

Chapter 459 Oregon Public Employees Retirement System

DIVISION 1

PROCEDURAL RULES

459-001-0000	Notice of Proposed Rule
459-001-0005	Model Rules of Procedure
459-001-0010	Filing Papers
459-001-0015	Conduct of Meetings of the Board
459-001-0025	Delegation to Director and Staff
459-001-0030	Review of Staff Actions and Determination
459-001-0035	Contested Case Hearing
459-001-0040	Petitions for Reconsideration
459-001-0090	Statement of Intention and Understanding

DIVISION 5

ADMINISTRATION

459-005-0001	Definitions, Generally
459-005-0005	Amendments to Retirement Law
459-005-0010	Public Employees Retirement Fund, A Trust
459-005-0030	Payments of Sums to Persons Entitled Thereto
459-005-0055	Actuarial Equivalency Factors
459-005-0058	Adoption of New Actuarial Equivalency Factors
459-005-0060	Standards for the Adoption of New Actuarial Equivalency Factors
459-005-0100	Definitions — Member's Fiduciary
459-005-0110	Fiduciary Document Requirements
459-005-0130	Termination of Member's Fiduciary
459-005-0140	Permissible Actions Under A Fiduciary Document
459-005-0150	Effective Date of Fiduciary Document Rules
459-005-0180	Incapacity of Members, Beneficiaries, and Alternate Payees
459-005-0210	Transmittal of Reports and Documents
459-005-0215	Transmittal of Remittances or Payments
459-005-0220	Receipt Date for Reports, Documents, Remittances, and Payments
459-005-0225	Requirement to Make Payments by Electronic Funds Transfer
459-005-0250	Recovery of Administrative Costs
459-005-0310	Date of Participation and Transfer of Employee Funds to the Oregon University System — OUS
459-005-0350	Membership Status of Persons in Concurrent Employment Eligible to Participate in an Optional or Alternative Retirement Plan
459-005-0370	Date of Participation and Transfer of Employee Funds to an Alternative Retirement Plan — OHSU
459-005-0506	Plan Compliance with Federal Statutes and Regulations
459-005-0525	Ceiling on Compensation for Purposes of Contributions and Benefits
459-005-0530	Limitation for Employers with Multiple Retirement Plans — for Contributions and Distributions Before January 1, 2000
459-005-0535	Annual Benefit Limitation
459-005-0540	Permissive Service Credit
459-005-0545	Annual Addition Limitation
459-005-0560	Required Minimum Distributions, Generally
459-005-0590	General Provisions and Applicability Date — Direct Rollovers
459-005-0591	Definitions — Direct Rollovers
459-005-0595	Limitations — Direct Rollovers
459-005-0599	Election Procedures — Direct Rollovers
459-005-0600	Precedence for Reductions or Deductions of Benefit Payment
459-005-0610	Recovery of Overpayments

DIVISION 7

EARNINGS AND INTEREST DISTRIBUTION

459-007-0001	Definitions
459-007-0003	Determination of Tier One Year-to-Date Calculation
459-007-0005	Annual Earnings Crediting

459-007-0015	Interest Rate Applied to Underpayment of Estimated Benefits
459-007-0020	Statutory Limitation on the Crediting of Earnings
459-007-0025	Crediting Earnings To Member Lump Sum Payments Received
459-007-0040	Crediting Earnings upon Withdrawal of a Tier One Member's Account
459-007-0050	Crediting Earnings for a Deceased Tier One Active or Inactive Member
459-007-0060	Crediting Earnings to the Tier One Employer Death Benefit
459-007-0070	Crediting Earnings at Tier One Service or Disability Retirement
459-007-0080	Crediting Earnings at Tier One Service Retirement, Single Payment
459-007-0090	Crediting Earnings upon Tier One Service Retirement, Two or More Installment Payments
459-007-0110	Crediting Earnings at Tier One Loss of Membership
459-007-0220	Distribution of Earnings for Withdrawal of Member's Account — Tier Two
459-007-0230	Crediting Earnings for a Deceased Tier Two Active or Inactive Member
459-007-0240	Crediting Earnings to the Tier Two Employer Death Benefit
459-007-0250	Crediting Earnings at Tier Two Service or Disability Retirement
459-007-0260	Crediting Earnings at Tier Two Service Retirement, Single Payment
459-007-0270	Crediting Earnings upon Tier Two Service Retirement, Two or More Installment Payments
459-007-0290	Crediting Earnings at Tier Two Loss of Membership
459-007-0300	Crediting Earnings to Police Officer and Firefighter Unit Accounts in the Fund
459-007-0510	Crediting Earnings to Employer Contribution Accounts
459-007-0530	Crediting Earnings To Employer Lump Sum Payments
459-007-0900	Crediting Earnings To Integration Lump Sum Payments

DIVISION 9

PUBLIC EMPLOYER

459-009-0020	Public Employer
459-009-0050	Payment of Cost Estimates
459-009-0070	Actuarial Pooling of Employer Liability
459-009-0084	Unfunded Actuarial Liability Lump-Sum Payments by Employers Participating in an Actuarial Group
459-009-0085	Unfunded Actuarial Liability Lump-Sum Payments by Employers Not Participating in an Actuarial Group
459-009-0090	Lump-Sum Payments by Employers
459-009-0100	Employer Reporting and Remittance of Contributions
459-009-0120	Employer Recordkeeping for Multiple Qualified Retirement Plans
459-009-0130	Invoicing for Delinquent Employee Contributions
459-009-0200	Employer Remitting of Employee Contributions
459-009-0350	Allocation of PERS Employer Actuarial Assets and Liabilities

DIVISION 10

MEMBERSHIP

459-010-0000	Purpose and Authority
459-010-0003	Eligibility and Membership for the PERS Chapter 238 Program
459-010-0005	Continuous Service
459-010-0010	Leave of Absence
459-010-0011	Authorized Paid Leave of Absence
459-010-0012	Membership of Community College Employees
459-010-0014	Creditable Service in PERS Chapter 238 Program
459-010-0025	Student Employee

Chapter 459 Oregon Public Employees Retirement System

459-010-0030	Determination of Employee Status
459-010-0032	Determination of Independent Contractor Status
459-010-0035	Six-Month Waiting Period
459-010-0042	Retroactive Salary Payments
459-010-0045	Substitution of Annuity
459-010-0055	Withdrawal of Contributions
459-010-0078	Volunteer Service
459-010-0115	Term of Appointive Office
459-010-0125	Eligibility of Volunteer Firefighters
459-010-0165	Transfer into a New Classification
459-010-0170	Retirement Age and Contribution Rate of One Employed in Two Classes of Service
459-010-0175	Computation of Prior Credit Service for Accumulated Seasonal Employment
459-010-0180	Membership of Elected Officer or Fixed Term Officer
459-010-0205	Retention of Membership by School Employees

DIVISION 11

RETIREMENT CREDIT

459-011-0050	Forfeiture and Restoration of Service Rights
459-011-0100	Credit for Military Service under USERRA
459-011-0110	Limited Service Credit for Time Spent in Armed Forces
459-011-0115	Military Full Cost Purchase
459-011-0200	Re-Establishment of Membership
459-011-0500	Accumulated Unused Sick Leave

DIVISION 13

RETIREMENT BENEFITS

459-013-0040	Documentary Evidence
459-013-0060	Payment of Retirement Benefits
459-013-0110	Eligibility for Early Benefits
459-013-0260	Effective Date Used in the Establishment of Service Retirement Benefits
459-013-0280	Calculation of Variable Match

DIVISION 14

DEATH BENEFITS

459-014-0030	Designation of Beneficiary
459-014-0100	Distribution in Event of Death

DIVISION 15

DISABILITY RETIREMENT ALLOWANCES

459-015-0000	Purpose
459-015-0001	Definitions
459-015-0005	Eligibility for Disability Retirement Allowances
459-015-0010	Criteria for Granting and Denying Disability Retirement Allowances
459-015-0020	Application Required
459-015-0025	Application Processing — Independent Examinations and Appeals
459-015-0030	Hearings on Denial or Discontinuance of Disability Retirement Allowances
459-015-0035	Evidence — Contested Case Hearings
459-015-0040	Proof of Case — Contested Case Hearings
459-015-0045	Return to Work
459-015-0050	Periodic Reviews
459-015-0055	Selection of Benefit Option and Commencement of Allowance
459-015-0060	Reduction Due to Workers' Compensation Payment

DIVISION 16

POLICE OFFICERS AND FIRE FIGHTERS

459-016-0100	Purchase of Units by a Police Officer or Firefighter to Provide Increased Benefits
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DIVISION 17

REEMPLOYED RETIRED MEMBERS

459-017-0060	Reemployment of Retired Members
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DIVISION 20

OLD-AGE AND SURVIVORS INSURANCE

459-020-0005	Remitting of Employer and Employee Contributions
459-020-0010	Annual Report of Earnings
459-020-0012	Quarterly Reconciliation of Social Security Reporting
459-020-0015	Collection of Pro Rata Share of Expenses
459-020-0020	Due Date for Administrative Expenses
459-020-0025	Penalty
459-020-0030	Board May Request Information
459-020-0035	Employer's Records Shall Be Available to Board
459-020-0040	Determination of Employee Status
459-020-0045	Extras Valued for Salary Contributions
459-020-0050	Governmental Unit Contracting with Board Must Have Legal Status
459-020-0055	All Prior Rules Superseded

DIVISION 30

LOCAL PUBLIC EMPLOYER RETIREMENT PLANS FOR POLICE OFFICERS AND FIRE FIGHTERS

459-030-0009	Contents of the Petition
459-030-0011	"Equal To or Better Than" Exemption
459-030-0015	Actuarial Review
459-030-0025	Standards for Review of Police Officers and Firefighters Retirement Plans
459-030-0030	Board Action on Petition and Review of Order

DIVISION 35

HEALTH INSURANCE PROGRAMS

459-035-0000	Policy and Goals
459-035-0001	Definitions
459-035-0010	Standard Retiree Health Insurance Account
459-035-0020	Eligibility, General
459-035-0030	Eligibility, Retirement Health Insurance Account
459-035-0040	Eligibility, Retiree Health Insurance Premium Account
459-035-0050	Contribution Payment from Retiree Health Insurance Premium Account for Eligible Retired State Employees Not Eligible for Medicare
459-035-0060	Contribution Payment from Retirement Health Insurance Account for Eligible Retired Members Who are Covered by Medicare
459-035-0070	Enrollment
459-035-0080	Effective Date of Coverage
459-035-0090	Retiree Health Insurance Premium Payment Process
459-035-0100	Employer Contributions for Retiree Health Insurance
459-035-0150	Continuation of Insurance Coverage Under COBRA
459-035-0200	Contracting for Health Insurance Plans, Administrator and Other Services
459-035-0220	Contract and Bid Request Solicitations

DIVISION 40

JUDGE MEMBER PROGRAM

459-040-0001	Definitions
459-040-0010	General Administration
459-040-0020	Judge Member Disability Retirement
459-040-0030	Plan A Service Retirement Allowance
459-040-0040	Plan B Service Retirement Allowance

Chapter 459 Oregon Public Employees Retirement System

459-040-0050	Variable Annuity Adjustments for Judge Members
459-040-0060	Judge Member Death Before Retirement
459-040-0070	Judge Member Death After Retirement
459-040-0080	Required Minimum Distribution of Judge Member Death Benefits

DIVISION 45

DOMESTIC RELATIONS ORDERS

459-045-0000	Authority and Purpose
459-045-0001	Definitions
459-045-0010	Division of Benefits
459-045-0020	Court Orders
459-045-0030	General Administration
459-045-0040	Requesting Information for Dividing PERS Benefits
459-045-0050	Filing Requirements for Alternate Payees
459-045-0060	General Assumptions for Computing Benefits
459-045-0080	PERS Notifications
459-045-0090	PERS Administrative Fee

DIVISION 50

DEFERRED COMPENSATION

459-050-0000	Purpose and Authority
459-050-0001	Definitions
459-050-0005	Policy and Goals of Deferred Compensation Program
459-050-0025	Deferred Compensation Advisory Committee
459-050-0030	Deferred Compensation Administrator
459-050-0035	Assistance to the Oregon Investment Council and the State Treasurer
459-050-0037	Trading Restrictions
459-050-0040	Unforeseeable Emergency Withdrawal Appeals Committee
459-050-0050	Eligibility and Enrollment
459-050-0060	OSGP Designation of Beneficiary
459-050-0065	Beneficiary Predeceases or Disclaims Benefit
459-050-0070	Catch-Up Programs
459-050-0072	Military Leave Catch-Up
459-050-0075	In-Service Distribution
459-050-0077	Loan Program
459-050-0080	Distribution of Funds After a Severance of Employment
459-050-0090	Direct Rollover
459-050-0150	Unforeseeable Emergency Withdrawal
459-050-0200	Court Orders
459-050-0210	Segregation of a Participant Account
459-050-0220	Distribution of an Alternate Payee Account
459-050-0230	Release of Information
459-050-0240	Deferred Compensation Program Notifications
459-050-0250	Fee for Administration of a Court Order
459-050-0300	Required Minimum Distribution Requirements
459-050-0310	Power of Attorney

DIVISION 60

PUBLIC RECORDS ADMINISTRATION

459-060-0000	Purpose
459-060-0001	Definitions
459-060-0010	Requests and Fees for Public Records
459-060-0020	Confidentiality of Member's Records
459-060-0030	Disclosure of Records Without Consent
459-060-0050	Request for Benefit Estimate
459-060-0200	Confidentiality and Inadmissibility of Mediation Communications
459-060-0210	Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

DIVISION 70

OREGON PUBLIC SERVICE RETIREMENT PLAN, GENERALLY

459-070-0001	Definitions
459-070-0050	Participation of Public Employers
459-070-0100	Employer Reporting
459-070-0110	Employer Remittance of Contributions

DIVISION 75

OPSRP PENSION PROGRAM

459-075-0010	Eligibility and Membership
459-075-0030	Calculation of Overtime for Purposes of Final Average Salary
459-075-0100	Credit for Military Service under USERRA
459-075-0150	Retirement Credit
459-075-0200	Retirement Eligibility for Police Officer and Firefighter Members

DIVISION 76

OPSRP DISABILITY BENEFIT

459-076-0000	Purpose
459-076-0001	Definitions
459-076-0005	Eligibility for Disability Benefits
459-076-0010	Criteria for Granting and Denying Disability Benefits
459-076-0020	Application Required
459-076-0025	Application Processing — Independent Examinations and Appeals
459-076-0045	Cessation of Disability Benefits Upon Reaching Normal Retirement Age
459-076-0050	Periodic Reviews
459-076-0055	Payment of Disability Benefit
459-076-0060	Reduction Due to Workers' Compensation Payment

DIVISION 80

OPSRP INDIVIDUAL ACCOUNT PROGRAM

459-080-0010	Membership
459-080-0050	IAP Employer Account Contributions
459-080-0100	Credit for Military Service under USERRA
459-080-0150	Employee Contributions into the IAP Account
459-080-0200	IAP Account Adjustments for Earnings or Losses
459-080-0250	IAP Account Installments
459-080-0500	Limitation on Contributions

DIVISION 1

PROCEDURAL RULES

459-001-0000

Notice of Proposed Rule

Prior to adoption, amendment or repeal of any permanent 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, or transmitting by email if the recipient has elected that option, 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 transmitting by email if the recipient has elected that option, 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 transmitting by email if the recipient has elected that option, or furnishing notice to the following persons, organi-

zations 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) Department 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;
- (6) 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.

(6) By mailing a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule.

Stat. Auth.: ORS 183.335 & 238.650

Stats. Implemented:

Hist.: PER 13, f. & cf. 10-26-76; PER 4-1981, f. & cf. 1-15-81; PER 1-1982, f. 11-22-82, cf. 1-1-83; PERS 3-1994, f. & cert. ef. 5-10-94; PERS 14-2004, f. & cert. ef. 6-15-04

459-001-0005

Model Rules of Procedure

The Attorney General's Model Rules of Procedure under the Administrative Procedures Act, as adopted and effective January 1, 2006, 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 July 1, 2006.

[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 Oregon Public Employees Retirement System.]

Stat. Auth.: ORS 183.341 & 238.650

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

Hist.: PER 11, f. 4-18-72, cf. 5-1-72; PER 12, f. 3-14-74, cf. 4-11-74; PER 13, f. & cf. 10-26-72; Renumbered from 459-030-0005; PER 2-1978, f. & cf. 11-2-78; PER 1-1980, f. & cf. 2-15-80; PER 1-1986, f. & cf. 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; PERS 25-2004, f. 11-23-04, cert. ef. 12-1-04; PERS 10-2006, f. & cert. ef. 6-26-06

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 & 238.650

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

Hist.: PER 11, f. 4-18-72, cf. 5-1-72; PER 12, f. 3-14-74, cf. 4-11-74; Renumbered from 459-030-0010; PER 3-1981, f. & cf. 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 - 192.710 & 238.650

Stats. Implemented:

Hist.: PER 1-1978, f. & cf. 9-1-78; PERS 5-1994, f. & cert. ef. 5-10-94; PERS 21-2005, f. & cert. ef. 11-1-05

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 an administrative law judge 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 & 183.600 - 183.690

Stats. Implemented:

Hist.: PERS 4-1990, f. & cert. ef. 3-26-90; PERS 21-2005, f. & cert. ef. 11-1-05

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.

(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 con-

tested 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 acknowledge receipt of a petition for a contested case hearing within 15 days of filing.

(5) The Director, or an administrator appointed by the Director, may direct the staff to schedule a formal contested case hearing or develop a recommendation to deny the member's request to be presented to the Board. The Board may then deny a request for a hearing when it has decided, in consultation with legal counsel, that the Board has no authority to grant the relief requested.

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

(7) Proposed order. The administrative law judge's proposed order becomes final 90 days following service upon the petitioner, the Director and the Board through the Director. Exceptions to the proposed order by the Director or the petitioner must be filed with the Hearing Officer administrative law judge 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).

(8) 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.

(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.

(10) The Board will generally deliberate and decide on final orders during regularly scheduled board meetings. The Board may instead deliberate and decide at any other time and place allowed by law, as determined on a case-by-case basis, such as electronically or via a telephone conference.

Stat. Auth.: ORS 238.650, 183.464 & 183.600 - 183.690

Stats. Implemented: ORS 183.413 - 183.470

Hist.: PERS 4-1990, f. & cert. ef. 3-26-90; PERS 10-2001, f. 12-14-01, cert. ef. 1-1-02; PERS 21-2005, f. & cert. ef. 11-1-05; PERS 11-2006, f. & cert. ef. 6-26-06

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 60 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 60 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 reconsiders, 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 60-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 238.650

Stats. Implemented: ORS 183.413 - 183.470

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

PERS 11-2006, f. & cert. ef. 6-26-06

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 - 637, 238.005 - 715 & 243.401 - 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) "Ad hoc" means one-time for a specific purpose, case, or situation without consideration of a broader application.

(2) "After-tax" contributions means:

(a) Member contributions required or permitted by 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.

(3) "Before-tax" contributions means member contributions required or permitted by 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 fed-

eral income taxation at the time paid to PERS. "Before-tax" contributions are included in:

(a) Computing final average salary; and

(b) Computing the employer's contributions paid to PERS if the employer has elected to "pick up" the member contributions.

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

(5) "Casual worker" means an individual engaged for incidental, occasional, irregular, or unscheduled intervals or for a period of less than six consecutive calendar months.

(6) "Contributions" means any contributions required or permitted pursuant to ORS 238.200 or 238.515.

(7) "Effective date of withdrawal" is the later of:

(a) The first day of the calendar month in which PERS receives the completed documents required of the member who is requesting a withdrawal of the member's regular account and variable account, if any; or

(b) The first day of the calendar month in which PERS receives the required notice of separation from the member's former employer(s).

(8) "Effective retirement date" means:

(a) For service retirements, the date described in OAR 459-013-0260; or

(b) For disability retirements, the date described in OAR 459-015-0015.

(9) "Elected official" means an individual 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(5).

(10) "Emergency worker" means an individual engaged in case of emergency, including fire, storm, earthquake, or flood.

(11) "Employee" has the same meaning as provided in ORS 238.005(7) 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 in accordance with OAR 459-010-0030.

(C) An individual 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(6).

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

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

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

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

(14) "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))

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

(a) ORS 238.005(8) for all PERS Tier One members;

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

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

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

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

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

(18) "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.

(19) "Judge member" has 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(12)(b), (c), and (d), respectively.

(20) "Legislator" means an individual elected or appointed to the Oregon Legislative Assembly who has elected to participate in PERS pursuant to ORS 238.015(5) as a member of the Oregon Legislative Assembly as provided in ORS 238.068.

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

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

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

(24) "Qualifying position" has the same meaning as provided in ORS 238.005(19).

(25) "Regular account" means the account established under ORS 238.250 for each active and inactive member who has made contributions to the Fund or the account of an alternate payee of such a member.

(26) "Salary" has the same meaning as provided in ORS 238.005(21).

(a) For a Tier One member, a lump sum payment for accrued vacation pay is 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, a lump sum payment for accrued vacation pay:

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

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

(27) "Seasonal worker" means an individual whose engagement is characterized as recurring for defined periods that are natural divisions of the employer's business cycle or services.

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

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

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

(31) "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.

(32) "Variable account" and "member variable account" mean the account in the Variable Annuity Account established under ORS

238.260(2) for each active and inactive member who has elected to have amounts paid or transferred into the Variable Annuity Account.

(33) "Variable Annuity Account" means the account established in ORS 238.260(2).

(34)(a) "Volunteer" means an individual who performs a service for a public employer, and who receives no compensation for the service performed.

(b) The term "volunteer" does not include an individual whose compensation received from the same public employer for similar service within the same calendar year exceeds the reasonable market value for such service.

(35) "Year" means any period of 12 consecutive calendar months.

(36) The provisions of this rule are effective January 1, 2003.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238

Hist.: PERS 2-1998, f. & cert. ef. 3-16-98; PERS 3-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 12-2003, f. & cert. ef. 11-14-03; PERS 14-2003, f. & cert. ef. 11-20-03; PERS 15-2003, f. & cert. ef. 12-15-03; PERS 9-2004(Temp), f. 4-15-04 cert. ef. 5-21-04 thru 7-1-04; PERS 15-2004, f. & cert. ef. 6-15-04; PERS 19-2005, f. 11-1-05, cert. ef. 1-1-06; PERS 4-2006, f. & cert. ef. 4-5-06

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 - 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 upon the PERF contrary to ORS 238.660, 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 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; PERS 21-2005, f. & cert. ef. 11-1-05

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) **Experience Study.** The Director shall take steps to assure that the Board's consulting actuary shall present the Experience Study required by ORS 238.605 to the Board by September 1 of each even numbered year.

(2) **Actuarial Equivalency Study.** The Director shall take steps to assure, pursuant to ORS 238.630(3)(g), that the Board's consulting actuary shall present an Actuarial Equivalency Study to the Board as soon as practicable, but no later than the December 15 next following the presentation of the Experience Study described in section (1) of this rule. 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).

(3) **Adoption of actuarial equivalency factors.**

(a) In computing the retirement allowance of members and alternate payees with retirement dates from July 1, 2003, to January 1, 2005, the Board shall use actuarial equivalency factor tables that are based on the mortality assumptions of the actuary's 2001 experience study adopted by the Board on September 10, 2002.

(b) Beginning effective January 1, 2005, the Board shall adopt actuarial equivalency factor tables to be effective for January 1 of each odd numbered year. Actuarial equivalency factor tables adopted under this section shall comply with the standards set forth in OAR 459-005-0060.

(4) **Calculation of retirement allowance.**

(a) The provisions of this section apply to any member or alternate payee with an effective date of retirement on or after July 1, 2003, except for a person who is a judge member on June 30, 2003, and who makes an election under ORS 238.565(4).

(b) PERS shall establish years of service, an account balance and final average salary as of June 30, 2003, for each person described in subsection (a) of this section. The years of service, account balance and final average salary shall be determined as provided in section 40 of chapter 67, Oregon Laws 2003 (Enrolled HB 2003).

(c) For each person described in subsection (a) of this section, the Board shall perform the following two calculations:

(A) "Regular" calculation. The Board shall calculate the retirement allowance using:

- (i) The years of service, account balance and final average salary as of the effective date of retirement;
- (ii) All calculations applicable to the member under ORS 238.300(2);
- (iii) The optional form of retirement allowance selected by the member at retirement under ORS 238.300, 238.305, 238.320 or 238.325; and
- (iv) The actuarial equivalency factor tables in effect on the effective date of retirement.

(B) "Look-back" calculation. The Board shall calculate the retirement allowance using:

- (i) The years of service, account balance and final average salary described in subsection (b) of this section;
- (ii) All calculations applicable to the member under ORS 238.300(2);
- (iii) The optional form of retirement allowance selected by the member under ORS 238.300, 238.305, 238.320 or 238.325; and
- (iv) The actuarial equivalency factor tables in effect on June 30, 2003.

(d) The retirement allowance shall be the higher of the amounts described in paragraphs (c)(A) and (c)(B) of this section, payable as of the effective date of retirement.

(5) **Death benefit payments.** Any monthly payments to be made to a beneficiary under ORS 238.390, 238.395 or 238.405 for a member who dies on or after May 9, 2003, shall be calculated using the actu-

arial equivalency factor tables that are in effect on the date that the first payment is due the beneficiary.

(6) **Judge members.** The actuarial equivalency factor tables in effect on June 30, 2003, shall be used to calculate the retirement allowance and surviving spouse pension of a person who is a judge member on June 30, 2003, and who makes an election under ORS 238.565(4), whether that election is made before, on or after June 30, 2003.

Stat. Auth: ORS 238.630 & 238.650
Stats. Implemented: ORS 238.630(3)(g)
Hist.: PERS 1-1993, f. 4-14-93, cert. ef. 5-1-93; PERS 6-1996, f. 8-13-96, cert. ef. 1-1-99; PERS 5-2004, f. & cert. ef. 2-18-04

459-005-0058

Adoption of New Actuarial Equivalency Factors

Pursuant to OAR 459-005-0055, the Board adopts the factors as described in the 2001 Actuarial Equivalency Factors report to be effective on July 1, 2003.

Stat. Auth: ORS 238.630 & 238.650
Stats. Implemented: ORS 238.630(3)(g)
Hist.: PERS 2-2003, f. & cert. ef. 6-13-03

459-005-0060

Standards for the Adoption of New Actuarial Equivalency Factors

The Board shall adopt the actuarial equivalency factors used by PERS as described in OAR 459-005-0055(4) according to the following:

- (1) Changes in mortality to reflect the best actuarial information on mortality available at the time that new actuarial tables are adopted;
- (2) Changes in the assumed rate adopted by the Board for the latest actuarial valuation if they are determined by the Board, in consultation with the PERS actuary, to be statistically significant; and
- (3) The mortality tables shall be combined with respect to gender and membership classification to derive unisex actuarial equivalency factors. The blending of the mortality assumptions shall be performed by the Board's consulting actuary in accordance with generally recognized and accepted actuarial principles and practices.

Stat. Auth: ORS 238.630 & 238.650
Stats. Implemented: ORS 238.630(3)(g)
Hist.: PERS 2-2003, f. & cert. ef. 6-13-03

459-005-0100

Definitions — Member's Fiduciary

(1) "Fiduciary Document" means the court order appointing a person as the member's fiduciary or the signed power of attorney by the member appointing the member's fiduciary as their attorney-in-fact.

(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) "Member's Fiduciary" means a guardian or conservator appointed under Oregon law, any person acting as an attorney-in-fact for a member under a power of attorney, or any other person appointed by a court to assume financial responsibility with respect to a member.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.005 - 238.715
Hist.: PERS 7-1996, f. & cert. ef. 11-12-96; PERS 4-1999, f.& cert. ef. 10-11-99; PERS 6-2007, f. & cert. ef. 2-21-07

459-005-0110

Fiduciary Document Requirements

(1) No person may act as a member's fiduciary with respect to PERS matters unless the Fiduciary Document naming or appointing such person(s) meets the requirements set forth in this rule.

(2) The Fiduciary Document shall be in written form and may be either on forms furnished by PERS or in a format approved by PERS. The Fiduciary Document shall contain express language appointing the member's fiduciary as guardian or conservator or otherwise to act on behalf of the member either with respect to the member's financial matters generally or with respect to the member's PERS benefits specifically.

(3) At a minimum, the Fiduciary Document must contain:

(a) The signature of the member or other authority appointing or designating the member's fiduciary.

(b) The signature and address of the member's fiduciary. This requirement can also be satisfied if the Fiduciary Document is accom-

panied by another document containing the signature and address of the member's fiduciary.

(4) A Fiduciary Document must be received by PERS before the member's fiduciary will be allowed to conduct any transactions on behalf of the member and must otherwise meet the requirements set forth in OAR 459-005-0110 or 459-005-0130, as applicable.

(5) If a Fiduciary Document was executed by the member over ten years prior to the date such document is filed with PERS, and there is a request to take any action by the member's fiduciary, the document will be effective with respect to PERS only if the member's fiduciary certifies to PERS, in a form which PERS in its sole discretion deems satisfactory, the continued validity of the fiduciary document.

(6) If more than one individual is named or appointed in a Fiduciary Document as the member's fiduciary, the document must stipulate whether the individuals must act together or may act separately.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - 238.715

Hist.: PERS 7-1996, f. & cert. ef. 11-12-96; PERS 4-1999, f. & cert. ef. 10-11-99; PERS 6-2007, f. & cert. ef. 2-21-07

459-005-0130

Termination of Member's Fiduciary

The authority granted a member's fiduciary will terminate upon the occurrence of the earliest of the following events:

(1) A written revocation is filed with PERS containing the member's signature, if the member appointed the member's fiduciary.

(2) A Fiduciary Document is filed with PERS which:

(a) Bears a date that is later than the Fiduciary Document previously filed with PERS;

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

(c) Names a different person as the member's fiduciary.

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

(4) PERS receives notification that the member's fiduciary has been removed or their authority terminated by the court which originally named or granted authority to the member's fiduciary, or that action has been taken by a different court.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - 238.715

Hist.: PERS 7-1996, f. & cert. ef. 11-12-96; PERS 6-2007, f. & cert. ef. 2-21-07

459-005-0140

Permissible Actions Under A Fiduciary Document

(1) After receipt by PERS of a Fiduciary Document meeting the requirements set forth in OAR 459-005-0110, the member's fiduciary and the member (unless the member's fiduciary is a guardian or conservator) may execute any document required by PERS or perform any PERS related business that falls within the scope of the powers granted by the Fiduciary Document.

(2) If the power to appoint a substitute member's fiduciary is provided in the Fiduciary Document and is subsequently exercised by the member's fiduciary, such appointment must be evidenced by a written document submitted to PERS containing:

(a) The member's fiduciary's signature;

(b) An express granting of all, or whatever portion of, the powers held by the member's fiduciary that is being granted to the substitute member's fiduciary; and

(c) The signature and address of the substitute member's fiduciary.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - 238.715

Hist.: PERS 7-1996, f. & cert. ef. 11-12-96; PERS 6-2007, f. & cert. ef. 2-21-07

459-005-0150

Effective Date of Fiduciary Document 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 a member's fiduciary or revoking a Fiduciary Document after such date, or until amended or repealed by the Board.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - 238.715

Hist.: PERS 7-1996, f. & cert. ef. 11-12-96; PERS 21-2005, f. & cert. ef. 11-1-05; PERS 6-2007, f. & cert. ef. 2-21-07

459-005-0180

Incapacity of Members, Beneficiaries, and Alternate Payees

(1) **Definitions.** For purposes of this rule, "incapacitated" and "financially incapable" have the meanings given those terms in ORS 125.005.

(2) **Presumption of capacity.** Unless demonstrated otherwise in accordance with the requirements of section (3) of this rule, PERS staff shall base its determinations on the presumption that all members, beneficiaries, and alternate payees are not incapacitated or financially incapable of making benefit decisions and executing any documents related to those decisions.

(3) **Process for overcoming presumption.** If any party in interest challenges a staff determination in accordance with OAR 459-001-0030 through 459-001-0040 based on a claim of incapacity of a member, beneficiary, or alternate payee, PERS will reverse its previous determination only if the party presents an order or determination by a court with appropriate jurisdiction specifically directing PERS to do so, or such other relief as that court may direct.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - 238.715

Hist.: PERS 8-2003, f. & cert. ef. 7-2-03

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

(b) Any request by a member for confidential information under provisions of ORS 192.502(12).

(c) 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 or e-mail. Failure to comply with these standards shall result in the PERS or the Deferred Compensation Program not accepting the report or document:

(a) The quality of the original hard copy shall be clear and dark enough to transmit legibly.

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

(c) Any report or document transmitted 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.

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

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

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

(g) The first sheet of the transmission shall indicate the number of pages being transmitted, and shall contain a telephone number to call if there are problems with the transmission.

(h) Neither the original nor any additional copies of the facsimile filings should be filed with PERS.

(i) The sender shall maintain the original of the document with the original notarization or signature affixed, as well as proof of fax 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 requests for information regarding PERS or the Deferred Compensation Program, 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 - 238.750

Hist.: PERS 6-1999, f. & cert. ef. 11-22-99; PERS 20-2004, f. 9-22-04 cert. ef. 10-14-04; PERS 21-2005, f. & cert. ef. 11-1-05

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 State Postal Service (USPS);

(b) A private express carrier as defined in ORS 293.660(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 - 238.750

Hist.: PERS 6-1999, f. & cert. ef. 11-22-99; PERS 21-2005, f. & cert. ef. 11-1-05

459-005-0220

Receipt Date for Reports, Documents, Remittances, and Payments

(1) As used in this rule:

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

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

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

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

(3) Any report, document, remittance, or payment required by PERS shall be deemed filed and received based on the receipt stamp affixed to the report, document, remittance, or payment when received by PERS.

(4) Any report, document, remittance, or payment that does not display a PERS receipt stamp shall be deemed filed and received on the imaged date. If the imaged date is later than the due date, the report, document, remittance, or payment shall be deemed filed and received five business days before the imaged date.

(5) Any report, document, remittance, or payment required by PERS which is lost or delayed 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, remittance, or payment was deposited in the USPS or with a private express carrier before the date due for filing, and was correctly addressed to PERS;

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

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

(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 accepts by 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 the 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 administrative rule.

(9) Any report or document that PERS accepts 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 PERS receives the transmission.

(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.

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

(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

Stats. Implemented: ORS 238, 238A

Hist.: PERS 6-1999, f. & cert. ef. 11-22-99; PERS 21-2005, f. & cert. ef. 11-1-05; PERS 10-2007, f. & cert. ef. 7-26-07

459-005-0225

Requirement to Make Payments by Electronic Funds Transfer

(1) As used in this rule, the following words and phrases have the following meanings:

(a) "Public employer" has the same meaning given the term in ORS 238.005(17) and includes all public school districts and educational service districts.

(b) "Electronic funds transfer" has the same meaning given the term in ORS 293.525.

(c) "ACH credit" means the electronic funds transfer from the public employer's account, initiated by the public employer and cleared through the Automated Clearing House (ACH) network for deposit to PERS.

