

The Board, acting through its Deferred Compensation Manager 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 Manager 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 Manager 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 Manager 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 Manager 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 Manager 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 administration of the Deferred Compensation Program.

(6) Subject to Board approval, the Manager 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 plan(s) under ORS 243.474 to 243.478.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - ORS 243.507

Hist.: PERS 2-1995, f. 10-13-95, cert. ef. 11-1-95; PERS 5-2000, f. & cert. ef. 8-11-00

459-050-0040

Financial Hardship Committee

(1) The Financial Hardship Committee is established to evaluate appeals denied by the Manager for the distribution of deferred compensation on the basis of claims of unforeseen emergency, in compliance with the **Internal Revenue Code, section 457**, and the provisions of OAR 459-050-0150. The Financial Hardship Committee shall formally approve or deny each appeal based on the merits of the appeal and the standards set forth in applicable U.S. Treasury Regulations.

(2) If an appeal is approved, the Financial Hardship Committee authorizes the Manager to release the funds within 30 calendar days of approval.

(3) If an appeal is denied, the requestor may submit a request for review, under the provisions of OAR 459-001-0030(6) and this rule, to the Director of PERS together with additional documentation.

(4) Total confidentiality shall be applied to all appeals submitted subject to the Oregon public records laws.

(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 Program of PERS.

(b) Two persons shall be PERS staff members from other than the Deferred Compensation Program.

(6) The Financial Hardship Committee shall meet upon the call of the Manager of the Deferred Compensation Program, and no sooner than 14 calendar days following receipt of an appeal to the denial of a request for a hardship distribution by the Manager of the Deferred Compensation Program.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - ORS 243.507

Hist.: PERS 2-1995, f. 10-13-95, cert. ef. 11-1-95; PERS 5-2000, f. & cert. ef. 8-11-00

459-050-0050

Eligibility and Enrollment

The purpose of this rule is to establish eligibility criteria and the process for an eligible employee to enroll in the Deferred Compensation Plan established in accordance with section 457 of the Internal Revenue Code and ORS chapter 243.

(1) **Eligible employee.** Eligible employee shall have the same meaning as OAR 459-050-0001(19), and as defined by section 457 of the Internal Revenue Code.

(2) **Application for enrollment.** Subject to the requirements of subsections (a) through (c) below, an eligible employee may enroll to participate in the Deferred Compensation Program by entering into a written agreement as specified herein with the plan sponsor. The written agreement must specify that a portion of the eligible employee's future compensation will be reduced each month, the amount of the reduction, and that the amount of the reduction will be contributed to an account established for the employee in the Deferred Compensation Plan.

(a) An eligible employee may enter into an agreement to participate in the plan on or before the first day of employment or anytime while employed; provided, however, that the requirements of subsection (b) set out below must be satisfied.

(b) In order for an eligible employee to be enrolled, the following forms provided by the Deferred Compensation Program must be properly completed and filed with the Deferred Compensation Program:

(A) A Plan and Agreement Form, as defined in OAR 459-050-0001(33);

(B) An Acknowledgement Form and Designation of Investment Options, which is an eligible employee's written acknowledgement that the employee understands the terms of the Plan and Agreement and is an eligible employee's election of investment option preferences; and

(C) A Designation of Beneficiary form, as provided in OAR 459-050-0060.

(c) If the forms are incomplete, do not comply with plan provisions in any manner whatsoever, or the Plan is unable to process the application, then staff will notify the eligible employee within 30 calendar days from the date the enrollment forms are received with the reasons the Deferred Compensation Program cannot accept the enrollment as submitted.

(3) **Deferral effective date.** The Deferred Compensation Program must receive an application for enrollment and be able to determine that the application is complete and may be processed no later than the 25th day of any calendar month for salary reduction of future earnings to begin from compensation paid for services performed during the calendar month following receipt of enrollment.

(4) **Investment option preference(s).** All or any portion of a participant's account may be, but shall not be required to be, invested by the plan sponsor in the investment options designated by the participant. The plan sponsor shall have absolute and uncontrolled discretion with respect to the option or options in which the account shall be invested.

(5) **Disclosure statement.** Prior to the deferral of any part of an eligible employee's salary, the employee shall be provided information about the investment options including, but not limited to, the probable income and safety of the moneys deferred. 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 Deferred Compensation Program does not provide investment advice, fund analysis or research. Investment options are not guaranteed nor FDIC insured.

(6) **Deferral amount.** A participant's salary shall be reduced each pay period in an amount or percentage specified by the participant for the purpose of contribution to the participant's account in the Deferred Compensation Plan. The amount of the salary reduction shall not be less than the minimum per month established by the plan sponsor and shall not exceed the maximum applicable allowable contribution to a Deferred Compensation Plan as defined in section 457(b)(2) of the Internal Revenue Code.

(a) A new participant who enrolls after the first pay period in a calendar year may elect to defer the maximum allowable contribution for the year from future compensation for the remainder of the year.

(b) The participant's maximum deferral limit is determined without regard to amounts rolled over from an eligible retirement plan to the participant's Deferred Compensation account.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - ORS 243.507

Hist.: PERS 9-2002, f. & cert. ef. 6-13-02

459-050-0060

Designation of Beneficiary

The purpose of this rule is to establish the criteria and process that must be used to designate a beneficiary. The provisions in this rule apply to participants, a participant's surviving beneficiaries, alternate payees and an alternate payee's surviving beneficiaries.

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

(a) "Administrator" means the person appointed by a probate court to handle the distribution of property of someone who has died without a will, or with a will that fails to name someone to carry out this task.

(b) "Conservator" means the person who has been appointed by a court to manage the property and financial affairs of an incapacitated person.

(c) "Executor" means the person named in a will to handle the property of someone who has died. The executor must collect and manage the property, pay debts and taxes, and distribute the remaining assets as specified in the will. In addition, the executor handles any probate court. Executors are also called personal representatives.

(d) "Personal Representative" means the person named in a will to handle the property of someone who has died. Personal representatives are also called executors.

(2) **Designation of Beneficiary.** When a participant in the Deferred Compensation Program dies, the benefit of the participant's

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account shall be paid to the beneficiaries designated by the participant. For purposes of this rule, a participant may designate any of the following as a primary or contingent beneficiary:

- (a) Any natural person(s);
- (b) The personal representative or executor of the estate of the participant;
- (c) A charity or other non-profit organization; or
- (d) A trust that is valid under Oregon state law.

(A) If a living trust is designated, the trust must be legally in existence before the participant makes the designation.

(B) If a designated trust fails to satisfy the requirements in OAR 459-050-0300(1)(c)(B), payment to the trust shall be made as provided in OAR 459-050-0300(11).

(3) **Surviving beneficiary or alternate payee.** Any surviving beneficiary designated under section (2) of this rule or an alternate payee may designate a beneficiary in the same manner as a participant.

(4) **Power of attorney.** The agent shall submit a copy of the Power of Attorney document with the filing of the designation of beneficiary form. The Deferred Compensation Plan may, but is not required to, accept a beneficiary designation made by an agent or attorney-in-fact appointed under a Power of Attorney document. If the Deferred Compensation Program is satisfied that a Power of Attorney document is valid, has not been revoked, and empowers the agent or attorney-in-fact to designate a beneficiary, the program shall accept a beneficiary designation made by the agent or attorney-in-fact appointed under the Power of Attorney document.

(5) **Conservator.** The Deferred Compensation Program shall accept a beneficiary designation made by a conservator for the participant provided that the conservator submit a certified copy of the letters of conservatorship or other court order appointing a conservator with the designation of beneficiary form.

(6) **Effective date of designation of beneficiary.** A designation of beneficiary is not effective until a properly completed designation on a form supplied by the Deferred Compensation Program is filed with the Deferred Compensation Program. In the event a designation of beneficiary is incomplete staff will provide notification within 30 days explaining why the form is incomplete.

(7) **Revocation of designation of beneficiary.** A participant, alternate payee or surviving beneficiary may revoke any and all previous beneficiary designations by filing a new designation on a properly completed form supplied by the Deferred Compensation Program. This designation must be in accordance with section (2) of this rule.

(8) **Dissolution of marriage.** A participant's designation of beneficiary shall not be revoked or nullified by a decree of divorce, decree of annulment, or other similar circumstance.