(d) "ACH debit" means the electronic funds transfer from the public employer's account, initiated by PERS and cleared through the ACH network to debit the public employer's account and credit the PERS account.

(2) Public employers are required to make all payments to PERS by means of electronic funds transfer (EFT).

(3) On a form provided by PERS, public employers shall authorize EFT payments to PERS, and submit the form to PERS by December 1, 2005.

(a) The public employer shall provide PERS with all information necessary to allow for EFT payments, including the method of EFT payment (ACH debit or ACH credit).

(b) A public employer must complete a new EFT authorization form to change the method of transfer or to update the employer's account information.

(4) ACH Debits from a public employer's account will be processed on the third business day after the statement date and be effective on the fifth business day after the statement date.

(5) Effective January 1, 2006, a penalty shall be assessed equal to one percent of payments made by means other than EFT. This penalty is in addition to any penalties incurred under ORS 238.710 and OAR 459-020-0025.

(6) The PERS Executive Director will have the discretion to waive the penalty described in section (5) of this rule. The employer must submit any such requests in writing.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 293.525

Hist.: PERS 12-2005, f. & cert. ef. 7-5-05

459-005-0250

Recovery of Administrative Costs

(1) Estimates.

(a) Any active or inactive member within two years of eligibility for service retirement may request from PERS an estimate of retirement benefits ("estimate").

(b) Upon request, PERS shall provide a member with a maximum of two estimates in a calendar year at no cost.

(c) PERS shall charge a fee of \$60 for each estimate that exceeds the limit specified in subsection (b) of this rule.

(d) A fee charged under subsection (c) of this rule shall be paid in full prior to receipt of the requested estimate(s). Payment shall be made by check or money order payable to the Public Employees Retirement System.

(e) The provisions of this rule do not apply to current judge members during their term of office.

(2) Full cost purchases. If a member purchases retirement credit under ORS 238.157, 238.162, or 238.175, a fee of \$145 will be added to the cost of the purchase to cover the administrative costs incurred by PERS in processing the request.

Stat. Auth.: ORS 238.610 & 238.610

Stat. Implemented: ORS 238.610, 238.157, 238.162 & 238.175

Hist.: PERS 22-2003, f. 12-15-03 cert. ef. 1-1-04; PERS 22-2004, f. & cert. ef. 9-22-04

459-005-0310

Date of Participation and Transfer of Employee Funds to the Oregon University System — OUS

(1) The effective date of an election by an administrative or academic employee of the Oregon State University System of Higher Education (OUS) to participate in an Optional Retirement Plan authorized under ORS 243.800 is the first of the month following the employee's election to participate in the Optional Retirement Plan.

(a) Unless otherwise agreed upon, notice of the effective date of an election to participate in the Optional Retirement Plan will be provided to PERS by the OUS within 30 days of the election date.

(b) If the employee is a member of PERS or the Oregon Public Service Retirement Plan (OPSRP) Pension Program or Individual Account Program (IAP), and is eligible to transfer their PERS or OPSRP accounts to the Optional Retirement Plan, the OUS will forward a copy of that election at the time of the notification required in subsection (a) of this section.

(2) The date of transfer will be:

(a) For a member's PERS member account, variable account, or OPSRP Pension account, the first working day of the calendar month following the date of the notification by OUS to PERS of the employee's election to participate in an Optional Retirement Plan authorized under ORS 243.800.

(b) For a member's OPSRP IAP account, the actual date of distribution.

(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 243.800.

(4) For the purposes of this rule:

(a) "PERS member account" means the member's regular account in the fund as defined in ORS 238.250; and

(b) "PERS variable account" means the member's account in the Variable Annuity Account in the Fund as defined in ORS 238.260.

(c) "OPSRP pension account" means the member's benefit eligible for withdrawal under the provisions of ORS 238A.120; and

(d) "IAP Account" means the member's account, to the extent the member is vested, as set forth under ORS 238A.350.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 243.775

Hist.: PERS 3-1996, f. & cert. ef. 6-11-96; PERS 4-2005, f. & cert. ef. 1-31-05

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 Oregon University System or by the Oregon Health and Science University is concurrently employed by another PERS or Oregon Public Service Retirement Plan (OPSRP) participating employer, eligibility for PERS or OPSRP membership shall be based on the following:

(a) If the person elects to participate in an Optional Retirement Plan offered by the Oregon University System under ORS 243.800, or an alternative retirement plan offered by the Oregon Health and Science University under ORS 353.250, and concurrently employed with other PERS or OPSRP participating employers in a non-qualifying position(s) as defined in OAR chapter 459, the person:

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

(B) Shall not be eligible to establish membership in PERS or OPSRP 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 Oregon University System under ORS 243.800, or an alternative retirement plan offered by the Oregon Health and Science University under ORS 353.250, and concurrently employed with other PERS or OPSRP participating employers is in a qualifying position(s) as defined in OAR chapter 459, the person:

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

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

(3) A member of PERS or OPSRP who is concurrently employed and establishes PERS or OPSRP 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 243.800(6) and (7).

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.015, 243.775 & 353.250(3)
Hist.: PERS 3-1996, f. & cert. ef. 6-11-96; PERS 4-2005, f. & cert. ef. 1-31-05

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) “PERS account” means the member’s regular 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;
 - (b) “OPSRP pension account” means the member’s benefit eligible for withdrawal under the provisions of ORS 238A.120; and
 - (c) “IAP account” means the member’s accounts, to the extent the member is vested, as set forth under ORS 238A.350.
- (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 Oregon Health and Science University (OHSU) to PERS within 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 PERS, OPSRP Pension, or IAP accounts 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 238A.100 and 238A.300:
 - (a) An employee who is serving a six-month waiting period shall establish active membership in accordance with ORS 238A.100 and 238A.300 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 or OPSRP shall cease as of the effective date of the election.
 - (4) A PERS or OPSRP member electing to participate in an alternative retirement plan, authorized under ORS 353.250, and who is not concurrently an active member of PERS or OPSRP with another PERS or OPSRP participating employer, may petition PERS to have the member’s PERS, OPSRP Pension, or IAP accounts 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 OPSRP Pension, or IAP accounts as provided in subsection (a) of this section shall not include any reserves of any PERS-participating employer.
 - (5) A PERS or OPSRP 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 accounts, except as provided in section (4) of this rule.
 - (6) A transfer of a member’s PERS, OPSRP Pension, or IAP accounts 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 or OPSRP Pension accounts 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 16th of a calendar month.

(8) The date of distribution of a member’s OPSRP IAP account(s) to an alternative retirement plan, authorized under ORS 353.250, as provided for in section (4) of this rule will be the date of the actual distribution.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.015 & 353.250(3)
Hist.: PERS 5-1998, f. & cert. ef. 5-22-98; PERS 2-1999, f. & cert. ef. 5-13-99; PERS 4-2005, f. & cert. ef. 1-31-05

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 Chapters 238 and 238A by establishing limits on contributions and benefits under the Public Employees Retirement System (PERS).
 - (2) Definitions in general for OAR 459-005-0500 to 459-005-0799:
 - (a) “Member” shall have the same meaning as provided in ORS 238.005(12) with respect to members covered by ORS Chapter 238 and as provided in ORS 238A.005(10) with respect to members covered by ORS Chapter 238A.
 - (b) “Employment” means service as an employee as defined in OAR 459-005-0001(13).
 - (c) “Board” shall have the same meaning as provided in ORS 238.005(2).
 - (d) “PERS” shall have the same meaning as provided in OAR 459-005-0001(23).
 - (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. For purposes of IRC Section 414(k), the individual account program under ORS Chapter 238A shall be treated as a DC plan for the purposes of IRC Sections 72(d) and 415.
 - (f) “Defined benefit plan (DB)” means a plan which is not a defined contribution plan. For purposes of IRC Section 414(k), the pension programs under ORS Chapters 238 and 238A shall be treated as part of a defined benefit plan for purposes of IRC Sections 72(d) and 415.
 - (3) The provisions of this rule are effective on January 1, 2004.

Stat. Auth.: ORS 238.630(3)(h), 238.305 & 238.650
Stats. Implemented: ORS 238
Hist.: PERS 5-1999, f. & cert. ef. 11-15-99; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05; PERS 8-2005, f. & cert. ef. 2-22-05
- 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 Chapters 238 and 238A.
 - (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(21) and 238.205 with respect to ORS Chapter 238 and in ORS 238A.005(16) with respect to Chapter 238A 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 as it applies to ORS Chapter 238, an “employer” shall mean a “public employer” as defined in ORS 238.005(17). For the purposes of this rule as it applies to ORS Chapter 238A, an “employer” shall mean a “participating public employer” as defined in ORS 238A.005(11).

(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 Chapters 238 and 238A. 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 Chapters 238 and 238A 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) with respect to ORS Chapter 238 and under ORS 238A.130 with respect to ORS Chapter 238A 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) with respect to Chapter 238 and as defined in ORS 238A.130 with respect to Chapter 238A 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) With respect to ORS Chapter 238, creditable service, as defined in ORS 238.005(5), shall be given for each month that an active member is paid salary or wages and allowable contributions have been remitted to PERS, or would be remitted but for the annual compensation limit in IRC Section 410(a)(17). With respect to ORS Chapter 238A, retirement credit as determined in ORS 238A.140, shall be given for each month that an active member is paid salary or wages and allowable contributions have been remitted to PERS, or would be remitted but for the annual compensation limit in IRC Section 401(a)(17).

(8) The provisions of this rule are effective on January 1, 2004.
Stat. Auth.: ORS 238.630, 238.650 & 238A.005(16)(c)(I)

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; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05; PERS 8-2005, f. & cert. ef. 2-22-05; PERS 19-2005, f. 11-1-05, cert. ef. 1-1-06

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 & 238.650

Stats. Implemented: ORS 238.005 - 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 and the pension program under ORS Chapter 238A for a calendar year, excluding any benefit payable under ORS 238.485 through 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 payments to purchase permissive service credit as defined in OAR 459-005-0540, Permissive Service Credit;

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

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

(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, in the year purchased.

(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.

(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 the table prescribed pursuant to the Internal Revenue Code.

(7) The provisions of this rule are effective on January 1, 2004.

Stat. Auth.: ORS 238.630, 238.650 & 238A.125

Stats. Implemented: ORS 238.005 - 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; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05; PERS 8-2005, f. & cert. ef. 2-22-05

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 & 238.650

Stats. Implemented: ORS 238.005 - 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 under IRC Section 415(d)); 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 term "annual additions" has 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, 1997. As used in this subsection, the term “eligible participant” includes any individual who became an active member before January 1, 2000.

(5) Purchase of Service in the Armed Forces Under ORS 238.156 or 238A.150. 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) or 238A.150 and the service is covered under Internal Revenue Code Section 414(u), 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) The provisions of this rule are effective on January 1, 2004.

Stat. Auth.: ORS 238.630, 238.650 & 238A.370

Stats. Implemented: ORS 238.005 - 238.715

Hist.: PERS 5-1999, f. & cert. ef. 11-15-99; PERS 11-2002, f. & cert. ef. 7-17-02; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05; PERS 8-2005, f. & cert. ef. 2-22-05

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 Treasury Regulation Sections 1.401(a)(9)-1 through 1.401(a)(9)-9. 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 1/2; 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 requirements set forth in Treasury Regulation Section 1.401(a)(9)-4.

(c) Calculation of Life Expectancies. For purposes of this section and Chapter 238 benefits and the Pension Program, which are part of the DB component of PERS, life expectancies shall not be recalculated after the initial determination, unless otherwise required by Treasury Regulation Section 1.401(a)(9)-5, Q&A-4 and Q&A-5. For purposes of this section and the Individual Account Program, life expectancies

shall be recalculated but no more frequently than annually, unless otherwise required by Treasury Regulation Section 1.401(a)(9)-5, Q&A-5.

(d) Limitations on Benefit Changes. 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 except as permitted under Treasury Regulation Sections 1.401(a)(9)-4 and 1.401(a)(9)-6.

(e) Limitations on Conversion of Joint Annuity to Single Life Annuity Following Divorce. A retired member who has had a required beginning date may elect to convert a joint and survivor annuity under Option 2A or 3A under Chapter 238 to a single life annuity by reason of the member’s divorce from the joint annuitant, subject to the provisions of Treasury Regulation Section 1.401(a)(9)-6. This section applies to ORS Chapter 238 benefits notwithstanding ORS 238.305(5) and 238.325(3).

(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 under 238A.190(1)(a)) and designates a nonspouse beneficiary who is more than ten years younger than the member as calculated under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2, the benefit shall be actuarially adjusted to provide for a reduced survivor annuity benefit to the extent necessary to comply with federal requirements for qualified retirement plans.

(g) Limitation on Period-Certain Annuity Election (Chapter 238 only). If a member elects a 15-year certain option (Option 4 under ORS 238.305(1)), and attains age 85 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.

(h) Limitation on Selection of IAP Benefit Options. Benefit payment options selected under the Individual Account Program shall be considered as payment options under a DC plan and must comply with the requirements of Treasury Regulation Section 1.401(a)(9)-5.

(3) Distributions to Beneficiaries of Retired Members. If a retired member dies after annuity benefit payments have begun under Chapter 238 or the Pension Program or other benefit payments are required to begin under section (2) of 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 annuity payments have begun under Chapter 238 or the Pension Program or other benefit payments 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 designated 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) Distributions to Spouse Designated Beneficiaries. Notwithstanding subsection (a) of this section, if the designated beneficiary is the member’s surviving spouse as defined by the Internal Revenue Code:

(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 1/2; 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) The provisions of this rule are effective on January 1, 2003.

Stat. Auth.: ORS 238.630, 238.650, 238A.130, 238A.170 & 238A.410

Stats. Implemented: ORS 238.005 - 238.715

Hist.: PERS 5-1999, f. & cert. ef. 11-15-99; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05; PERS 8-2005, f. & cert. ef. 2-22-05; PERS 21-2005, f. & cert. ef. 11-1-05

ef. 2-22-05; PERS 5-2007(Temp), f. & cert. ef. 2-16-07 thru 8-14-07; PERS 9-2007, f. & cert. ef. 7-26-07

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 Chapters 238 or 238A 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.

(4) The provisions of this rule are effective on January 1, 2004.
Stat. Auth.: ORS 238.650 & 238A.430
Stats. Implemented: ORS 238.005 - 238.715
Hist.: PERS 11-1998, f. & cert. ef. 12-17-98; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05; PERS 8-2005, f. & cert. ef. 2-22-05

459-005-0591

Definitions — Direct Rollovers

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

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

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

(3) A “distributee” includes a PERS member, the surviving spouse of a deceased PERS member, a non-spouse beneficiary of the member that is a designated beneficiary under Code Section 402(c)(11), and the current or former spouse of a PERS member who is the alternate payee under a domestic relations order that satisfies the requirements of ORS 238.465 and the rules adopted thereunder.

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

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

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

(c) A qualified trust described in Code Section 401(a) that accepts the distributee’s eligible rollover distribution;

(d) An eligible deferred compensation plan described in Code Section 457(b) which is maintained by an eligible employer described in Code Section 457(e)(1)(A) and accepts the distributee’s eligible rollover distribution.

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

(f) For the purposes of ORS 237.650(3), the individual employee account maintained for a member under the Individual Account Program as set forth under ORS 238A.350(2); and

(g) For the purposes of ORS 237.655(2), the state deferred compensation program.

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

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

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

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

(7) The provisions of this rule are effective on January 1, 2007.
Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.005 - 238.715
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; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05; PERS 3-2005, f. & cert. ef. 1-31-05; PERS 8-2005, f. & cert.

459-005-0595

Limitations — Direct Rollovers

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

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

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

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

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

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

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

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

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

(3) The provisions of this rule are effective on January 1, 2007.
Stat. Auth.: ORS 238.650 & 238A.4500
Stats. Implemented: ORS 238, 238A
Hist.: PERS 11-1998, f. & cert. ef. 12-17-98; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05; PERS 8-2005, f. & cert. ef. 2-22-05; PERS 5-2007(Temp), f. & cert. ef. 2-16-07 thru 8-14-07; PERS 9-2007, f. & cert. ef. 7-26-07

459-005-0599

Election Procedures — Direct Rollovers

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

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

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

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

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

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

(A) Distributee’s full name;

(B) Distributee’s social security number;

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

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

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

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

(b) The election shall include or be accompanied by a statement by the recipient plan’s plan administrator that the plan will accept the

direct rollover for the benefit of the distributee, including whether or not the recipient plan will accept, and account for separately, after-tax dollars.

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

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

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

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

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

(b) The date of an electronic transfer/transaction to the recipient plan.

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

Stat. Auth.: ORS 238.650 & 238A.4500

Stats. Implemented: ORS 238, 238A

Hist.: PERS 11-1998, f. & cert. ef. 12-17-98; PERS 21-2005, f. & cert. ef. 11-1-05;

PERS 5-2007(Temp), f. & cert. ef. 2-16-07 thru 8-14-07; PERS 9-2007, f. & cert. ef.

7-26-07

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) & 238.650

Stats. Implemented: ORS 238.005 - 238.715

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

459-005-0610

Recovery of Overpayments

(1) Authority and Purpose. 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 full 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.

(2) For the purposes of this rule:

(a) "Overpayment" refers to an amount that is in excess of the amount a payee is entitled to under ORS Chapters 238 and 238A;

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

(c) "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;

(d) "Monthly payment" means any gross pension, annuity, service or disability retirement allowance, death benefit, or other benefit under ORS Chapters 238 or 238A that is paid monthly to or on behalf of a payee;

(e) "Lump-sum payment" means any one-time distribution or payment made under ORS Chapters 238 or 238A, or any other law directing PERS to make a payment, including a retroactive adjustment, that is not scheduled to be paid to or on behalf of a payee on a regular monthly basis;

(f) "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(6), 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; or

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

(3) In addition to the notice of an overpayment or erroneous payment to a payee required by ORS 238.715(4), PERS shall also send an explanation of the overpayment or erroneous payment; whether the Board asserts a right to assess interest, penalties and costs of collection; and a description of the manner in which the payee may appeal the determinations reflected in the explanation, if applicable.

(4) In determining the amounts owed by a payee and setting a repayment schedule under sections (5) or (6) of this rule, PERS shall reduce the amount owed by any lump-sum payment then owed by PERS to that payee. If the payee should subsequently become entitled to any lump sum payment, it shall be applied against the amounts then owed by that payee. PERS, in its discretion, may revise the repayment schedule or continue on the established schedule until the remaining amounts owed are fully repaid.

(5) The following list includes possible methods for PERS to recover an overpayment under an agreement with the payee. These methods are listed in order of preference. Unless otherwise ordered by the Board, PERS Staff is granted the discretion to select the method deemed most likely to effect a full recovery:

(a) A repayment of all amounts owed in a single payment;

(b) A deduction of a percentage or fixed dollar amount, to be agreed upon between the payee and PERS, from future monthly payments for a period not to exceed two years that will fully repay the amounts owed;

(c) A fixed monthly dollar amount to be agreed upon between the payee and PERS that will fully repay the amounts owed;

(d) A deduction of a percentage or fixed dollar amount from future monthly payments, to be agreed upon between the payee and PERS, for a specified period greater than two years that will fully repay the amounts owed if PERS deems that a longer repayment period is warranted by the payee's personal financial circumstances.

(6) If the payee does not agree to one of the recovery methods under section (5) of this rule, PERS shall use one of the following methods to effect a full recovery of any overpayment or erroneous payment:

(a) Deducting not more than 10 percent from current and future monthly payments to a payee until the full amounts owed are recovered;

(b) Making an actuarially determined reduction, not to exceed 10 percent, to current and future payments from PERS calculated to repay the full amount of the overpayment or erroneous payment during the period in which monthly payments will be made to the payee;

(c) Seeking recovery of the overpayment or erroneous payment by using any remedy available to the Board under applicable law; or

(d) Engaging the services of outside collection agencies.

(7) If a recovery method has to be selected under section (6) and the overpayment is caused solely by the actions of PERS or a participating public employer, the actuarial reduction method described in (6)(b) will be the preferred method to recover that overpayment unless otherwise ordered by the Board.

(8) 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 (6)(b) of this rule.

(9) In the event that PERS determines that an overpayment or erroneous payment was not caused by PERS or by the actions of a

participating public employer, PERS may include within the amounts owed by the payee:

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

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

(10) 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; and

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

(11) 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 ORS 238.715(4).

(12) 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) & 238.650

Stats. Implemented: ORS 238.715

Hist.: PERS 14-1998, f. & cert. ef. 12-17-98; PERS 2-2006, f. & cert. ef. 2-1-06

DIVISION 7

EARNINGS AND INTEREST DISTRIBUTION

459-007-0001

Definitions

The words and phrases used in this division have the same meaning given them in ORS Chapter 238 and OAR 459-005-0001. Specific and additional terms for purposes of this division are defined as follows unless context requires otherwise:

(1) "Annual rate" means the rates determined by the Board for crediting earnings to Tier One regular accounts, Tier Two regular accounts and member variable accounts, effective as of December 31 of each year.

(2) "Assumed rate" means the actuarial assumed rate of return on investments as adopted by the Board for the most recent actuarial valuation.

(3) "Average annualized rate" means the monthly rate provided by the Oregon State Treasury representing the rate credited to cash accounts.

(4) The "Benefits-in-Force Reserve" or "BIF Reserve" means the reserve established under ORS 238.670(2).

(5) "Capital Preservation Reserve" means the reserve established under ORS 238.670(3).

(6) "Contingency Reserve" means the reserve established under ORS 238.670(1).

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

(8) "Date of payment" means the date a payment is received by PERS.

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

(10) "Tier One Member Deficit Reserve" and "Deficit Reserve" mean the deficit reserves established in ORS 238.255(1) that are used to fund crediting of the assumed rate to Tier One regular accounts and that are used to reflect losses attributable to Tier One regular accounts.

(11) "Tier One Member Rate Guarantee Reserve" and "Rate Guarantee Reserve" mean the reserve referenced in ORS 238.255(1) that enables the Board to credit earnings at or above the assumed rate under the conditions specified in ORS 238.255.

(12) "Year-to-date calculation" means the factor used to credit a pro-rata distribution of year-to-date earnings, allowing for reserves and expenses, to Tier One regular accounts, Tier Two regular accounts, or member variable accounts. These factors are calculated by staff on a monthly basis using the market value of investments in the Fund as

supplied by the Oregon State Treasury. Year-to-date calculations for Tier One member regular accounts will be determined in accordance with OAR 459-007-0003.

(13) The provisions of this rule shall be applied retroactively to July 1, 2003.

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; PERS 4-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 24-2003, f. & cert. ef. 12-15-03; PERS 18-2005(Temp), f. & cert. ef. 10-26-05 thru 4-19-06; PERS 1-2006, f. & cert. ef. 2-1-06

459-007-0003

Determination of Tier One Year-to-Date Calculation

(1) Any year-to-date calculation ("factor") used to credit earnings to Tier One member regular accounts shall be a pro-rate of the assumed interest rate and cannot be greater unless and until the conditions in ORS 238.255 have been met.

(2) The provisions of this rule shall be applied retroactively to July 1, 2003.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238

Hist.: PERS 24-2003, f. & cert. ef. 12-15-03; PERS 18-2005(Temp), f. & cert. ef. 10-26-05 thru 4-19-06; PERS 1-2006, f. & cert. ef. 2-1-06

459-007-0005

Annual Earnings Crediting

(1) For purposes of this rule, "remaining earnings" means earnings available for distribution to a particular account or reserve after deduction of amounts required or authorized by law for other purposes.

(2) Except as otherwise specified in this division, earnings on all accounts and reserves in the Fund shall be credited as of December 31 of each calendar year in the manner specified in this rule.

(3) **Health insurance accounts.** All earnings attributable to the Standard Retiree Health Insurance Account (SRHIA), the Retiree Health Insurance Account (RHIA) or the Retirement Health Insurance Premium Account (RHIPA) shall be credited to the account from which they were derived, less administrative expenses incurred by each account, as provided in ORS 238.410, 238.415 and 238.420, respectively.

(4) **Employer lump sum payments.** All earnings or losses attributable to the employer lump sum payment accounts established under ORS 238.229 shall be credited to the accounts from which they were derived.

(5) Administrative expenses.

(a) Earnings on the Variable Annuity Account shall first be used to pay a pro rata share of administrative expenses in accordance with ORS 238.260(6). If the Variable Annuity Account experiences a loss, the loss shall be increased to pay a pro rata share of administrative expenses.

(b) Earnings attributable to Tier One regular accounts, the Tier One Rate Guarantee Reserve, Tier Two member regular accounts, employer contribution accounts, the Contingency Reserve, the Benefits-in-Force Reserve and the Capital Preservation Reserve shall first be used to pay the system's remaining administrative expenses under ORS 238.610.

(6) **Member variable accounts.** All remaining earnings or losses attributable to the Variable Annuity Account shall be credited to the participants of that account, as provided under ORS 238.260(6) and (7)(b).

(7) Contingency Reserve.

(a) In any year in which total earnings on the Fund equal or exceed the assumed rate, an amount not exceeding seven and one-half percent of remaining earnings attributable to Tier One regular accounts, the Tier One Rate Guarantee Reserve, Tier Two regular accounts, Benefits-in-Force Reserve, employer contribution accounts, the Capital Preservation Reserve and the Contingency Reserve shall be credited to the Contingency Reserve to the level at which the Board determines it is adequately funded for the purposes specified in ORS 238.670(1).

(b) The portion of the Contingency Reserve allowed under ORS 238.670(1)(a) for use in preventing a deficit in the fund due to employer insolvency may only be credited using earnings attributable to employer contribution accounts.

(8) **Tier One Member Deficit Reserve.** All remaining earnings attributable to Tier One regular accounts and the Tier One Rate Guarantee Reserve shall be credited to the Tier One Member Deficit Reserve established in ORS 238.255(1) until the deficit is eliminated.

(9) **Capital Preservation Reserve.** Remaining earnings attributable to the Tier Two member regular accounts, employer contribution accounts, the Benefits-in-Force Reserve, the Contingency Reserve and the Capital Preservation Reserve may be credited from those sources to one or more reserve accounts that may be established under ORS 238.670(3) to offset gains and losses of invested capital.

(10) **Tier One regular accounts.** All remaining earnings attributable to Tier One regular accounts and the Tier One Rate Guarantee Reserve shall be credited to Tier One member regular accounts at the assumed rate in any year in which the conditions set out in ORS 238.255 have not been met. Crediting under this subsection shall be funded first by all remaining earnings attributable to Tier One regular accounts and the Tier One Rate Guarantee Reserve, then moneys in the Tier One Rate Guarantee Reserve.

(11) **Tier One Member Rate Guarantee Reserve.** In any year in which the Deficit Reserve has a zero balance, remaining earnings attributable to Tier One regular accounts, the Tier One Member Rate Guarantee Reserve, the Benefits-in-Force Reserve, and the Contingency Reserve may be credited to the Tier One Member Rate Guarantee Reserve established under ORS 238.255(1).

(12) **Tier Two member regular accounts.** All remaining earnings or losses attributable to Tier Two member regular accounts shall be credited to all active and inactive Tier Two member regular accounts under ORS 238.250.

(13) **Benefits-in-Force Reserve.** Remaining earnings attributable to the Benefits-in-Force Reserve, the Contingency Reserve, the Capital Preservation Reserve and employer contribution accounts, in that order, shall be used, to the extent available, to credit the Benefits-in-Force Reserve with earnings up to the assumed rate for that calendar year in accordance with ORS 238.670(2).

(14) **Employer contribution accounts.** All remaining earnings attributable to employer contribution accounts shall be credited to employer contribution accounts.

(15) **Remaining earnings.** Any remaining earnings shall be credited to accounts and reserves in the Fund at the Board's discretion.

(16) The provisions of this rule shall be applied retroactively to April 15, 2004.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238

Hist.: PERS 8-2004, f. & cert. ef. 4-15-04; PERS 18-2005(Temp), f. & cert. ef. 10-26-05 thru 4-19-06; PERS 1-2006, f. & cert. ef. 2-1-06

459-007-0015

Interest Rate Applied to 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:

(1) the rate credited to the respective tier in the Fund for the prior calendar year for members who have effective dates of retirement prior to January 1, 2006;

(2) the average annualized interest rate, as defined in OAR 459-007-0001(3), in effect as of the date of distribution for members who have effective dates of retirement on and after January 1, 2006.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.455, OL 2005 Ch. 302

Hist.: PERS 6-1998, f. & cert. ef. 5-22-98; PERS 22-2005, f. & cert. ef. 12-7-05

459-007-0020

Statutory Limitation on the Crediting of Earnings

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

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238

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

459-007-0025

Crediting Earnings To Member Lump Sum Payments Received

(1) Definition.

(a) "Member lump sum payment" means any payment received by PERS that:

(A) Is not regularly scheduled;

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

(C) The member or payor has control over whether to make the payment.

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

(A) Retirement credit purchases.

(B) Voluntary redeposit, as provided under ORS 238.105.

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

(2) No earnings shall be credited to member lump sum payments that are made within 90 days before or after the member's effective retirement date.

(3) Earnings from the date of payment to December 31 of the calendar year of the date of payment, or the member's effective retirement date, whichever occurs first, shall be credited to the member's lump sum payment based on the rate derived from the formula:

$(Y - X)(R/T) + (Z - Y)$, where:

R = The number of days from the date of payment through the last day of the month the payment is received;

T = The total number of days in the month the payment is received;

X = The latest year-to-date calculation ("factor") applicable to the member's regular account as of the first of the month of the date of payment;

Y = The factor as of the first of the month following the date of payment; and

Z = The factor as of the effective retirement date if such date occurs during the year the payment is received, or, in all other cases, the annual rate applicable to the member's regular account as of December 31 of the year the payment is received.

(4) If the formula described in section (3) of this rule results in a rate less than zero for a Tier One member, the rate shall be zero.

[Example: A member lump sum payment is received by PERS on May 12, 2002, from a Tier One member whose effective retirement date is August 1, 2003. The Tier One factor as of May 1, 2002, is 1.0263, the Tier One factor as of June 1, 2002, is 1.0330, and the Tier One annual rate for 2002 is 1.0800. Therefore, R = 20, T = 31, X = 1.0263, Y = 1.0330, Z = 1.0800 and the earnings crediting rate is:

$$\begin{aligned} & (1.0330 - 1.0263)(20/31) + (1.0800 - 1.0263) \\ &= (0.0067)(0.6452) + (0.0537) \\ &= 0.0043 + 0.0537 \\ &= 0.0580] \end{aligned}$$

(5) If the effective retirement date does not occur in the same year as the date of payment, the member lump sum payment shall be made a part of the member's regular account as of January 1 of the year following the date of payment.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238

Hist.: PERS 9-2000, f. 12-15-00 cert. ef. 1-1-01; PERS 4-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 13-2003, f. & cert. ef. 11-14-03; PERS 1-2007, f. & cert. ef. 1-23-07

459-007-0040

Crediting Earnings upon Withdrawal of a Tier One Member's Account

When a Tier One member withdraws his or her member account under ORS 238.265, earnings from the effective date of the last annual rate to the date of distribution shall be credited in the manner specified in this rule.

(1) Earnings on the member's regular account shall be credited as follows:

(a) If earnings for the calendar year prior to the effective date of withdrawal have not yet been credited, earnings for that year shall be credited to the member's regular account based on the latest year-to-date calculation available for that year.

(b) Earnings from January 1 of the calendar year of the effective date of withdrawal to the effective date of withdrawal shall be credited to the member's regular account based on the latest year-to-date calculation as of the effective date of withdrawal.

(2) If the member is participating in the Variable Annuity Account, earnings or losses of the Variable Annuity Account shall be credited as follows:

(a) If earnings or losses for the calendar year prior to the effective date of withdrawal have not yet been credited, earnings or losses for that year shall be credited to the member's variable account based on the latest year-to-date calculation available for that year.

(b) Earnings or losses from January 1 of the calendar year of the effective date of withdrawal to the effective date of withdrawal shall be credited to the member's variable account based on the latest year-to-date calculation as of the first of the month of the effective date of withdrawal.

(3) After earnings and losses have been credited in accordance with sections (1) and (2) of this rule, the value of the variable account shall be added to the value of the regular account and the sum shall constitute the withdrawal amount.

(4) Earnings on the withdrawal amount from the effective date of withdrawal to the date of distribution shall be paid to the member based on the average annualized rate prorated for that period.

(5) The provisions of this rule are effective on July 1, 2003.

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; PERS 4-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 24-2003, f. & cert. ef. 12-15-03

459-007-0050

Crediting Earnings for a Deceased Tier One Active or Inactive Member

Upon the death of an active or inactive Tier One member, earnings from the date of death to the date of distribution shall be credited as specified in this rule.

(1) Definitions. For purposes of this rule:

(a) "Death benefit amount" means the funds held by PERS for the beneficiary or beneficiaries of a deceased member until benefits are distributed.

(b) "Effective date of request" means the first of the month in which PERS receives a valid request for distribution of the death benefit amount.

(2) For a member whose date of death is on or after January 1, 2000:

(a) If the member's death is prior to July 1, 2003, earnings shall be credited to the member's regular account as follows:

(A) If earnings for the calendar year prior to the date of the member's death have not yet been credited, earnings for that year shall be credited based on the greater of the assumed rate or the latest year-to-date calculation available for that year.

(B) Earnings for the calendar year of the member's death shall be credited based on the greater of the assumed rate, prorated from January 1 to the first of the month of the member's death, or the latest year-to-date calculation as of the first of the month of the member's death.

(b) If the member's death is on or after July 1, 2003, earnings shall be credited to the member's regular account as follows:

(A) If earnings for the calendar year prior to the date of the member's death have not yet been credited, earnings for that year shall be credited based on the latest year-to-date calculation available for that year.

(B) Earnings for the calendar year of the member's death shall be credited based on the latest year-to-date calculation as of the first of the month of the member's death.

(c) If the member was participating in the Variable Annuity Account, earnings or losses of the Variable Annuity Account shall be credited to the member's variable account as follows:

(A) If earnings or losses for the calendar year prior to the calendar year of the member's death have not yet been credited, earnings or losses for that year shall be credited based on the latest year-to-date calculation available for that year.

(B) Earnings or losses for the calendar year of the member's death shall be credited based on the latest year-to-date calculation as of the first of the month of the member's death.

(d) After earnings have been credited in accordance with subsections (a), (b) and (c) of this rule, the value of the member's variable account shall be added to the value of the member's regular account and the sum shall constitute the death benefit amount as of the first of the month of the member's death.

(e) If the effective date of request occurs within the same year as the date of death, earnings from the first of the month of the member's death to the effective date of request shall be credited based on the latest year-to-date calculation for Tier Two regular accounts as of the effective date of request less the latest year-to-date calculation for Tier Two regular accounts as of the first of the month of the member's death, and subsections (f) through (h) of this section do not apply.

(f) Earnings on the death benefit amount from the first of the month of the member's death to the end of the calendar year shall be

credited based on the Tier Two annual rate less the latest year-to-date calculation for Tier Two as of the first of the month of the member's death.

(g) Earnings on the death benefit amount for calendar years following the year of the member's death and prior to the year funds are requested shall be credited in accordance with OAR 459-007-0005 for Tier Two regular accounts.

(h) Earnings on the death benefit amount from January 1 of the year funds are requested to the effective date of request shall be based on the latest year-to-date calculation for Tier Two regular accounts.

(i) Earnings from the effective date of request to the date of distribution shall be based on the average annualized rate.

(3) If a member's date of death is prior to July 1, 2003, and the effective date of request is prior to December 31, 2004, earnings shall be credited as follows:

(a) Earnings from the date of death through December 31, 1999, shall be credited to the member's regular account as of December 31, 1999, in accordance with the provisions of this rule in effect from the date of death through December 31, 1999.

(b) Earnings from January 1, 2000, to the date of distribution shall be credited in accordance with ORS 238.390 as simple interest prorated for that period based on the assumed rate.

(4) If a member's date of death is prior to January 1, 2000, but the effective date of request is on or after December 31, 2004:

(a) Earnings shall be credited in accordance with the version(s) of OAR 459-007-0050 in effect up to January 1, 2000.

(b) As of January 1, 2000, the deceased member's account(s) shall be converted to a death benefit amount under subsection (2)(d) of this rule.

(c) Earnings on the death benefit amount from January 1, 2000, to the date of distribution shall be credited in accordance with subsections (2)(e) through (2)(h) of this rule.

(5) The provisions of this rule are effective on July 1, 2003.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.390, 238.430 & 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; PERS 4-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 24-2003, f. & cert. ef. 12-15-03; PERS 16-2004, f. & cert. ef. 6-15-04; PERS 21-2005, f. & cert. ef. 11-1-05

459-007-0060

Crediting Earnings to the Tier One Employer Death Benefit

(1) Upon the death of a Tier One member who is entitled to an employer death benefit under ORS 238.395, the amount of the employer benefit shall be added to the death benefit amount, as defined in OAR 459-007-0050(1), as of the first of the month of the member's death.

(2) Earnings shall thereafter be credited to the death benefit amount in accordance with OAR 459-007-0050(2)(e) through (g).

(3) The provisions of this rule are effective on July 1, 2003.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.390, 238.430 & 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; PERS 4-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 24-2003, f. & cert. ef. 12-15-03; PERS 21-2005, f. & cert. ef. 11-1-05

459-007-0070

Crediting Earnings at Tier One Service or Disability Retirement

Upon the service retirement or disability retirement of a Tier One member, earnings from the effective date of the last annual rate to the effective retirement date shall be credited to the member account in the manner specified in this rule.

(1) Earnings shall be credited to the member's regular account as follows:

(a) If earnings for the prior calendar year have not yet been credited, earnings shall be credited for that year based on the latest year-to-date calculation available for that year.

(b) Earnings for the calendar year of the effective retirement date shall be credited based on the latest year-to-date calculation as of the effective retirement date.

(2) If the member is participating in the Variable Annuity Account at time of retirement, earnings or losses shall be credited to the member's variable account as follows:

(a) If earnings or losses for the calendar year prior to the effective retirement date have not yet been credited, earnings or losses for that year shall be credited based on the latest year-to-date calculation available for that year.

(b) Earnings or losses for the calendar year of the effective retirement date shall be credited based on the latest year-to-date calculation as of the effective retirement date.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.260, 238.300, 238.305 & 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; PERS 20-2003, f. 12-15-03 cert. ef. 4-1-04

459-007-0080

Crediting Earnings at Tier One Service Retirement, Single Payment

Notwithstanding OAR 459-007-0070, when a Tier One member retires and elects to receive a single payment of benefits under ORS 238.305(2) or (3), earnings from the effective date of the last annual rate to the date of distribution shall be credited in the manner specified in this rule.

(1) Earnings on the member's regular account shall be credited as follows:

(a) If earnings for the calendar year prior to the effective retirement date have not yet been credited, earnings for that year shall be credited to the member's regular account based on the latest year-to-date calculation available for that year.

(b) Earnings credited for the calendar year of the effective retirement date shall be credited to the member's regular account based on the latest year-to-date calculation as of the effective retirement date.

(c) Earnings from the effective retirement date to the date of distribution shall be paid to the member based on the average annualized rate prorated for that period.

(2) If the member is participating in the Variable Annuity Account at time of retirement, earnings or losses shall be credited as follows:

(a) If earnings or losses for the calendar year prior to the effective retirement date have not yet been credited, earnings or losses for that year shall be credited to the member's variable account based on the latest year-to-date calculation available for that year.

(b) Earnings or losses from January 1 of the year of the effective retirement date to the effective retirement date shall be credited to the member's variable account based on the latest year-to-date calculation as of the effective retirement date.

(3) Earnings on the combined amount of the accounts credited under sections (1) and (2) of this rule from the effective retirement date to the date of distribution shall be paid to the member based on the average annualized rate prorated for that period.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.260, 238.300, 238.305 & 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; PERS 20-2003, f. 12-15-03 cert. ef. 4-1-04

459-007-0090

Crediting Earnings upon Tier One Service Retirement, Two or More Installment Payments

Notwithstanding 459-007-0070, if a Tier One member retires and elects to receive installment payments under ORS 238.305(4), earnings shall be credited from the effective date of the last annual rate to the date of distribution of the final installment payment in the manner specified in this rule.

(1) **Regular account.** Earnings shall be credited to the member's regular account as follows:

(a) **Prior year earnings.** If earnings for the calendar year prior to the effective retirement date have not yet been credited, earnings shall be credited for that year based on the latest year-to-date calculation available for that year.

(b) **Retirement year earnings.** Earnings for the calendar year of the effective retirement date shall be based on the latest year-to-date calculation as of the effective retirement date.

(2) **Variable account.** If the member is participating in the Variable Annuity Account, earnings or losses shall be applied to the member's variable account as follows:

(a) **Prior year earnings.** If earnings or losses for the calendar year prior to the effective retirement date have not yet been credited to the member's variable account, earnings or losses for that year shall be credited based on the latest year-to-date calculation available for that year.

(b) **Retirement year earnings.** Earnings or losses for the calendar year of the effective retirement date shall be credited based on the latest year-to-date calculation as of the effective retirement date.

(c) In accordance with ORS 238.305(4)(a)(F), after crediting 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 member's variable account shall be transferred to the member's regular account as of the effective retirement date.

(3) **Initial installment.** Earnings shall be credited to the initial installment as follows:

(a) If the initial installment is distributed in the same year as the effective retirement date, earnings shall be paid with the initial installment based on the average annualized rate prorated from the effective retirement date to the date of distribution of the initial installment.

(b) If the initial installment is distributed in the year following the effective retirement date, earnings shall be paid with the initial installment based on the average annualized rate prorated from January 1 of the year following the effective retirement date to the date of distribution of the initial installment.

(4) **Annual earnings — initial year.** Earnings from the effective retirement date to December 31 of the year of retirement shall be credited to the member's regular account in the following amount:

(a) The member's regular account balance as of December 31 of the year of retirement, excluding the remaining earnings credited to the member's regular account under subsection (1)(b) of this rule and to the member's variable account under subsection (2)(b) of this rule; multiplied by

(b) The annual rate for that year less the latest year-to-date calculation as of the effective retirement date.

(5) **Annual earnings — subsequent years.** Earnings shall be credited to the member's regular account as of December 31 of each calendar year subsequent to the effective retirement date in the manner specified in this section.

(a) Earnings from January 1 to the date of distribution of the annual installment shall be credited in the following amount:

(A) The member's regular account balance as of the date of distribution of the annual installment; multiplied by

(B) The annual rate for that year, prorated from January 1 to the date of distribution.

(b) Earnings from the date of distribution of the annual installment to December 31 shall be credited in the following amount:

(A) The member's regular account balance as of December 31; multiplied by

(B) The annual rate for that year, prorated from the date of distribution to December 31.

(6) **Final installment.** The final installment shall include the remaining balance of the member's regular account as of the date of distribution of the final installment, plus earnings credited as follows:

(a) If earnings for the calendar year prior to the year of the final installment have not yet been credited to the member's regular account, earnings shall be credited based on the latest year-to-date calculation available for that year.

(b) Earnings for the calendar year of the final installment shall be credited based on the latest year-to-date calculation as of the date of distribution of the final installment.

(7) The provisions of this rule shall be applied retroactively to April 1, 2004.

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

Stats. Implemented: ORS 238.260, 238.300, 238.305 & 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; PERS 20-2003, f. 12-15-03 cert. ef. 4-1-04; PERS

18-2005(Temp), f. & cert. ef. 10-26-05 thru 4-19-06; PERS 1-2006, f. & cert. ef. 2-1-06

459-007-0110

Crediting Earnings at Tier One Loss of Membership

When a Tier One member's membership terminates under ORS 238.095(2), earnings from the effective date of the last annual rate to the first of the month following the month of loss of membership shall be credited to the member account in the manner specified in this rule.

(1) Earnings on the former member's regular account shall be credited as follows:

(a) If earnings for the calendar year prior to the date of loss of membership have not yet been credited, earnings shall be credited for that year based on the latest year-to-date calculation available for that year.

(b) Earnings for the calendar year of loss of membership shall be credited based on the latest year-to-date calculation as of the first of the month following the date of loss of membership.

(2) If the former member is participating in the Variable Annuity Account, earnings or losses of the Variable Annuity Account shall be credited to the former member's variable account as follows:

(a) If earnings or losses for the calendar year prior to the date of loss of membership have not yet been credited, earnings or losses for that year shall be credited based on the latest year-to-date calculation available for that year.

(b) Earnings or losses for the calendar year of loss of membership shall be credited as of the end of the calendar month of loss of membership based on the latest year-to-date calculation as of the first of the month following the date of loss of membership.

(3) No earnings or losses shall be credited for any period following the calendar month of loss of membership.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.095 & 238.435

Hist.: PERS 9-1998, f. 5-22-98, cert. ef. 1-1-2000; PERS 4-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 13-2003, f. & cert. ef. 11-14-03

459-007-0220

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

When a Tier Two member withdraws his or her member account under ORS 238.265, earnings or losses from the effective date of the last annual rate to the date of distribution shall be credited in the manner specified in this rule.

(1) Earnings or losses on the member's regular account shall be credited as follows:

(a) If earnings or losses for the calendar year prior to the effective date of withdrawal have not been credited, earnings or losses for that year shall be credited to the member's regular account based on the latest year-to-date calculation for that year.

(b) Earnings or losses from January 1 of the calendar year of the effective date of withdrawal to the effective date of withdrawal shall be credited to the member's regular account based on the latest year-to-date calculation as of the effective date of withdrawal.

(2) If the member is participating in the Variable Annuity Account, earnings or losses of the Variable Annuity Account shall be credited as follows:

(a) If earnings or losses for the calendar year prior to the effective date of withdrawal have not been credited, earnings or losses for that year shall be applied based on the latest year-to-date calculation for that year.

(b) Earnings or losses from January 1 of the calendar year of the effective date of withdrawal to the effective date of withdrawal shall be credited to the member's variable account based on the latest year-to-date calculation as of the effective date of withdrawal.

(3) After earnings and losses have been credited in accordance with sections (1) and (2) of this rule, the value of the variable account shall be added to the value of the regular account and the sum shall constitute the withdrawal amount.

(4) Earnings on the withdrawal amount from the effective date of withdrawal to the date of distribution shall be paid to the member based on the average annualized rate prorated for that period.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.265, 238.430 & 238.435

Hist.: PERS 7-1998, f. & cert. ef. 5-22-98; PERS 1-2000, f. & cert. ef. 1-7-00; PERS 26-2004, f. 11-23-04, cert. ef. 3-15-05

459-007-0230

Crediting Earnings for a Deceased Tier Two Active or Inactive Member

Upon the death of an active or inactive Tier Two member, earnings or losses date of death to the date of distribution shall be credited as specified in this rule.

(1) Definitions. For purposes of this rule:

(a) "Death benefit amount" means the funds held by PERS for the beneficiary or beneficiaries of a deceased member until benefits are distributed.

(b) "Effective date of request" means the first of the month in which PERS receives a valid request for distribution of the death benefit amount.

(2) For members whose date of death is on or after January 1, 2000, earnings or losses shall be credited to the member's regular account as follows:

(a) If earnings or losses for the calendar year prior to the date of the member's death have not yet been credited, earnings or losses shall be applied for that year based on the latest year-to-date calculation for that year.

(b) Earnings or losses for the calendar year of the member's death shall be credited based on the latest year-to-date calculation for that year as of the first of the month of the member's death.

(3) If the member was participating in the Variable Annuity Account, earnings or losses of the Variable Annuity Account shall be credited to the member's variable account as follows:

(a) If earnings or losses for the calendar year prior to the member's death have not been credited, earnings or losses for that year shall be based on the latest year-to-date calculation available for that year.

(b) Earnings or losses for the calendar year of the member's death shall be applied based on the latest year-to-date calculation for that year as of the first of the month of the member's death.

(4) After earnings have been credited in accordance with sections (2) and (3) of this rule, the value of the member's variable account shall be added to the value of the member's regular account and the sum shall constitute the death benefit amount as of the first of the month of the member's death.

(5) Earnings on the death benefit amount from the first of the month of the member's death to the end of that calendar year shall be credited based on the Tier Two annual rate less the Tier Two latest year-to-date-calculation as of the first of the month of the member's death.

(6) Earnings on the death benefit amount for calendar years following the year of the member's death and prior to the year funds are requested shall be credited in accordance with OAR 459-007-0005 for Tier Two regular accounts.

(7) Earnings on the death benefit amount from January 1 of the year funds are requested to the effective date of request shall be based on the Tier Two latest year-to-date calculation.

(8) Earnings from the effective date of request to the date of distribution shall be based on the average annualized rate prorated for that period.

(9) If the member's date of death is prior to January 1, 2000, earnings shall be credited in accordance with the rules applicable to Tier Two members in effect up to January 1, 2000. As of January 1, 2000, the deceased member's account shall be converted to a death benefit amount. Earnings on the death benefit amount from January 1, 2000 to the date of distribution shall be credited in accordance with sections (5) through (8) of this rule.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.390, 238.430 & 238.435

Hist.: PERS 7-1998, f. & cert. ef. 5-22-98; PERS 26-2004, f. 11-23-04, cert. ef. 3-15-05

459-007-0240

Crediting Earnings to the Tier Two Employer Death Benefit

(1) Upon the death of a Tier Two member who is entitled to an employer death benefit under ORS 238.395, the amount of the employer benefit shall be added to the death benefit amount, as defined in OAR 459-007-0230(1), as of the first of the month of the member's death.

(2) Earnings shall thereafter be credited to the death benefit amount in accordance with OAR 459-007-0230(5) through (8).

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.395, 238.430 & 238.435

Hist.: PERS 7-1998, f. & cert. ef. 5-22-98; PERS 26-2004, f. 11-23-04, cert. ef. 3-15-05

459-007-0250

Crediting Earnings at Tier Two Service or Disability Retirement

Upon the service or disability retirement of a Tier Two member, earnings from the effective date of the last annual rate to the effective retirement date shall be credited to the member account in the manner specified in this rule.

(1) Earnings or losses credited to the member's regular account as follows:

(a) If earnings or losses for the prior calendar year have not yet been credited, earnings or losses for that year shall be credited based on the latest year-to-date calculation for that year.

(b) Earnings or losses for the calendar year of the effective retirement date shall be credited based on the latest year-to-date calculation for that year.

(2) If the member is participating in the Variable Annuity Account at time of retirement, earnings or losses shall be credited to the member's variable account as follows:

(a) If earnings or losses for the calendar year prior to the effective retirement date have not yet been credited, earnings or losses for that year shall be credited based on the latest year-to-date calculation for that year.

(b) Earnings or losses for the calendar year of the effective retirement date shall be credited based on the latest year-to-date calculation as of the effective retirement date.

Stat. Auth.: ORS 238.650

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

Hist.: PERS 7-1998, f. & cert. ef. 5-22-98; PERS 26-2004, f. 11-23-04, cert. ef. 3-15-05

459-007-0260

Crediting Earnings at Tier Two Service Retirement, Single Payment

Notwithstanding OAR 459-007-0250, when a Tier Two member retires and elects to receive a single payment under provisions of ORS 238.305(2) or (3), earnings or losses from the effective date of the last annual rate to the date of distribution shall be credited in the manner specified in this rule.

(1) Earnings or losses on the member's regular account shall be credited as follows:

(a) If earnings or losses for the calendar year prior to the effective retirement date have not yet been credited, earnings or losses shall be credited to the member's regular account based on the latest year-to-date calculation for that year.

(b) Earnings or losses credited for the calendar year of the effective retirement date shall be applied based on the latest year-to-date calculation as of the effective retirement date for that year.

(2) If the member is participating in the Variable Annuity Account at time of retirement, earnings or losses shall be credited to the member's variable account as follows:

(a) If earnings or losses for the calendar year prior to the effective retirement date have not been applied to the member's variable 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 the latest year-to-date calculation as of the effective date of retirement for that year.

(3) Upon applying the earnings or losses as provided in section (2) of this rule, the balance of the member's variable account shall be transferred to the member's regular account as of the effective date of retirement.

(4) Earnings from the effective date of retirement to the date of distribution shall be credited based on the average annualized rate prorated for that period.

Stat. Auth.: ORS 238.650

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

Hist.: PERS 7-1998, f. & cert. ef. 5-22-98; PERS 1-2000, f. & cert. ef. 1-7-00; PERS 26-2004, f. 11-23-04, cert. ef. 3-15-05

459-007-0270

Crediting Earnings upon Tier Two Service Retirement, Two or More Installment Payments

Notwithstanding 459-007-0250, when a Tier Two member retires and elects to receive installment payments under ORS 238.305(4),

earnings shall be credited from the effective date of the last annual rate to the date of distribution of the final installment payment in the manner specified in this rule.

(1) Regular account. Earnings shall be credited to the member's regular account as follows:

(a) Prior year earnings. If earnings for the calendar year prior to the effective retirement date have not yet been credited, earnings shall be credited for that year based on the latest year-to-date calculation available for that year.

(b) Retirement year earnings. Earnings for the calendar year of the effective retirement date shall be based on the latest year-to-date calculation as of the effective retirement date.

(2) Variable account. If the member is participating in the Variable Annuity Account, earnings or losses shall be applied to the member's variable account as follows:

(a) Prior year earnings. If earnings or losses for the calendar year prior to the effective retirement date have not yet been credited to the member's variable account, earnings or losses for that year shall be credited based on the latest year-to-date calculation available for that year.

(b) Retirement year earnings. Earnings or losses for the calendar year of the effective retirement date shall be credited based on the latest year-to-date calculation as of the effective retirement date.

(c) In accordance with ORS 238.305(4)(a)(F), after crediting 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 member's variable account shall be transferred to the member's regular account as of the effective retirement date.

(3) Initial installment. Earnings shall be credited to the initial installment as follows:

(a) If the initial installment is distributed in the same year as the effective retirement date, earnings shall be paid with the initial installment based on the average annualized rate prorated from the effective retirement date to the date of distribution of the initial installment.

(b) If the initial installment is distributed in the year following the effective retirement date, earnings shall be paid with the initial installment based on the average annualized rate prorated from January 1 of the year following the effective retirement date to the date of distribution of the initial installment.

(4) Annual earnings — initial year. Earnings from the effective retirement date to December 31 of the year of retirement shall be credited to the member's regular account in the following amount:

(a) The member's regular account balance as of December 31 of the year of retirement, excluding the remaining earnings credited to the member's regular account under subsection (1)(b) of this rule and to the member's variable account under subsection (2)(b) of this rule; multiplied by

(b) The annual rate for that year less the latest year-to-date calculation as of the effective retirement date.

(5) Annual earnings — subsequent years. Earnings shall be credited to the member's regular account as of December 31 of each calendar year subsequent to the effective retirement date in the manner specified in this section.

(a) Earnings from January 1 to the date of distribution of the annual installment shall be credited in the following amount:

(A) The member's regular account balance as of the date of distribution of the annual installment; multiplied by

(B) The annual rate for that year, prorated from January 1 to the date of distribution.

(b) Earnings from the date of distribution of the annual installment to December 31 shall be credited in the following amount:

(A) The member's regular account balance as of December 31; multiplied by

(B) The annual rate for that year, prorated from the date of distribution to December 31.

(6) Final installment. The final installment shall include the remaining balance of the member's regular account as of the date of distribution of the final installment, plus earnings credited as follows:

(a) If earnings for the calendar year prior to the year of the final installment have not yet been credited to the member's regular account, earnings shall be credited based on the latest year-to-date calculation available for that year.

(b) Earnings for the calendar year of the final installment shall be credited based on the latest year-to-date calculation as of the date of distribution of the final installment.

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

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

Hist.: PERS 7-1998, f. & cert. ef. 5-22-98; PERS 1-2000, f. & cert. ef. 1-7-00; PERS 26-2004, f. 11-23-04, cert. ef. 3-15-05

459-007-0290

Crediting Earnings at Tier Two Loss of Membership

When a Tier Two member's membership terminates under ORS 238.095(2), earnings from the effective date of the last annual rate through the end of the month of loss of membership shall be credited to the member account in the manner specified in this rule.

(1) Earnings or losses on the former member's regular account shall be credited as follows:

(a) If earnings or losses for the calendar year prior to the date of loss of membership have not yet been credited, earnings or losses shall be credited for that year based on the latest year-to-date calculation available for that year.

(b) Earnings or losses for the calendar year of loss of membership shall be credited based on the latest year-to-date calculation as of the end of the month of the date of loss of membership.

(2) If the former member is participating in the Variable Annuity Account, earnings or losses of the Variable Annuity Account shall be credited to the former member's variable account as follows:

(a) If earnings or losses for the calendar year prior to the date of loss of membership have not yet been credited, earnings or losses for that year shall be credited based on the latest year-to-date calculation for that year.

(b) Earnings or losses for the calendar year of loss of membership shall be credited as of the end of the month of loss of membership based on the latest year-to-date calculation as of the first of the month following the date of loss of membership.

(3) No earnings or losses shall be credited for any period following the calendar month of loss of membership.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.095

Hist.: PERS 7-1998, f. & cert. ef. 5-22-98; PERS 26-2004, f. 11-23-04, cert. ef. 3-15-05

459-007-0300

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

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

(a) "Effective date of unit benefits" means the date the member elects to begin receiving unit benefits.

(b) "End date" means the date after which earnings are no longer credited to the unit account and is the later of:

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

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

(c) "Unit" means a unit of additional benefits purchased under ORS 238.440.

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

(e) "Unit benefits" means the increased benefits a police officer or firefighter may purchase under ORS 238.440.

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

(a) For a Tier One member, in the same manner as provided for Tier One member regular accounts in OAR 459-007-0005.

(b) For a Tier Two member, in the same manner as provided for Tier Two member regular accounts in OAR 459-007-0005.

(3) Crediting earnings or losses to a withdrawal. If the unit account is withdrawn under ORS 238.440(4) or (5), earnings or losses will be credited to the unit 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 on a lump sum purchase.

(a) If a member makes a lump sum purchase under ORS 238.440(2) and elects an effective date of unit benefits that is the same date as the member's effective retirement date, earnings or losses will not be credited on the lump sum purchase.

(b) If a member makes a lump sum purchase under ORS 238.440(2) and elects an effective date of unit benefits that is later than the member's effective retirement date, earnings or losses on the member's lump sum purchase from the date of receipt to the effective date of unit benefits shall be credited to the unit account as provided in sections (8) to (10) of this rule.

(5) Crediting earnings or losses to effective date of unit benefits. When a retired member elects to begin receiving unit benefits under ORS 238.440(1) or (2), earnings or losses will be credited to the member's unit account as of the effective date of unit benefits as follows:

(a) For a Tier One member, in the same manner as provided in the version of OAR 459-007-0070(1) in effect on the effective date of unit benefits.

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

(6) If, after the crediting of earnings under section (5) of this rule, the amount in the unit account is greater than the actuarially determined amount required at the time of retirement to purchase the number of units elected, the difference will be returned to the member in a lump sum. The lump sum shall be credited with earnings from the effective date of unit benefits to the date of distribution based on the average annualized rate.

(7) Crediting earnings to end date. If a member's effective date of unit benefits does not occur prior to the end date, earnings from the last annual earnings crediting to the end date shall be credited to the unit account as follows:

(a) If earnings for the calendar year prior to the end date have not yet been credited to the member's unit account, earnings shall be credited for that year based on the latest year-to-date calculation available for that year.

(b) Earnings for the calendar year of the end date shall be credited to the unit account based on the latest year-to-date calculation as of the end date.

(8) Earnings from the date of payment to December 31 of the calendar year of the date of payment, or the member's effective date of unit benefits, whichever occurs first, shall be credited to the member's lump sum payment based on the rate derived from the formula:[Formula not included. See ED. NOTE.]

(9) If the formula described in section (8) of this rule results in a rate less than zero for a Tier One member, the rate shall be zero. [Example not included. See ED. NOTE.]

(10) If the effective date of unit benefits does not occur in the same year as the date of payment, the member lump sum payment shall be made a part of the member's regular account as of January 1 of the year following the date of payment.

[ED. NOTE: Example & Formula referenced are available from the agency.]

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.440

Hist.: PERS 8-2000, f. & cert. ef. 12-5-00; PERS 8-2004, f. & cert. ef. 4-15-04; PERS 1-2007, f. & cert. ef. 1-23-07

459-007-0510

Crediting Earnings to Employer Contribution Accounts

When funds are transferred from an employer contribution account to the Benefits-In-Force Reserve due to a member's death, disability retirement, service retirement or other purpose, earnings shall be credited to the employer contribution account in the manner specified in this rule.

(1) Earnings shall be credited based on the same method used to determine the rate of earnings to be credited to member accounts upon a member's death or retirement.

(2) Earnings shall be credited at year-end closing on a retroactive basis, effective as of the first of the calendar month following the date of the transfer.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238

Hist.: PERS 3-1999, f. & cert. ef. 7-27-99; PERS 8-2004, f. & cert. ef. 4-15-04

459-007-0530

Crediting Earnings To Employer Lump Sum Payments

(1) Definitions.

PUBLIC EMPLOYER

(a) "Employer lump sum payment" means any employer payment that:

- (A) Is not regularly scheduled;
- (B) Is not paid as a statutorily fixed percentage of salary; and
- (C) The contributor has control over whether to make the payment.

(b) "UAL factor" represents actual earnings or losses from investments and is not subject to funding requirements of the Contingency or Capital Preservation Reserves.

(2) Subject to OL 2005 Ch. 808 Sec. 13(4), the employer lump sum payment shall first be applied to liabilities attributable to creditable service by employees of the employer before the participating public employer was grouped with other public employers. Earnings on these amounts shall be credited based on the following:

(a) For the month in which the employer lump-sum payment is received, earnings shall be credited based on the average annualized rate, prorated for the number of days from date of receipt to the end of the month.

(b) For the remainder of the year, the employer lump-sum payment shall receive earnings based on the difference between the final Tier Two annual earnings rate and the Tier Two earnings rate in effect as of the first of the month after receipt of the payment.

(c) In subsequent calendar years, earnings or losses shall be credited to the employer lump sum payment in accordance with OAR 459-007-0005(14).

(3) Earnings on an employer lump sum payment held in a separate account subject to ORS 283.225(9) shall be credited based on the following:

(a) For the month in which the employer lump sum payment is received, earnings shall be credited based on the average annualized rate, prorated for the number of days from date of receipt to the end of the month.

(b) For the remainder of the year, the employer lump-sum payment shall receive earnings based on the difference between the annual UAL factor and the UAL factor in effect as of the first of the month after receipt of the payment.

(c) In subsequent calendar years, earnings shall be credited to the employer lump sum payment on an annual basis in accordance with OAR 459-007-0005(4).

(4) The provisions of this rule are effective on January 1, 2004.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238

Hist.: PERS 9-2000, f. 12-15-00 cert. ef. 1-1-01; PERS 4-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 13-2003, f. & cert. ef. 11-14-03; PERS 27-2004, f. & cert. ef. 11-23-04; PERS 20-2005, f. 11-1-05, cert. ef. 11-4-05

459-007-0900

Crediting Earnings To Integration Lump Sum Payments

(1) Definition. "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.

(2) 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 member regular accounts.

(3) Earnings on an integration lump sum payment shall be credited based on the rate derived from the formula:

$(Y - X)(R/T) + (Z - Y)$, where:

R = The number of days from the date of payment through the last day of the month the payment is received;

T = The total number of days in the month the payment is received;

X = The latest year-to-date calculation ("factor") for Tier Two regular accounts as of the first of the month the payment is received;

Y = The factor as of the first of the month following the date of payment; and

Z = The Tier Two annual rate for the year the payment is received.

[Example: An integration lump sum payment is received by PERS on May 12, 2002. The Tier Two factor as of May 1, 2002, is 1.0077, the Tier Two factor as of June 1, 2002, is 0.9995, and the Tier Two annual rate for 2002 is 0.0893. Therefore, $X = 1.0077$, $Y = 0.9995$, $Z = 0.0893$, $R = 20$, $T = 31$ and the earnings crediting rate is:

$$\begin{aligned} & (0.9995 - 1.0077)(20/31) + (0.0893 - 0.9995) \\ & = (-0.0082)(0.6452) + (-0.9102) \\ & = -0.0053 - 0.9102 \\ & = -0.9155 \end{aligned}$$

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238

Hist.: PERS 9-2000, f. 12-15-00 cert. ef. 1-1-01; PERS 4-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 13-2003, f. & cert. ef. 11-14-03

459-009-0020

Public Employer

(1) A "public employer" shall have the same meaning as that term is given in ORS 238.005(17) 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) & 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; PERS 21-2005, f. & cert. ef. 11-1-05

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 & 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 political 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: 2005 OL, Ch. 808, Sec. (12), (13), (14), ORS 238.225 & 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; PERS 20-2005, f. 11-1-05, cert. ef. 11-4-05

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 employer 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) "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.

(b) "Fair Value UAL" means the unfunded actuarial liability calculated using the fair market value of assets.

(c) "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.

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

(e) "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.

(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 (6) 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 (6) of this rule.

(3) Requirements. In order to make a UAL lump-sum payment, an employer must comply with the process described in sections (4) through (10) of this rule.

(4) Initiating UAL lump-sum payment process. At least 45 calendar days prior to the date the employer intends to make a UAL lump-sum payment, the employer shall notify the PERS Employer Liability 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) Payment to the actuary. At least 30 calendar days prior to the date the employer intends to make a UAL lump-sum payment, the employer shall remit payment for the cost of the UAL calculation directly to the PERS consulting actuary according to the instructions on the invoice provided by the PERS consulting actuary. Failure to remit payment according to the terms of this section may result in the PERS consulting actuary not completing the employer's UAL calculation by the proposed UAL lump-sum payment date.

(6) 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 that the PERS consulting actuary 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 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 date(s) 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 (6)(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.

(7) Notification of calculation. PERS staff shall notify the employer in writing of the results of the individual employer's calculation in section (6) above, including the effective date(s) 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.

(8) Notification of UAL lump-sum payment. The employer or its agent shall notify the PERS Employer Liability 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.

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

(10) Receipt of UAL lump-sum payment. In order to adjust the employer contribution rate to that reported by PERS in section (7) 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 (8) 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 (8) 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 (8) of this rule, the employer's contribution rate shall be adjusted to the rate the payment amount fully funds using the actuarial calculation in subsection (6)(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 (7) of this rule; or

(B) Taking action pursuant to ORS 238.225.

(11) 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 chapters 238 or 238A, rather than as a reduction of those obligations.

(a) The UAL lump-sum payment shall be held in a Side 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 Side 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 Side Account to the Employer Contribution Account of the actuarial group in which the employer is participating.

(12) Crediting earnings or losses. For the purposes of this rule, Side 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).

(13) 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.

(14) 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; PERS 20-2005, f. 11-1-05, cert. ef. 11-4-05; PERS 17-2006, f. & cert. ef. 11-24-06

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) "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.

(b) "Fair Value UAL" means the unfunded actuarial liability calculated using the fair market value of assets.

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

(d) "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.

(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 (6) 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 (6) of this rule.

(3) Requirements. In order to make a UAL lump-sum payment, an employer must comply with the process described in sections (4) through (10) of this rule.

(4) Initiating UAL lump-sum payment process. At least 45 calendar days prior to the date the employer intends to make a UAL lump-sum payment, the employer shall notify the PERS Employer Liability 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) Payment to the actuary. At least 30 calendar days prior to the date the employer intends to make a UAL lump-sum payment, the employer shall remit payment for the cost of the UAL calculation directly to the PERS consulting actuary according to the instructions on the invoice provided by the PERS consulting actuary. Failure to remit payment according to the terms of this section may result in the

PERS consulting actuary not completing the employer's UAL calculation by the proposed UAL lump-sum payment date.

(6) 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 that the PERS consulting actuary 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 date(s) 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 (6)(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.

(7) Notification of calculation. PERS staff shall notify the employer in writing of the results of the employer's calculation in section (6) above, including the effective date(s) 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.

(8) Notification of UAL lump-sum payment. The employer or its agent shall notify the PERS Employer Liability 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.

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

(10) Receipt of UAL lump-sum payment. In order to adjust the employer contribution rate to that reported by PERS in section (7) 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 (8) 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 (8) 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 (8) of this rule, the employer's contribution rate shall be adjusted to the rate the payment amount fully funds using the actuarial calculation in subsection (6)(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 (7) of this rule; or

(B) Taking action pursuant to ORS 238.225.

(11) Actuarial treatment of the UAL lump-sum payment. For actuarial purposes, the UAL lump-sum payment made by the employer shall be treated as pre-funded contributions and additional assets for

the payment of obligations of the employer under ORS chapters 238 or 238A, rather than as a reduction of those obligations.

(a) The UAL lump-sum payment shall be held in a Side 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 Side 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 Side Account to the Employer Contribution Account.

(12) Crediting earnings or losses. For the purposes of this rule, Side 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).

(13) 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.

(14) 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; PERS 20-2005, f. 11-1-05, cert. ef. 11-4-05; PERS 17-2006, f. & cert. ef. 11-24-06

459-009-0090

Lump-Sum Payments by Employers

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 a lump-sum payment is made by an individual public employer that does not have an existing unfunded actuarial liability, or when an individual employer makes a lump-sum payment in excess of the employer's unfunded actuarial liability.

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

(a) "Actuarial Surplus" means the excess of the actuarial value of an employer's assets over the employer's actuarial liability.

(b) "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 to be used for the sole benefit of members of the trust with the purpose of paying future retirement and death benefits.

(c) "Fair Value UAL" or "Fair Value Actuarial Liability" means the UAL or actuarial liability calculated using the fair market value of assets.

(d) "IAP" means the Individual Account Program of the Oregon Public Service Retirement Plan.

(e) "Pension Program Contributions" means the total calculated employer contribution due in any reporting period for both the PERS and OPSRP pension programs, excluding any IAP contribution due.