(9) **No Designated Beneficiary.** If the designated primary and contingent beneficiaries on file with the Deferred Compensation Program have predeceased the deceased participant, surviving beneficiary, or alternate payee who made the designation, or if the program is otherwise unable to administer the designation, the Deferred Compensation Plan shall distribute the benefit of the deceased's account to the executor, personal representative, or administrator of the deceased's estate.

(a) If the program is unable to locate the designated beneficiaries or the executor, personal representative, or administrator of the estate by December 31 of the calendar year following the participant's death, the amount in the deceased's account on that date shall be credited to the Deferred Compensation Fund. The amount credited may be used for the payment of administrative expenses of the Deferred Compensation Program.

(b) If the designated beneficiaries or the executor, personal representative, or administrator of the estate is later located or other future successful claim is filed, payment will be made in an amount not to exceed the balance in the deceased's account credited to the Deferred Compensation Fund in subsection (9)(a).

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - ORS 243.507

Hist.: PERS 6-2002, f. & cert. ef. 5-24-02

Beneficiary Predeceases or Disclaims Benefit

Purpose. The purpose of this rule is to establish the criteria and process that must be used if a beneficiary predeceases the participant, alternate payee, or surviving beneficiary who made the designation as provided in OAR 459-050-0060, or a beneficiary disclaims a death benefit.

(1) **Beneficiary predeceases or disclaims benefit.** If one or more designated beneficiaries predecease the participant, alternate payee, or surviving beneficiary who made the designation as provided in OAR 459-050-0060, or if a designated beneficiary files a disclaimer as provided in section (2) of this rule, the beneficiary's interest in the respective account will be distributed to any remaining surviving beneficiaries or contingent beneficiaries in proportion to each remaining beneficiary's interest as defined by the deceased participant's, alternate payee's, or surviving beneficiary's most recent designation of beneficiary on file with the Deferred Compensation Program.

(2) **Disclaiming beneficiary payment.** If the Deferred Compensation Program receives written evidence to its satisfaction that a designated beneficiary has made a legally valid disclaimer, the benefit will be distributed as though the beneficiary died before the deceased participant, alternate payee, or surviving beneficiary. A disclaimer will be deemed valid if it complies with Oregon law and is an irrevocable and unqualified refusal by a beneficiary to accept any payment from the Deferred Compensation Program. However, a disclaimer is not effective until staff has received and reviewed it, and determined that the following conditions are satisfied:

(a) The disclaimer must be executed before the beneficiary accepts or uses any death benefit payment;

(b) The disclaimer must be in writing and signed by the disclaiming beneficiary;

(c) The disclaimer must state an irrevocable and unqualified refusal to accept the benefit;

(d) The disclaimer must have been filed with the Deferred Compensation Program administrator within nine months after the date of death of the participant, alternate payee, or surviving beneficiary or the date the disclaiming beneficiary attains 21 years of age, whichever is later; and

(e) The disclaimer must provide for or allow the benefit to pass without any direction from the disclaiming beneficiary.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 – ORS 243.507

Hist.: PERS 12-2002, f. & cert. ef. 7-17-02

459-050-0070

Catch-Up Programs

The purpose of this rule is to establish the criteria and process to allow an eligible employee to contribute additional amounts, in excess of the regular applicable maximum allowable contributions, to the eligible employee's account in the Deferred Compensation Plan.

(1) **Definitions.** Subject to subsections (a) and (b) below, for purposes of this rule, "normal retirement age" means the normal retirement age defined in the plan sponsor's retirement plan.

(a) "Normal retirement age" for members of the Public Employees Retirement System shall have the same meaning as ORS 238.005(14), 238.280(2), and for judge members, ORS 238.535.

(b) If an eligible employee continues to work beyond normal retirement age, "normal retirement age" shall be that date or age designated by the eligible employee but not later than 70-1/2 years of age.

(2) **50-Plus Catch-Up Program.** Pursuant to the conditions of this rule, eligible employees who are 50 years of age and older and who are deferring the maximum allowable regular contributions to the Deferred Compensation Plan or who are new enrollees in the plan maximizing their annual allowable regular contribution may elect to contribute an additional amount under **section 414(v) of the Internal Revenue Code** in excess of the maximum regular contribution allowed.

(a) **Conditions for enrollment:** An eligible employee must be 50 years of age or older on December 31 of the calendar year in

459-050-0065

which the eligible employee begins to participate in the 50-Plus Catch-Up Program.

(A) To participate in the 50-Plus Catch-Up Program, an eligible employee must have started deferring the maximum allowable regular contribution with the first compensation payment for the calendar year or must be a new enrollee in the Deferred Compensation plan that is maximizing annual deferral after the first pay period.

(B) An eligible employee may participate in the 50-Plus Catch-Up Program during years either before or after participation in the 3-Year Catch-Up Program in section (3) below, but may not participate in both during the same calendar year.

(C) An eligible employee may participate in the 50-Plus Catch-Up during the calendar year containing the employee's retirement date.

(b) **Application for enrollment.** Subject to the conditions in subsection (2)(a) above, an eligible employee may participate in the 50-Plus Catch-Up Program. An eligible employee choosing to participate must enroll, by entering into a written agreement as specified herein with the plan sponsor. The written agreement must specify the amount of the additional annual deferral, that the additional deferral will be divided equally by the available months for the calendar year, and that the amount is in addition to the eligible employee's regular maximum deferral.

(A) Subject to the conditions and requirements of these rules and applicable law, an eligible employee may enter into a written agreement to participate in the 50-Plus Catch-Up Program on or before the first day of employment or anytime while employed to defer an amount annually in addition to the eligible employee's regular maximum deferral amount.

(B) In order for an eligible employee to be enrolled, a properly completed 50-Plus Catch-Up enrollment form provided by the Deferred Compensation Program must be filed with and approved by the Deferred Compensation Program.

(C) If the form is incomplete or does not comply with 50-Plus Catch-Up Program conditions of enrollment in subsection (2)(a) above, then staff will notify the eligible employee within 30 calendar days from the date the enrollment form is received with the reasons the Deferred Compensation Plan cannot accept the enrollment.

(c) **50-Plus Catch-Up Program deferral begin date.** Salary reduction for the 50-Plus Catch-Up Program contributions can begin no earlier than the payment date of salary or wages earned for services performed during the calendar month following the date of approval of the 50-Plus Catch-Up Program enrollment form.

(d) **Additional deferral amounts.** The additional deferral may be in an amount elected by an eligible employee, but shall not exceed the maximum additional deferral allowed in **section 414(v) of the Internal Revenue Code.**

(A) An eligible employee may change the amount of additional contributions deferred within the maximum additional deferral amount allowed. Changes may be made at any time on forms or by other approved methods prescribed by the Deferred Compensation Program and will be effective on the date of payment for salary or wages earned for services performed during the calendar month following receipt of the change request.

(e) **Cancellation of Participation in the 50-Plus Catch-Up Program.** An eligible employee may cancel participation in the 50-Plus Catch-Up Program at any time on forms or by other approved methods prescribed by the Deferred Compensation Program. The cancellation will be effective on the date of payment for salary or wages earned for services performed during the calendar month following receipt of the cancellation notification. An eligible employee may later re-apply to begin participation in the 50-Plus Catch-Up Program.

(3) **3-Year Catch-Up Program.** Eligible employees may elect to contribute an additional amount under section 457 of the Internal Revenue Code in excess of the maximum regular contribution allowed for one or more of the three consecutive calendar years of employment prior to attaining normal retirement age, if in previous years the full amount of the eligible employees' deferral allowance was not used.

(a) **Conditions for enrollment.** The earliest date to participate in the 3-Year Catch-Up Program is in the three calendar years imme-

diate preceding the year an eligible employee reaches normal retirement age.

(A) The increase over the maximum allowable regular contribution limit is available only to the extent of unused portions of the maximum allowable regular contribution for previous calendar years during which the eligible employee contributed less than the maximum allowable or did not choose to make contributions to the Deferred Compensation Program.

(B) Previous calendar years during which deferrals were made to the 50-Plus Catch-Up shall not be included in the calculation to determine the maximum allowable contribution under the 3-Year Catch-Up Program.

(C) An eligible employee may not participate in the 3-Year Catch-Up Program during calendar years of enrollment in the 50-Plus Catch-Up in section (2) above.

(D) An eligible employee may not participate in the 3-Year Catch-Up during the calendar year containing the eligible employee's retirement date, unless the last day worked is the last working day of that calendar year.

(E) Pursuant to **section 457(b) of the Internal Revenue Code**, an eligible employee who is 70-1/2 years of age or older may not participate in the 3-Year Catch-Up Program.