(f) "Surplus 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 creating an actuarial surplus or increasing an existing actuarial surplus; and

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

(g) "UAL 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.

(h) "Unfunded Actuarial Liability" or "UAL" means the excess of an employer's actuarial liability over the actuarial value of assets.

(2) For employers making a combined surplus lump-sum payment and UAL lump-sum payment, the provisions of this rule apply only to the surplus lump-sum payment unless otherwise indicated.

(3) Minimum surplus lump-sum payment amount. If an individual employer elects to make a surplus lump-sum payment under this rule, the payment must be at least:

(a) \$100,000 or 100 percent of the individual employer's actuarial liability, whichever is less, for an employer whose actuarial liability as calculated under section (9) of this rule is less than \$1 million; or

(b) Ten percent of the individual employer's actuarial liability, for an employer whose actuarial liability as calculated under section (9) of this rule is equal to or greater than \$1 million.

(4) Maximum surplus lump-sum payment amount. If an individual employer elects to make a surplus lump-sum payment under this rule, the payment shall not be greater than the amount required to bring the employer's total defined-benefit pension program contributions to zero percent of payroll based upon the individual employer's reported payroll in the most recent actuarial valuation.

(5) Requirements. In order to make a surplus lump-sum payment, an employer must comply with the process described in sections (6) through (14) of this rule.

(6) Initiating surplus lump-sum payment process. At least 45 calendar days prior to the date the employer intends to make a surplus lump-sum payment, the employer shall notify the PERS Employer Liability Coordinator in writing that it intends to make a surplus lump-sum payment. The notification shall specify:

(a) Whether the intended payment is to be for 100 percent of the individual employer's calculated actuarial liability or, if other than 100 percent, the percent of the individual employer's calculated actuarial liability or amount of the intended payment; and

(b) No more than two potential dates for the payment.

(7) 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 date(s) of the surplus lump-sum payment.

(8) Payment to the actuary. At least 30 calendar days prior to the date the employer intends to make a surplus lump-sum payment, the employer shall remit payment for the cost of the actuarial liability calculation directly to the PERS consulting actuary according to the instructions on the invoice provided by the PERS consulting actuary. Failure to remit payment according to the terms of this section may result in the PERS consulting actuary not completing the employer's actuarial liability calculation by the proposed surplus lump-sum payment date.

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

(a) 100 percent of the employer's actuarial liability, or 100 percent of the employer's share of the actuarial liability for the actuarial group in which the employer is participating, as applicable;

(b) The minimum amount of the surplus lump-sum payment under section (3) of this rule;

(c) The maximum amount of the surplus lump-sum payment under section (4) of this rule;

(d) The alternative percentage or dollar amount specified by the employer in its notification under section (6) of this rule; and

(e) The effect of the following surplus lump-sum payment amounts on the individual employer's contribution rate using the potential date(s) for payment specified by the employer in its notification in section (6) of this rule:

(A) 100 percent of the individual employer's actuarial liability calculated in subsection (9)(a) of this rule;

(B) The surplus lump-sum payment amount specified by the employer in its notification, if other than 100 percent;

(C) The minimum amount of the surplus lump-sum payment calculated in subsection (9)(b) of this rule; and

(D) The maximum amount of the surplus lump-sum payment calculated in subsection (9)(c) of this rule.

(10) The calculations described in section (9) of this rule shall be:

(a) Based on the individual employer's fair value actuarial liability from the most recent actuarial valuation;

(b) Based on the covered salary, for the individual employer or as a proportion of the pool, as applicable, reported by the employer for the year of the most recent actuarial valuation; and

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

(11) Notification of calculation. PERS staff shall notify the employer in writing of the results of the individual employer's calculation under section (9). In addition, PERS shall send the employer a notification describing risks and uncertainties associated with making a lump-sum payment.

(12) Notification of payment. The employer or its agent shall notify the PERS Employer Liability Coordinator in writing at least three business days prior to making a surplus lump-sum payment. This notification shall be in addition to the notification in section (6) of this rule and shall specify the dollar amount of the payment and the date the employer intends to make the payment.

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

(14) Receipt of payment. In order to adjust the employer contribution rate to that reported by PERS in section (11) of this rule, PERS must receive the correct funds no later than five business days after the corresponding intended date of the surplus lump-sum payment specified in the notification described in section (12) of this rule.

(a) If the surplus lump-sum payment is received by PERS on or before the intended date specified in the notification described in section (12) 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 the first of the month following receipt of the payment by PERS.

(b) If the surplus 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 payment.

(c) Except as provided in subsection (14)(d), if the surplus lump-sum payment received by PERS is other than any amount specified in the notification under section (12) of this rule, the employer's contribution rate shall be adjusted to the rate the payment amount fully funds using the actuarial calculation in section (9) of this rule.

(d) If the surplus lump-sum payment received by PERS is less than the minimum amount described in section (3) of this rule, or greater than the maximum amount described in section (4) 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 (11) of this rule; or

(B) Taking action pursuant to ORS 238.225.

(15) Frequency of surplus lump-sum payments. An employer may make only one surplus lump-sum payment per calendar year.

(16) Actuarial treatment of the payment. For actuarial purposes, the surplus lump-sum payment made by the employer shall be treated as pre-funded contributions and additional assets for the payment of obligations of the employer under ORS chapters 238 or 238A, rather than as a reduction of those obligations.

(a) If the employer makes a combined surplus lump-sum payment and UAL lump-sum payment, the UAL lump-sum payment amount shall be held in a separate Side Account to which the provisions of OAR 459-009-0084 or 459-009-0085, as applicable, shall apply.

(b) The surplus lump-sum payment shall be held in a Side Account for the benefit of the employer making the surplus 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 Side Account that are to be amortized for that year.

(c) After earnings or losses have been credited for the year, the amount amortized shall be transferred from the Side Account to the Employer Contribution Account of the individual employer or of the actuarial group in which the employer is participating, as applicable.

(17) Crediting earnings or losses. For the purposes of this rule, Side 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).

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

(19) Effective date of rule. This rule shall apply to all surplus 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 17-2006, f. & cert. ef. 11-24-06

459-009-0100

Employer Reporting and Remittance of Contributions

Employers shall transmit reports and contributions to PERS in accordance with OAR 459-070-0100 and 459-070-0110.

Stat. Auth.: ORS 238.650 & OL 2003 Ch. 733

Stats. Implemented: ORS 238 & OL 2003 Ch. 733

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; PERS 25-2003, f. 12-30-03 cert. ef. 1-1-04

459-009-0120

Employer Recordkeeping for Multiple Qualified Retirement Plans

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

(2) For purposes of this rule:

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

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

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

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

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

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

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

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

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

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

(i) The employer contributions to the employee's account in that plan;

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

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

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

(b) For a qualified defined benefit retirement plan(s), an employer participating in PERS who has ever offered one or more qualified defined benefit retirement plans other than PERS shall maintain the

following records for each employee who is a PERS member for each plan the employee has ever been enrolled in:

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

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

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

(4) Unless otherwise agreed upon:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 238.630(5), 238.705 & 238.650
 Stats. Implemented: ORS 238.630
 Hist.: PERS 4-1995, f. 11-14-95, cert. ef. 12-1-95; PERS 1-1996, f. & cert. ef. 3-26-96;
 Renumbered from 459-005-0505; PERS 21-2005, f. & cert. ef. 11-1-05

459-009-0130

Invoicing for Delinquent Employee Contributions

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

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

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

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

Stat. Auth.: ORS 238.650
 Stats. Implemented: ORS 238.200 & 238.705
 Hist.: PER 8, f. 12-15-55; PER 4-1980(Temp), f. 11-26-80, ef. 12-1-80; PER 1-1984(Temp), f. & ef. 6-29-84; PER 2-1984(Temp), f. & ef. 9-26-84; PER 1-1985, f. & ef. 3-22-85; PERS 1-1995, f. 9-12-95, cert. ef. 1-1-96; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0135(4); PERS 10-1998, f. & cert. ef. 6-17-98

459-009-0200

Employer 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 and 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 and 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 and 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 and 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 and 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 and 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 and 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 and 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. & cf. 6-1-79; PER 2-1979, f. & cf. 7-19-79; PER 2-1980, f. & cf. 3-7-80; PERS 1-1996, f. & cert. cf. 3-26-96; Renumbered from 459-010-0208; PERS 7-1999 f. & cert. cf. 11-22-99; PERS 12-2006, f. & cert. cf. 6-26-06

459-009-0350

Allocation of PERS Employer Actuarial Assets and Liabilities

Purpose. The purpose of this rule is to provide guidance in the drafting of agreements by employers involved in transfers of PERS-covered employees regarding the allocation of PERS employer actuarial assets and liabilities; to provide guidance to the Board in determining the allocation of such assets and liabilities when such allocation is not acceptably addressed based on the criteria of this rule in agreements between the employers involved in the transfers; to provide guidance to the Board in determining the allocation of PERS employer actuarial assets and liabilities if dissolution of an employer occurs and the allocation of these assets and liabilities is not otherwise acceptably addressed according to this rule in the dissolution; and to provide guidance to the Board when an employer is unable to amortize its PERS employer actuarial assets and liabilities as directed by the Board. All the provisions of this rule shall be applied at the discretion of the PERS Board to achieve sound actuarial funding of the system as well as full funding of the individual benefits accrued by members. This rule does not address whether or not PERS is required to pay benefits that are unfunded.

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

(a) "Actuarial Funded Percentage" means the ratio, expressed as a percentage, of actuarial liabilities to actuarial assets as determined by a PERS-approved actuary.

(b) "Actuarial Surplus" means the excess of the actuarial value of assets over the actuarial liability.

(c) "Actuarial Valuation" means the determination by the PERS-approved actuary, as of an actuarial valuation date, of the normal cost, actuarial liability, actuarial value of assets, and related actuarial present values for a pension plan.

(d) "Actuarial Valuation Date" is the date approved by the Board for which demographic and economic data has been captured and used in an actuarial valuation.

(e) "Dissolution" means voluntary or involuntary corporate dissolution, extinguishment, or termination of the existence of an employer.

(f) "PERS-Approved Actuary" means an actuary employed by PERS for ongoing actuarial advice or any other actuary approved in writing by the PERS executive director or designee.

(g) "PERS Employer Actuarial Assets" means the assets contributed to PERS by an employer and by employees for service to that employer plus attributed earnings as determined by a PERS-approved actuary. Such assets include Benefits in Force reserve assets as determined by a PERS-approved actuary.

(h) "PERS Employer Actuarial Liabilities" means the liabilities of a particular employer determined by a PERS-approved actuary that represent the actuarially determined amounts necessary to fund benefits due PERS-covered members and their beneficiaries.

(i) "Receiving Employer" means an employer to which PERS-covered employees are transferred from a participating employer.

(j) "Transfer" means the movement of one or more PERS-covered employees and their designated position(s) from the payroll of one employer to the payroll of another employer as the result of an agreement between the two employers.

(k) "Transferring Employer" includes the following:

(A) A participating employer from which PERS-covered employees are transferred;

(B) A participating employer that forms one or more separate governmental entities that employ PERS-covered employees transferred from the participating employer.

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

(2) Documented and Acceptable Transfer Agreements. Transferring employers that transfer PERS-covered employees to receiving employers may address the allocation of PERS employer actuarial assets and liabilities associated with the transferring employees in a written transfer agreement. The allocation of PERS employer actuarial assets and liabilities under such an agreement must be acceptable to PERS. To be acceptable to PERS, the allocation must meet the following standards or be approved by the PERS Board:

(a) Actuarial Funded Percentage. The transfer may not result in the transferring or receiving employer having an actuarial funded percentage after the transfer that is lower than the lesser of either:

(A) The lowest actuarial funded percentage as determined by a PERS-approved actuary of such transferring or receiving employer as of the valuation date of the most recent PERS-adopted actuarial valuation for that employer promulgated prior to the effective date of the transfer; or

(B) The PERS system-wide actuarial funded percentage as of the valuation date of the most recent PERS-adopted actuarial valuation promulgated prior to the effective date of the transfer.

(b) Effective Date. The effective date of the allocation of the PERS employer actuarial assets and liabilities shall be the date of the transfer.

(c) Upon petition of either the transferring or receiving employer, the Board may grant an exception to these standards if the employer can demonstrate that the transfer agreement will achieve full funding of the individual benefits accrued by the transferring employees without undue administrative burden.

(d) Review of staff determination. If the transfer agreement does not meet the standards in paragraphs (2)(a) and (2)(b) above, a review of the staff determination of acceptability may be requested pursuant to OAR 459-001-0030.

(3) Undocumented Transfers or Unacceptable Transfer Agreements. If an allocation of PERS employer actuarial assets and liabilities associated with the transferring employees is not documented among the transferring and receiving employers or if a transfer agreement is found by PERS to be unacceptable under the provisions of this rule, the PERS employer actuarial assets and liabilities of the transferred employees shall remain the responsibility of the transferring employer and shall be amortized under section (9) of this rule.

(4) Effective Date of Allocation of PERS Employer Actuarial Assets and Liabilities in the Transfer of Employees. PERS shall allocate assets and liabilities for transferred employees as of the date of the transfer. The transferring and receiving employer's accounts will be adjusted to reflect the effective date of the allocation of assets and liabilities. Contributions received, including earnings on those contributions, before and after the effective date will be credited to the appropriate employer and member accounts in accordance with PERS policy, statutes and rules.

(5) Pooled Employers. If a participating employer participates in either of the actuarial pools described in OAR 459-009-0070(2) or 459-009-0070(4) and transfers PERS-covered employees to a receiving employer that participates in either of these pools, this rule will apply only to the unfunded liabilities or surpluses accrued prior to entry into these pools.

(6) Non-Participating Employer. A change in an employer's status, whether prior to or following the effective date of this rule, from a participating to a non-participating employer, will not exempt the employer from the provisions of this rule.

(7) Dissolution of an Employer. If dissolution of an employer has occurred and there is no acceptable transfer agreement for any transferred employees, the dissolved employer's PERS actuarial assets and liabilities will be amortized under section (9) of this rule.

(8) Mergers and Consolidations. Any employer that is a succeeding, surviving, or successor employer following a combining of entities, regardless of the name given to that combination, including but not limited to mergers and consolidations, shall, to the extent permitted by law, be required to assume all PERS actuarial assets and liabilities from the other affected entities that took part in the combination which are related to the employees whose positions are part of the new combined entity.

(9) Amortization of All PERS Employer Actuarial Liabilities and Assets.

(a) Amortization of Employer Actuarial Liabilities. To amortize the PERS unfunded actuarial liabilities of any employer, PERS may take one or more of the following actions as directed by the Board, until the amortization is complete. They include but are not limited to the following:

(A) PERS will adjust the contribution rate of the employer as necessary either at the next date of adjustment for all PERS-covered employers or, if approved by the PERS Board, at an earlier or later date.

(B) PERS will seek to obtain and recover assets of the employer other than PERS Employer Actuarial Assets, as a creditor, through a mutual agreement with the employer, or, if an agreement cannot be reached, through other legal means, as approved by the PERS Board.

(C) PERS will allocate the employer actuarial liabilities:

(i) Consistent with any applicable law; and

(ii) Consistent with any acceptable agreement between the receiving employer and transferring employer whose employee's service generated the liability; or

(iii) Consistent with any acceptable agreement among employers which through such agreement formed the employer under which the liability was created.

(D) PERS will allocate the employer actuarial liabilities to the Contingency Fund as established by ORS 238.670(1).

(b) Amortization of Employer Actuarial Assets. To amortize the PERS employer actuarial surplus of an employer, the following steps will be taken, in order, until the amortization is complete or the final step has been concluded:

(A) PERS will allocate the employer actuarial surplus:

(i) Consistent with any applicable law; and

(ii) Consistent with any acceptable agreement between the receiving employer and transferring employer whose employee's service generated the surplus; or

(iii) Consistent with any acceptable agreement among employers which through such agreement formed the employer under which the surplus was created.

(B) PERS will adjust the contribution rate of the employer either at the next date of adjustment for all other employers of the system or, if so approved by the board, at an earlier or later date.

(C) PERS will allocate the employer actuarial assets as general assets of the Fund.

(10) Retroactive Application. The provisions in this rule will apply to all transfers, regardless of whether they occur prior to or after the effective date of this rule.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.225, 238.605, 238.670, 238.705 & 2005 OL, 808, Sec. (12), (13), (14)

Hist.: PERS 1-2003, f. & cert. ef. 1-15-03; PERS 20-2005, f. 11-1-05, cert. ef. 11-4-05

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

459-010-0003

Eligibility and Membership for the PERS Chapter 238 Program

(1) For the purpose of this rule:

(a) "Concurrent positions" means positions with two or more PERS participating employers where the positions occur together in any given calendar year.

(b) "Qualifying position" means:

(A) For an employee who is employed in a position or in concurrent positions designated as non-qualifying and performs 600 or more total hours of service in a calendar year, the position or concurrent positions will be considered qualifying and the employee shall be considered to have performed service in a qualifying position from the date of employment or January 1 of the calendar year in which the employee performed more than 600 hours of service, whichever is later.

(B) Except as provided in paragraph (C) of this subsection, for an employee who is employed in a position or concurrent positions designated as qualifying and performs less than 600 hours of service in a calendar year, the position or concurrent positions will be consid-

ered non-qualifying from the date of employment or January 1 of the calendar year in which the employee performed less than 600 hours of service, whichever is later.

(C) For purposes of determining qualification upon separation from employment, but not for any other purpose, if an employee was employed in a position or concurrent positions for less than a full calendar year and performed less than 600 hours of service in that calendar year, but would have performed 600 hours of service or more if the employee had performed service in the same position or concurrent positions for the full calendar year, and if the employee performed 600 or more hours of service in the previous calendar year, the position or concurrent positions will be considered qualifying up to the date of separation.

(c) "Service" means any calendar month an employee:

(A) Is in an employer/employee relationship, as defined in OAR 459-010-0030; and

(B) Received a payment of "salary," as defined in ORS 238.005 or similar payment from workers compensation or disability.

(2) An employee qualifies as a member of PERS under ORS 238.015 if the employee:

(a) Has completed a 6 month waiting period as defined in ORS 238.015(1);

(b) Has been employed in a qualifying position;

(c) Is not otherwise ineligible for membership; and

(d) Has not elected to participate in an optional or alternate retirement plan as provided in ORS Chapters 243 and 353.

(3) An employee shall remain an active member in PERS if the employee is employed in a qualifying position that totals 600 or more hours of service per calendar year.

(4) If an employee hired into a non-qualifying position completed service meeting the definition of "qualifying position" under section (1)(b) of this rule, the employee shall qualify as an active member for that calendar year.

(5)(a) If an active member in a qualifying position is terminated or they separate from employment prior to completing 600 hours of service in a year, the member shall not receive any service credit for that year unless they qualify under section (1)(b)(C) above.

(b) If an active member in a qualifying position is terminated or they separate from employment prior to completing 600 hours of service in a year and do not qualify under section (1)(b)(C), in addition to not receiving any service credit, all contributions for the year, employee and employer, shall be credited to the employer.

(6) The provisions of this rule are effective for all eligibility determinations made on or after January 1, 2006.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.015, 243.800 & 353.250

Hist.: PERS 5-2005, f. & cert. ef. 2-22-05; PERS 23-2005, f. 12-23-05, cert. ef. 1-1-06

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(5) or "retirement credit" under ORS 238.005(19).

(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; PERS 21-2005, f. & cert. ef. 11-1-05

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(20)(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(5), payments to employees during paid leave shall be considered salary, as defined under ORS 238.005(20)(a), 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(12)(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, 238.015, 238.025 & 238.200
Hist.: PERS 9-2001, f. 12-14-01, cert. ef. 1-1-02; PERS 21-2005, f. & cert. ef. 11-1-05

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 238.074; but are subject to the membership requirements under ORS 238.015.

(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 238.015.

(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 238.015. 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 238.082.

Stat. Auth.: ORS 238.650
Stats. Implemented:
Hist.: PERS 3-1992, f. & cert. ef. 5-4-92; PERS 21-2005, f. & cert. ef. 11-1-05

459-010-0014

Creditable Service in PERS Chapter 238 Program

(1) For purposes of this rule:

(a) "Service credit" has the same meaning as "creditable service" in ORS 238.005(5).

(b) "Major fraction of a month" means a minimum of 50 hours in any calendar month in which an active member is being paid a salary by a participating public employer and contributions are due to the system either by or on behalf of the member.

(2) An active member will be considered to have met the definition of performing service for a major fraction of a calendar month if:

(a) The member has performed at least 600 hours of qualifying service, as defined in OAR chapter 459, in that same calendar year; and

(b) The member's employer(s) have reported salary and hours for a pay period occurring within that calendar month.

(3) An active member will not be considered to have met the definition of performing service for a major fraction of a calendar month if the member:

(a) Starts employment after the 15th of a calendar month, or

(b) Ends employment prior to the 16th of a calendar month, unless the member begins employment again in another qualifying position prior to the end of that calendar month.

(4) The granting or denial of creditable service based on the considerations in sections (2) and (3) above can be rebutted by the member or employer providing records that establish that the member did or did not in fact perform service for the requisite number of hours required to be considered a major fraction of a month under section (1).

(5) If the active member is a school employee, they may instead accrue one half year of service credit if the employee:

(a) Is or was employed in a qualifying position as defined in OAR chapter 459; and

(b) Is employed for all portions of a school year when it is normally in session.

(6) Except as provided for under section (3) of this rule, an employee may not accrue more than one full month of service credit for any number of hours worked in a calendar month and no more than one year of service credit for any number of hours worked in a calendar year.

(7) The provisions of this rule are effective for service credit determinations made on or after January 1, 2006.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.015

Hist.: PERS 6-2005, f. & cert. ef. 2-22-05; PERS 24-2005, f. 12-23-05, cert. ef. 1-1-06

459-010-0025

Student Employee

(1) Under ORS 238.015(4), 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(4)

Hist.: PER 8, f. 12-15-55; PERS 8-1998, f. & cert. ef. 5-22-98; PERS 19-2005, f. 11-1-05, cert. ef. 1-1-06

459-010-0030

Determination of Employee Status

(1) The term "employee" shall have the same meaning as provided in ORS 238.005(7) and OAR 459-005-0001(11).

(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(7)

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; PERS 21-2005, f. & cert. ef. 11-1-05

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 contest 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 performance of the contracted labor or services; or has a significant investment in the facilities used in performing the labor or services;

(d) Payment for labor or 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 Waiting Period

(1) The six-month waiting period required for establishing membership shall be six full calendar months of service (uninterrupted by a total of more than 30 working days during such six months) to the same employer or concurrent employers. The six full calendar months:

(a) Begins on the date hired; and

(b) Includes the month in which the employee is hired if employment begins on the first business day of the month. For the purposes of this rule, a business day is Monday through Friday when PERS is open for business.

(2) Membership in the system shall be established as of the first of the month following six full calendar months of 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-month period.

(3) 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 the waiting period under Section (1) of this rule. The six-month waiting period shall be extended by the length of the qualified leave of absence.

(4) The provisions of this rule shall be applied retroactively to August 1, 2003.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.015 & 238A.025

Hist.: PER 8, f. 12-15-55; PERS 12-1998, f. & cert. ef. 12-17-98; PERS 10-2005, f. & cert. ef. 3-31-05

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 re-deposit 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 re-deposit.

(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) & 238.650
Stats. Implemented: ORS 238.055(11), 238.055(15), 238.200 - 230, 238.300 & 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(7) 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 80 percent 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(7)
Hist.: PER 8, f. 12-15-55; PERS 12-1998, f. & cert. ef. 12-17-98; PERS 19-2005, f. 11-1-05, cert. ef. 1-1-06

459-010-0055

Withdrawal of Contributions

(1) Definition. A "controlled group" is a group of employers treated as a single employer for purposes of maintaining qualified status under federal law.

(2) An inactive member may withdraw the member account balance under ORS 238.265 if:

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

(b) PERS receives the member's request for withdrawal of the member account before the member reaches earliest service retirement age; and

(c) The member has been absent from service with a participating employer for at least a full calendar month following the month of separation.

(3) Under no circumstance may a member withdraw less than the entire balance in the member account.

(4) An inactive member shall receive an additional 50 percent of the balance of the member account as of the effective date of withdrawal, including earnings credited under OAR 459-007-0040, to be paid from employer contributions, if:

(a) As of the effective date of withdrawal, the member has been an inactive member since on or before January 1, 2000;

(b) Employee contributions were made during each of five calendar years or more;

(c) Membership has not terminated under ORS 238.095 or 238.265; and

(d) The member's effective date of withdrawal is on or after July 1, 2004, and before June 30, 2006.

(5) If a member withdraws the member account and receives an additional 50 percent of the member account under section (3) of this rule, the member may not subsequently restore the creditable service forfeited by the withdrawal under ORS 238.105 or 238.115.

(6) The member may revoke the request for withdrawal of the member account if PERS receives a written request to revoke prior to the earlier of:

(a) The date of distribution; or

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

(7) If a member withdraws the member account under this rule, membership shall be terminated as of the effective date of withdrawal.

(8) If a member who has withdrawn the member account under this rule returns to employment with any participating employer 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 withdrawal 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, and does not reemploy the member until the requirements of section (2) of this rule are satisfied;

(b) The member repays the withdrawn amount in full within 30 days following the effective date of such employment; or

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

(9) If a participating employer employs a member after the member's effective date of withdrawal and fails to notify the system of the employment the employer shall hold PERS harmless for any actual or perceived loss of benefits as a result of the withdrawal.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.265 & OL 2003 Ch. 276 § 2
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; PERS 17-2004, f. 6-15-04 cert. ef. 7-1-04

459-010-0078

Volunteer Service

(1) "Volunteer Service" means service as a volunteer as defined in OAR 459-005-0001.

(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 - 238.715
Hist.: PERS 12-1998, f. & cert. ef. 12-17-98; PERS 12-2003, f. & cert. ef. 11-14-03

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 238.650
Stats. Implemented:
Hist.: PER 8, f. 12-15-55; PERS 21-2005, f. & cert. ef. 11-1-05

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 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, 2005 OL, Ch. 808, Sec. (12), (13), (14) & ORS 238.225
Hist.: PER 8, f. 12-15-55; PERS 12-1998, f. & cert. 12-17-98; PERS 20-2005, f. 11-1-05, cert. ef. 11-4-05

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 238.650
Stats. Implemented:
Hist.: PER 8, f. 12-15-55; PERS 21-2005, f. & cert. ef. 11-1-05

DIVISION 11

RETIREMENT CREDIT

459-011-0050

Forfeiture and Restoration of Service Rights

(1) A member who, pursuant to ORS 238.265, withdraws the amount credited to the member's account forfeits all membership rights accrued under ORS chapter 238 prior to the date of the withdrawal, including any service rights attributable to employment prior to the date of the withdrawal.

(2) Any such person who reenters the service of a participating employer within five years from the date of the last separation from employment that preceded the member's withdrawal may, at any time during the one-year period immediately following the date of reemployment, repay to PERS, in a single lump sum payment, an amount equal to the amount withdrawn plus the earnings the amount withdrawn would have accumulated from the date of withdrawal to the date of repayment. A person who makes a repayment as described in this section shall establish or reestablish membership in the system as provided in section (3) or (4) of this rule.

(3) If the date of the former member's repayment under section (2) is before the date on which the former member incurs a "Break in Service" under ORS 238A.025, the PERS Chapter 238 membership and service rights forfeited by the withdrawal will be revived. The former member will reestablish membership in the PERS Chapter 238 Program on the first day of the month following the date of the repayment. The withdrawn member account will be reestablished in the amount of the repayment.

(4) If the date of the former member's repayment under section (2) occurs on or after the date the former member incurs a "Break in Service" under ORS 238A.025, the PERS Chapter 238 membership and service rights forfeited by the withdrawal will be restored to the extent they existed immediately prior to the withdrawal. The withdrawn member account will be reestablished in the amount of the repayment. Membership and service subsequent to the date of reemployment will be subject to the provisions of the OPSRP Pension Program. The former member will establish membership in the OPSRP Pension Program on the earlier of:

(a) The date the former member establishes membership pursuant to ORS 238A.100; or

(b) The first day of the month following the date of the repayment.

(5) Notwithstanding the provisions of this rule, a member who withdraws pursuant to ORS 238.265 and receives an additional amount pursuant to section 2, chapter 276, Oregon Laws 2003, may not reestablish membership under section (2) of this rule.

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; PERS 2-2007, f. & cert. ef. 1-23-07

459-011-0100

Credit for Military Service under USERRA

(1) Purpose. The purpose of this rule is to implement ORS 238.156(1).

(2) Limitation of scope of rule. Contributions, benefits and service credit provided under this rule shall not exceed contributions, benefits and service credit required under federal law for periods of military service.

(3) Definitions. For purposes of this rule:

(a) "Employee" means an individual employed by a participating public employer in a qualifying position, as defined in ORS 238.005(19) and who is not excluded from the definition of employee as set forth in ORS 238.005(7).

(b) "Employee contributions" means contributions made to the Fund.

(c) "Employer" means the legal entity that employed an individual at the time that individual left for military service. For purposes of this rule, the State of Oregon is a single legal entity. Each separate school district is a separate legal entity.

(d) "Military service" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes:

- (A) Active duty;
- (B) Active duty for training;
- (C) Initial active duty for training;
- (D) Inactive duty training;
- (E) Full-time National Guard duty;

(F) A period for which an employee is absent from a position of employment for the purpose of an examination to determine the fitness of the employee to perform any of the above types of duty; or

(G) A period for which an employee is absent from employment for the purpose of performing funeral honors duty as authorized by 10 U.S.C. § 12503 or 32 U.S.C. § 115.

(e) "Salary" means the rate of pay the employee would have earned if he or she had remained employed during the period of military service, including any increases that would have been awarded the employee based on longevity of employment or seniority of position. If such rate of pay is not reasonably certain, the rate shall be based on the employee's average rate of pay from the employer. The average rate of pay shall be calculated for a period not to exceed the 12-month period immediately preceding the period of military service.

(f) "Uniformed services" means the following:

- (A) Armed Forces;
- (B) Army National Guard;
- (C) Air National Guard;
- (D) Commissioned corps of the Public Health Service; and
- (E) Any other category of individuals designated by the President in time of war or national emergency.

(g) "USERRA" means the 1994 federal Uniformed Services Employment and Reemployment Rights Act as in effect on the effective date of this rule.

(4) Retirement credit under USERRA.

(a) Eligibility. An employee shall be eligible for the benefits of this section if:

(A) The employee leaves PERS-covered employment to perform military service;

(B) The cumulative length of the employee's absence from employment with the employer for military service does not exceed the limits set forth in USERRA §4312;

(C) The employee initiates reemployment on or after December 12, 1994, with the same PERS-covered employer within the time limits specified in USERRA §4312; and

(D) All other eligibility requirements for benefits under USERRA are met.

(b) Credit for military service. An employee who meets the eligibility requirements of subsection (a) of this section shall be credited

with the amount of retirement credit the employee would have accrued if he or she had remained in employment with the employer during the period of military service, only to the extent that the employee contributions have been made.

(c) Termination. An employee's eligibility for the benefits of this rule terminates upon the occurrence of one of the disqualifying events listed in USERRA §4304.

(5) Employee contributions.

(a) Employee contributions shall be made upon reemployment for eligible military service in accordance with the following:

(A) Contributions to be made by the employer. If the employee was entitled to employer-paid pre-tax (EPPT) contributions as described in OAR 459-009-0200(2) as of the date the employee left employment to perform military service, the employer shall pay, in a lump sum payment, the amount of employee contributions that would have been made if the employee had remained in the employment of the employer during the period of military service, based on salary as defined in section (3) of this rule.

(B) Contributions to be made by the employee. If the employee was entitled to only member-paid pre-tax (MPPT) or member-paid after-tax (MPAT) contributions, the employee may contribute part or all of the employee contributions that would have been made if the employee had remained in the employment of the employer during the period of military service, based on salary as defined in section (3) of this rule. Contributions made under this paragraph must be remitted to PERS by:

(i) Payroll deduction; or

(ii) Monthly payment of no less than one month of contributions; or

(iii) Lump-sum payment.

(b) Any individual, agency, or organization may pay the employee contributions specified in paragraph (5)(a)(B) on behalf of the employee under the payment provisions set forth in subparagraph (5)(a)(B)(ii) or (iii).

(c) Contributions made under this section must be made during the period beginning with reemployment and whose duration is three times the period of the employee's military service, such period not to exceed five years.

(d) Any contributions made under this section shall be added to the employee's regular or variable account(s).

(e) Contributions made under this section shall not include nor be entitled to earnings or losses that would have been credited during the period of military service.

(6) Employer contributions. Any employer contributions associated with credit for military service under this rule shall be made as directed by PERS in accordance with ORS 238.225.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 238.650 & 238.156

Stats. Implemented: ORS 238.156

Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0015; PERS 2-2004, f. & cert. ef. 1-22-04; PERS 19-2005, f. 11-1-05, cert. ef. 1-1-06; PERS 16-2006, f. & cert. ef. 11-24-06

459-011-0110

Credit for Military Service under ORS 238.156(3)

(1) Definitions. For purposes of this rule:

(a) "Armed Forces" means the:

- (A) Army;
- (B) Navy;
- (C) Air Force;
- (D) Marine Corps; and
- (E) Coast Guard.

(b) "Employee" means an individual employed by a participating public employer in a qualifying position, as defined in ORS 238.005(19) and who is not excluded from the definition of employee as set forth in ORS 238.005(7).

(c) "Employer" means the legal entity that employed an individual at the time that individual left for military service. For purposes of this rule, the state of Oregon is a single legal entity. Each separate school district is a separate legal entity.

(d) "Military service" means the period during which the employee is in active duty service in the Armed Forces.

(e) "Salary" means the employee's rate of pay, for contribution and benefit calculation purposes, at the time the employee entered or reentered military service.

(2) Retirement credit under ORS 238.156(3).

(a) Eligibility. An employee shall be eligible for the benefits of this rule if:

(A) The employee leaves employment to perform military service;

(B) The employee returns to employment with the same employer after other than dishonorable discharge from military service and within the time limits specified in ORS 238.156(3)(b); and

(C) The employee is either not entitled to or would receive a lower benefit under the provisions of OAR 459-011-0100.

(b) Credit for military service. An employee who meets the eligibility requirements of subsection (a) of this section shall be credited with the amount of retirement credit the employee would have accrued if he or she had remained in employment with the employer during the period of military service, provided that all required contributions have been made.

(3) Contributions for the period of military service. To receive credit for the period of military service, contributions must be made to the Fund in accordance with the following:

(a) Contributions must be made in a lump sum payment as specified in ORS 238.156(3)(c);

(b) Such lump sum payment must equal six percent of the salary that would have been paid to the employee had the employee remained in employment with the employer during the period of military service based on the employee's salary rate at the time the employee entered or reentered military service;

(c) Any individual, agency, or organization may pay the amount specified in this subsection on behalf of the employee; and

(d) Any contributions made under this section shall be added to the employee's regular account and in all respects shall be considered as though made by payroll deduction.