(F) An eligible employee may participate only once in the 3-Year Catch-Up Program, regardless of whether the 3-Year Catch-Up is used in less than three calendar years and the eligible employee or former eligible employee rejoins the plan or participates in another eligible plan after retirement.

(b) **Application for enrollment.** Subject to the conditions in subsection (3)(a) above, an eligible employee may enroll to participate in the 3-Year Catch-Up Program by entering into a written agreement as specified herein with the plan sponsor. The written agreement must specify the eligible employee's proposed retirement date and the month in which to begin the 3-Year Catch-Up deferrals.

(A) An eligible employee may enter into a written agreement to participate in the 3-Year Catch-Up Program at anytime while employed to defer an amount annually in addition to the eligible employee's regular maximum deferral amount.

(B) In order for an eligible employee to be enrolled, a properly completed 3-Year Catch-Up enrollment form provided by the Deferred Compensation Program must be filed with and approved by the Deferred Compensation Program. In addition, wage or salary information must be submitted for the previous calendar years during which an eligible employee either did not participate in the Deferred Compensation Program or did not use the full amount of deferral. An eligible employee must submit either:

(i) Legible copies of W-2 Wage and Tax Statement forms for each calendar or tax year; or

(ii) Legible copies of final pay stubs showing gross and taxable salary for each calendar year.

(C) If the application for enrollment is incomplete, if wage or salary information is not legible, or if application does not comply with the 3-Year Catch-Up Program conditions of enrollment in subsection (3)(a) above, then staff will notify the eligible employee within 30 calendar days from the date the enrollment documents are received with the reasons the Deferred Compensation Plan cannot accept the enrollment.

(c) **3-Year Catch-Up Program deferral effective date.** Salary reduction for the 3-Year Catch-Up Program contributions can begin no earlier than the payment date of salary or wages earned for services performed during the calendar month following the date of approval of the 3-Year Catch-Up Program enrollment form.

(d) **Additional Deferral Amount.** After receipt of the properly completed 3-Year Catch-Up Program enrollment form and required salary information, Deferred Compensation Program staff will notify an eligible employee of the amount of maximum contributions that may be deferred.

(A) The amount of the Catch-Up salary reduction may not be less than the minimum amount established by the plan sponsor that is over the maximum regular deferral and may not exceed the maximum allowable contribution to a Deferred Compensation Plan as defined in **section 457(b)(3) of the Internal Revenue Code.**

(B) An eligible employee may change the amount of additional contributions deferred within the minimum and maximum additional deferral amounts allowed. Changes may be made at any time on forms or by other approved methods prescribed by the Deferred Compensation Program and will be effective on the date of payment for salary or wages earned for services performed during the calendar month following receipt of the change request.

(c) **Cancellation of Participation in the 3-Year Catch-Up Program.** An eligible employee may cancel participation in the 3-Year Catch-Up Program at any time on forms or by other approved methods prescribed by the Deferred Compensation Program. The cancellation will be effective on the date of payment for salary or wages earned for services performed during the calendar month following receipt of the cancellation notification. An election to cancel participation is irrevocable.

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

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 – ORS 243.507

Hist.: PERS 12-2002, f. & cert. ef. 7-17-02

459-050-0075

In-Service Distribution

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

(1) **De minimis distribution.** A de minimis distribution is an in-service distribution of the entire balance of a small account prior to the date a participant has a severance of employment. A de minimis distribution may be made if all of the following conditions are satisfied:

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

(b) The total balance of the participant’s account does not exceed the limitations in the **Internal Revenue Code Section (IRC) 457(e)(9)(A)**, which is \$5,000 for the year 2001;

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

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

(2) **Unforeseeable emergency withdrawal.** An unforeseeable emergency withdrawal is an in-service distribution made to a participant due to an unforeseeable emergency. This withdrawal may be made prior to the date a participant has a severance of employment and as defined in OAR 459-050-0150.

(a) A participant must apply for an unforeseeable emergency withdrawal using forms provided by, or other methods approved by, the Deferred Compensation Program as provided for in OAR 459-050-0150(4).

(3) **Funds available for in-service distribution.** Only funds contributed to a deferred compensation plan, as defined in IRC 457, and earnings on those contributions may be distributed in a de minimis distribution or unforeseeable emergency withdrawal. Any funds directly transferred or rolled over to the Deferred Compensation Program from any plan other than an IRC 457 deferred compensation plan shall not be distributed for a de minimis distribution or an unforeseeable emergency withdrawal.

(4) **Prohibitions on elective deferrals after an in-service distribution.** A participant who receives a de minimis distribution or an unforeseeable emergency withdrawal shall be prohibited from making elective deferrals and employee contributions to the Deferred Compensation Program for a period of 6 consecutive months from the date of distribution.

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

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - ORS 243.507

Hist.: PERS 13-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-28-02; PERS 9-2002, f. & cert. ef. 6-13-02

459-050-0080

Distribution of Funds After a Severance of Employment

The purpose of this rule is to establish the criteria and process for obtaining a distribution of deferred compensation funds after a participant’s severance of employment as defined herein. Distribution under the Deferred Compensation Program shall be made in accordance with any minimum distribution or other limitations required by **Internal Revenue Code (IRC) section 401(a)(9)**, including IRC section 401(a)(9)(G), Section 1.457 of the U. S. Treasury Regulations, proposed Treasury Regulation section 1.401(a)(9)-2, Internal Revenue Service rulings and other interpretations.

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

(a) “**Severance of Employment**” means a participant has ceased rendering services as an employee or an independent contractor of a plan sponsor for a minimum of 30 consecutive days, including services as a temporary employee, and has no intention to return to work for the plan sponsor.

(b) “**Intention to return to work**” means a written or oral, formal or informal agreement has been made with the plan sponsor to return to work on a full time, part time or temporary basis at the time the severance is effective. If a participant returns to work with the plan sponsor within 30 calendar days of severance, then a rebuttable presumption exists that the participant intended to return to work as of the date of severance.

(c) “**Commencement date**” means the month and year that a participant or an alternate payee will begin receiving a distribution(s) from the Deferred Compensation Program, whether by operation of the participant’s or alternate payee’s election or under the terms of the plan. The commencement date may be no earlier than the second calendar month following the month in which severance from employment became effective. The commencement date is not the date that the necessary funds are liquidated for distribution.

(d) “**Liquidation of funds**” means the conversion of the necessary funds from the investments in the Deferred Compensation Program into cash for payment under a specified manner of distribution. Liquidation of funds shall be on a pro-rata basis determined by the investment allocation of an account at the time the funds are liquidated.

(e) “**Liquidation date**” means the date the Deferred Compensation Program designates for liquidation of funds. Generally, the liquidation date will not be earlier than the 25th day of the calendar month preceding the commencement date. The Deferred Compensation Program may determine the liquidation date based on normal business practices. The Deferred Compensation Program is not liable to a participant for failure to liquidate an investment on a specified date.

(f) “**Date of distribution**” means the date funds are distributed to the participant, alternate payee, beneficiary, or other recipient in accordance with the plan, regardless of the mechanism by which those funds are distributed.

(g) “**Manner of distribution**” means the manner elected by the participant, alternate payee, or beneficiary in accordance with the terms of the plan, in which a distribution is to be paid out of the Deferred Compensation Program.

(h) “**Required beginning date**” means April 1 of the calendar year following the later of:

(A) The calendar year in which the participant reaches 70-1/2 years of age; or

(B) The calendar year in which the participant retires.

(2) **Manner of distribution.** Subject to the provisions of sections (3) through (5) set out below, a participant, surviving beneficiary, or alternate payee may elect a manner of distribution, designate one or more beneficiaries, and change beneficiaries at any time. The total amount distributed may not exceed the total account value. The following manners of distribution are available:

(a) **Total distribution of the account value in a lump sum.** A lump-sum distribution is not eligible for direct deposit;

(b) **Single distribution of a portion of the account value in a lump sum.** This form of lump-sum distribution is not eligible for direct deposit. Funds not distributed shall continue to receive earn-

ings or losses based on the performance of investment option(s) in which funds are held;

(c) Systematic withdrawal distribution for a specific number of years, which may be paid annually, semiannually, quarterly or monthly. Any funds remaining after each periodic payment shall continue to receive earnings or losses based on the performance of investment option(s) in which the funds are held. The remaining number of periodic distributions shall not change. However, the amount of distributions shall be adjusted depending on the earnings or losses experienced;

(d) Periodic specified dollar amount distribution. This distribution may be paid annually, semiannually, quarterly or monthly, and may be paid in specific dollar amounts in \$5 increments. Any funds remaining after each periodic payment shall continue to receive earnings or losses based on the performance of investment option(s) in which the funds are held. The amount of each periodic distribution will remain the same throughout the withdrawal period. However, the withdrawal period may vary depending on the earnings or losses experienced;

(e) Required minimum distribution, which will provide an annual distribution of the minimum amount required in IRC section 401(a)(9). This manner of distribution is available only to those who defer distribution to age 70-1/2 years of age (no later than April of the year following the year reaching 70-1/2 years of age) or a participant who continues to work and severs employment after 70-1/2 years of age. Funds not distributed shall continue to receive earnings or losses based on the performance of investment option(s) in which funds are held; or

(f) Mandatory single lump-sum distribution of an account balance of less than \$1,000. This distribution shall be made to any participant or alternate payee with an account balance of less than \$1,000 within one year of the participant's severance of employment.

(3) Application Requirements. Application shall be made on forms provided by, or other methods approved by, the Deferred Compensation Program. No distribution may be paid unless a timely and complete application is filed with the Deferred Compensation Program as follows:

(a) An application for distribution or to change the manner of distribution will be considered filed in a timely manner if it is received in writing or other method approved by the Deferred Compensation Program at least 30 days prior to the requested commencement date. The commencement date may be no earlier than the second calendar month following the month of severance of employment.

(b) An application for distribution or to change the manner of distribution may be made by a participant, surviving beneficiary, or alternate payee or the authorized representative of a participant, surviving beneficiary or alternate payee. A valid document appointing an authorized representative such as a power of attorney, guardianship or conservatorship appointment, must be submitted to the Deferred Compensation Program. The Deferred Compensation Program retains the discretion to determine whether the document is valid for purposes of this rule.

(c) The participant, surviving beneficiary, or alternate payee must file a tax-withholding certificate with the Deferred Compensation Program at least 30 days prior to the requested commencement date. If the certificate is not filed, the Deferred Compensation Program shall withhold federal and state income taxes based on a marital status of single and no dependents or other federally mandated tax withholding requirements. A new certificate may be filed at any time, and will be applied to distributions paid on and after the first calendar month following the date received or as soon as reasonably possible.

(d) When direct deposit is permitted under the Deferred Compensation Plan, a request for periodic distributions to be transmitted to a financial institution for direct deposit must be made using a Deferred Compensation Program Automatic Deposit Agreement.

(e) Distribution of deferred compensation funds will occur no later than five days following the date funds necessary for a specified payment were liquidated.

(4) Denial of distribution election. The Deferred Compensation Program may deny any distribution election if that denial is required

to maintain the status of the Deferred Compensation Program under the Internal Revenue Code and regulations adopted pursuant to the Internal Revenue Code and ORS Chapter 243.

(5) Changing the manner of distribution. A participant, surviving beneficiary or alternate payee may change or discontinue the manner of distribution only as follows and subject to the requirements of section (3) above:

(a) Manners of distribution under sections (2)(c), (2)(d) and (2)(e) of this rule may be changed at any time upon application as required under section (3) of this rule.

(b) Distributions under sections (2)(c) and (2)(d) of this rule may be discontinued upon written notification or by other methods approved by the Deferred Compensation Program. The participant, surviving beneficiary, or alternate payee must submit an application, as required in section (3) of this rule, to restart distributions and elect a manner of distribution for the remaining account.

(c) Subject to the requirements of this rule, a participant, surviving beneficiary or alternate payee who has commenced receiving a required minimum distribution may apply under the requirements of section (3) of this rule:

(A) For one or more additional distributions in a lump sum not to exceed the total value of the account; and

(B) To change the manner of distribution so long as future distributions will be continuous and equal to or greater than the minimum distribution required.

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

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - ORS 243.507

Hist.: PERS 5-2000, f. & cert. ef. 8-11-00; PERS 13-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-28-02; PERS 9-2002, f. & cert. ef. 6-13-02

459-050-0090

Direct Rollover

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

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

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

(b) "Direct Rollover" means:

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

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

(c) "Distributee" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) The distributee's full name;

(B) The distributee's social security number;

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

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

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

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

(a) The Deferred Compensation Program shall only accept assets from pre-tax accounts. Accounts that contain after-tax employee contributions are not eligible for rollover into the Deferred Compensation Program.

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

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

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

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

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

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

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - ORS 243.507

Hist.: PERS 2-2002(Temp), f. & cert. ef. 1-11-02 thru 6-28-02; PERS 9-2002, f. & cert. ef. 6-13-02

459-050-0150

Financial Hardship Withdrawal

The purpose of this rule is to establish the criteria and process for obtaining a distribution of deferred compensation funds due to an unforeseeable emergency prior to separation from employment.

(1) Definitions:

(a) "Unforeseeable emergency" or "unforeseen emergency" means a severe financial hardship to the participant, in a deferred compensation plan under ORS chapter 243, resulting from a sudden and unexpected illness or accident of the participant or of a dependent (as defined in **IRS Regulation 152(a)**) of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstance arising as a result of events beyond the control of the participant.

(b) "Immediate need" means the financial obligation of an unforeseeable emergency that accrues within a 90 day period preceding and the 90 day period following application for emergency withdrawal.

(c) "Emergency withdrawal" means the amount directly related to and reasonably necessary to satisfy an immediate need of an unforeseeable emergency, but in no case shall the amount exceed the balance of the participant's account in a deferred compensation plan.

(2) The circumstance that will constitute an unforeseeable emergency will depend on the facts of each case, but in any case, payment may not be made to the extent that such hardship is or may be satisfied:

(a) Through reimbursement or compensation by insurance or otherwise;

(b) By liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or

(c) By cessation of deferrals under the plan.

(3) Examples of what are not considered to be unforeseeable emergencies include:

- (a) Person and/or dependent school expenses;
- (b) The purchase a home or costs associated with a voluntary relocation of housing;
- (c) The reduction of personal credit liabilities not associated with an unforeseeable emergency;
- (d) Expenses associated with a legal separation or the dissolution of a marriage;
- (e) Expenses associated with medical procedures that are elective or not medically required;
- (f) Expenses associated with the establishing of a personal business or managing a personal business;
- (g) Recreational expense;
- (h) Travel expenses not associated with an unforeseeable emergency; and

(i) Usual and customary tax obligations.

(4) Application process:

(a) The required forms for applying for an emergency withdrawal may be obtained from the PERS Deferred Compensation Program or the third party administrator (TPA) retained to administer PERS Deferred Compensation Program. PERS or the TPA shall forward the application packet to the requester within two working days of the date the request is received by PERS.

(b) The completed application packet and documentation of the unforeseen emergency are to be transmitted by use of the United State Postal Service (USPS) or by private carrier as defined in ORS 293.660(2) to the TPA for initial review.

(c) The TPA shall review the application packet and associated documentation of unforeseen emergency for completeness applicability. Upon completion of the review, the TPA shall forward the application packet, the related documentation and its recommendation to the PERS Deferred Compensation Manager within three working days of receipt of application packet from requester.

(d) Within three working days of receipt of application packet, related documentation and TPA recommendation, the Deferred Compensation Manager shall approve or deny the request for emergency withdrawal and immediately notify the requester.

(5) If the request for emergency withdrawal is approved:

(a) The Deferred Compensation Manager shall determine method of payment, based on the nature of the unforeseen emergency related to the immediate needs. The method of payment may be either a lump sum or periodic payments.

(b) The Deferred Compensation Manager shall immediately notify the TPA to release the requested funds.

(6) If the request for an emergency withdrawal is denied, the requester may appeal the denial to the Financial Hardship Committee as provided in OAR 459-050-0040.

(7) The application packet shall contain:

- (a) Financial Hardship Application form;
- (b) A financial statement;
- (c) Tax withholding certificate; and
- (d) Deferral Cancellation form.

[ED. NOTE: Forms referenced in this rule are available from the agency.]

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - ORS 243.507

Hist.: PERS 5-2000, f. & cert. ef. 8-11-00

459-050-0200

Court Orders

The purpose of this rule is to describe the procedures for the administration of a court order and the requirements for a court order to be approved as a Qualified Domestic Relations Order.