(e) Contributions made under this rule shall not include nor be entitled to earnings or losses that would have been credited during the period of military service.

(4) Employer contributions. Any employer contributions associated with credit for military service under this rule shall be made as directed by PERS in accordance with ORS 238.225.

Stat. Auth.: ORS 238.650 & 238.156

Stats. Implemented: ORS 238.156

Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0155; PERS 2-2004, f. & cert. ef. 1-22-04; PERS 19-2005, f. 11-1-05, cert. ef. 1-1-06

459-011-0115

Military Full Cost Purchase

(1) For the purposes of this rule:

(a) "Active Duty for Training" means periods of active service where the member engages in training only.

(b) "Armed Forces" means the Army, Navy, Air Force, Marine Corps and the Coast Guard and the reserve components thereof.

(c) "Effective Retirement Date" means the date the member is eligible to retire and has indicated on their retirement application.

(d) "Full Cost" means the actual cost to the system of the retirement credit for military service being purchased, including any applicable administrative fee.

(e) "Military Service" means qualifying service as described under section (2) of this rule.

(2) An eligible member who served in the Armed Forces prior to becoming a member of PERS may purchase up to four years of retirement credit for military service if they:

(a) Were other than dishonorably discharged from the Armed Forces;

(b) Entered or reentered active service after January 1, 1950, or were in active service on January 1, 1950;

(c) Were on active duty for other than active duty for training; and

(d) Except as provided in section (3) of this rule, the member must be neither receiving, nor eligible to receive, a pension or retirement for service in the Armed Forces at the time of their Effective Retirement Date.

(3) If member is or was a member of a reserve component of the Armed Forces and would be entitled to a pension or retirement for service in the military, the purchase or retirement credit must be made prior to member reaching age 60.

(4) If the member has reached earliest retirement age, the purchase may be made within 90 days before and after the member's effective retirement date.

(a) If the member has not reached earliest retirement date, the purchase may be made only in the 90 day period immediately before the member's effective retirement date.

(5) A member electing to make a full cost purchase may elect to have the service retirement allowance determined under any calculation for which the member is eligible for under ORS 238.300 even if the calculation does not produce the highest retirement allowance.

(6) If the full cost of the purchase is not known at the time the payment is required, the member must pay the remainder of the full cost purchase. If the member does not pay the entire full cost, the member's full cost purchase request will be rejected.

(7) To verify military service, a copy of the member's form DD-214 or other acceptable military discharge or service records must be submitted to PERS with the full cost purchase request.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.157

Hist.: PERS 9-2006, f. & cert. ef. 4-5-06

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; PERS 21-2005, f. & cert. ef. 11-1-05

459-011-0500

Accumulated Unused Sick Leave

(1) Pursuant to ORS 238.350, a public employer may request that one or more groups of its employees be compensated for accumulated unused sick leave in the form of increased retirement benefits. The request, in writing and accompanied by certified copy of the public employer's governing body's official action, shall be effective not earlier than the first of the calendar month following date of the official action by the public employer.

(2) The Board shall determine the monetary value of 1/2 of the accumulated unused sick leave by the following procedure:

(a) For retiring employees not subject to ORS 238.350(1)(b), the hourly rate used to establish the monetary value of the unused sick leave shall be determined by dividing the monthly final average salary by 173.3 hours, multiplying this hourly rate times 1/2 of all accumulated unused sick leave hours reported, and adding this value to the final average salary calculation;

(b) For retiring employees subject to ORS 238.350(1)(b), the hourly rate used to establish the monetary value of the unused sick leave shall be determined by dividing the salary in the final contract of employment by the number of contract hours, multiplying this hourly rate times 1/2 of all unused sick leave hours reported for employment as described in ORS 238.350(1)(b) and adding this value to the final average salary calculation;

(c) The monetary value of the unused sick leave for retiring employees described in ORS 238.350(1)(b) who were employed under contracts for 12 months or earned 96 hours of sick leave in any of the three or less years used in determining final average salary will be valued as provided in subsection (a) of this section.

(3) Upon an employee's termination of employment from any PERS covered position, a public employer shall report the amount of accumulated unused sick leave on forms furnished by the Board. The public employer shall transmit the forms to the Board and provide a legible copy of the form or a facsimile thereof to each terminated employee immediately following final payment of salary. For PERS purposes, accumulated unused sick leave cannot exceed an accrual of more than eight hours per month worked less usage.

(4) To be eligible for the use of unused sick leave pursuant to ORS 238.350, a member must have been in the employ of a public employer and in a covered group on or after the effective date of an

employer's election to extend the use of accumulated unused sick leave. A member retiring with an 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 preceding the effective date of the employer's election.

Stat. Auth.: ORS 238.350 & 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 & 238.305
 Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0070; PERS 21-2005, f. & cert. ef. 11-1-05

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 238.005(5), 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 & 238.305
 Hist.: PERS 10-2000, f. 12-15-00 cert. ef. 1-1-01; PERS 20-2005, f. 11-1-05, cert. ef. 11-4-05

459-013-0280

Calculation of Variable Match

This rule will be used to determine the member's retirement allowance under the Money Match method provided for in ORS 238.300(2)(b)(A) for members that are subject to the variable annuity adjustment provided under ORS 238.260(12). To calculate these members' retirement allowance, the following process will be used:

(1) **Annuity Calculation.** The balance in the member's regular account will be combined with a projected balance based on what the member's variable account balance would have been had the member's contributions to the variable account been made to the regular account instead. If the member chooses a retirement allowance that includes an annuity, this combined balance will be converted to an annuity using the appropriate actuarial equivalency factor to determine that annuity.

(2) **Pension Calculation.** The pension provided for in ORS 238.300(2)(b)(A) will be determined by applying an actuarial equivalency factor to the combined balance determined in accordance with section (1).

(3) **Variable Adjustment.** The retirement allowance calculated under sections (1) and (2), as applicable, will be increased or decreased by applying an actuarial equivalency factor to the difference between the actual balance in the member's variable account on their effective retirement date and the projected balance determined under section (1) above.

(4) The provisions of this rule only apply to members who participated in the variable account program by making contributions to their variable account on or after January 1, 1982. The adjustment provided for by ORS 238.260(12) and this rule will apply only to those contributions and associated earnings after that date.

(5) In determining "the portion of the annuity payable from the Variable Annuity Account" as required by ORS 238.260(10) and (11),

all of the member's variable account will be included, including the portion that is included in calculating the variable adjustment at retirement specified in ORS 238.260(12).

(6) The method described in this rule to calculate a member's allowance will also be followed to calculate the "look-back" benefit as described in section 4 of chapter 68, Oregon Laws 2003 (HB 2004). The difference in value between the member's variable and what those contributions would have earned in the regular account as of June 30, 2003 will be used as the basis for the "look-back" comparison.

(7) If a member who has a variable account elects to transfer that account balance to the regular account under ORS 238.260(14), the difference between the amount in the variable account (subject to the limitations in section (4) of this rule) and what that portion of the variable account would have been had the member instead invested solely in the regular account shall be determined as of the date of the transfer. That difference will be applied to the member's regular account as described in section (1) of this rule and also pursuant to ORS 238.260(12)(b) or (c) to increase or decrease the member's retirement allowance.

(8) The provisions of this rule are effective July 1, 2004.

[ED. NOTE: Example referenced is available from the agency.]

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.260(12) & 238.300(1) & (2)

Hist.: PERS 10-2004(Temp), f. 4-15-04 cert. ef. 7-1-04 thru 10-31-04; PERS 18-2004, f. 6-15-04, cert. ef. 7-1-04

DIVISION 14

DEATH BENEFITS

459-014-0030

Designation of Beneficiary

(1) 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.)

(2) When a member designates a new beneficiary or beneficiaries, such action shall annul and revoke all prior designations.

(3) 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 238.650

Stats. Implemented: ORS 238.390

Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0075; PERS 21-2005, f. & cert. ef. 11-1-05; PERS 5-2006, f. & cert. ef. 4-5-06

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 & 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

459-015-0000

Purpose

(1) The Legislative Assembly has established within the Public Employees Retirement System (PERS) a program for early retirement

by reason of disability. The 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.

(2) Disability retirement is an expedited retirement allowance resulting from a disability and is intended solely to provide benefits to PERS members who are unable to work because they are disabled. A disability retirement allowance is not in addition to a service retirement allowance.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.320 - 238.345

Hist.: PERS 15-2005, f. & cert. ef. 10-3-05

459-015-0001

Definitions

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

(1) Any work for which qualified: A job, not necessarily the last or usual job, which the applicant for a disability retirement allowance:

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

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

(2) Certified vocational consultant: A person who satisfies the criteria set forth under either of the following:

(a) A Master's Degree in vocational rehabilitation, and one year of experience in performing vocation 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; or

(b) 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.

(3) Confidential information: Information of a personal nature such that disclosure would constitute an unreasonable invasion of privacy as defined by state law.

(4) Date of disability: The later of:

(a) The day an active member ceased to work because of injury or disease;

(b) The date an inactive member separated from employment if the inactive member applies for a disability retirement allowance within five years from date of separation and the disability has been continuous from the date of separation; or

(c) The date an inactive member was disabled if such disability occurred within six months from date of separation.

(5) Date of termination: The date a member terminates from employment such that an employee/employer relationship no longer exists; 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.

(6) Extended duration: A period of not less than 90 consecutive calendar days, unless the disability is expected to result in the death of the disabled member in less than 90 days.

(7) Independent medical exam: An exam or exams conducted by a physician chosen by PERS for purposes other than treatment which results in the issuance of a report or reports based on those exams, giving an opinion regarding the claimed injury or disease.

(8) Material contributing cause: The efficient, dominant, and proximate cause of the disability, without which the member would not be disabled.

(9) Monthly salary: "Salary" as defined in ORS 238.005(20)(a) that is earned in the last full calendar month of employment, and includes employer payments under ORS 238.205.

(a) Retroactive payments or payments made due to clerical errors, paid in accordance with ORS 238.005(20)(b)(C), are allocated to the period the salary was earned or should have been earned.

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

(10) Monthly salary received: The salary paid, as defined in section (9) of this rule, for the last full calendar month of employment prior to date of disability.

(11) Normal retirement age: The age at which a member can retire without a reduced benefit as set forth under ORS 238.005 and 238.280.

(12) Other income: Includes, but is not limited to:

(a) Salary or wages received as an employee;

(b) Self-employment income from:

(A) Services industry;

(B) Sales;

(C) Assembly or manufacturing;

(D) Consulting;

(E) Property management;

(F) Hobby income; or

(G) Book advances.

(c) "Other income" does not include:

(A) Investment income;

(B) Rent; and

(C) Royalties.

(13) Physician: 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.

(14) Periodic review: A review of a member receiving a disability retirement allowance to determine whether or not a continued allowance is warranted.

(15) Performance of duty: Mental or physical incapacitation arising out of and in the course of duty and is not intentionally self-inflicted. The injury or disease must be initially caused, aggravated or accelerated to cause incapacitation by the performance of the member's duties in the employment of a participating public employer. 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.

(16) Pre-existing condition: A condition that was not sustained in actual performance of duty with the current employer.

(17) Protected health information: Health information created or received by a health care provider, health plan, or health care clearinghouse, where an individual has a reasonable belief that the information can identify the individual, which relates to:

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

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

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

(18) Qualifying position: One or more concurrent positions with a participating employer, in a participating class, which requires 600 or more hours in a calendar year.

(19) 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.

(20) Similar in compensation: Salary or income, excluding overtime, equaling at least 80% of the monthly salary, as defined in section (9) of this rule.

(21) Similar location: A position in the same general area of the applicant's residence or last employment location.

(22) Training or vocational rehabilitation program: A comprehensive, coordinated program, usually state or federally funded, to train and assist individuals with disabilities in securing gainful employment commensurate with their abilities and capabilities.

(23) Vocational evaluation: An evaluation conducted by a certified vocational consultant, to determine the ability of an applicant to perform any work for which they are qualified.

(24) Work related stress: Conditions or disabilities resulting from, but not limited to:

(a) Change of employment duties;

(b) Conflicts with supervisors;

(c) Actual or perceived threat of loss of a job, demotion, or disciplinary action;

(d) Relationships with supervisors, coworkers, or the public;

(e) Specific or general job dissatisfaction;

(f) Work load pressures;

(g) Subjective perceptions of employment conditions or environment;

(h) Loss of job or demotion for whatever reason;

(i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;

(j) Objective or subjective stresses of employment; or

(k) Personnel decisions.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.320 - 238.345 & 238.435(5)

Hist.: PERS 15-2005, f. & cert. ef. 10-3-05

459-015-0005

Eligibility for Disability Retirement Allowances

(1) The Legislative Assembly has adopted rigorous criteria for eligibility to draw disability retirement allowance. Total, not partial disability, for an extended duration is required and eligibility for a disability retirement allowance requires that:

(a) A member be disabled to such an extent that the member is unable to perform any work for which qualified as defined in OAR 459-015-0001(1); and

(b) Is unable to generate any income that is similar in compensation as defined in OAR 459-015-0001(20) as of date of disability.

(2) In determining a member's eligibility for a disability retirement allowance, the burden of proof is upon the applicant. The Board is not required to prove whether the applicant is or is not eligible for a disability retirement allowance.

(3) Eligibility requirements for duty disabilities.

(a) Applicants with less than ten years of PERS employment must establish that they are members of PERS and were disabled while in the actual performance of duty, as defined in OAR 459-015-0001(15).

(b) A member who has a pre-existing condition (as defined in OAR 459-015-0001(16)) must prove that the material contributing cause (as defined in OAR 459-015-0001(8)) of the disability was sustained while in actual performance of duty.

(c) Work related stress, as defined in OAR 459-015-0001(24), will not be considered as the material contributing cause, as defined in OAR 459-015-0001(8), of a duty disability unless the applicant establishes all of the following:

(A) The employment conditions producing the work related stress exist in a real and objective sense;

(B) The employment conditions producing the work related stress are conditions other than conditions generally inherent in every working situation or reasonable disciplinary, corrective or job performance evaluation actions by the employer, or cessation of employment or employment decisions attendant upon ordinary business or financial cycles;

(C) There is a diagnosis of a mental or emotional disorder which is generally recognized in the medical or psychological community; and

(D) There is evidence that the work related stress arose out of and in the course of employment.

(4) Eligibility requirements for non-duty disabilities. Eligible applicants must have a minimum of ten years of employment as calculated pursuant to ORS 238.320(6).

(5) If a member meets the eligibility criteria, the member's disability retirement allowance shall be based on creditable service time as though the member had continuously worked for a PERS participating employer to:

(a) Age 55 if retiring due to disability when the applicant's last PERS covered position was as a police officer or a firefighter.

(b) Age 58 if retiring due to disability when the applicant's last PERS covered position was as other than a police officer or firefighter.

(c) Actual service if member is over age 55 or 58 as used in (a) and (b) above.

(6) Termination of membership. Disability retirement allowances are available only to PERS members. PERS membership is terminated by either loss of membership or withdrawal of the member account balance as provided in ORS 238.095. Therefore, former PERS members who have terminated their membership through loss of membership or withdrawal are not eligible to receive PERS disability retirement allowances.

Stat. Auth.: ORS 238.650 & 238.095

Stats. Implemented: ORS 238.320 - 238.345

Hist.: PERS 2-1992, f. & cert. ef. 1-14-92; PERS 15-2005, f. & cert. ef. 10-3-05

459-015-0010

Criteria for Granting and Denying Disability Retirement Allowances

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

(2) All claims of a disability must be supported by at least one physician's report, resulting from a physical examination, documenting how the injury or disease incapacitates the member.

(3) 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 psychologist when accompanied by a report of physical examination by a treating or consulting physician;

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

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

(d) For claims of fibromyalgia, at least one report of a treating or consulting rheumatologist; and

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

(4) To demonstrate that he or she is unable to perform any work for which qualified, as defined in OAR 459-015-0001(1), the applicant shall document how the injury or disease incapacitates the applicant. 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, PERS may request, at PERS expense, a vocational evaluation be done by a vocational consultant who is fully certified as set forth in OAR 459-015-0001(2)(a) or (b).

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

(5) When there is a dispute among medical experts, more weight will be given to those medical opinions that are both well reasoned and based on complete information.

(6) The Board may deny any application or discontinue any disability retirement allowance if an applicant refuses to submit to an independent medical or vocational examination.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.320 & 238.335

Hist.: PERS 2-1992, f. & cert. ef. 1-14-92; PERS 4-1992, f. & cert. ef. 5-4-92; PERS 15-2005, f. & cert. ef. 10-3-05

459-015-0020

Application Required

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

(2) Applications must be made on forms prescribed by PERS. PERS may require the member to provide any information that PERS 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 must submit to PERS 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 allowance, PERS will notify the applicant's current or most recent employer of the filing. Additionally, PERS 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 that predates the last day the member was actually on the job.

(6) An application will 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 has terminated employment from all PERS covered service, the member must file an application for a disability retirement allowance within five calendar years of the date of termination. The disabling condition must be continuous from the date of termination to the date the application is filed.

(b) For a member who is disabled due to injury or disease after terminating employment from all PERS covered service 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 termination.

(A) The injury or disease must be continuous from the date of onset to the date of application.

(B) The separation must be continuous from the date of termination to the date the application is filed.

(C) The member must have a minimum of ten years of employment as calculated pursuant to ORS 238.320(6).

(7) In determining the effective date of a disability retirement allowance, PERS 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 first day of the month following the date of termination.

(8) When making application for a PERS disability retirement allowance, PERS will request the applicant authorize any physician, health practitioner, hospital, clinic, pharmacy, employer, employment agency, or government agency to release and disclose to PERS, or independent physicians and vocational consultants retained by PERS, 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 PERS determines relates to the applicant's claim of disability and inability to perform any work for which qualified.

(9) When filing an application for disability retirement allowance, if the applicant wishes to authorize release and disclosure of protected health information, as defined in OAR 459-015-0001(17), the applicant must complete and sign a consent form which specifically authorizes the release and disclosure of such information.

(a) This authorization is voluntary. Because PERS is not a covered entity as defined in 45 C.F.R., Parts 160 and 164, the protected health information is not subject to federal and state health information privacy laws, but is protected under Oregon State Public Record disclosure laws.

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

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

Stat. Auth.: ORS 183.310 - 183.550, 237.171, 237.191, 237.263 & 45 CFR Parts 160 & 164

Stats. Implemented:

Hist.: PERS 2-1992, f. & cert. ef. 1-14-92; PERS 15-2005, f. & cert. ef. 10-3-05

459-015-0025

Application Processing — Independent Examinations and Appeals

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

(a) For independent medical exams, PERS shall inform the applicant in writing and postmarked not less than ten days prior to a scheduled examination of the identity of the physician(s) selected to examine the applicant, together with location, date and time.

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

(c) 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.

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

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

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

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

(e) Good cause does not include:

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

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

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

(2) When PERS requires an applicant to travel to be examined by a physician, vocational consultant, or other professional, PERS will 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 taxi, bus, rail, or other public carrier shall be paid only upon presentation of receipts from the providers. Lodging and subsistence shall be allowed only when an overnight stay 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 by PERS because of a member's failure to meet a scheduled appointment.

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

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

(b) If the disability application is approved:

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

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

(4) The Director, or the Director's designee, 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, or the Director's designee, with a recommendation to approve or to deny a disability retirement allowance. The Director, or the Director's designee, may accept or reject the staff's recommendation, or refer the application back to staff for further documentation and review.

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

(b) If the disability claim is denied, the staff shall issue an Intent to Deny letter by regular and certified mail, return receipt requested. The denial 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 Intent to Deny letter.

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

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

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

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

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

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

(6) The final denial letter will 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.

(7) PERS will notify the most recent employer of the approval 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 will not contain any confidential information as defined in OAR 459-015-0001(3).

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.320 & 238.335

Hist.: PERS 2-1992, f. & cert. ef. 1-14-92; PERS 5-1992, f. & cert. ef. 5-4-92; PERS 15-2005, f. & cert. ef. 10-3-05

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 an administrative law judge designated by the Office of Administrative Hearings and conducted in accordance with the Attorney General's Model Rules of Procedure as adopted by OAR 459-001-0005. The member may represent himself or be represented by legal counsel. An Assistant Attorney General will appear at the hearing to assist the staff in presenting its position, and to assist in the development of a complete hearing record.

(4) Following the hearing, the hearings officer shall prepare or direct one of the parties to prepare a Proposed Findings of Fact, Conclusions of Law and Order and serve it on the parties. The administrative law judge'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 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).

(5) In accordance with OAR 459-001-0040, prior to initiating any judicial review of a final order, an applicant may 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 - 183.550, 183.600 - 183.690 & 238.650

Stats. Implemented: ORS 238.320 - 238.345

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; PERS 9-2003, f. & cert. ef. 8-4-03; PERS 21-2005, f. & cert. ef. 11-1-05

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 administrative law judge 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 administrative law judge 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 administrative law judge 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 administrative law judge 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 - 183.550, 183.600 - 183.690, 237.171, 237.191 & 237.263
Stats. Implemented:
Hist.: PERS 2-1992, f. & cert. ef. 1-14-92; PERS 21-2005, f. & cert. ef. 11-1-05

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 administrative law judge 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 - 183.550, 183.600 - 183.690, 237.171, 237.191 & 237.263
Stats. Implemented:
Hist.: PERS 2-1992, f. & cert. ef. 1-14-92; PERS 21-2005, f. & cert. ef. 11-1-05

459-015-0045

Return to Work

(1) The Public Employees Retirement Board allows a member who is receiving a disability allowance to return to work as follows:

(a) Returning to work in a PERS qualifying position. A member who has not been medically released for any work for which qualified, may return to work in a PERS qualifying position, as defined by OAR 459-010-0003, for a 90-day trial period without losing disability retirement status. While the member is working during this trial period:

(A) Disability benefits will be suspended.

(B) Any wages earned during the trial period are excluded from the definition of salary for purposes of computing PERS contributions or determining PERS retirement benefits unless the member continues the employment beyond 90 days. If the member continues beyond the 90 days, the period will be considered qualifying as of the first day the member returned to work and retroactive contributions, without interest, are required.

(b) Returning to work in a PERS non-qualifying position. A member 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 qualifying for PERS active membership. Unless the member has reached normal retirement age, the monthly disability retirement will be adjusted by any earned income which, when added

to the disability retirement allowance, exceeds the gross monthly salary earned at the time of retirement for disability.

(c) Returning to work in a non-PERS position. A member who has not been medically released for any work for which qualified, may be employed by other than a PERS participating employer. Unless the member has reached normal retirement age, the monthly disability retirement allowance shall be adjusted by any wages which, when added to the disability retirement allowance, exceeds the gross monthly salary earned at the time of retirement for disability.

(2) A member's disability retirement allowance will be terminated if the member has been medically released for any work for which qualified, whether the member returns to work or not, and PERS will invoice the member for, or recover under ORS 238.715, any overpayment of benefits.

(3) If a member returns to work as provided in sections (1) or (2) of this rule, the member must:

(a) Notify PERS in writing of the reemployment within 30 days of such reemployment; and

(b) Report monthly to PERS the amount of any earned income.

(4) PERS may contact other public or private agencies, such as the Oregon Employment Department, the Oregon Department of Revenue, or the U.S. Internal Revenue Service to obtain employment information.

(5) Upon request by PERS, a member must provide PERS with a copy of the member's federal income tax returns, together with copies of IRS forms W-2.

(6) The Board may require medical examination reports or vocational evaluations for any member receiving a disability retirement allowance who is reemployed.

(7) If the member is reemployed under section (1) of this rule and is unable to continue employment due to the disabling injury or disease as confirmed by medical documentation, the member or employer must notify PERS. If medical documentation substantiates that the disability prevents the completion of the trial period, the disability retirement allowance will be reinstated at the end of the 90 day period, or as of the date the member leaves the trial employment, whichever is sooner.

(8) A disability retirement allowance shall not be discontinued solely by reason of the retired member entering a training or vocational rehabilitation program as defined in OAR 459-015-0001(22).

(9) Restoration of member account after return to work. If a member returns to PERS covered employment after the 90-day trial period, or is medically released at any time for any work for which they are qualified, the disability claim will be closed and the member's regular and variable PERS account(s) will be restored to the dollar amount of the account as of the effective date of disability.

(10) Creditable service. A member does not receive creditable service while drawing disability benefits. If, however, the member returns to PERS covered employment, their disability claim is closed, and they subsequently retire under a service retirement, service time for the period of disability will be restored as follows:

(a) For duty disabilities, creditable service will be granted to the member at no cost to the member.

(b) For non-duty disabilities, creditable service may be purchased by the member under the provisions of ORS 238.175.

Stat. Auth.: ORS 238.320, 238.335, 238.330, 238.650 & 238.715

Stats. Implemented: ORS 238.175 & 238.330

Hist.: PERS 2-1992, f. & cert. ef. 1-14-92; PERS 15-2005, f. & cert. ef. 10-3-05

459-015-0050

Periodic Reviews

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

(2) Periodic reviews will be used to determine that continued disability retirement allowances are warranted. In recommending the continuance or discontinuance of a disability retirement allowance, for the original approved disability or a new medical condition, PERS will follow the criteria established under OAR 459-015-0010.

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

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

(a) The reviews may be medical or vocational in nature, or both.

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

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

(B) Updated physician or specialist reports;

(C) Independent medical or vocational examinations; or

(D) Employment and wage information, including but not limited to, tax returns or information from the State Employment Department.

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

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

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

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

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

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

(D) The final discontinuation letter will 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 member has the burden to prove continuing eligibility for a disability retirement allowance.

(6) The Director, or the Director's designee, is authorized to approve or deny the continuance of a disability retirement allowance.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.320 & 238.335

Hist.: PERS 2-1992, f. & cert. ef. 1-14-92; PERS 5-1992, f. & cert. ef. 5-4-92; PERS 15-2005, f. & cert. ef. 10-3-05

459-015-0055

Selection of Benefit Option and Commencement of Allowance

(1) Upon filing an application for a disability retirement allowance, the member may make a preliminary designation of beneficiary and a preliminary selection of benefit option.

(a) A member may choose from retirement Options 1, 2, 2A, 3, 3A, 15 year certain or refund annuity as set forth in ORS 238.300 and 238.305, or an optional disability retirement allowance under ORS 238.325.

(b) A member may not choose a lump-sum option.

(2) Within 90 days following the Director's, or the Director's designee's, approval of the application for disability retirement allowance, the member must complete a final designation of beneficiary and selection of benefit option on forms provided by PERS. Receipt of the final forms will supercede any preliminary beneficiary designation or benefit option.

(a) The final option selected applies only to the corresponding time period the member is receiving a disability retirement allowance.

(b) The beneficiary designation or benefit option may be changed up to 60 days after the date of the first benefit payment as provided in ORS 238.325(2).

(c) If a member's disability retirement allowance is canceled, the option selected for the purposes of that disability retirement allowance is canceled and a new option may be selected upon a subsequent disability or a service retirement.

(3) If the member does not complete a final selection of benefit option within 90 days following the Director's, or the Director's designee's, approval of the application for disability retirement allowance:

(a) The benefit will be the benefit as set forth under ORS 238.320(1); and

(b) The latest beneficiary designation on file for the PERS Chapter 238 Program will be used to determine the default beneficiary. If no designation exists, the beneficiary will be as provided for under ORS 238.390(2).

(4) Purchases. If a member is eligible to purchase additional creditable service or retirement credit under ORS Chapter 238, the payment for the purchase(s) shall accompany the final selection of benefit option form.

(5) The payment of a disability retirement allowance shall commence within ten days following receipt by PERS of all of the following items, or the date the first payment is due, as set forth in Section (6) of this rule, whichever is later:

(a) From the member:

(A) Final designation of beneficiary and selection of benefit option form;

(B) Proof of member's age;

(C) Proof of age for the designated beneficiary if a joint survivor option is elected; and

(D) Spousal consent form.

(b) From the employer:

(A) Financial; and

(B) Demographic information indicating the member has separated from PERS-covered employment.

(6) A disability payment is first due on the later of:

(a) The first of the calendar month in which the member files a complete application for disability benefits with PERS; or

(b) The first of the month following the first full calendar month after final payment by the employer of any wages or paid leave benefits to the member, excluding any cash payoff of accrued vacation or compensatory time; or

(c) The first of the calendar month following the date that the disability application is approved by the Director.

(d) Notwithstanding subsections (a), (b) and (c) of this section, no payment shall be made prior to the end of the period of 90 consecutive days beginning with the date of disability as defined in OAR 459-015-0001(4); and

(e) A disability retirement allowance shall be retroactive to the effective date of disability.

(7) If PERS cannot calculate the actual disability benefit payment, an estimated payment will be made until PERS receives all the necessary information needed to calculate the actual benefit payment. The payment will be made retroactive to the effective date of disability if the benefits become due before the 90 consecutive day period of incapacitation has elapsed.

(a) If the estimated payment results in an underpayment of \$10 or more a month, the member will receive interest based on the provisions set forth in OAR 459-007-0015.

(b) If the estimated payment results in an overpayment of any amount, the overpayments may be recovered by decreasing the monthly benefit amount until the difference between the amount the member received and the amount the member should have received is recovered.

(8) Within the 60 day period following the issue date of the first actual (not estimated) benefit payment, the member may change their benefit option. The Option change will be retroactive to the effective disability retirement date.

(9) Minimum disability benefit. A disability benefit will not be less than \$100 per month under the non-refund Option 1 benefit or the amount the member would have received for service retirement, if eligible, whichever is higher.

(10) In the event a member applying for a disability retirement allowance dies prior to the Director's approval of the application, and:

(a) the member has made a preliminary designation of beneficiary or selected a benefit option, the preliminary election(s) shall be effective upon the Director's approval of that application.

(A) If the beneficiary is the surviving spouse, the surviving spouse may, within 90 days from the date the disability application is approved, elect to have either Option 2 or 3 disability benefits or pre-retirement death benefits, as provided in ORS 238.390 or 238.395, if eligible.

(B) If the surviving spouse elects either Option 2 or 3, the surviving spouse cannot name a beneficiary and all benefits will cease upon the spouse's death.

(b) the member has not made a preliminary designation of beneficiary or selected a benefit option, the member will be considered as having died before retirement.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.320, 238.325 & 238.335

Hist.: PERS 2-1992, f. & cert. ef. 1-14-92; PERS 15-2005, f. & cert. ef. 10-3-05

459-015-0060

Reduction Due to Workers' Compensation Payment

(1) PERS disability payments are reduced by payments a Tier Two member receives from Workers' Compensation. There is no reduction for a Tier One member. Other disability-related income, such as Social Security and/or private disability insurance plan payments will not affect the amount of a PERS disability retirement allowance.

(2) A Tier Two member's disability retirement allowance will be offset by any gross monthly workers' compensation 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 workers' compensation claim is based is related to the condition on which the PERS disability retirement claim is based.

(a) A monthly workers' compensation payment includes:

- (A) Weekly gross payments;
- (B) Semi-monthly gross payments;
- (C) Monthly gross payments; and

(D) 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) A monthly workers' compensation payment does not include:

- (A) Payments for medical services;
- (B) Payments for vocational training;
- (C) Reemployment assistance payments; and

(D) 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) The workers' compensation payment will be considered paid on the date that payment is issued, and will not be allocated to any period other than the month payment is issued.

(3) In the event a Tier Two member is eligible to receive a PERS disability retirement allowance, PERS will request of the Workers' Compensation Division, or any other public or private workers' compensation insurance carrier, documentation of the portion of a lump sum settlement that is made on account of a temporary total disability or a permanent total disability.

(4) The disability allowance of a Tier Two member will be reduced by the amount by which the combined monthly benefits payable from both PERS and any monthly workers' compensation payment on account of temporary total disability or permanent total disability exceed the monthly salary of the member at time of disability.

(5) A Tier Two member who is eligible to receive a disability retirement allowance must report immediately to PERS the receipt or the award of any monthly workers' compensation payment as described in section (2)(a) of this rule.

(6) In the event a Tier Two member receives one or more monthly workers' compensation payment(s) while also receiving a disability retirement allowance, but PERS is not notified of the workers' compensation payment until after making one or more disability retirement allowance payments:

(a) PERS will recalculate the disability retirement allowance, taking the monthly workers' compensation payments into account; and

(b) PERS will invoice the member for, or recover under ORS 238.715, any overpayment of PERS benefits.

(7) A Tier Two member's PERS disability retirement allowance:

(a) Will first be calculated in accordance with ORS 238.435 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) will be made to the adjusted PERS disability retirement allowance established under ORS 238.435 and this rule.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.435 & 238.330(3)

Hist.: PERS 3-1998, f. & cert. ef. 3-16-98; PERS 15-2005, f. & cert. ef. 10-3-05

DIVISION 16

POLICE OFFICERS AND FIRE FIGHTERS

459-016-0100

Purchase of Units by a Police Officer or Firefighter to Provide Increased Benefits

(1) For the purposes of this rule:

(a) "Active" means an "active member" as defined in ORS 238.005(12)(b).

(b) "Current" means a member who is currently employed as a police officer or firefighter.

(c) "Firefighter" has the same meaning as set forth in ORS 238.005(9).

(d) "Five years" means five full years ending on the fifth anniversary date of the transfer from a police or fire position.

(e) "Inactive" means an "inactive member" as defined in ORS 238.005(12)(c).

(f) "Police officer" has the same meaning as set forth in ORS 238.005(16).

(2) Eligibility to Purchase Units. An active and current police officer or firefighter may purchase a maximum of eight units to provide increased benefits between the date of retirement and age 65. A member who retires prior to age 60 will receive unit payments over a minimum five-year period.

(3) Lump-Sum Purchase at Retirement. An active and current police officer or firefighter may choose to make a lump-sum purchase of police and fire units within the 60 days prior to the police officer's or firefighter's effective retirement date.

(a) If previous payroll contributions for unit benefits have been made, a lump-sum purchase of any remaining units, for a maximum of eight units, may be made within 60 days prior to the member's retirement date if the member is less than age 65.

(b) If no payroll contributions for unit benefits have been made, a lump-sum purchase of units may be made within the 60 days prior to the member's retirement date only if the member is less than age 60.

(4) Additional Contributions for Police Officers or Firefighters Retiring Prior to Age 60. An active and current police officer or firefighter who retires prior to age 60 may make additional contributions to purchase actuarially reduced unit benefits beginning at any date between the date of early retirement and age 60.

(5) Police Officers or Firefighters Who Work Until the Age of 65. Contributions for unit benefits are not permitted once the member reaches the age of 65. The amount in the unit account of a member who works until age 65 will be refunded to the member in a lump sum.

(6) Cancellation of Police and Fire Unit Contributions. A police officer or firefighter who has elected to make unit contributions may elect, in writing, to cancel the additional contributions at any time. Once canceled, the member will not be permitted to participate in the unit benefit program at a future time.

(7) Refund of Unit Account.

(a) Voluntary Refund. A police officer or firefighter may request a refund of the unit account if the police officer or firefighter is separated from all participating employers and their control groups.

(b) Involuntary Refund. A police officer or firefighter who has elected to make unit contributions and transfers to an inactive position or a non-police or fire job class will:

(A) Retain the unit account for five years immediately following the transfer.