(1) Legal requirements. A final court order or judgment must clearly specify the amount awarded to an alternate payee from the participant's Deferred Compensation account, and the language must be administrable under ORS Chapter 243.507 and OAR chapter 459, division 050. Subject to the requirements of the Internal Revenue Code and Oregon law, including these administrative rules, the Deferred Compensation Program will segregate an alternate payee's award from a participant's account once it has determined that the court order meets the requirements of a Qualified Domestic Relations Order (QDRO).

(2) Requirements of a QDRO. The Deferred Compensation Program may approve a court order as a Qualified Domestic Relations Order (QDRO), if the following conditions are satisfied:

(a) The Deferred Compensation Program office has received the QDRO;

(b) The QDRO includes a specific percentage or dollar amount to be awarded to the alternate payee from the participant's account; and

(c) The QDRO directs the Deferred Compensation Program to segregate the participant's account or otherwise assign the amount of the award from the participant's account, and deposit the award amount in a separate account in the name of the alternate payee as of a date specified in the order.

(3) Final court order. A final court order is required. The Deferred Compensation Program shall not divide a participant's Deferred Compensation account or make a payment to or on behalf of an alternate payee upon receipt of a draft court order. The Deferred Compensation Program will divide the account so long as the other requirements under the Internal Revenue Code and Oregon law including these rules have been met, upon subsequent receipt of the following:

(a) Certified copy of a final court order that specifies the action(s) required by the Deferred Compensation Program concerning the alternate payee's award. All certified copies must be subsequently reviewed and approved by staff as administrable pursuant to ORS 243.507, and OAR chapter 459, division 050, before the Deferred Compensation Program shall disburse funds from an account to which a QDRO applies or an order is currently under review for determination of QDRO status. Staff shall provide a written explanation to the participant and the alternate payee(s) as soon as practicable setting out the Deferred Compensation Program's determination whether a final court order can be administered by the Deferred Compensation Program as a QDRO. Case-specific award information shall be provided to attorneys or other representatives of a participant or an alternate payee only if a participant release or an alternate payee release has been received by the Deferred Compensation Program, as described in OAR 459-050-0001.

(4) The Deferred Compensation Program may, in its discretion, accept or reject any court order, or any portion thereof. The Deferred Compensation Program shall provide a written explanation of any rejection as soon as practicable to the participant and the alternate payee, as well as to their attorneys if a release, as defined in OAR 459-050-0001, has been filed with the Deferred Compensation Program.

(5) The Deferred Compensation Program may require a court-approved modification to enable the Deferred Compensation Program to comply with the order and the parties' intent, and so that the Deferred Compensation Program may administer the court order according to applicable Oregon and federal law. For example, if the Deferred Compensation Program determines that a court order is unclear or silent with regard to the alternate payee's right to all or a portion of the participant's Deferred Compensation account, the Deferred Compensation Program shall not approve the court order until a court order is received that clearly states what comprises the alternate payee's award.

(6) The court order must not require the Deferred Compensation Program to:

(a) Provide any type or form of distribution or any option not otherwise provided under the plan; and

(b) Monitor any designations of beneficiary(s) for compliance with the designation of beneficiary requirements in the court order.

(7) An original or certified copy of a final court order must be received by the Deferred Compensation Program, by mail or delivered in person, before the Deferred Compensation Program shall commence paying benefits to or on behalf of an alternate payee. Deferred Compensation Program in its discretion may accept a legible photocopy of a final court order, either by mail or delivered in person, as long as the Deferred Compensation Program can confirm it was filed with the court. If the Deferred Compensation Program cannot confirm that the order was filed with the court, the Deferred Compensation Program shall, within a reasonable time thereafter, notify the party who submitted the order that an original or certified copy of the final court order is required.

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(8) In the absence of a final court order, a restraining order, injunction, or stay must be filed with the Deferred Compensation Program in order to prevent the distribution of any funds to a participant. Except as may otherwise be allowed by law, a subsequent court order shall be required in order to allow future distributions.

(9) If a final 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.

(10) Discontinuation of domestic action. A confirmation signed and notarized by both the participant and the alternate payee is received by the Deferred Compensation Program, stating that all divorce or other domestic actions have been dismissed or abandoned, and that no final decree or court order shall be forth-coming. If no restraining order, injunction, or stay is on file with the Deferred Compensation Program, there shall be no further obligation or responsibility on the Deferred Compensation Program to correspond or communicate with any person other than the participant and no distribution may be made to anyone other than the participant or the participant's beneficiary(s).

(11) Draft court orders. If the Deferred Compensation Program does not receive a final court order within 12 months after the date the Deferred Compensation Program received the draft court order, the Deferred Compensation Program shall consider that no award was made to an alternate payee from the participant's Deferred Compensation account. There shall be no further obligation or responsibility on the part of the Deferred Compensation Program to correspond or communicate with any person other than the participant and no payment shall be distributed to anyone other than the participant or the participant's beneficiary(s).

(12) Review of draft court orders. Upon request, the Deferred Compensation Program may review draft court orders that contain language pertaining to the division of a participant's deferred compensation account. Staff shall provide a written response as soon as practicable to the submitting party and shall send a copy of the response to the other persons named in the draft court order if mailing addresses are provided.

(13) The Deferred Compensation Program is not responsible for the safekeeping or return of any court orders, whether draft or final, that are received. The Deferred Compensation Program staff may not modify, return, or sign and return, any documents that are received by the Deferred Compensation Program.

(14) Prospective award. If the Deferred Compensation Program has already generated distribution checks to the participant for the first of the month following the date the final court order was received and the court order meets the requirements of this rule, Oregon law, and the Internal Revenue Code, the Deferred Compensation Program shall:

(a) Pay distribution to the participant, notwithstanding the court order. The distribution payment shall be deemed by the Deferred Compensation Program as received by the participant.

(b) Establish an alternate payee's award on a prospective basis only and shall not pay retroactive distributions of any kind. Payment of future distributions to an alternate payee shall be made as soon as administratively feasible.

(15) If a final court order is received after a participant has received a distribution of his or her full account balance, the Deferred Compensation Program shall not invoice the participant for any funds that may have been awarded to the alternate payee.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - ORS 243.507

Hist.: PERS 13-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-28-02; PERS 9-2002, f. & cert. ef. 6-13-02

459-050-0210

Segregation of a Participant Account

The purpose of this rule is to describe the process and criteria the Deferred Compensation Program shall use to segregate an alternate payee's award from a participant's Deferred Compensation account, and how the alternate payee's account is maintained once established.

(1) Qualified Domestic Relations Order. Once the Manager or a designated employee has determined that a domestic relations order or another court order is a Qualified Domestic Relations Order as defined under the Internal Revenue Code and Oregon law and in accordance with OAR 459-050-0200, the plan participant's Deferred Compensation account shall be divided and a separate account established in the name of the alternate payee as required under the Qualified Domestic Relations Order (QDRO).

(2) Effective date of segregation. The QDRO may specify a date between January 1 and December 31, on which to calculate the award and segregate the alternate payee's award from the participant's deferred compensation account.

(a) If a date is not specified in a QDRO, the Deferred Compensation Program shall use the date that the QDRO was signed by the court on which to calculate and segregate the alternate payee's award from a participant's deferred compensation account.

(3) Segregation of Participant Account. If a QDRO directs or otherwise requires the Deferred Compensation Program to segregate the participant's account based on a certain percentage awarded to the alternate payee, the percentage shall be converted into a dollar amount. The converted dollar amount or the dollar amount stated in the QDRO that is awarded to the alternate payee shall be deposited into a separate account in the name of the alternate payee.

(4) Investment of funds. Except as otherwise limited by Oregon statute or administrative rule, the alternate payee shall have the same rights and privileges as a participant concerning the investment of funds under the deferred compensation plan.

(5) Fees. The alternate payee's segregated account shall bear all fees and expenses related to the alternate payee's segregated account as though the alternate payee were a participant.

(6) Designation of beneficiary(s). Subject to the terms and conditions of the Deferred Compensation Plan, the alternate payee shall designate a beneficiary(s) as provided for in OAR 459-050-0060. The designated beneficiary(s) shall receive the alternate payee's account if:

(a) The alternate payee dies before distributions from the account began or were required to begin; or

(b) The alternate payee dies and was receiving a distribution that allowed the alternate payee to designate a designation of beneficiary(s) in which case the beneficiary(s) shall receive the balance of the account.

(7) The participant or alternate payee is responsible for the filing and maintenance of all designations of beneficiary(s) as may be required pursuant to a court order. Benefits shall be paid only to the designated beneficiary(s) on file with the Deferred Compensation Program.

(8) Except as may otherwise be required under applicable Oregon law, a divorce shall not revoke a beneficiary designation on file with the Deferred Compensation Program that names the former spouse as the participant's or alternate payee's beneficiary. After a divorce, a participant or an alternate payee is responsible for filing any beneficiary designation changes with the Deferred Compensation Program if a change of beneficiary is desired.

(9) Mailing address. An alternate payee shall notify the Deferred Compensation Program of their current mailing address by sending it in writing to the Deferred Compensation Program office whenever a change in mailing address occurs. Such notification is deemed filed when it is received by the Deferred Compensation Program and is effective upon filing.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - ORS 243.507

Hist.: PERS 13-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-28-02; PERS 9-2002, f. & cert. ef. 6-13-02

459-050-0220

Distribution of an Alternate Payee Account

(1) Commencement date of distribution. Subject to other requirements set forth in this division of administrative rules, a distribution to an alternate payee may commence no earlier than 60 days after the participant's date of severance from employment but no later than the alternate payee's required beginning date in accordance with IRC 401(a)(9) and OAR 459-050-0080.

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(2) Distribution options. Subject to the rules and regulations pertaining to required minimum distributions, the alternate payee may elect to receive payment in any manner available to the participant under the Deferred Compensation Plan and OAR 459-050-0080, without regard to the form of payment elected by the participant.

(3) Application. The alternate payee must file an application for distribution, or request to change a distribution option with the Deferred Compensation Program at least 30 days prior to the requested date of the change or the distribution commencement date as prescribed in OAR 459-050-0080.

(4) Life expectancy factor. The life expectancy of the alternate payee shall be used anytime the form of payment elected by the alternate payee is based on a life expectancy factor.

(5) Tax liability. If the alternate payee is a spouse or former spouse, the alternate payee shall be solely responsible for the total amount of state and federal taxes at the time of distribution of an alternate payee's account effective January 1, 2002. If an alternate payee is someone other than the spouse or former spouse of the participant, the participant shall be solely responsible for the total amount of state and federal taxes at time of distribution of their alternate payee's account.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 – ORS 243.507

Hist.: PERS 13-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-28-02 ; PERS 9-2002, f. & cert. ef. 6-13-02

459-050-0230

Release of Information

(1) Written release. The Deferred Compensation Program must receive a signed written release, as defined in OAR 459-050-0001, from the participant or the alternate payee before the Deferred Compensation Program may provide information pertaining to the participant's or alternate payee's Deferred Compensation account, beneficiary designations, distributions, or award information contained in any draft or final court order on record to any person other than the parties to the court order. A written authorization to release information is valid indefinitely, unless a specific end date is provided in the written statement.

(2) Subpoena. A subpoena for information available from the Deferred Compensation Program must be made out to the State of Oregon, Deferred Compensation Program. Service shall be made so as to allow at least three full business days for preparation and travel. Notwithstanding the foregoing, the Deferred Compensation Program reserves the right to object to any subpoena on the grounds that the subpoena fails to provide a reasonable time for preparation and travel, is otherwise unreasonable or oppressive, or that service was improper, in addition to any other basis legally available. Original or certified copies of subpoenas must be served at the Deferred Compensation Program office. Faxed subpoenas are not acceptable.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 – ORS 243.507

Hist.: PERS 4-2002, f. & cert. ef. 3-26-02

459-050-0240

Deferred Compensation Program Notifications

(1) Notification responsibility. The Deferred Compensation Program is a separate entity from other public employer retirement plans and deferred compensation plans, and notification to other plans does not constitute notice to the Deferred Compensation Program. Similarly, the Deferred Compensation Program is not responsible for notifying other plans of changes in participant or alternate payee information, such as changes in address, the receipt of an application for distribution, or the death of a Deferred Compensation Program participant or an alternate payee.

(2) Receipt of a final court order. Deferred Compensation Program 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) Tax reporting. The Deferred Compensation Program shall issue the applicable tax reporting forms directly to the recipient of any funds that are issued by the Deferred Compensation Program pursuant

to a final court order for domestic relations purposes, and in a manner consistent with the Internal Revenue Code and Oregon law.

(4) Quarterly statements. All alternate payees who are awarded a separate account in the Deferred Compensation Program shall be sent a quarterly statement on their account. Such statement will be sent to their last known address.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 – ORS 243.507

Hist.: PERS 13-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-28-02 ; PERS 9-2002, f. & cert. ef. 6-13-02

459-050-0250

Fee for Administration of a Court Order

(1) Fee charged to participant and alternate payee. If the Deferred Compensation Program is required by a court order to segregate a participant's account and create a separate account for an alternate payee(s), the Deferred Compensation Program shall charge the participant and the alternate payee actual and reasonable administrative expenses and related costs incurred by the Deferred Compensation Program in obtaining data and making calculations.

(2) Fee calculation. The Deferred Compensation Program, when collecting administrative expenses and related costs, shall allocate those expenses and costs between the participant and the alternate payee on a pro-rata basis, based on the fraction of the account received by the participant or alternate payee. The Deferred Compensation Program may not charge the participant and alternate payee more than a combined total of \$300.00 for administrative expenses and related costs incurred in obtaining data or making calculations.

(3) Collection of fee. The fee shall be deducted out of the participant's and alternate payee's Deferred Compensation account(s) after the accounts have been separated per court order.

(4) The fee that shall be charged for dividing the participant's account shall not be contingent on the number of days it takes for the Deferred Compensation Program to complete its review of any type of court order that is received by the Deferred Compensation Program.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 – ORS 243.507

Hist.: PERS 4-2002, f. & cert. ef. 3-26-02

459-050-0300

Required Minimum Distribution Requirements

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

(a) "Required Beginning Date" means April 1 of the calendar year following the later of:

(A) The calendar year in which the participant reaches 70-1/2 years of age; or

(B) The calendar year in which the participant retires.

(b) "Required Commencement Date" means the date that the deferred compensation plan must begin to distribute all or part of an account to a surviving beneficiary.

(c) "Designated Beneficiary" means:

(A) A natural person designated as a beneficiary by the participant, alternate payee, or surviving beneficiary as provided in OAR 459-050-0060; or

(B) If a trust is designated as a beneficiary, the individual beneficiaries of the trust will be treated as designated beneficiaries if the trust satisfies the requirements in section (2) of this rule and applicable Treasury Regulations, including but not limited to Proposed Treasury Regulation Section 1.401(a)(9)-1, Q&A-D-5.

(C) If the beneficiary is not a person or a trust satisfying these requirements, the participant, alternate payee, or surviving beneficiary will be deemed to have no designated beneficiary only for purposes of required minimum distributions under IRC 409(a)(9) and distribution shall be made in accordance with section (11) of this rule.

(d) "Life Expectancy" means the length of time a person of a given age is expected to live as set forth in Treasury Regulation Section 1.72-9. Required minimum distributions shall be calculated so as to satisfy the requirements of Section 401(a)(9) using the life expectancy tables provided in Treasury regulations. Life expectancies shall not be recalculated after the initial determination, except as otherwise required under Oregon or federal law.

(2) A trust as beneficiary. If a trust is designated as a beneficiary, the individual beneficiaries of the trust will be treated as designated beneficiaries as defined in paragraph (1)(c)(B) if by December 31 of the calendar year following the death of a person who designated a trust as beneficiary, the trust satisfies the following conditions:

(a) The trust must be irrevocable, or become irrevocable by its terms at the time of the person's death;

(b) The trust's beneficiaries must be natural persons who are identifiable from the trust instrument; and

(c) One of the following must be provided to the Deferred Compensation Program:

(A) A list of all beneficiaries of the trust, including contingent beneficiaries, along with a description of the portion to which they are entitled and any conditions on their entitlement, all corrected certifications of trust amendments, and a copy of the trust instrument if requested by the Deferred Compensation Program; or

(B) A copy of the trust instrument and copies of any amendments after they are adopted.

(3) Applicable law. Distributions under the Deferred Compensation Program shall be made in accordance with Internal Revenue Code (IRC) Section 401(a)(9), Treasury regulations, Internal Revenue Service rulings and other interpretations issued, including Proposed Treasury Regulation Section 1.401(a)(9)-2. IRC Section 401(a)(9) overrides the provisions of this rule and any other statute or rule pertaining to the required minimum distribution requirements and any manners of distributions, if they are found to be inconsistent with IRC Section 401(a)(9).