(B) If at the end of the five years, the member has not turned age 50 or returned to a qualifying police or fire position, the member's election will be canceled and the amount in the unit account automatically refunded.

(c) A voluntary or involuntary refund results in a cancellation of the unit account. Once a unit account is canceled, the member may not participate in the unit benefit program at a future time.

(d) A police officer or firefighter who requests a withdrawal of the PERS member account will automatically receive a refund of the unit account.

(8) Disability Retirement. A police officer or firefighter who is approved for a PERS chapter 238 Program disability retirement is eligible to purchase the balance of the police and fire units or make an initial purchase equal to the maximum eight units.

(9) Reemployment under USERRA. An eligible PERS chapter 238 Program police or fire member who leaves a qualifying position to serve in the Uniformed Services is eligible upon initiating reemployment to make up the unit benefit contributions which would have been made to the member's unit account had the member not left to serve in the Uniformed Services.

(a) Contributions made under this section must be remitted to PERS by:

(A) Payroll deduction; or

(B) Monthly payment of no less than one month of contributions; or

(C) Lump-sum payment.

(b) Any individual, agency, or organization may pay the employee contributions specified in subsection (a) of this section on behalf of the employee under the payment provisions set forth in paragraph (B) or (C) of this section.

Stat. Auth.: ORS 238.650

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; PERS 18-2006, f. & cert. ef. 10-24-06

DIVISION 17

REEMPLOYED RETIRED MEMBERS

459-017-0060

Reemployment of Retired Members

(1) **Reemployment under ORS 238.082.** A retired member of the system receiving a service retirement allowance, who has elected an option other than the total lump sum option under ORS 238.305(3), including those who have retired at a reduced benefit under ORS 238.280(1) or (2), may be employed under ORS 238.082 by a participating employer without loss of retirement benefits provided:

(a) The period or periods of employment with one or more public employers participating in the system do not exceed 1039 hours in a calendar year; or

(b) If the retired member is receiving retirement, survivors, or disability benefits under the federal Social Security Act, the period or periods of employment do not exceed the greater of 1039 hours in a calendar year or the total number of hours in a calendar year that, at the retired member's specified hourly rate of pay, limits the annual compensation of the retired member to an amount that does not exceed the following Social Security annual compensation limits:

(A) For retired members who have not reached full retirement age under the Social Security Act, the annual compensation limit is \$12,480; or

(B) For the calendar year in which the retired member reaches full retirement age under the Social Security Act and only for compensation for the months prior to reaching full retirement age, the annual compensation limit is \$33,240.

(2) A retired member described in section (1) of this rule who has reached full retirement age under the Social Security Act may work an unlimited number of hours without loss of retirement benefits.

(3) The limitations on employment in section (1) of this rule do not apply if:

(a) The retired member meets the requirements under ORS 238.082(3), (4), (5), or (6), and did not retire at a reduced benefit under the provisions of ORS 238.280(1) or (2); or

(b) The retired member is on active state duty in the organized militia and meets the requirements under ORS 399.075(8).

(4) If a retired member is reemployed subject to the limitations of ORS 238.082 and section (1) of this rule, but the period or periods of employment subsequently exceed those limitations, the following will occur if employment continues into the month following the date the limitations are exceeded:

(a) PERS will cancel the member's retirement. The last monthly service retirement allowance payment the member is entitled to will be for the month in which the limitations were exceeded. A member who receives benefits to which he or she is not entitled must repay those benefits to PERS.

(b) The member will reestablish active membership as required by ORS 238.078 the first of the calendar month following the date the limitations were exceeded.

(c) The member's account shall be rebuilt in accordance with the provisions of section (9) of this rule.

(5) **Reemployment of retired member who elected the total lump sum option.** A retired member who has elected the total lump sum option under ORS 238.305(3) may return to work with a participating employer in the six month period following the member's effective retirement date without having to repay the retirement benefits paid to them provided:

(a) The retired member is designated by the employer(s) as a casual, emergency, or seasonal worker as defined in OAR 459-005-0001; and

(b) The period or periods of employment with one or more public employers participating in the system do not exceed 599 hours.

(6) The return to work in a qualifying or other position after six months following the retirement date of a member who elected the total lump sum option has no effect on the retirement status of that member and, upon such reemployment, the member is not required to repay retirement benefits.

(7) If a retired member described in section (5) of this rule, is working subject to the limitation of subsection (5)(b) of this rule and the member exceeds that limitation, the member's retirement will be cancelled. The member will be required to repay to PERS in a single payment the total amount of all retirement benefits received. The member will reestablish active membership as required by ORS 238.078 effective the first of the calendar month following the date the member exceeded that limitation. The member's account shall be rebuilt in accordance with ORS 238.078(2) and subsection (10)(d) of this rule. Upon subsequent retirement, the member may choose a different retirement payment option.

(8) Limitations on hours of employment in sections (1) and (5) of this rule will be based on the number of hours employed on and after the retired member's effective retirement date.

(9) **Reemployment under ORS 238.078(1).** If a member has been retired for service for more than six calendar months and is reemployed in a qualifying position by a participating employer under the provisions of ORS 238.078(1), the following will occur:

(a) PERS will cancel the member's retirement effective the date of the member's reemployment.

(b) The member will reestablish active membership as required by ORS 238.078 on the date the member is reemployed.

(c) If the member elected an option other than a lump sum option under ORS 238.305(2) or (3), the member need not repay any service retirement allowance payment received that is attributable to the period the member was separated from service. The last monthly service retirement allowance payment to which the member is entitled will be for the month prior to the calendar month in which the member is reemployed. A member who receives benefits to which he or she is not entitled must repay those benefits to PERS. Upon subsequent retirement, the member may choose a different retirement option.

(A) The member's account shall be rebuilt as required by ORS 238.078 effective the date active membership is reestablished.

(B) Amounts distributed from the BIF under the provisions of subsection (A) shall be credited with earnings at the BIF rate or the assumed rate, whichever is less, from the date of retirement to the date of active membership.

(d) If the member elected a partial lump sum option under ORS 238.305(2), the member need not repay any service retirement allowance payment received that is attributable to the period the member was separated from service. The last monthly service retirement allowance payment to which the member is entitled will be for the month prior to the calendar month in which the member is reemployed. A member who receives benefits to which he or she is not entitled must repay those benefits to PERS. No repayment of lump sum payment(s) received during the period the member was separated from service is required. Upon subsequent retirement, the member may not choose a different retirement option unless the member has repaid to PERS an amount equal to the lump sum payment(s) received and the interest that would have accumulated on that amount.

(A) The member's account shall be rebuilt as required by ORS 238.078 effective the date active membership is reestablished.

(B) Amounts distributed from the BIF under the provisions of subsection (A), excluding any amounts attributable to any lump sum repayment(s) by the member, shall be credited with earnings at the BIF rate or the assumed rate, whichever is less, from the date of retirement to the date of active membership.

(e) If the member elected the total lump sum option under ORS 238.305(3), no repayment of the total lump sum payment received is

required. Upon subsequent retirement, the member may not choose a different retirement option unless the member has repaid to PERS in a single payment an amount equal to the total lump sum payment received and the interest that would have accumulated on that amount.

(A) If the member repays PERS as described in subsection (e) the member's account shall be rebuilt as required by ORS 238.078 effective the date that PERS receives the single payment.

(B) Amounts distributed from the BIF under the provisions of subsection (A) shall not be credited with earnings for the period from the date of retirement to the date of active membership.

(10) **Reemployment under ORS 238.078(2).** If a member has been retired for service for less than six calendar months and is reemployed in a qualifying position by a participating employer under the provisions of ORS 238.078(2), the following will occur:

(a) PERS will cancel the member's retirement effective the date of the member's reemployment.

(b) All retirement benefits received by the member must be repaid to PERS in a single payment before the member can be reemployed.

(c) The member will reestablish active membership as required by ORS 238.078 effective the date the member is reemployed.

(d) The member account shall be rebuilt effective the date that PERS receives the single payment. The amount in the member account shall be the same as the amount in the member account at the time of the member's retirement.

(e) Upon subsequent retirement, the member may choose a different retirement payment option.

(11) Upon the subsequent retirement of any member who reestablished active membership under ORS 238.078, the retirement benefit of the member shall be calculated using the actuarial equivalency factors in effect on the effective date of the subsequent retirement.

(12) The provisions of subsections (9)(c)(B), (9)(d)(B), and (9)(e)(B) of this rule are applicable to members who reestablish active membership under ORS 238.078 whose initial effective retirement date is on or after the effective date of this rule.

(13) **Reporting requirement.** The employer shall notify PERS under which statute a retiree is reemployed in a format acceptable to PERS.

(a) Upon request by PERS, a participating employer shall certify to PERS that a retired member has not exceeded the number of hours allowed in ORS 238.082 and sections (1) and (5) of this rule.

(b) Upon request by PERS a participating employer shall provide PERS with business and employment records to substantiate the actual number of hours a retired member was employed.

(c) Participating employers shall provide the information requested in this section within 30 days of the date of the request.

(14) **Sick leave.** Accumulated unused sick leave reported by the employer to PERS upon a member's retirement, as provided in ORS 238.350, shall not be made available to a retired member returning to employment under sections (1) or (9) of this rule.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.078 & 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; PERS 18-2003(Temp), f. & cert. ef. 12-15-03 thru 5-31-04; PERS 19-2004, f. & cert. ef. 6-15-04; PERS 3-2006, f. & cert. ef. 3-1-06

DIVISION 20

OLD-AGE AND SURVIVORS INSURANCE

459-020-0005

Remitting of Employer and Employee Contributions

(1) Unless otherwise agreed upon between the Retirement Board and the employer, the employer shall transmit the amount of employee and employer social security contributions together with Remittance Advice to the Retirement Board as follows (date postmarked by U.S. Postal Service is deemed date received if sent through the U.S. Postal Service).

For Pay Dates: — Send so that total contributions will be received not later than:

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 & 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 & 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 & 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 238.650

Stats. Implemented:

Hist.: PER 9, f. 12-15-55; PERS 21-2005, f. & cert. ef. 11-1-05

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 & 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.

Stat. Auth.: ORS 238.650

Stats. Implemented:

Hist.: PER 9, f. 12-15-55; PER 6-1981, f. & ef. 3-5-81; PERS 21-2005, f. & cert. ef. 11-1-05

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 238.650

Stats. Implemented:

Hist.: PER 9, f. 12-15-55; PERS 21-2005, f. & cert. ef. 11-1-05

DIVISION 30

LOCAL PUBLIC EMPLOYER RETIREMENT PLANS FOR POLICE OFFICERS AND FIRE FIGHTERS

459-030-0009

Contents of the Petition

(1) A petition for exemption of a public employer shall contain the following information:

- (a) The name of the public employer;
- (b) For current affected police officers and fire fighters; a list of the names, ages, sex, dates of employment and plan participation, annual employee contributions (withheld or picked up) to the employer's plan for each year of participation beginning in 1973 with total current account balances of employee contributions, if applicable, and total gross salaries paid in each of the three most recent calendar years;
- (c) A copy of the plan including each written trust agreement, contract or insurance policy providing retirement benefits to the public employer's police officers and fire fighters;
- (d) Such additional information as will assist an actuary retained by the Board in reviewing the retirement benefits to be provided the police officers and fire fighters.

(2) Information provided in the petition shall be current as of the valuation date.

Stat. Auth.: ORS 237

Stats. Implemented:

Hist.: PER 4-1978, f. & ef. 11-2-78; PER 13-1981, f. & ef. 11-23-81; PERS 1-1989, f. & cert. ef. 12-4-89

459-030-0011

"Equal To or Better Than" Exemption

(1) If a public employer provides retirement benefits to its police officers and firefighters that are equal to or better than the benefits that would be provided to them under the Oregon Public Service Retirement Plan, the public employer may petition the Board for exemption from participation of such employees. Such petition will be reviewed under the requirements and timelines of this division.

(2) The Board will review any exemption granted under this division every two years to determine whether the exempt public employer is complying with the requirements of this division.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 237.620

Hist.: PER 4-1978, f. & ef. 11-2-78; PERS 1-1989, f. & cert. ef. 12-4-89, Renumbered from 459-030-0020; PERS 9-2005, f. & cert. ef. 2-22-05

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 Firefighters Retirement Plans

(1) A determination whether a public employer provides retirement benefits to its police officers and firefighters that are equal to or better than the benefits that would be provided to them under the Oregon Public Service Retirement Plan (OPSRP) will be made as of the valuation date. The "valuation date" is the date set by the Board as of which the retirement benefits under the public employer's retirement plan and under the OPSRP retirement plan shall be compared.

(2) The Board will consider the aggregate total actuarial present value of all retirement benefits accrued since July 1, 1973 and projected to be accrued after the valuation date by the group of police officers and firefighters employed on the valuation date by the public employer. The projected benefits will compare the total value of benefits that would be accrued if the police officers and firefighters became members of OPSRP or remained in the plan being evaluated.

(a) The Board will 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 OPSRP.

(b) The Board will 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 OPSRP, namely: A service retirement; a disability retirement; a death benefit; and vesting.

(3) In conducting an actuarial review of a public employer's retirement plan for its police officers and firefighters, the actuary retained by the Board will use demographic data supplied by the employer to determine whether the retirement benefits provided under the plan are equal to or better than the benefits which would be provided under OPSRP. If the employer does not provide sufficient data in a timely manner, the actuary will use a hypothetical data set representing a demographic cross-section of police officers and firefighters who are subject to this division.

(4) The Board will conduct its review based on its current actuarial assumptions for police officers and firefighters of public employers in OPSRP.

(5) The Board will 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 firefighters. The Board will 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.

(6) In considering a public employer's retirement plan provisions, the Board will not value portability of pension credits, tax advantages, Social Security benefits or participation, and any worker's compensation component of a public employer's plan as determined by the employer.

(7) 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 238.650

Stats. Implemented: ORS 237.620

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; PERS 9-2005, f. & cert. ef. 2-22-05

459-030-0030

Board Action on Petition and Review of Order

(1) The actuary will issue a written report that concludes whether a public employer's plan meets the standards for receiving an exemption under OAR 459-030-0025. After receipt of the written actuarial review report and recommendations of staff, the Board will issue an order granting or denying the petition for exemption. No order denying a petition for exemption will be issued until at least 90 days after the actuary had delivered its report to the Board. During that period, the public employer may amend its plan to comply retroactive to the valuation date or file a written request for an extension. Upon filing of that request, the Board will not enter an order denying a petition for exemption for an additional 60 days after receiving the request. If a public employer submits an amended plan before the Board adopts an order denying the exemption, the actuary will submit a supplemental report on whether the amended plan meets the required standards

under OAR 459-030-0025. The Board may adopt an order at any time after receiving the supplemental report.

(2) Within 60 days of the effective date of any order issued under this rule, the public employer, the affected public employees, or their labor representative may file a petition for rehearing or reconsideration pursuant to OAR 459-001-0010 and 459-001-0040.

(3) A public employer who has received an order denying its petition for exemption and who has exhausted its remedies under this division will join the Oregon Public Service Retirement Plan as of the following January 1, or such other date as the Board directs in its order.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 237.620

Hist.: PER 4-1978, f. & ef. 11-2-78; PERS 1-1989, f. & cert. ef. 12-4-89; PERS 9-2005, f. & cert. ef. 2-22-05

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 to do business in the State of Oregon, or certified in another state that is operating under the laws of that state, to obtain health insurance coverage for eligible retirees, and their spouses or dependents.

(2) Benefits shall be provided under the Board's health insurance programs for eligible persons through retiree contributions and any other available funding to cover the Board's costs of health care coverage and administration under insurance contract between the Board and insurance carriers.

Stat. Auth.: ORS 238.410 & 238.650

Stats. Implemented: ORS 238.410, 238.415 & 238.420

Hist.: PERS 4-1996, f. & cert. ef. 6-11-96; PERS 5-1999, f. & cert. ef. 11-15-99; PERS 14-2002, f. & cert. ef. 11-18-02

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" means the Public Employees Retirement Board as established in ORS 238.630.

(2) "Carrier" shall have the same meaning as provided in ORS 238.410(1)(a).

(3) "Competitive Negotiations" means the procurement method whereby proposals are requested from a number of sources and the Request for Proposals is publicized.

(4) "Creditable Service" shall have the same meaning as provided in ORS 238.005(5).

(5) "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.

(6) "Dependent Domestic Partner of a PERS Retiree" means a person who has a relationship with a PERS retiree that has the characteristics described below. To qualify as a "dependent domestic partner of a PERS retiree," the person and the PERS retiree must:

(a) Share a close personal relationship and be responsible for each other's common welfare, including but not limited to having joint financial responsibilities;

(b) Be each other's sole domestic partner;

(c) Not be married to anyone, nor have had another domestic partner within the previous 12 months;

(d) Not be related by blood so closely as to bar marriage in the State of Oregon;

(e) Have jointly shared the same regular and permanent residence for at least 12 months immediately preceding the effective date of coverage with the intent to continue doing so indefinitely; and

(f) Have the PERS retiree providing over one-half of the financial support for the person and qualify as a dependent of the PERS retiree as determined under section 105(b) of the Internal Revenue Code, 26 USC 105(b), as amended by the Working Families Tax Relief Act of 2004, P.L. 108-311.

(7) "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.

(8) "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.

(9) "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.

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

(11) "Health Insurance" means insurance for health care, as that term is defined in ORS 238.410(1)(c).

(12) "Medicare" means the federal health care insurance plan established under Title XVIII of the Social Security Act as amended.

(13) "Medicare Companion Plan" means a PERS-sponsored health insurance plan for eligible persons who are eligible for and enrolled in Medicare.

(14) "Non-Competitive Negotiation" means procurement through solicitation of a proposal from only one source.

(15) "PEBB" means the Public Employees' Benefit Board established under ORS 243.061.

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

(17) "PERS Member" shall have the same meaning as "member" provided in ORS 238.005(12).

(18) "Plan Year" means a 12-month period beginning January 1 and ending December 31.

(19) "Qualifying Service" means creditable service, as defined in ORS 238.005(5), plus any periods of employment with an employer participating in PERS that are required of the employee before becoming a PERS member.

(20) "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).

(21) "RHIA" means the Retirement Health Insurance Account established under ORS 238.420 to help defray the cost of the Medicare Companion Plan.

(22) "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.

(23) "Small Purchase Procedures" (informal bidding) means the relatively simple and informal procurement methods whereby price and rate quotations are obtained from at least three sources and selection is made on the basis of cost and other applicable criteria.

(24) "SRHIA" means the Standard Retiree Health Insurance account established within the Public Employees Retirement Fund separate from the General Funds to administer employee and the employer contributions to the PERS sponsored health insurance program.

(25) "Staff" means the employees of the Public Employees Retirement System.

(26) "Third Party Administrator" means the individual or organization that the Board contracts with to provide administrative services as specified in the contract.

(27) The provisions of this rule are effective on January 1, 2005.

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; PERS 15-1998, f. & cert. ef. 12-17-98; PERS 5-1999, f. & cert. ef. 11-15-99; PERS 14-2002, f. & cert. ef. 11-18-02; PERS 17-2005, f. & cert. ef. 10-3-05

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 as described in OAR 459-035-0090, shall be deposited in the SRHIA.

(3) Funds in the SRHIA shall be paid out only as follows:

(a) In accordance with insurance carrier contracts, premiums charged by a carrier for eligible persons' health insurance coverage, shall be paid to the carrier(s) from the SRHIA.

(b) In accordance with contract(s) entered into by the Board under ORS 238.410(6), administrative costs incurred in administering the PERS health insurance program shall be paid from the SRHIA.

(4) The total contributions paid into the SRHIA, RHIA and RHIPA will not exceed 25% of the aggregate contributions to the retirement benefits.

(5) The Director shall provide a report at the close of each calendar year that will contain the following elements:

(a) Total contributions by participating employers into the Public Employees Retirement Fund during the calendar year immediately past and the total accumulation of such contributions since July 11, 1987.

(b) Total contributions paid by participating employers into RHIA and RHIPA, and the total accumulation of such contributions since July 11, 1987.

(c) Total contributions by all eligible persons into SRHIA.

(d) The ratio of (a) to (b)+(c) expressed as a percentage.

(6) The Director shall provide a report to the PERS Board disclosing the ratio expressed in the calculation of (5)(d) and shall note whether PERS is compliant with the 25% rule under Internal Revenue Code §401(h).

Stat. Auth.: ORS 238.410 & 238.650

Stats. Implemented: ORS 238.410, 238.415 & 238.420

Hist.: PERS 5-1999, f. & cert. ef. 11-15-99; PERS 14-2002, f. & cert. ef. 11-18-02

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 a retiree, a spouse, a dependent, a dependent domestic partner and a surviving spouse or dependent. Each category of "eligible person" is defined as follows:

(1) A retiree as defined in OAR 459-035-0001(20).

(2) A spouse means the spouse of an eligible retiree.

(3) A dependent means a dependent child as defined in OAR 459-035-0001(5), 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) A dependent domestic partner as defined in OAR 459-035-0001(6).

(5) A 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.

(6) 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.

(7) In no event shall an eligible person as defined in this rule be entitled to coverage as both a retiree and a spouse, dependent, or dependant domestic partner.

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; PERS 14-2002, f. & cert. ef. 11-18-02

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(19) 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(5).

(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; PERS 14-2002, f. & cert. ef. 11-18-02

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(19) 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(5), 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; PERS 14-2002, f. & cert. ef. 11-18-02

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 predetermined 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;

(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 sub-paragraph (i) of this paragraph;

(iv) Step 4. Divide the total in Step 3 of sub-paragraph (iii) of this paragraph by the total in Step 2 of sub-paragraph (ii) of this paragraph.

(E) Compute the change in value of the average active 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 sub-paragraph (E)(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 1.6240. The factor 1.6240 is the estimated ratio of non-Medicare retiree claims cost to active claims cost;

(iv) Step 4. Multiply the result of Step 2 of sub-paragraph (ii) of this paragraph by the result of Step 3 of sub-paragraph (iii) of this paragraph for each plan;

(v) Step 5. Total the results for all of the calculations in Step 4 of sub-paragraph (iv) of this paragraph;

(vi) Step 6. Total the results of the average participation calculations for all plans in Step 2 of sub-paragraph (ii) of this paragraph;

(vii) Step 7. Divide the total premium in Step 5 of sub-paragraph (v) of this paragraph by total average participation as calculated in Step 6 of sub-paragraph (vi) of this paragraph.

(F) The result of Step 7 of sub-paragraph (E)(vii) of this subsection minus Step 4 of sub-paragraph (D)(iv) of this subsection is the maximum monthly amount available to be paid by the PERS on behalf of an eligible retired state employee. Under no circumstances will this amount be less than \$0.

(3) The factor in Step 3 of sub-paragraph (2)(E)(iii) of this rule shall be evaluated no less frequently than every three years.

(4) The monthly amount available established under section (2) of this rule shall be published by November 1 of each calendar year, or as soon as possible thereafter, and shall be effective for the plan year next following for PERS sponsored plans.

(5) In the event an active plan is not to be renewed for a subsequent plan year, the participants shall be deemed to be covered by another existing plan most similar in benefits.

(6) This rule applies to the amount to be paid by PERS for the plan year 1993 and subsequent plan years.

(7) No person eligible for a contribution from the RHIPA as provided for in this rule shall be entitled to a contribution from the RHIA.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.415

Hist.: PERS 8-1992, f. 12-14-92, cert. ef. 12-31-92; PERS 4-1996, f. & cert. ef. 6-11-96; PERS 4-1998, f. & cert. ef. 3-16-98; 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; PERS 14-2002, f. & cert. ef. 11-18-02; PERS 23-2003, f. 12-15-03 cert. ef. 1-1-04

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 including, in the case of a dependent domestic partner, an Affidavit of Dependent Domestic Partnership. The form must indicate which plan is desired and it must list individ-

ually all dependents, including the spouse, that are to be enrolled. The form can be obtained from the Third Party Administrator or PERS;

(b) An eligible person who is a retiree may enroll:

(A) Within 90 days of the retiree's effective date of retirement;

(B) At any time if covered under another group health insurance plan for 24 consecutive months immediately preceding enrollment, provided that the application for enrollment is filed within 30 days of loss of coverage. Health care coverage under workers' compensation, Medicare or any other governmental entitlement program for health care do not qualify as other group health insurance coverage for purposes of this paragraph;

(C) Within 90 days of initial Medicare eligibility, if the retiree is enrolled in Parts A and B of Medicare; or

(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 90 days of the retiree's death;

(B) At any time if covered under another group health insurance plan for 24 consecutive months immediately preceding enrollment, provided that the application for enrollment is filed within 30 days of loss of coverage. Health care coverage under workers' compensation, Medicare or any other governmental entitlement program for health care do not qualify as other group health insurance plan coverage for purposes of this paragraph;

(C) Within 90 days of initial Medicare eligibility, if he or she is enrolled in Parts A and B of Medicare; or

(D) During an open enrollment period designated by the Board.

(f) A new spouse, dependent domestic partner, or dependent may be enrolled:

(A) Within 30 days of becoming a spouse, a dependent domestic partner 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.

(g) An eligible retiree's spouse may enroll within 90 days of initial Medicare eligibility, if he/she is enrolled in Parts A & B of Medicare even though the retiree remains enrolled in a non-PERS health plan.

(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, dependent domestic partner 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, dependent domestic partner 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.

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; PERS 15-1998, f. & cert. ef. 12-17-98; PERS 14-2002, f. & cert. ef. 11-18-02

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; or

(D) The date specified in an announcement of a plan change period or an open enrollment period, if applicable.

(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; or

(D) The date specified in an announcement of a plan change period or an open enrollment period, if applicable.

(c) For a new eligible spouse, dependent, or dependent domestic partner, the first day of the month following the date the completed enrollment form is filed and in the case of a domestic partner, an Affidavit of Dependent Domestic Partnership, 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) Coverage shall cease for an eligible person on the earliest of the following dates:

(a) The end of the month in which a signed notification is received by PERS from the covered person to terminate coverage.

(b) The end of the month for which the last premium is paid.

(c) The end of the month in which a person ceases to be an eligible person, subject to any continuation of coverage rights under state or federal law.

Stat. Auth.: ORS 238.410 & 238.650

Stats. Implemented: ORS 238.410 & 238.420

Hist.: PERS 4-1996, f. & cert. ef. 6-11-96; PERS 14-2002, f. & cert. ef. 11-18-02

459-035-0090

Retiree Health Insurance Premium Payment Process

(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 pension 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 Standard Retiree Health Insurance Account.

(A) The total monthly contribution due shall be deducted for the 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 as provided for in ORS 238.410(4).

(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 Standard Retiree Health Insurance Account. Amounts deposited in the Standard Retiree

Health Insurance Account shall be used 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 & 238.650

Stats. Implemented: ORS 238.410, 238.415 & 238.420

Hist.: PERS 4-1996, f. & cert. ef. 6-11-96; PERS 5-1999, f. & cert. ef. 11-15-99; PERS 14-2002, f. & cert. ef. 11-18-02

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 & 238.650

Stats. Implemented: ORS 238.410, 238.415 & 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 premium for that coverage and shall not be entitled to any contributions from the RHIA or RHIPA. Premium payment shall be made only by check or money order, and the check or money order must be physically received by the Third Party Administrator on or before the due date. Subject to the grace periods required by COBRA, failure to make the premium payment by the due date shall result in termination of a person's continuation coverage.

Stat. Auth.: ORS 238.410 & 238.650

Stats. Implemented: 238.410

Hist.: PERS 4-1996, f. & cert. ef. 6-11-96; PERS 21-2005, f. & cert. ef. 11-1-05

459-035-0200

Contracting for Health Insurance Plans, Administrator and Other Services

(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) Managed care health plan coverage;

(d) Dental insurance coverage; and

(e) Long term care insurance plans.

(2) The Board may retain consultants, brokers or other advisory personnel, or organizations specializing in health care costs containment or other administrative services when it deems necessary.

(3) The procurement of health insurance coverage, health insurance administration services, and other specialized services will follow one or more of the following procurement methods:

(a) Small Purchase Procedures. Small Purchase Procedures may be used for the procurement of services costing not more than \$75,000.

(b) Competitive Negotiation. Competitive Negotiation shall be used for personal service contracts in excess of \$75,000 per agreement per fiscal year and may be used for contracts of less than \$75,000. Exceptions may be granted to accommodate one or more of the conditions described in subsection (3)(c) of this rule with the approval of the Director. The procedure described below must be followed when Competitive Negotiation is used.

(A) A Request for Proposal (RFP) shall be prepared for contracts for which competitive negotiation procedures will be used. The RFP shall include, at a minimum, the following information:

(i) Date and hour which proposals must be received;

(ii) Description of work; and
(iii) Evaluation specific to contract criteria.
(B) Notification of the availability of the RFP shall be advertised in newspapers or periodicals as determined by the staff.

(C) Proposals shall be evaluated in a manner consistent with the evaluation criteria included in the RFP by the Board or committee thereof. A written document stating why the selection was made will be on file at PERS office.

(D) Paragraphs (3)(b)(B) and (3)(b)(C) of this rule may be excepted from these competitive negotiation procedures if the Director determines it is warranted by time or cost considerations.

(c) Non-Competitive Negotiation. Non-Competitive Negotiation may be used for contracts if public notice of the Board's intent to contract for services is properly published and one of the following is applicable:

(A) The item or service is available only from a single source, or the sole source has special skills that are only available based upon his/her expertise or situation;

(B) Public need or emergency situation compels purchasing the coverage or service without the delay incident to competitive solicitation; or

(C) The contract is a renewal of an existing contract, subject to approval by all required parties."

Stat. Auth.: ORS 238.410 & 238.650

Stats. Implemented: ORS 238.410

Hist.: PERS 4-1996, f. & cert. ef. 6-11-96; PERS 14-2002, f. & cert. ef. 11-18-02

459-035-0220

Contract and Bid Request Solicitations

The Board and PERS will comply with the requirements of ORS 200.035 regarding the timely notice of all contract and bid request solicitations in excess of \$5,000 to the Advocate for Minority, Women and Emerging Small Business.

Stat. Auth.: ORS 238.410 & 238.650

Stats. Implemented: ORS 238.410, 238.415 & 238.420

Hist.: PERS 14-2002, f. & cert. ef. 11-18-02

DIVISION 40

JUDGE MEMBER PROGRAM

459-040-0001

Definitions

The words and phrases used in this Division have the same meaning given them in ORS Chapter 238, particularly as defined in ORS 238.500 to 238.585. Additional terms are defined as follows unless context requires otherwise:

(1) Former spouse" means a person whose spousal relationship with the judge member terminated before the date of the judge member's death.

(2) "Life pension" means an allowance paid monthly for:

(a) The life of a retired judge member as either a service or disability retirement allowance, as described in ORS 238.535 and 238.555;

(b) The life of a surviving spouse of a deceased judge member or a deceased retired judge member as described in ORS 238.565; or

(c) The life of a former spouse of a deceased judge member or a deceased retired judge member as described in ORS 238.565.

(3) "Plan A" means the service retirement allowance payable under ORS 238.535(1)(a).

(4) "Plan B" means the service retirement allowance payable under ORS 238.535(1)(b).

(5) "Pro tem judge" means a retired judge member performing temporary service as a judge without pay as a condition of retirement under the Plan B retirement option.

(6) "Surviving spouse" means the spouse of the judge member at the date of the judge member's death.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.500 - 238.585

Hist.: PERS 11-2007, f. & cert. ef. 7-26-07

459-040-0010

General Administration

(1) A person younger than age 72 becomes a judge member on the date that the person takes office as a judge. A judge member does not serve a waiting period.

(2) A judge member may retire under:

(a) Plan A, as provided in OAR 459-040-0030; or

(b) Plan B, as provided in OAR 459-040-0040.

(3) Before attaining age 60, a judge member must elect in writing, on forms furnished by the Judicial Department, whether to retire under Plan A or Plan B. A judge member who fails to make the election must retire under Plan A.

(4) A judge member who has service as other than a judge member must elect a retirement option available for service in other classifications for that portion of the benefit.

(5) Lump sum options are not available for judge member retirement benefits.

(6) For purchases of creditable service, a judge member is subject to the same requirements as a general service member.

(7) A judge member's contributions to PERS must cease at the end of the calendar year that the judge member attains age 75. The judge member shall be retired from judicial office and receive a service retirement allowance effective January 1 of the following calendar year.

(8) A person age 72 or older who becomes a judge is not eligible to become a judge member. The judge may establish membership in PERS as a general service member; see generally OAR chapter 459, divisions 10, 75, and 80 for membership eligibility guidelines for the PERS Plan.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.500 - 238.585

Hist.: PERS 11-2007, f. & cert. ef. 7-26-07

459-040-0020

Judge Member Disability Retirement

A judge member who meets the requirements of ORS 238.555 may apply for disability retirement. The provisions of OAR chapter 459, division 15 apply to judge member disability retirement with the following exceptions:

(1) The terms "member" and "employee member" in Division 15 mean a judge member as defined in ORS 238.500.

(2) "Normal retirement age" means the age at which a judge member may retire without a reduced benefit as set forth under ORS 238.535.

(3) "Qualifying position" as defined in OAR 459-015-0001(18) does not apply to judge members.

(4) A judge member's effective disability retirement date is the first day of the month following the month in which the judge member's disability retirement application is approved.

(5) A judge member must have six years of service as a judge member to be eligible for non-duty disability retirement.

(6) If a judge member meets the eligibility criteria for disability retirement, the member's disability retirement allowance shall be based on creditable service time as though the member had continuously worked as a judge pursuant to ORS 238.555(1) or (2).

(7) PERS judge membership is terminated by withdrawal of the member account balance as provided in ORS 238.545. Former PERS judge members who have terminated their membership through withdrawal are not eligible to receive PERS disability retirement allowances.

(8) OAR 459-015-0060 does not apply to judge members.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.555

Hist.: PERS 11-2007, f. & cert. ef. 7-26-07

459-040-0030

Plan A Service Retirement Allowance

(1) The Plan A service retirement allowance is a life pension calculated in accordance with ORS 238.535(1)(a).

(2) A judge member is not eligible to receive a service retirement allowance under Plan A before the judge member turns age 60.

(3) A judge member may retire under Plan A upon written application on a form furnished by PERS:

(a) At age 65 or thereafter with an unreduced service retirement allowance.

(b) At or after age 60 but before age 65, with an actuarially reduced service retirement allowance. The service retirement allowance shall be reduced by 8% for each full year and 8% prorated for each partial year the effective retirement date precedes the date the judge member attains age 65.

(4) If a judge member, retiring at age 70 or thereafter, was formerly contributing to the Judges' Retirement Fund and established membership in PERS pursuant to ORS 237.215(3) (1989 Edition), the judge member shall be entitled to a service retirement allowance as provided for in ORS 238.535(4).

Stat. Auth: ORS 238.650
Stats. Implemented: ORS 238.535
Hist.: PERS 11-2007, f. & cert. ef. 7-26-07

459-040-0040

Plan B Service Retirement Allowance

(1) The Plan B service retirement allowance is a life pension calculated in accordance with ORS 238.535(1)(b).