(a) If a participant, alternate payee, or surviving beneficiary has not begun distribution or elected a minimum distribution by the beginning date or commencement date required in this rule and IRC Section 401(a)(9), the Deferred Compensation Program shall begin distribution of the minimum amount required as provided under OAR 459-050-0080(2)(e) or, if required, the entire account. There is no exception for those who fail to apply for or to elect a distribution of the minimum amount required in IRC Section 401(a)(9).

(b) The required minimum distribution amount may never exceed the entire account balance on the date of distribution.

(4) Minimum distribution requirements for participants. Distributions must begin no later than the participant's required beginning date.

(a) The participant's entire account balance shall be distributed over the participant's life expectancy or over a period not extending beyond the participant's life expectancy without regard to the designated beneficiary's age unless the designated beneficiary is a spouse who is more than 10 years younger than the participant.

(b) If the designated beneficiary is a spouse and is more than 10 years younger than the participant, the entire account balance shall be distributed over the joint lives of the participant and the designated beneficiary.

(5) Minimum distribution requirements for alternate payees. The minimum distribution requirements applicable to an alternate payee are determined by whether a Qualified Domestic Relations Order (QDRO) allocates a separate account to the alternate payee or provides that a portion of a participant's benefit is to be paid to the alternate payee.

(a) If a separate account is established in the name of the alternate payee under OAR 459-050-0210, required minimum distributions to the alternate payee must begin no later than the participant's required beginning date. The alternate payee's entire account balance shall be distributed over the alternate payee's life expectancy or over a period not extending beyond the alternate payee's life expectancy.

(b) If no separate account is established in the name of the alternate payee and the alternate payee is paid a portion of a participant's benefit, the alternate payee's portion of the benefit shall be aggregated with the amount distributed to the participant and will be treated, for purposes of meeting the minimum distribution requirement, as if it had been distributed to the participant.

(6) Manners of distribution available to surviving designated beneficiaries. A surviving designated beneficiary may choose a manner of distribution and apply for a distribution as provided for in OAR 459-050-0080. If the distribution to a participant or alternate

payee has begun in accordance with section 401(a)(9)(A)(ii) and the participant dies before the entire account has been distributed or after distributions are required to begin under section (4) of this rule, distributions to the surviving designated beneficiary must be made at least as rapidly as under the manner of distribution used before the participant's or alternate payee's death.

(7)(a) Distributions treated as having begun. Distributions from an individual account are not treated as having begun to a participant in accordance with section 401(a)(9)(A)(ii) until the participant's required minimum distribution beginning date, without regard to whether distributions from an individual account have been made before the required beginning date.

(b) If distribution has been made before the required beginning date in the form of an irrevocable annuity, the distributions are treated as having begun if a participant dies after the annuity starting date but before the required beginning date. The annuity starting date will be deemed the required minimum distribution beginning date.

(8) Required commencement date for a surviving designated beneficiary. If a participant dies before distributions are required to begin or are treated as having begun, the entire account balance must be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death, unless the beneficiary makes the following distribution election in the manner prescribed by the Deferred Compensation Plan:

(a) Distributions must begin no later than December 31 of the calendar year following the year of the participant's or alternate payee's death; and

(b) Distribution of payments over the designated beneficiary's lifetime or over a period not exceeding the designated beneficiary's life expectancy.

(A) The beneficiary's life expectancy is calculated using the age of the beneficiary in the year following the year of the participant's death, reduced by one for each subsequent year.

(B) If the participant has more than one designated beneficiary as of December 31 of the calendar year following the year of the participant's death and the account has not been divided into separate accounts for each beneficiary, the beneficiary with the shortest life expectancy is treated as the designated beneficiary.

(9) Required commencement date for a spousal beneficiary. If distributions have not begun before the participant's death and if the sole designated beneficiary is the participant's surviving spouse, distributions to the surviving spouse must commence on or before the later of the dates set forth in subsections (a) and (b) below:

(a) December 31 of the calendar year immediately following the calendar year in which the participant died; or

(b) December 31 of the calendar year in which the participant would have attained 70-1/2 years of age.

(c) The distribution period during the surviving spouse's life is the spouse's single life expectancy.

(10)(a) Required commencement date for a surviving spouse's beneficiary. If the surviving spouse dies after the participant's death but before distributions to the spouse have begun, any death benefits payable to the surviving spouse's beneficiary will be applied as if the surviving spouse were the participant. The date of death of the surviving spouse will be substituted for the date of death of the participant.

(b) A death benefit payable to the surviving spouse of the deceased participant's surviving spouse shall be distributed as provided in section (8) of this rule. The provisions of section (9) of this rule do not apply to a death benefit payable to a surviving spouse of the deceased participant's surviving spouse.

(11)(a) Required commencement date if no designated beneficiary: If a participant dies before the required beginning date with no designated beneficiary as defined in paragraph (1)(c)(C) of this rule, the total account balance must be distributed as provided for in OAR 459-050-0060, by December 31 of the calendar year containing the fifth anniversary of the participant's or alternate payee's death.

(b) If a participant dies after the required beginning date with no designated beneficiary as defined in paragraph (1)(c)(C) of this rule, the applicable distribution period must not be longer than the participant's life expectancy.

(12) Determining the designated beneficiary. The designated beneficiary will be determined based on the beneficiary(s) designated as of December 31 of the calendar year following the calendar year of the participant's, alternate payee's, or surviving beneficiary's death.

(a) A participant may change beneficiaries after his or her required beginning date.

(b) A beneficiary may be changed after a participant's death, such as by one or more beneficiaries disclaiming benefits.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - ORS 243.507

Hist.: PERS 6-2002, f. & cert. ef. 5-24-02

459-050-0310

Power of Attorney

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

(a) "Power of Attorney Document" means a written document expressly granting legal authority to another named individual(s) or agent(s) to act on behalf of and to manage some or all financial matters in the name of the individual creating the power of attorney under the terms and conditions set forth in the document.

(b) "Attorney-in-Fact" means one or more named individuals appointed by another individual in a Power of Attorney Document to act on his or her behalf under the terms and conditions set forth in the Power of Attorney Document.

(c) "Alternate Attorney-in-Fact" means a named individual appointed 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 as Attorney-in-Fact is unable or unwilling to perform as Attorney-in-Fact in the first instance.

(d) "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.

(e) "Agent" means a person or entity entrusted with another's business and acting under a power of attorney.

(f) "Principal" means the person who expressly grants, in writing, certain powers of attorney to another individual. For purposes of the Deferred Compensation Program a principal may be:

(A) A Deferred Compensation Plan participant;

(B) The beneficiary of a deceased Deferred Compensation Plan participant; or

(C) The alternate payee under a domestic relations order that satisfies the requirements of ORS 243.507 and OAR 459-050-0200 to 459-050-0250.

(2) Designation of Power of Attorney. No person may act as an Attorney-in-Fact, or an agent by a power of attorney, for a participant, alternate payee, or beneficiary with respect to Deferred Compensation Program matters unless the Power of Attorney Document appointing such person(s) or agent(s) meets the following requirements:

(a) The Power of Attorney Document shall be in written form in a format approved by the Deferred Compensation Program. The Power of Attorney Document shall contain express language:

(A) Granting the principal's power of attorney with respect to the principal's financial matters generally to a named individual(s) or agent(s); or

(B) Granting the principal's power of attorney with respect to the principal's Deferred Compensation account to a named individual(s) or agents(s).

(b) A principal may designate more than one Attorney-in-Fact in the Power of Attorney Document. If more than one individual is appointed Attorney-in-Fact, the document shall stipulate whether the individuals may act separately, or whether and how they must act collectively.

(c) A principal 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. The Deferred Compensation Program 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.

(d) Every document granting a power of attorney must contain:

(A) The principal's notarized signature subject to the following requirements:

(i) Notary information must appear on the same page as the principal's signature; or

(ii) Notary information must clearly be an integral part of the document granting power of attorney.

(B) The signature and address of the Attorney-in-Fact and the Alternate Attorney-in-Fact, if any, or an agent. The requirement of this paragraph will also be satisfied if the power of attorney document is accompanied by an example signature and address of the Attorney-in-Fact, and any Alternate Attorney-in-Fact, or an agent, as a separate attachment.

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

(3) Effective Date of Power of Attorney. A document that grants or revokes a power of attorney will be effective as to Deferred Compensation Program matters upon receipt by the Deferred Compensation Program, if the document satisfies the requirements set forth in this rule.

(a) If the document does not satisfy the requirements of this rule, Deferred Compensation Program staff will attempt to notify the principal or Attorney-in-Fact within 30 calendar days after receipt of a document that grants or revokes a power of attorney. If staff fails to notify the principal or Attorney-in-Fact 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 Deferred Compensation Program matters.

(4) Revocation of Power of Attorney. A Power of Attorney Document filed with the Deferred Compensation Program shall be revoked upon the occurrence of the earliest of the following events:

(a) A written revocation is filed with the Deferred Compensation Program containing the notarized signature of the principal. The notary information must be on the same page as the signature of the principal or must clearly be a part of the document. A photocopy of the revocation of a power of attorney may be filed with the Deferred Compensation Program if the notary information is clearly legible; or

(b) A Power of Attorney Document that satisfies the requirements of this rule is filed with the Deferred Compensation Program which bears a date that is later than any Power of Attorney Document previously filed with the Deferred Compensation Program; or

(c) The death of the principal.

(5) Permissible Actions Under A Power of Attorney. After receipt by the Deferred Compensation Program of a Power of Attorney Document satisfying the requirements set forth in section (2) of this rule, both the principal and the principal's designated Attorney-in-Fact may execute any document required by the Deferred Compensation Program or perform any Deferred Compensation Program related business that falls within the scope of the powers granted by the principal in the Power of Attorney Document.

(a) 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 manners of distribution;

(C) To choose investment preferences; and

(D) To enroll or discontinue enrollment.

(b) If the power to appoint a substitute Attorney-in-Fact exists under a Power of Attorney Document and is exercised by an Attorney-in-Fact, such appointment must be evidenced by a written document submitted to Deferred Compensation Program 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 or notary information must clearly be a part of the document granting power of attorney;

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(B) Words expressly delegating 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.

(c) A Power of Attorney Document submitted to the Deferred Compensation Program that satisfies the requirements of section (2) of this rule shall be conclusive evidence of the intent of the principal to grant a power of attorney in accordance with the express provisions of the submitted Power of Attorney Document.

(A) If the Deferred Compensation Program is required to rely upon a submitted Power of Attorney Document until it is revoked as provided in section (4) of this rule, the Deferred Compensation Program shall not be held liable for actions taken by the Deferred Compensation Program at the request of the designated Attorney-in-Fact, or Substitute Attorney-in-Fact, if applicable, under such unrevoked Power of Attorney Document.

(B) In the event that the Deferred Compensation Program relies upon a submitted Power of Attorney Document after the death of the principal and prior to the Deferred Compensation Program receiving notice of the principal's death, the Deferred Compensation Program shall have no liability for action taken by it at the request of the Attorney-in-Fact or Substitute Attorney-in-Fact after the principal's death and before the Deferred Compensation Program has been notified of the principal's death.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - ORS 243.507

Hist.: PERS 9-2002, f. & cert. ef. 6-13-02

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

459-060-0010

Requests and Fees for Public Records

(1) **Requesting public records.** Anyone may request to inspect or obtain copies of a public record(s), as defined in ORS 192.410(4), that is in the custody of the Public Employees Retirement System. PERS will allow reasonable access to any public record which a person has a right to inspect during regular business hours, as long as the record is not exempt from disclosure by law. PERS may determine the time and manner of inspection or copying to protect the records and to prevent interference with the regular activities of PERS and its employees. A request for public records must be made in writing, and must include:

(a) The name, address, and telephone number of the requestor;
(b) The identification, description, type, and format of the public record, if known to the requestor; and

(c) The number of copies requested of the public record, if copies are requested.

(2) A reasonable period of time, as determined by PERS, will be allowed for staff to locate and assemble the requested records, and consult with the Attorney General's office, if needed.

(3) **Fees for public records.** In accordance with ORS 192.440, PERS may charge a reasonable fee. Fees are calculated to reimburse PERS for the actual costs of providing and conveying copies of public records. A fee schedule is available upon request.

(a) For each request, the requestor will be informed of the estimated cost, including the employee hourly rate of pay for staff time charges, before the service(s) is performed.

(b) All fees must be paid in advance of releasing the requested public records for inspection or before photocopies are provided, unless otherwise directed by the Director or designee. Payments must be made by check or money order and made payable to the Public Employees Retirement System.

(4) **Records available at no cost.** No fee will be charged for one copy of the following public records:

(a) Board agenda for the past 12 months;
(b) Approved Board minutes or Board orders for the past 12 months;

(c) Current PERS administrative rules compilation;
(d) Current Oregon Revised Statutes pertaining to PERS;
(e) Current PERS publications;
(f) A PERS member's record to the extent permitted under OAR 459-060-0030 and 459-060-0020, excluding paragraph (3)(a)(D); and

(g) No fee will be charged for providing records in an alternative format when required under the Americans with Disabilities Act.

(5) **Fee waiver.** The Director or designee may reduce or waive fees when:

(a) Supplying the requested record(s) is within the normal scope of PERS activity;

(b) Supplying the requested record(s) is in the public interest because making the record available primarily benefits the general public; or

(c) Payment would create an extreme financial hardship on the requestor.

Stat. Auth.: ORS 192.440, ORS 238.650 & ORS 243.470

Stats. Implemented: ORS 237.410 - ORS 237.520, ORS 237.610 - ORS 237.620,

ORS 237.950 - 237.980, ORS 238, 243.401 - 243.507 & 192.410 - 192.505

Hist.: PERS 11-2000, f. 12-15-00 cert. ef. 1-1-01; PERS 7-2002, f. & cert. ef. 5-24-02

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

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

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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; or

(D) To reconcile an actuarial valuation by providing the employer with the following member information:

- (i) Salary information;
- (ii) Employment history; or
- (iii) Contribution history.

(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), (C) and (D) of section (3) of this rule and the employer certifies in writing that it will not disclose the information to any third party except to the extent permitted under OAR chapter 459, division 060 and ORS 192.502(10).

(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; PERS 7-2002, f. & cert. ef. 5-24-02

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

459-060-0200

Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) **Mediations Excluded.** Sections (6)-(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters; or

(c) Mediation in which the only parties are public bodies; or

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential; or

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) **Disclosures by Mediator.** A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)-(d), (j)-(l), or (o)-(p) of section (9) of this rule.

(7) **Confidentiality and Inadmissibility of Mediation Communications.** Except as provided in section (8) and (9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) **Written Agreement.** Section (7) of this rule does not apply to mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate." [Form not included. See ED. NOTE.]

(9) **Exceptions to confidentiality and inadmissibility.**

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of

the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation, or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation, or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712, or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege, or

(B) Attorney work product prepared in anticipation of litigation or for trial, or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency, or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation, or

(E) Settlement concepts or proposals, shared with mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Director or designee determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of the provision does not waive confidentiality or inadmissibility.

[ED. NOTE: Forms referenced in this rule are available from the agency.]

Stat. Auth.: ORS 36.224 and 238.650

Stats. Implemented: ORS 36.224, 36.228, 36.230, 36.232 and ORS Chapter 238

Hist.: PERS 7-2000, f. & cert. ef. 12-5-00

459-060-0210

Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule

does not apply to disputes involving the negotiation of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed.

(2) The words and phrases used in this rule have the same meaning as given them in ORS 36.110 and 36.234.

(3) Nothing in this rule affects any confidentiality created by other law.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (7) of this rule.

(5) **Disclosures by Mediator.** A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h)-(j) of section (7) of this rule.

(6) **Confidentiality and Inadmissibility of Mediation Communications.** Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:

(a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation, and

(b) The person agreeing to the confidentiality of the mediation on behalf of the agency:

(A) Is neither a party to the dispute nor the mediator, and

(B) Is designated by the agency to authorize confidentiality for the mediation, and

(C) Is at the same or higher level in the agency than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or Governor's designee.

(7) **Exceptions to confidentiality and inadmissibility.**

(a) Any statement, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result

in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(e) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(f) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(g) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(h) In an action for damages or other relief between a party to the mediation and the mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(i) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(j) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(8) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures of \$1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the agency, may not be made confidential.

(9) When a mediation is subject to section (6) of this rule, the agency will provide to all parties to the mediation and to the mediator a copy of this rule or an explanation of where a copy of the may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224 & ORS 238.650