(2) A judge member is not eligible to receive a service retirement allowance under Plan B before age 60.

(3) A judge member may retire under Plan B at age 60 or thereafter upon written application on forms furnished by PERS.

(4) A judge member who retires under Plan B must serve as a pro-tem judge for 35 days per calendar year for five years following the judge member's retirement date. Days of service in excess of 35 days in a calendar year may be carried over and applied to the pro tem service obligation in future years. Appointment and service as a pro-tem judge is administered by the Office of the State Court Administrator under rules adopted by order of the Chief Justice of the Oregon Supreme Court.

(5) If a judge member, retiring at age 70 or thereafter, was formerly contributing to the Judges' Retirement Fund and established membership in PERS pursuant to ORS 237.215(3) (1989 Edition), the judge member shall be entitled to a service retirement allowance as provided for in ORS 238.535(4).

Stat. Auth: ORS 238.650
Stats. Implemented: ORS 238.535
Hist.: PERS 11-2007, f. & cert. ef. 7-26-07

459-040-0050

Variable Annuity Adjustments for Judge Members

(1) A judge member may have elected to have a portion of the judge member's contributions paid into the Variable Annuity Account in the Fund as provided in ORS 238.260(3) before June 30, 2003. A judge member who was participating in the Variable Annuity Account on that date may continue to make contributions to the Variable Annuity Account for service as a judge member performed on or after January 1, 2004.

(2) The retirement allowance of a judge member with a variable account, whether receiving a service or disability retirement, shall be adjusted in accordance with ORS 238.260(12). The adjustment may result in a benefit greater than 75% of final average salary.

(3) A retiring judge member participating in the Variable Annuity Account must elect at retirement to transfer the variable account balance to the judge member's regular account in the fund, as of the effective date of retirement under the provisions of ORS 238.260(9), or to maintain an account in the Variable Annuity Account under the provisions of ORS 238.260(10) and (11).

(4) A judge member who meets the criteria of ORS 238.260(14)(a) may elect at any time before retirement to make a one-time transfer of the balance of the judge member's variable account to the judge member's regular account in accordance with ORS 238.260(14).

Stat. Auth: ORS 238.650
Stats. Implemented: ORS 238.260 & OL 2003 Ch. 625, Sec.19
Hist.: PERS 11-2007, f. & cert. ef. 7-26-07

459-040-0060

Judge Member Death Before Retirement

If a judge member dies before retiring, benefits shall be distributed and calculated as follows:

(1) For a surviving spouse:

(a) If the judge member has six or more years of service as a judge and the judge member is not an inactive judge member performing pro tem service under the provisions of ORS 238.545(4), the surviving spouse shall receive a life pension equal to two-thirds of the retirement allowance the judge member would have received under Plan A, had the judge member retired on the date of death.

(b) If the judge member has six or more years of service as a judge and the judge member is an inactive judge member performing pro tem service under the provisions of ORS 238.545(4) at the time

of death, the surviving spouse shall receive a life pension equal to two-thirds of the service retirement allowance the judge member would have received under Plan B, had the judge member retired on the date of death.

(c) If the judge member has less than six years of service as a judge, the surviving spouse shall receive a lump sum payment equal to the amount credited to the judge member account in the Fund on the first of the month following the date of death.

(d) If a surviving spouse receiving a life pension under this section dies and the total amount of pension payments received by the surviving spouse is less than the amount that had been credited to the deceased judge member's account as of the date of death of the judge member, the designated beneficiary of the judge member shall receive a lump sum payment equal to the remainder.

(2) For purposes of computing a surviving spouse's life pension in section (1) of this rule, a judge member who dies before age 60 is deemed to have died at age 60.

(3) If the judge member has six or more years of service as a judge has no surviving spouse, the designated beneficiary shall receive a lump sum payment equal to the amount credited to the judge member account in the Fund on the first of the month following the date of death.

(4) If the judge member has no surviving spouse and no designated beneficiary at death, a lump sum payment equal to the amount credited to the judge member's account on the date of death shall be paid to the judge member's estate.

(5) If the judge member, under the provisions of ORS 238.565(8), elects to have a portion of the pension payable to a surviving spouse paid to a former spouse, the designated portion shall be paid to the former spouse as a life pension. The portion of the pension not paid to the former spouse shall be paid to the surviving spouse, if any.

(a) The life of the first former spouse designated to receive a pension under ORS 238.565(8) will be the measuring life of the pensions payable to the surviving spouse and to any other former spouse.

(b) Upon the death of the first designated former spouse, the pensions payable to the surviving spouse and to any other former spouse shall cease.

(c) If, at the death of the first designated former spouse, the total amount of the payments received by the surviving spouse and former spouse(s) is less than the amount that had been credited to the deceased judge member's account as of the date of the judge member's death, the judge member's designated beneficiary shall receive a lump sum payment equal to the remainder.

Stat. Auth: ORS 238.650
Stats. Implemented: ORS 238.565
Hist.: PERS 11-2007, f. & cert. ef. 7-26-07

459-040-0070

Judge Member Death After Retirement

If a judge member dies after the effective retirement date, benefits shall be distributed and calculated as follows:

(1) Surviving Spouse Standard Two-thirds Benefit. The surviving spouse of a judge member shall receive a life pension equal to two-thirds of the service retirement allowance the judge member is receiving or is entitled to receive on the date of death.

(2) Additional benefit for surviving spouse. The surviving spouse may be entitled to an addition to the pension described in section (1) of this rule if:

(a) The judge member selected a reduced retirement allowance under ORS 238.565(4); and

(b) The surviving spouse is the spouse of record on the effective date of retirement.

(3) No surviving spouse. If the judge member has no surviving spouse and the total amount of retirement allowance received by the retired judge member is less than the amount credited to the judge member account on the judge member's effective retirement date, the designated beneficiary shall receive a lump sum payment equal to the remainder.

(4) Death of surviving spouse. If a surviving spouse receiving a pension under section (1) of this rule dies and the total amount received as retirement allowance by the retired judge member and as pension by the surviving spouse is less than the amount credited to the judge member account on the effective date of retirement of the judge member, the designated beneficiary of the judge member shall receive a lump sum payment equal to the remainder.

(5) Default beneficiary. If the judge member has no valid written designation of beneficiary filed with the PERS Board before the judge member's death, the beneficiary of the judge member shall be the personal representative of the judge member's estate.

(6) Unpaid accrued retirement allowance. Any accrued retirement allowance due a retired judge member that is unpaid at the time of death of the judge member shall be paid as follows:

(a) To the surviving spouse of the judge member;

(b) If there is no surviving spouse of the judge member, to the beneficiary of the judge member; or

(c) If there is no surviving spouse or beneficiary of the judge member, in the manner provided for payments under ORS 238.390(2).

(7) If the judge member, under the provisions of ORS 238.565(8), elects to have a portion of the pension payable to a surviving spouse paid to a former spouse, the designated portion shall be paid to the former spouse as a life pension. The portion of the pension not paid to the former spouse shall be paid to the surviving spouse, if any.

(a) The life of the first former spouse designated to receive a pension under ORS 238.565(8) will be the measuring life of the pensions payable to the surviving spouse and to any other former spouse.

(b) Upon the death of the first designated former spouse, the pensions payable to the surviving spouse and to any other former spouse shall cease.

(c) If, at the death of the first designated former spouse, the total amount of the payments received by the retired judge member and the payments received by the surviving spouse and former spouse(s) is less than the amount credited to the deceased judge member's account on the judge member's effective retirement date, the judge member's designated beneficiary shall receive a lump sum payment equal to the remainder.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.565

Hist.: PERS 11-2007, f. & cert. ef. 7-26-07

459-040-0080

Required Minimum Distribution of Judge Member Death Benefits

(1) In the event an active or inactive judge member dies before retiring, the required minimum distribution of death benefits attributable to the deceased judge member shall be made in accordance with OAR 459-014-0100.

(2) In the event a retired judge member dies, the required minimum distribution(s) to a surviving spouse and/or to a beneficiary of the deceased judge member shall be made in accordance with OAR 459-005-0560. For the purposes of this rule, a former spouse is a non-spouse beneficiary of the deceased judge member.

(3) A lump sum distribution of death benefits of a deceased judge member may be eligible for a rollover in accordance with OAR 459-005-0590 to 459-005-0599.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.565

Hist.: PERS 11-2007, f. & cert. ef. 7-26-07

DIVISION 45

DOMESTIC RELATIONS ORDERS

459-045-0000

Authority and Purpose

(1) In accordance with ORS 238.465(3), the provisions of ORS 238.465 (Oregon Laws 1993, Chapter 715) shall be administered by the Public Employees Retirement System and under the policies and procedures established by the Public Employees Retirement Board. To this end, the Board and the staff shall:

(a) Provide for the administration of a separate account in PERS in the name of an alternate payee when so ordered by the court.

(b) Establish criteria to determine whether or not domestic relations orders, judgments of dissolution, divorce decrees, and marital property agreements comply with ORS 238.465.

(c) Establish definitions and procedures for the effective and efficient administration of ORS 238.465.

(2) The rules of this division are intended to provide a clear and complete description of the division of benefits payable under PERS and on how those divided benefits may be paid as provided for in ORS 238.465.

(3) PERS is a defined benefit plan and benefits are attributable to both employee and employer contributions.

(4) The rules contained in division 045 pertain to PERS benefits covered in ORS Chapter 238, and not to the State's Deferred Compensation plan addressed in ORS Chapter 243.

Stat. Auth.: ORS 238.465(3) & 238.650

Stats. Implemented: ORS 238.465

Hist.: PERS 5-1996, f. & cert. ef. 6-11-96; PERS 21-2005, f. & cert. ef. 11-1-05

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(12) 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" has the same meaning as provided in ORS 239.005(24). 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 benefits that eventually may become due and payable and PERS is not bound by any estimates it provides.

(21) "The earliest date the member would be eligible to receive retirement" shall have the same meaning as provided in ORS 238.005(6), 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) & 238.650

Stats. Implemented: ORS 238.465

Hist.: PERS 5-1996, f. & cert. ef. 6-11-96; PERS 3-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 14-2003, f. & cert. ef. 11-20-03; PERS 19-2005, f. 11-1-05, cert. ef. 1-1-06

459-045-0010

Division of Benefits

The purpose of this rule is to describe methods for determining an alternate payee's award from a member's PERS account and PERS Funds, which are administrable by PERS.

(1) Pre Retirement Division Method: A final court order or judgment which establishes a separate account in the Fund in the name of the alternate payee at the time of the award.

(a) The court order must be received by the Divorce Decree Unit at the PERS Portland Headquarters office prior to the issue date of any payment to, or on behalf of a member, of a service or disability retirement, refund, or death benefit.

(b) The Pre Retirement Division Method shall not be used if a court order allows any option for a member to subsequently buy out the alternate payee's interest in the member's PERS funds.

(c) The court order must include a specific percentage or dollar amount, either directly or pursuant to a formula resulting in a percentage or dollar amount to be awarded to the alternate payee.

(d) The court order must direct PERS to transfer the amount of the award from the member's account and to deposit it in a separate account in the Fund in the name of the alternate payee as of a court provided date.

(e) The court order shall specify a date between January 1, and through December 31, on which to base the transfer of the alternate payee's award from the member's PERS account. If a court order directs PERS to transfer a certain percentage to the alternate payee, it shall be converted into a dollar amount. The converted dollar amount or the dollar amount stated in the court order that is awarded to the alternate payee shall be applied against the last audited PERS member account balance on record as of the end of the plan year (December 31) on or immediately preceding the award date specified in the court order and then it shall be deposited into a separate account in the name of the alternate payee.

(f) If a date is not given in a court order on which PERS is to base the transfer of an alternate payee's award from a member's PERS member account then PERS shall use the date the court order was signed by the court and base the transfer as of the end of the plan year (December 31) immediately preceding the date the order was signed by the court. If the date the order was signed by the court is December 31 then the last audited account balance as of December 31 of the plan year in which the order was signed shall be used.

(g) A percentage award that is due an alternate payee shall be applied against the member's individual account, and in the Variable Annuity Account in the Fund. Specific dollar amounts awarded to an alternate payee shall be applied against the member's individual account, and in the Variable Annuity Account in the Fund on a pro-rata basis.

(h) Once the value of the alternate payee's award is established, the portion of the award that is attributable to the 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 sub-paragraph (C). Any court order that PERS receives that utilizes the ratio method must spell out in full the formula that is to be used for determining the alternate payee's award.

(A) The numerator is the creditable service time accrued as an active member during the marriage, (MCS). The denominator is the total of the member's total creditable service, (TCS) as defined in ORS 238.005(5), at the time benefits become due and payable to either the member or the alternate payee, expressed as the equation:

MCS = Ratio of benefits accrued during the marriage.
TCS

(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:

MA = Ratio of benefits accrued during the marriage.
TA

(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 chapter 459, division 007.

(d) When an alternate payee exercises the election under paragraph (2)(d)(A) or (B) of this rule pursuant to a court order that utilizes the formula described in paragraph (2)(b)(A) of this rule, the total creditable service that shall be used for the denominator shall be based as if a member who is active had terminated as of the date payments are effective for the alternate payee. If a member is inactive and has already terminated on some other date prior to the alternate payee's election, then the inactive member's total actual creditable service time shall be used as the denominator.

(e) When an alternate payee exercises the election under paragraph (2)(d)(A) or (B) of this rule pursuant to a court order that utilizes the formula described in paragraph (2)(b)(B) of this rule, the denominator that shall be used for an active or an inactive member shall be the total member's PERS account as of December 31 of the year prior to the date payments are effective for the alternate payee. If a member is retiring at the same time an alternate payee is exercising an election under paragraph (2)(c)(A) of this rule, then the actual total member PERS account shall be used as the denominator.

(4) The Payment Division Deduction Method: This method can be used in regard to a member prior to retirement, or in regard to a member who has retired and has started receiving payment. A court order provides an award, which is stated as a flat or set dollar amount, or as a percentage, either directly or pursuant to a formula, that is to be paid to an alternate payee from the service or disability retirement benefit that shall be paid in the future to a member, or that is presently being paid by PERS to a retired member.

(a) The flat or set dollar amount or percentage that is awarded to the alternate payee shall be deducted out of the retired member's gross monthly benefit.

(b) Under this method an alternate payee's award shall not be based on the alternate payee's age or life expectancy.

(c) A court order may direct that a member select a specific payment option and designate the alternate payee as the primary beneficiary, if the member has not retired as of the date PERS receives a final court order. If a court order provides for this type of an award, payment to the member at the time the member retires shall be based on the age difference between the member and the alternate payee. The alternate payee award shall then be deducted from the member's gross monthly benefit, at the time the member retires.

(d) If a member has retired and has been receiving payment for more than the time period allowed in ORS 238.305(1) PERS shall not allow a change of payment option from what was originally selected by the member, regardless of any direction to the contrary that may be contained in a court order.

(e) If a member has retired and been receiving payment for more than the period allowed in ORS 238.305(1) PERS shall only allow a change in the beneficiary designation if the option 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) & 238.650

Stats. Implemented: ORS 238.465

Hist.: PERS 5-1996, f. & cert. ef. 6-11-96; PERS 21-2005, f. & cert. ef. 11-1-05

459-045-0020

Court Orders

(1) A final court order or judgment must clearly specify the amount awarded to an alternate payee from the member's account and the member's PERS funds, and the language must be administrable under ORS Chapter 238 and OAR chapter 459, division 045.

(2) If a court order is unclear or silent as to whether or not an alternate payee is entitled to all portions of the member's PERS funds, PERS shall not approve the court order until a court order is received that gives complete detail on what comprises the alternate payee's award. PERS shall not include as part of the alternate payee's award those benefits an alternate payee is not eligible for as described in OAR 459-045-0030(3), (5), (6), (7), (8), (9), (10), 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 administrable 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 forth-coming, if no restraining order is previously on file with PERS.

(c) If PERS does not receive a final court order within 12 months from the date a draft court order was received by PERS, then PERS shall consider that no award was made to an alternate payee from the member's PERS funds. There shall be no further obligation or responsibility on PERS to correspond or communicate with any person other than the member and no payment shall be distributed to anyone other than the member or the member's beneficiary(s).

(6) If a court order states that another court order shall follow, a certified copy of the subsequent court order must be received and approved by staff before any payment shall be made pursuant to the court order.

(7) PERS upon request may review draft court orders that contain language on how to divide a member's PERS account or the member's PERS funds, that the member is or may become entitled to. Staff shall provide a written response as soon as practicable to both the member and the alternate payee on whether or not a draft court order can be administered by PERS, as well as to their attorneys.

(8) Final court orders must be received by the PERS Divorce Decree Unit, either by mail, or delivered in person, before PERS will commence paying benefits to or on behalf of an alternate payee. PERS at its discretion may accept a legible photocopy of a final court order, either by mail or in person, as long as PERS can confirm it was filed with the court.

(9) All court orders, whether draft or final, that are received by PERS are microfilmed and the document that was received is discarded. PERS staff cannot modify, return, or sign and return, any document that is received by PERS.

(10) PERS at its discretion may accept or reject any court order, or accept or reject any portion thereof, in regard to a specific member. PERS shall provide a written response as soon as practicable, of any rejection to both the member and the alternate payee, as well as to their attorneys.

(11) A court approved modification may be required in order for PERS to comply with the parties' intent and in order to administer according to PERS retirement law.

(12) If PERS has already generated benefit checks for the first of the month following the date the final court order was received by PERS, then PERS shall:

(a) Pay benefits to the member, notwithstanding the court order.

(b) Make payment of future benefits to an alternate payee as soon as administratively feasible.

(13) If a final court order is received by the PERS Divorce Decree Unit after a service or disability retirement benefit has been generated the benefit payment shall be deemed by PERS as received by the member. PERS shall establish an alternate payee's award on a prospective basis only and shall not pay retroactive benefits of any kind.

(14) If a final court order is received by PERS after a member has received a refund of his or her member PERS account no funds shall be distributed to the alternate payee by PERS, and PERS shall not invoice the member for any funds that may have been awarded to the alternate payee.

Stat. Auth.: ORS 238.465(3) & 238.650

Stats. Implemented: ORS 238.465

Hist.: PERS 5-1996, f. & cert. ef. 6-11-96

459-045-0030**General Administration**

(1) An alternate payee's award is payable to the alternate payee if the member would be eligible to receive benefits upon separation from service. The member is not required to be separated from service.

(2) A court order may restrict an alternate payee's award to be payable only when the member applies for and receives benefits.

(3) Unless prohibited by court order, an alternate payee who requests a withdrawal shall receive an additional 50 percent of the alternate payee award as of the effective date of withdrawal if:

(a) The alternate payee's effective date of withdrawal is on or after July 1, 2004, and before June 30, 2006; and

(b) As of the alternate payee's effective date of withdrawal, the member has met the requirements of OAR 459-010-0055(4), or would meet them except that he or she has not withdrawn that portion of the member account that may be withdrawn.

(4) Under no circumstance may an alternate payee withdraw less than the entire alternate payee award and payment under this section constitutes payment in full.

(5) The alternate payee may revoke the request for withdrawal if PERS receives a written request to revoke prior to the date of distribution.

(6) The separate account in the name of the alternate payee shall be credited with earnings in accordance with OAR chapter 459, division 007 as follows:

(a) To the date of distribution of the separate account; or

(b) To the date a non-vested member ceases to be a member as provided in ORS 238.095(2), whichever is earlier.

(7) 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 the member participated in the Variable Annuity Account in the Fund. Once a separate account is established for the alternate payee, those funds will no longer receive variable annuity account earnings.

(8) At the time of the division and establishment of the alternate payee accord, the alternate payee account will be administered under Tier One 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, or 238.105, 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.

(9) At the time of the division and establishment of the alternate payee account, the alternate payee account will be administered under Tier Two pursuant to ORS 238.250 and 238.435, if the provisions of sections (8)(a) and (b) are not applicable to the member.

(10) The provisions of this rule do not apply to judge members under ORS 238.500 through 238.585.

(11) The provisions of this rule do not apply to the benefits provided under the Oregon Public Service Retirement Plan Pension Program under ORS Chapter 238A.

(12) 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, but only if a court order allows the 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 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.

(13) The alternate payee may elect to convert the Refund Annuity Option as described in ORS 238.300 to one of the following optional forms:

(a) Option 1, as described in ORS 238.305(1);

(b) Option 4, as described in ORS 238.305(1); or

(c) The lump-sum payment option, as described in ORS 238.305(2)(a) and (b) and 238.305(3).

(14) Alternate payees are provided 60 days from the date of their first payment to change the option or designation of beneficiary, except that the designation of beneficiary under the Refund Annuity Option or Option 4 may be changed by the alternate payee at any time before the alternate payee's death.

(15) An alternate payee whose total award is less than \$200 per month under Option 1, defined in ORS 238.305(1), shall receive in lieu of any and all allowances or other benefits or form of payment described in section (13) 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.

(16)(a) PERS shall provide to the alternate payee a written summary of the information used in making a retirement computation. An alternate payee may contest the accuracy of the factual information used by PERS in making the computation of the retirement allowance or benefit by filing a written notice of contest with PERS not later than whichever of the following days occurs last:

(A) The 30th day after the date on which the computation and information is provided to the alternate payee under this section; or

(B) The 30th day after the date on which the retirement allowance or benefit to which the alternate payee is entitled first becomes payable.

(b) The filing of a notice of contest under this section extends the time allowed for election of an optional form of retirement allowance or benefit until the 30th day after the conclusion of the contest proceeding or review results in a change in the computation of the retirement allowance or benefit.

(c) Upon receiving a notice of contest under this section, PERS shall determine the accuracy of the contested information and make a written decision either affirming the accuracy of the information and computation based thereon or changing the computation using corrected information. PERS shall provide to the member a copy of the decision and a written explanation of any applicable statutes and rules.

(d) This section does not affect any authority of PERS, on its own initiative, to correct an incorrect computation of any retirement allowance or benefit.

(17) 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.

(18) An alternate payee shall not be entitled to health insurance benefits under ORS 238.410, 238.415, and 238.420 regardless of whether a court order awards these benefits to an alternate payee.

(19) An alternate payee shall not be entitled to any benefits derived from the optional purchase of police officer and fire fighter unit benefits under 238.440 regardless of whether a court order awards these benefits to an alternate payee.

(20) 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, earnings, or other benefits earned as a member participating in PERS.

(21) Alternate payee court awards made after a member has retired under ORS 238.300 or 238.320 shall be paid as deductions from the retired member's retirement allowance or lump-sum benefit or from the member's beneficiary's retirement allowance or lump sum payment. No alternate payee account will be established.

(22) A court order may require a member who retired under ORS 238.300 or 238.320 to change the designated beneficiary outside the timeframe allowed under ORS 238.305(5) or 238.325(2). The retirement allowance will be adjusted based on the new beneficiary's age to ensure the value of the benefits will not be greater than the allowance the member is otherwise eligible to receive.

(23) Members who retire for disability under ORS 238.320 or 238.325 are considered retired members and all the provisions of sections (12) through (21) of this rule apply to the alternate payee.

(24) Death benefits payable from an alternate payee account are as follows:

(a) If an alternate payee dies before payout or retirement, the alternate payee award is payable to the alternate payee's designated beneficiary or estate as provided by ORS 238.390 and 238.395. No

employer death benefits are payable under ORS 238.395 unless the member would have been eligible for employer death benefits had the member died on the same date as the alternate payee.

(b) If an alternate payee has begun receiving retirement benefits or dies after the first payment is due, the benefits due the designated beneficiary or estate, if any, will be based on the option selected by the alternate payee.

(c) If an alternate payee dies after applying for a monthly retirement benefit but before the first of the month following the effective retirement date, the account shall be treated as if the alternate payee died before retirement and benefits will be paid under subsection (a) above.

(d) If the alternate payee is awarded a percentage of a benefit, as long as the award is payable the award will continue to be paid to the alternate payee's designated beneficiary, unless the court decree specifies otherwise.

(25) If the member predeceases the alternate payee, the benefits payable to the alternate payee are as follows:

(a) The alternate payee who has a separate account becomes eligible to withdraw his or her account in the form of a death benefit under ORS 238.390 and 238.395 (if eligible). If the alternate payee elects a death benefit under ORS 238.390 and 238.395 (if eligible), the death benefit shall be in lieu of any withdrawal, service or disability retirement or any other benefit. If the alternate payee does not elect a death benefit, the alternate payee shall be eligible to withdraw the separate account, or to leave the account in the Fund and elect to draw benefits under one of the optional retirement choices described in section (13) of this rule, any time on or after the date the member would have reached earliest retirement age.

(b) If the alternate payee is awarded a percentage of a benefit, as long as the award is payable the award shall be paid according to the decree of divorce or separation or annulment unless the court decree provides for no alternate payee death benefits from the member's account.

(26) Benefit payments to either the member or the alternate payee, or to both simultaneously, that exceed the allowable limits set forth in Section 415 of the Internal Revenue (IRC) shall be deducted from the benefit payment(s) to the member or the alternate payee, or both. Unless a final court order specifies the allocation of the deduction for benefits that exceed the limits in IRC Section 415, PERS shall prorate 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.

(27) Distributions of benefits under OAR chapter 459, division 045 must not jeopardize the status of the programs as being part of a tax-qualified governmental plan.

Stat. Auth.: ORS 238.465 & 238.650

Stats. Implemented: ORS 238.465 & OL 2003 Ch. 276 Sec. 2

Hist.: PERS 5-1996, f. & cert. ef. 6-11-96; PERS 17-2004, f. 6-15-04 cert. ef. 7-1-04; PERS 14-2005, f. & cert. ef. 8-18-05

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. 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. To facilitate prompt processing, copies of subpoenas should be served at the PERS Headquarters office.

(7) PERS must receive a written release from the member or the alternate payee to provide any person including a representative of the member or the alternate payee, any information except as provided for in OAR 459-045-0020(5)(a) and (8).

Stat. Auth.: ORS 238.465(3) & 238.650

Stats. Implemented: ORS 238.465

Hist.: PERS 5-1996, f. & cert. ef. 6-11-96; PERS 10-2003, f. & cert. ef. 8-4-03

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) & 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 mem-

ber 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) & 238.650

Stats. Implemented: ORS 238.465

Hist.: PERS 5-1996, f. & cert. ef. 6-11-96

459-045-0080

PERS Notifications

(1) PERS is a separate entity from other public employer retirement plans and deferred compensation plans and notification to other plans does not constitute notice to PERS. Similarly, PERS is not responsible for notifying other plans of changes in address, changes in eligibility, or that an application for retirement or refund benefits have been received, or that a PERS member or an alternate payee has died.

(2) PERS shall send written notification acknowledging receipt of a final court order to the submitting party and shall send a copy of the acknowledgment to the other persons named in the court order if mailing addresses are provided.

(3) PERS shall notify an alternate payee of his or her eligibility for payments when a member terminates all PERS covered employment before retiring, or upon the death of a member prior to retirement. It is the alternate payee's responsibility to contact PERS in order to begin receiving payment on or after the date the member has reached earliest retirement age.

(4) PERS shall issue the applicable tax reporting forms directly to the recipient of any funds that are issued by PERS pursuant to a final court order for domestic relations purposes.

(5) PERS shall notify the member and/or the alternate payee of any reduction in benefit payments payable to the member and/or the alternate payee that is made by PERS pursuant to **Section 415** of the **Internal Revenue Code** as provided in OAR 459-045-0030(15).

(6) PERS shall process deductions from alternate payee payments for federal and state taxes and other support obligations provided for in ORS 238.445.

(7) PERS shall allocate a member's after tax contributions (member cost) between the member and the alternate payee in accordance with **IRC Section 72(m)(10)** in the same proportion that benefits are divided between the member and the alternate payee as specified in the final court order.

(8) All alternate payees who are awarded a separate account in the Fund in their own name shall receive an annual statement on their account until they have received a refund payment or started receiving retirement or death benefit payments. PERS shall make a reasonable attempt to send the alternate payee an annual statement of account by May 31, for the prior calendar year's activity.

(9) Alternate payees who are awarded payments other than by separate account may request information about their award by sending their request in writing to PERS. Staff shall make a reasonable attempt to provide written information about the award within 90 days of receiving the written request.

Stat. Auth.: ORS 238.465(3) & 238.650

Stats. Implemented: ORS 238.465

Hist.: PERS 5-1996, f. & cert. ef. 6-11-96

459-045-0090

PERS Administrative Fee

(1) The Board has determined that actual and reasonable administrative expenses incurred by PERS for obtaining data and making calculations will always exceed \$300.00 when PERS establishes a separate alternate payee account under the Pre Retirement Division method or the At The Time of Payment Division method, or when establishing payment for an alternate payee or a member pursuant to a court order that uses the At The Time of Payment Division method. Therefore, PERS shall charge an administrative fee of \$300.00 for the costs related to establishing a separate account in the Fund in the name of the alternate payee, or for establishing payment for an alternate payee or a member pursuant to a court order that uses the Pre Retirement Division or At The Time of Payment Division methods.

(2) If a court order awards a separate account to an alternate payee pursuant to the Pre Retirement Division Method, then PERS shall allocate expenses and costs under the provisions of ORS 238.465(9), and OAR 459-045-0001(23) and (24).

(3) If a final court order uses the At The Time Of Payment Division method for determining an alternate payee's award, PERS shall allocate the fraction of the benefit awarded to the member and the alternate payee under the provisions of ORS 238.465(9), and OAR 459-045-0001(23). The fraction of the administrative fee that is owed by the alternate payee and the member shall be calculated at the time the alternate payee elects to have a separate account established, or elects to begin receiving a monthly payment.

(a) If the At The Time Of Payment Division Method used the years and months formula described in OAR 459-045-0010(2)(b)(A) then the numerator shall be the creditable service time accrued by the member during the marriage, and the denominator shall be the total creditable service accrued by the member at the time benefits become due and payable to either the member or the alternate payee. To determine the fee owed by the alternate payee, this fraction shall then be multiplied by the percentage awarded to the alternate payee under the final court order, as described in OAR 459-045-0010(2)(b)(C). The remainder of the \$300 administrative fee shall be allocated to the member. Amounts owed by the parties for the administrative fee shall be deducted from the respective parties' benefits when those benefits become payable.

(b) If the At The Time of Payment Division method used the member contributions and interest formula described in OAR 459-045-0010(2)(b)(B) then the numerator shall be the contributions and interest that accrued during the marriage, and the denominator shall be the contributions and interest in the member account balance as of December 31 immediately prior to the alternate payee election date, or the actual member account balance if the member elects to receive benefits at the same time as the alternate payee. To determine the percentage of the fee owed by the alternate payee, this fraction shall then

be multiplied by the percentage awarded to the alternate payee under the final court order, as described in OAR 459-045-0010(2)(b)(C). The remainder of the \$300 administrative fee shall be allocated to the member. Amounts owed by the parties for the administrative fee shall be deducted from the respective parties' benefits when those benefits become payable.

(4) The fee that shall be charged for dividing a PERS member's account or benefits shall not be contingent on the number of days it takes for PERS to complete its review of any type of court order that is received by PERS.

Stat. Auth.: ORS 238.465(9) & 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 - 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.

(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 - 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 - 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 provided for under ORS 243.505, shall be subject to the following qualifications and limitations:

(a) Each member shall be a participant in a deferred compensation plan established under ORS 243.401 to 243.507, and shall have knowledge of the Program.

(b) Four members shall be participants in the state deferred compensation plan.

(c) Two members shall be participants in a local government deferred compensation plan.

(d) One member shall be a retired deferred compensation plan participant.

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

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

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

(2) The Advisory Committee shall study and advise the Board on all aspects of the

Program, including but not limited to:

(a) The Program fee structure and procedures;

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

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

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

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

(f) The actuarial characteristics of eligible employees.

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

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

(b) Information furnished by the OIC or the State Treasurer concerning the types of available investments, the respective balance of

risk and return of each investment, and the administrative costs associated with each investment.

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.505

Hist.: PERS 2-1993, f. & cert. ef. 9-23-93; PERS 2-1995, f. 10-13-95, cert. ef. 11-1-95;

PERS 5-2000, f. & cert. ef. 8-11-00; PERS 3-2007, f. & cert. ef. 1-23-07

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 disclosure 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 - 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 - 243.507

Hist.: PERS 2-1995, f. 10-13-95, cert. ef. 11-1-95; PERS 5-2000, f. & cert. ef. 8-11-00

459-050-0037**Trading Restrictions**

The purpose of this rule is to establish criteria under which a participant may make trades in the Deferred Compensation Program. The Program is designed for long-term investment and periodic adjustment of asset allocation. Restrictions upon trades are necessary to protect participants and the Program from adverse financial impact attributable to frequent trading. Frequent trading by some participants can lower returns and increase transaction costs for all participants. Frequent trading also can trigger the imposition of redemption fees and restrictions by mutual funds within the Program and may cause the Program to be eliminated as an allowable investor in a mutual fund.

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

(a) "Investment Option" means an investment alternative made available under ORS 243.421.

(b) "Trade" means a purchase or redemption in an investment option for the purpose of moving monies between investment options.

(2) Restrictions. The following restrictions apply to all participants:

(a) A participant may not make a trade that exceeds \$100,000.

(b) A purchase that is attributable to a trade may not be redeemed from the investment option in which the purchase was made for a period of 90 days following the date of the trade.

(c) No trade may move monies directly from the Stable Value Option to the Short-Term Fixed Income Option or the Intermediate Bond Option.

(3) The Deferred Compensation Manager, if necessary to comply with trading restrictions imposed by a participating mutual fund or the Securities and Exchange Commission, may establish additional temporary trading restrictions.

(4) The Deferred Compensation Manager, in the event of extraordinary market conditions, may temporarily suspend any or all trading restrictions established by this rule.

(5) Any action taken by the Deferred Compensation Manager under sections (3) or (4) of this rule must be presented to the Board at its next scheduled meeting. The Board may take action as authorized by ORS 243.401 to 243.507. If the Board does not act, the action(s) taken by the Deferred Compensation Manager shall expire on the first business day following the date of the meeting.

(6) The provisions of this rule are not applicable to trades attributable to the operation of an automatic account rebalancing function offered by the Program.

(7) The trading restrictions provided in this rule are not exclusive. The Board may establish additional restrictions or sanctions as authorized by ORS 243.401 to 243.507.

(8) The effective date of this rule is May 1, 2007.

Stat. Auth.: ORS 243.470

Stats. Implemented: ORS 243.401 – 243.507

Hist.: PERS 4-2007, f. 1-23-07, cert. ef. 5-1-07

459-050-0040

Unforeseeable Emergency Withdrawal Appeals Committee

(1) Purpose. The Unforeseeable Emergency Withdrawal Appeals Committee (the Committee) shall evaluate appeals denied by the Deferred Compensation Manager or designee authorized to take action on the Manager's behalf for the distribution of deferred compensation on the basis of claims of unforeseeable emergency in compliance with the Internal Revenue Code, Section 457, 26 USC 457, and the provisions of OAR 459-050-0150. The 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) Committee composition. The Committee shall consist of not fewer than three persons.

(a) One person shall be a PERS staff member from the Deferred Compensation Program.

(b) Two persons shall be PERS staff members from other than the Deferred Compensation Program.

(3) Committee meetings. The Committee shall meet upon the call of the Manager of the Deferred Compensation Program no sooner than 14 calendar days following receipt of an appeal. The Committee shall evaluate the participant's written request, emergency withdrawal application, financial information, and all related documentation submitted for compliance with 26 USC 457 and the provisions of OAR 459-050-0150.

(4) Appeal approval. If an appeal is approved, the Committee authorizes the Manager to release the funds within 30 calendar days of approval.

(5) Appeal denial. Within seven calendar days of the Committee's denial, the requestor may request an informal conference with the Deferred Compensation Manager or designee authorized to take action on the Manager's behalf.

(6) Request for review. The requester may submit a request for review of the Committee's determination to the Director of PERS and shall do so within 30 calendar days of the Committee's denial. The request shall be in writing and include:

(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.

(7) Director's determination. Within 30 calendar days of receiving a request for review, the Director shall issue a written determination either approving or denying the unforeseeable emergency withdrawal.

Stat. Auth.: ORS 243.470

Stats. Implemented: ORS 243.401 – 243.507

Hist.: PERS 2-1995, f. 10-13-95, cert. ef. 11-1-95; PERS 5-2000, f. & cert. ef. 8-11-00; PERS 28-2004, f. & cert. ef. 11-23-04

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 – 243.507

Hist.: PERS 9-2002, f. & cert. ef. 6-13-02

459-050-0060

OSGP 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 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 may be revoked or nullified by a decree of divorce, decree of annulment, or other similar circumstance effective upon the entry of a judgment that revokes the designation of the beneficiary.

(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 - 243.507

Hist.: PERS 6-2002, f. & cert. ef. 5-24-02; PERS 6-2006, f. & cert. ef. 4-5-06

459-050-0065

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 - 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.

(1) Except as provided in subsections (a) and (b) of this section, for purposes of this rule, “normal retirement age” shall be the normal retirement age established in the plan sponsor’s retirement plan.

(a) “Normal retirement age” for members of the Public Employees Retirement System shall be as provided in ORS 238.005(14), 238.280(3), 238A.160, or 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 may not be 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 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 which the eligible employee begins to participate in the 50-Plus Catch-Up Program.

(A) 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, but may not participate in both programs during the same calendar year.

(B) An eligible employee may participate in the 50-Plus Catch-Up Program during the calendar year containing the employee's retirement date.

(b) Application for enrollment. An eligible employee choosing to participate must enroll by entering into a written agreement 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) 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.

(B) A properly completed 50-Plus Catch-Up Program 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, then the Deferred Compensation Program will notify the eligible employee within 30 calendar days from the date the enrollment form is received of the reasons the enrollment cannot be accepted.

(c) 50-Plus Catch-Up Program deferral effective date. 50-Plus Catch-Up Program contributions may be deferred for any calendar month by salary reduction only if an agreement providing for the deferral has been entered into before the first day of the month in which the compensation is paid or made available.

(d) Additional deferral amounts. The additional deferral may be an amount elected by an eligible employee, but shall not exceed the maximum additional deferral amount allowed under section 414(v) of the Internal Revenue Code, 26 USC 414(v). 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. Additional contributions may be deferred for any calendar month by salary reduction only if an agreement providing for the deferral has been entered into before the first day of the month in which the compensation is paid or made available.

(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 for any calendar month only if an agreement providing for the cancellation has been entered into before the first day of the month in which the compensation is paid or made available. An eligible employee who has cancelled participation may later re-apply to begin participation in the 50-Plus Catch-Up Program.

(3) 3-Year Catch-Up Program. An eligible employee 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 eligible employee did not contribute the maximum regular contribution amount.

(a) Conditions for enrollment. The earliest date to begin participation in the 3-Year Catch-Up Program is in the three calendar years immediately preceding the year in which an eligible employee reaches normal retirement age.

(A) Contributions over the maximum allowable regular contribution limit are permitted only to the extent of the unused portions of the maximum allowable regular contribution for previous calendar years during which the eligible employee contributed less than the maximum allowable regular contribution or did not make contributions to the Deferred Compensation Program.

(B) Calendar years during which contributions were made under the 50-Plus Catch-Up Program 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 and the 50-Plus Catch-Up Program during the same calendar year.

(D) An eligible employee must designate a proposed retirement date upon application. The designated proposed retirement date shall be used for the purpose of determining the catch-up period only. The catch-up period so determined shall not include the year of the designated proposed retirement date. An eligible employee who retires during the catch-up period may contribute the maximum allowable amount for the year of his retirement.

(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 participation in the 3-Year Catch-Up Program is for less than three calendar years or whether the eligible employee participates in an eligible plan after retirement.

(b) Application for enrollment. An eligible employee may participate in the 3-Year Catch-Up Program by entering into a written agreement with the plan sponsor. The written agreement must specify the eligible employee's designated proposed retirement date, the month in which to begin the 3-Year Catch-Up Program contributions and the number of years the eligible employee plans to participate in the 3-Year Catch-Up Program.

(A) An eligible employee may enter into a written agreement to participate in the 3-Year Catch-Up Program at any time while employed.

(B) A properly completed 3-Year Catch-Up Program enrollment form provided by the Deferred Compensation Program must be filed with and approved by the Deferred Compensation Program. Wage or salary information must be submitted for previous calendar years during which an eligible employee either did not participate in the Deferred Compensation Program or did not contribute the maximum regular contribution amount. An eligible employee must submit:

(i) Legible copies of W-2 Wage and Tax Statement forms for each relevant calendar or tax year; or

(ii) Legible copies of final pay stubs showing gross and taxable salary for each relevant calendar year.

(C) If the application for enrollment is incomplete, if wage or salary information is incomplete or illegible, or if the application does not comply with the 3-Year Catch-Up Program conditions of enrollment, then the Deferred Compensation Program will notify the eligible employee within 30 calendar days from the date the enrollment documents are received of the reasons the Deferred Compensation Program cannot accept the enrollment.

(c) 3-Year Catch-Up Program deferral effective date. 3-Year Catch-Up Program contributions may be deferred for any calendar month by salary reduction only if an agreement providing for the deferral has been entered into before the first day of the month in which the compensation is paid or made available.

(d) Additional Deferral Amount. After receipt of a properly completed 3-Year Catch-Up Program enrollment form and required wage or salary information, the Deferred Compensation Program will notify the eligible employee of the maximum amount of additional contributions that may be deferred.

(A) The amount of the 3-Year Catch-Up Program salary reduction may not be less than the minimum additional contribution amount established by the plan sponsor and may not exceed the maximum allowable contribution under 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 for any calendar month only if an agreement providing for the deferral has been entered into before the first day of the month in which the compensation is paid or made available.

(e) 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 for any calendar month only if an agreement providing for the cancellation has been entered into before the first day of the month in which the compensation is paid or made available. 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 - 243.507
Hist.: PERS 12-2002, f. & cert. ef. 7-17-02; PERS 28-2004, f. & cert. ef. 11-23-04; PERS 20-2005, f. 11-1-05, cert. ef. 11-4-05; PERS 3-2007, f. & cert. ef. 1-23-07

459-050-0072

Military Leave Catch-up

The purpose of this rule is to establish the criteria and procedures to comply with the Uniformed Services Employment and Reemployment Rights Act (USERRA) as codified in 38 USC 4301-433, and with 23 USC 414(u) and 457 for an eligible employee who has been absent from employment because of military service and who has elected to catch up contributions to the Deferred Compensation Program that would have been permitted had the eligible employee remained in employment with the participating employer during the qualifying period of military service.

(1) Definitions. For purposes of this rule:

(a) "Military service" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes:

- (A) Active duty;
- (B) Active duty for training;
- (C) Initial active duty for training;
- (D) Inactive duty training;
- (E) Full-time National Guard duty;

(F) A period for which an individual is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any of the above types of duty; or

(G) A period for which an individual is absent from employment for the purpose of performing funeral honors duty as authorized by 10 USC 12503 or 32 USC 115.

(b) "Uniformed services," means the Army, Navy, Air force, Marine Corps, Coast Guard, Army National Guard, the Air National Guard, Commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency.

(2) Eligibility for enrollment: An eligible employee shall be entitled make Military Catch-Up contributions if:

(a) The eligible employee leaves employment to perform military service and returns to employment with the same participating employer after other than dishonorable discharge from the uniformed services and within the time limits specified in USERRA.

(b) The eligible employee's cumulative length of absence from employment with the participating employer for military service does not exceed the limits set forth in USERRA.

(c) The eligible employee meets all other eligibility requirements under USERRA.

(d) Submits a timely and complete application.

(3) Application for enrollment: An eligible employee who meets the eligibility criteria for enrollment may apply to catch-up deferred compensation contributions that would have been permitted had the eligible employee remained in employment with the participating employer during the period of military service as provided by USERRA.

(a) Upon reemployment following qualifying military service, an eligible employee may enter into a written agreement to participate in the Military Leave Catch-Up Program to defer an amount annually in addition to the eligible employee's maximum deferral amount.

(b) In order for an eligible employee to be enrolled, a properly completed Military Leave Catch-Up Contributions enrollment form provided by the Deferred Compensation Program must be filed with and accepted by the Deferred Compensation Program.

(c) If the application for enrollment is incomplete, if documentation is missing or information is not legible, or if the application does not comply with the Military Leave Catch-Up Program eligibility for enrollment in section 2 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.

ments are received with the reasons the Deferred Compensation Plan cannot accept the enrollment.

(d) After receipt of the properly completed enrollment form and required information, Deferred Compensation Program staff will notify an eligible employee of the amount of maximum additional contributions that may be deferred.

(4) Military Leave Catch-Up Contributions. The additional military leave catch-up contributions shall not exceed the 26 USC 457 maximum annual allowable contributions that would have been permitted had the eligible employee remained in employment with the participating employer during the period of military service. The military leave catch-up contributions are in addition to the maximum allowable contribution limit.

(a) The maximum allowable military leave catch-up contribution for any calendar year during military service is available only to the extent of unused portions of the maximum allowable contribution for the calendar years during which the eligible employee contributed less than the maximum amount allowable.

(b) Salary for military leave catch-up purposes shall be based on the compensation the eligible employee would have received had the eligible employee remained actively employed during the period of military service, including any increases that would have been awarded the eligible employee based on longevity of employment or seniority of position.

(c) Military Leave Catch-Up Contributions are to be made through payroll deductions.

(d) Eligible employees may change the amount of additional contributions deferred not to exceed the maximum amounts allowable.

(e) Eligible employees may cancel Military Leave Catch-Up Contributions at any time.

(f) Military Leave Catch-up Contributions may be made for a period that begins on the date of reemployment and whose length is the lesser of:

- (A) Three times the period of qualified military service; or
- (B) Five years.

(5) IRC code limitations. Eligibility for and limitations to the maximum amount of Military Leave Catch-Up contributions shall be made in accordance with the requirements under USERRA, 38 USC 4301-4333 and 26 USC 414(u)(2) and 457.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 243.470
Stats. Implemented: ORS 243.401 - 243.507
Hist.: PERS 28-2004, f. & cert. ef. 11-23-04

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 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 - 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

459-050-0077

Loan Program

(1) Definitions. For purposes of this rule:

(a) "Cure period" is that time from when a default occurs until the end of the quarter following the quarter in which the default occurred.

(b) "Loan balance" means the outstanding principal and accrued interest due on the loan.

(c) "Participant Loan" means a loan that only affects the deferred compensation account of a participant.

(d) "Promissory note" means the agreement of loan terms between the Program and a participant.

(e) "Third Party Administrator (TPA)" means the entity providing record keeping and administrative services to the Program.

(2) Eligibility for loan. Participants who are currently employed by a Plan Sponsor that has agreed to participate in a Participant Loan program are eligible for a Participant Loan. Retired participants, participants separated from employment, designated beneficiaries, and alternate payees are not eligible.

(3) Application for loan: A participant must apply for a loan and meet the requirements set forth in this rule.

(a) Once a loan is approved, a participant must execute a promissory note in the form prescribed by the Program.

(b) If a participant is deceased prior to the disbursement of the proceeds of a loan, the participant's loan application shall be void as of the date of death.

(4) Loan Types:

(a) General purpose loan — a loan not taken for the purpose of acquiring a principal residence. General purpose loans must be repaid over a non-renewable repayment period of up to five years.

(b) Residential loan — a loan made for the purpose of acquiring a principal residence, which is, or within a reasonable time shall be, the principal residence of the participant. Residential loans must be repaid over a non-renewable repayment period of up to 15 years. A refinancing does not qualify as a residential loan. However, a loan from the Program that will be used to repay a loan from a third party will qualify as a residential loan if the loan would qualify as a residential loan without regard to the loan from the third party.

(5) Interest Rate: The rate of interest for a loan shall be fixed at one percent (1%) above the prime interest rate as published by the Wall Street Journal on the last business day of the month prior to the month in which the loan is requested.

(6) Loan Fees: A loan fee of \$50.00 shall be assessed when the loan is approved. The fee shall be deducted from a participant's deferred compensation account on a pro-rata basis from existing investments.

(7) Loan Limitations:

(a) The maximum loan amount is the lesser of:

(A) \$50,000; or

(B) One-half of the value of the participant's deferred compensation account on the date the loan is made.

(b) The minimum loan amount is \$1000.

(c) A participant may only have one outstanding loan.

(d) A participant who has received a loan may not apply for another loan until 12 months from the date the previous loan was paid in full.

(8) Source of Loan: The loan amount will be deducted from a participant's deferred compensation account.

(a) Loan amounts will be deducted pro-rata from existing investments in a participant's deferred compensation account.

(b) A participant may not transfer a loan to or from another retirement or deferred compensation plan.

(9) Repayment Terms: The loan amount will be amortized over the repayment period of the loan with interest compounded daily to calculate a level payment for the duration of the loan.

(a) Loan payments must be made by payroll deduction. To receive a loan from the Program a participant must enter into a payroll deduction agreement. For the purposes of this rule, a promissory note or other document that includes the payroll deduction amount and is signed by a participant as a requirement to obtain a loan may be a payroll deduction agreement. Except as provided in this rule, a participant may not submit a loan payment directly to the Program or the Third Party Administrator.

(b) A participant is responsible for loan repayment even if the employer fails to deduct or submit payments as directed under the payroll deduction agreement. To avoid defaulting on a loan by reason of the employer's failure to deduct or submit a payment a participant may submit a loan payment by sending a money order or certified check to the Third Party Administrator.

(c) A participant may repay the loan balance in a single payment at any time before the date the final loan payment is due.

(d) Partial payment of a scheduled payment and partial prepayment or advance payment of future payments shall not be permitted.

(e) Loan payments will be allocated in a participant's deferred compensation account in the same manner as the participant's current contribution allocation. If, for any reason, the allocation is not known, the payment will be allocated to the Short-Term Fixed Income Option.

(f) Any overpayment will be refunded to the participant.

(10) Leave of Absence. Terms of outstanding loans are not subject to revision except as provided in this section.

(a) Loan payments may be suspended up to one year during an authorized leave of absence if a participant's pay from the employer does not at least equal the payment amount.

(A) Interest on a loan continues to accrue during a leave of absence.

(B) A participant must immediately resume payments by payroll deduction upon return to work.

(C) The loan balance will be re-amortized upon the participant's return to work to be repaid within the remaining loan repayment period.

(D) Loan payments may be revised to extend the remaining loan repayment period to the maximum period allowed in the event the loan originally had a term shorter than the maximum period allowed under section (4) of this rule.

(E) If a participant is on a leave of absence that exceeds one year, the loan shall be in default unless repayment begins one year from the participant's last date worked or the date the final payment is due under the promissory note, whichever is earlier.

(b) Military Leave. Loan payments for participants on military leave may be suspended for the period of military service.

(A) A leave of absence for military service longer than one year will not cause a loan to be in default.

(B) Loan payments by payroll deduction must resume upon the participant's return to work.

(C) The original repayment period of a loan will be extended for the period of military service or to the maximum repayment period allowed for that type of loan, whichever is greater.

(D) Interest on a loan continues to accrue during a leave of absence for military service. If the interest rate on the loan is greater than 6%, then under the provisions of the Servicemembers Civil Relief Act of 2003, the rate shall be reduced to 6% during the period of military service.

(E) The loan balance will be re-amortized upon the participant's return to work to be repaid within the remaining loan repayment period as determined under paragraph (C) of this subsection.

(c) A participant on an authorized leave of absence or military leave may submit loan payments by sending a money order or certified check to the Third Party Administrator.

(11) Tax Reporting.

(a) The loan balance of a general purpose loan will be reported as a taxable distribution to the participant on the earlier of the last day of the loan repayment period, as adjusted under paragraphs (10)(a)(D) or (10)(b)(C) of this rule, if applicable, or if the loan is in default, the last day of the cure period.

(b) The loan balance of a residential loan will be reported as a taxable distribution to the participant on the earlier of the last day of the loan repayment period, as adjusted under paragraphs (10)(a)(D) or (10)(b)(C) of this rule, if applicable, or if the loan is in default, the last day of the cure period.

(c) If a participant dies prior to the loan balance being repaid, and the participant's beneficiary does not repay the loan balance in a single payment within 90 days of the participant's death, the loan balance will be reported as a taxable distribution to the estate of the participant.

(d) If a participant is eligible to receive a distribution under the Program, the reporting of a loan balance as a taxable distribution under this section will cancel the loan at the time the taxable distribution is reported. A canceled loan is a distribution and is no longer outstanding in a participant's account.

(e) If a participant is not eligible to receive a distribution under the Program, a loan balance reported as a taxable distribution under this section will be a deemed distribution for tax reporting purposes. A loan deemed distributed may not be canceled until the loan balance is repaid or the participant becomes eligible to receive a distribution. The loan balance will remain outstanding in the participant's account and will continue to accrue interest until repaid or canceled.

(12) Default.

(a) A loan is in default if a payment is not paid as scheduled or under any of the provisions set forth in this rule, the promissory note, or any related loan agreement.

(b) A loan is in default if the participant separates from employment with the plan sponsor that administers the loan payment payroll deductions.

(c) If a participant with a loan in default resumes loan payments by payroll deduction before the end of the cure period, the default will be cured. The participant must pay any missed payments and accrued interest before the end of the loan repayment period.

(d) Except as provided in subsection (c) of this section, if the participant does not cure a default by repaying the loan balance before the end of the cure period, the loan balance will be reported as a taxable distribution to the participant as provided in section (11) of this rule.

(13) The effective date of this rule is May 1, 2007.

Stat. Auth.: ORS 243.470

Stats. Implemented: ORS 243.401 – 243.507

Hist.: PERS 4-2007, f. 1-23-07, cert. ef. 5-1-07; PERS 8-2007, f. & cert. ef. 7-26-07

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) (26 USC 401(a)(9))** and related regulations.

(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.

(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 earnings 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) (26 USC 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 state income taxes based on a marital status of single and no dependents and federal income taxes based on a marital status of married and 3 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. Liquidation of funds will be done on a pro-rata basis determined by the investment allocation of an account at the time the funds are liquidated or from the Stable Value account, at the participant's election. The election must be filed before the participant begins receiving distributions. If the participant elects distribution from the Stable Value account and there are insufficient funds in that account on the date of each distribution (whether monthly, quarterly, semi-annually, or annually), the distribution will be done on the pro-rata basis described above regardless of the participant's election.

(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 - 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; PERS 28-2004, f. & cert. ef. 11-23-04

459-050-0090

Direct Rollover

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

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

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

(b) "Direct Rollover" means:

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

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

(c) "Distributee" means:

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

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

(C) The surviving spouse of a deceased participant;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) The distributee's full name;

(B) The distributee's social security number;

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507

Hist.: PERS 2-2002(Temp), f. & cert. ef. 1-11-02 thru 6-28-02; PERS 9-2002, f. & cert. ef. 6-13-02; PERS 5-2007(Temp), f. & cert. ef. 2-16-07 thru 8-14-07; PERS 9-2007, f. & cert. ef. 7-26-07

459-050-0150

Unforeseeable Emergency Withdrawal

The purpose of this rule is to establish the criteria and process for a participant to obtain a distribution of deferred compensation funds prior to separation from employment due to an unforeseeable emergency.

(1) Definitions.

(a) "Unforeseeable emergency" or "Unforeseen emergency" means a severe financial hardship to a participant resulting from a sudden and unexpected illness or accident of the participant or of a dependent of the participant as defined in 26 CFR 1.152-1, a loss of the participant's property due to casualty or other similar extraordinary and unforeseeable circumstance beyond the control of the participant.

(b) "Immediate need" means a financial obligation attributable to an unforeseeable emergency that accrues within the 180-day period preceding and the 90-day period following receipt of an application for emergency withdrawal.

(c) "Emergency withdrawal" means a payment to the participant from the participant's deferred compensation account in an 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 a participant's deferred compensation account.

(2) Eligibility for emergency withdrawals. Only a participant who established a deferred compensation account as an eligible employee and has not terminated from employment with their plan sponsor may apply to receive an unforeseeable emergency withdrawal. An alternate payee of a participant shall not be eligible to receive an emergency withdrawal.

(3) A participant must, if eligible, apply for a loan under the provisions of OAR 459-050-0077 prior to application for an unforeseen emergency withdrawal unless, as determined by the Deferred Compensation Manager, the participant would suffer additional financial hardship by complying with the loan application requirement.

(4) Circumstances that do not constitute an unforeseeable emergency. An emergency withdrawal shall not be approved for any reason other than an unforeseeable emergency. Circumstances that do not constitute an unforeseeable emergency include, but are not limited to:

(a) Participant or dependent school expenses;

(b) The purchase of 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 establishing or managing a personal business;

(g) Recreational expenses;

(h) Travel expenses not associated with an unforeseeable emergency; and

(i) Usual and customary tax obligations.

(5) Limitations on amount of emergency withdrawal. The maximum amount that may be approved as an emergency withdrawal shall be limited to what is reasonably needed to satisfy the immediate financial obligation related to the unforeseeable emergency, including taxes anticipated on the distribution. The amount of the emergency withdrawal shall be limited to the extent that the financial obligation can or may be satisfied by:

(a) Reimbursement or compensation by insurance or otherwise;

(b) Liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe unforeseeable emergency; or

(c) Cessation of participant contributions to the Deferred Compensation Program.

(6) Application for an emergency withdrawal. A participant must submit a completed emergency withdrawal application and financial information and related documentation sufficient to satisfy the provisions of this rule. The emergency withdrawal application may be returned if incomplete or if insufficient financial information or related documentation is submitted.

(a) The application form may be obtained from the Deferred Compensation Program or the third party administrator (TPA) retained to administer a portion of the Deferred Compensation Program.

(b) The completed application, financial information, and related documentation shall be submitted by use of the United State Postal Service or by private carrier as defined in ORS 293.660(2) for initial review.

(7) Cancellation of future contributions. Contributions by a participant to the Deferred Compensation Program shall immediately be cancelled upon receipt of an application for an emergency withdrawal from the participant.

(a) A participant who receives approval for an emergency withdrawal shall be prohibited from making elective deferrals and contributions to the Deferred Compensation Program for a period of six consecutive months from the date of distribution.

(b) A participant who receives a denial for an emergency withdrawal may enroll to make elective deferrals and contributions to the Deferred Compensation Program at any time.

(8) Approval or denial notification. The Deferred Compensation Manager or an authorized designee shall approve or deny a request for an emergency withdrawal within three working days after receipt of an accepted application. The participant will be notified by mail within ten days after a decision is made.

(9) Release of payment upon approval of an emergency withdrawal. The Deferred Compensation Manager or an authorized designee shall determine the method of payment, based on the immediate need. The Deferred Compensation Program shall immediately notify the TPA to release the requested funds.

(10) A participant may appeal a denial of an emergency withdrawal to the Unforeseeable Emergency Withdrawal Appeals Committee as provided in OAR 459-050-0040. The appeal shall be in writing and must include:

(a) A request for review by the Unforeseeable Emergency Withdrawal Appeals Committee;

(b) A short statement of the facts that are the basis of the appeal; and

(c) Any additional information or documentation to support the request for an emergency withdrawal.

(11) Number of emergency withdrawal requests. The number of times a participant may apply for an emergency withdrawal is unlimited and is unaffected by previous applications.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507

Hist.: PERS 5-2000, f. & cert. ef. 8-11-00; PERS 28-2004, f. & cert. ef. 11-23-04; PERS 3-2007, f. & cert. ef. 1-23-07

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: 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.

(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 forthcoming. 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 - 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. 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 alter-

nate 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 - 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.

(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 - 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. 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. To facilitate prompt processing, copies of subpoenas should be served at the Deferred Compensation Program office. Faxed subpoenas are not acceptable.

Stat. Auth: ORS 243.470
Stats. Implemented: ORS 243.401 - 243.507
Hist.: PERS 4-2002, f. & cert. ef. 3-26-02; PERS 11-2003, f. & cert. ef. 8-4-03

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 - 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 - 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 - 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 agent(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. 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;

(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 - 243.507

Hist.: PERS 9-2002, f. & cert. ef. 6-13-02

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 & 238.650

Stats. Implemented: ORS 192.410 - 192.505, 237.410 - 237.520, 237.610, - 237.620, 237.950 - 237.980 & 238

Hist.: PERS 8-1996, f. & cert. ef. 11-12-96; PERS 21-2005, f. & cert. ef. 11-1-05

459-060-0001

Definitions

The words and phrases used in this Division have the same meaning given them in ORS Chapter 238 and OAR 459-005-0001. Specific and additional terms are defined as follows unless context requires otherwise.

(1) For the purposes of division 060, the term "member" means an employee of a PERS participating employer, a PERS member as described in ORS 238.005(12), a former PERS member, the beneficiary of a PERS member, an alternate payee as defined in ORS 238.465, or the beneficiary of an alternate payee.

(2) "Medical records" means any reports, letters, or notes containing information regarding the member's health condition (mental or physical), or ability to perform any work.

(3) "Public disclosure" means disclosure of information to any individual other than the member or an individual that is legally authorized to act on behalf of the member as to PERS matters.

Stat. Auth.: ORS 192.502 & 238.650

Stats. Implemented: ORS 192.410-505, 237.410-520, 237.610-620, 237.950-980 & 238

Hist.: PERS 8-1996, f. & cert. ef. 11-12-96; PERS 16-2003, f. & cert. ef. 12-15-03

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 an individual 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, if any, 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 to a member or an employer for one copy of the following public records:

(a) Approved Board minutes or Board orders for the past 12 months;

(b) Current PERS administrative rules;

(c) Current Oregon Revised Statutes pertaining to PERS;

(d) Current PERS publications;

(e) A PERS member's record to the extent permitted under OAR 459-060-0030 and 459-060-0020, excluding paragraph (3)(a)(D); and

(f) No fee will be charged for providing such records:

(A) In an alternative format when required under the Americans with Disabilities Act; or

(B) If the records can be provided at nominal expense where collection of the fee would be more than the cost to provide the records.

(5) Except as provided under section (4) of this rule, PERS may not reduce or waive fees for making public records available and must charge the actual costs for services provided.

Stat. Auth.: ORS 192.440, 238.650 & 243.470

Stats. Implemented: ORS 237.410-520, 237.610-620, 237.950-980, 238, 243.401-507 & 192.410-505

Hist.: PERS 11-2000, f. 12-15-00 cert. ef. 1-1-01; PERS 7-2002, f. & cert. ef. 5-24-02; PERS 16-2003, f. & cert. ef. 12-15-03

459-060-0020

Confidentiality of Member's Records

(1) ORS 192.502(12) unconditionally exempts from public disclosure a member's nonfinancial membership records and an active or inactive member's financial records maintained by PERS. PERS shall not release such records to anyone other than the affected member or an authorized representative of the member or the member's estate except:

(a) Upon the written authorization of the member, or an individual that is legally authorized to act on behalf of the member or the member's estate as to PERS matters; or

(b) As otherwise provided in OAR 459-060-0030.

(2) ORS 192.502(2) conditionally exempts from public disclosure a retired member's financial information maintained by PERS. PERS shall not release such records to anyone other than the retired member or the retired member's estate unless:

(a) 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;

(b) PERS receives written authorization from the retired member, or an individual that is legally authorized to act on behalf of the retired member or the retired member's estate as to PERS matters; or

(c) Release is provided for under OAR 459-060-0030.

(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 459, division 060 and ORS 192.502(10).

(4) PERS shall not provide a mailing list of its members or their dependents to any individual or enterprise.

Stat. Auth.: ORS 192.502 & 238.650

Stats. Implemented: ORS 192.410-505, 237.410-520, 237.610-620, 237.950-980 & 238

Hist.: PERS 8-1996, f. & cert. ef. 11-12-96; PERS 7-2002, f. & cert. ef. 5-24-02; PERS 16-2003, f. & cert. ef. 12-15-03

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 & 238.650

Stats. Implemented: ORS 192.410 - 92.505, 237.410 - 237.520, 237.610 - 237.620, 237.950 - 237.980 & 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 & 238.650

Stats. Implemented: ORS 192.410 - 192.505, 237.410 - 237.520, 237.610 - 237.620, 237.950 - 37.980 & 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 nondisclosable 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 commu-

nications are not confidential and such communications may be introduced into evidence is 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 are available from the agency.]

Stat. Auth.: ORS 36.224 & 238.650

Stats. Implemented: ORS 36.224, 36.228, 36.230, 36.232 & 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 & 238.650

Stats. Implemented: ORS 36.230(4) & 238

Hist.: PERS 7-2000, f. & cert. ef. 12-5-00

DIVISION 70

OREGON PUBLIC SERVICE RETIREMENT PLAN, GENERALLY

459-070-0001

Definitions

The words and phrases used in this Division have the same meaning given them in ORS 238A.005 unless otherwise indicated in this rule. Specific and additional terms for purposes of Divisions 70, 75 and 80 are defined as follows unless context requires otherwise:

(1) "Academic employee of a community college" means an instructor who teaches classes offered for college-approved credit or on a non-credit basis.

(a) 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 section 20 of OL 2005 Ch. 332, but are subject to the membership requirements under ORS 238A.100 and OAR 459-075-0010.

(b) The governing body of a 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.

(2) "Break in Service" means a period concluding on or after August 29, 2003, during which a member of PERS performs no service with a participating public employer in a qualifying position for a duration of:

(a) Six or more consecutive calendar months; or

(b) 12 or more consecutive calendar months under one of the following circumstances:

(A) The member of PERS ceases performance of service for purposes that have qualified the member for family leave, as described in ORS 238A.025(3)(c), as determined by the employer; or

(B) The member of PERS ceases performance of service for career development purposes, as described in ORS 238A.025(3)(d); or

(C) The member ceases performance of service on or after August 29, 2003 due to the seasonal nature of the employee's employment and does not return to the same employer.

(3) "Calendar month" means a full month beginning on the first calendar day of a month and ending on the last calendar day of the same month.

(4) "Calendar year" means 12 calendar months beginning on January 1 and ending on December 31 following.

(5) "Employee" has the same meaning as "eligible employee" in ORS 238A.005(4).

(6) "Employee class" means a group of similarly situated employees whose positions have been designated by their employer in a policy or collective bargaining agreement as having common characteristics.

(7) "Employee contributions" means contributions made to the individual account program by an eligible employee under ORS 238A.330, or on behalf of the employee under ORS 238A.335.

(8) "Final Average Salary" (FAS) has the same meaning given the term in:

(a) ORS 238A.130(1) for OPSRP Pension Program members who are not employed by a local government as defined in ORS 174.116; or

(b) ORS 238A.130(3) for OPSRP Pension Program members who are employed by a local government as defined in ORS 174.116.

(9) "Member" has the same meaning given the term in ORS 238A.005(10).

(10) "Member account" means the account of a member of the individual account program.

(11) "Member of PERS" has the same meaning as "member" in ORS 238.005(12)(a), but does not include retired members.

(12) "OPSRP" means the Oregon Public Service Retirement Plan.

(13) "Overtime" means the salary or hours, as applicable, that an employer has designated as overtime.

(14) "PERS" means the retirement system established under ORS chapter 238.

(15)(a) "Qualifying position" means a position or positions in which an employee is expected to perform 600 or more combined hours of service in a calendar year.

(b) 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 have performed 600 hours or more in the calendar year.

(c) If an employee is employed in a position or positions not designated as qualifying and performs 600 or more total hours of service in a calendar year, the position or positions will be considered qualifying and the employee shall be considered to have performed service in a qualifying position from the date of employment or January 1 of the calendar year in which the employee performed more than 600 hours of service, whichever is later.

(d) Except as provided in subsection (e) of this section, if an employee is employed in a position or positions designated as qualifying and performs less than 600 hours of service in a calendar year, the position will be considered non-qualifying from the date of employment or January 1 of the calendar year in which the employee performed less than 600 hours of service, whichever is later.

(e) For purposes of determining qualification upon separation from employment in a position or positions, but not for any other purpose, if an employee was employed in a position or positions for less than a full calendar year and performed less than 600 hours of service in that calendar year, but would have performed 600 hours of service or more if the employee had performed service in the same position or positions for the full calendar year, and if the employee performed 600 or more hours of service in the previous calendar year, the position or positions will be considered qualifying as of the date of separation.

(16) "Salary" has the same meaning given the term in ORS 238A.005(16).

(17) "School employee" has the meaning given the term in ORS 238A.140(7).

(18) "Service." Except as provided in subsection (c) of this section, a person is still providing "service," for purposes of determining

whether a “Break in Service” has occurred under Section 2a, Chapter 733, Oregon laws 2003, during any calendar month that a member:

(a) Is in an employer/employee relationship; and
(b) Receives a payment of “salary,” as that term is defined in ORS 238.005(21) or similar payment from workers compensation or disability.

(c) A member who is a school employee will be considered to provide “service” during any calendar month the institution is not normally in session so long as the member is in an employer/employee relationship both before and after the period the institution is not normally in session.

(19) The provisions of this rule are effective on January 1, 2004.
Stat. Auth.: 238A.450
Stats. Implemented: 238A.005, 238A.025, 238A.140, 238A.330 & 238A.335
Hist.: PERS 4-2004, f. & cert. ef. 2-18-04; PERS 7-2005(Temp), f. & cert. ef. 2-22-05 thru 8-15-05; PERS 11-2005, f. & cert. ef. 6-16-05; PERS 25-2005, f. 12-23-05, cert. ef. 1-1-06; PERS 7-2006, f. & cert. ef. 4-5-06

459-070-0050

Participation of Public Employers

(1) Any public employer that does not already provide benefits under the Oregon Public Service Retirement Plan (OPSRP) may apply to participate in the OPSRP Pension Program, the OPSRP IAP, or both, only for service by eligible employees performed on or after the date the employer’s participation becomes effective.

(2) The application to participate in either or both OPSRP programs must contain, at a minimum, the following information:

(a) A true copy of the resolution, motion or other official action by which the employer’s governing board or equivalent decided to apply to participate;

(b) A designated person or position authorized to represent the employer on PERS matters;

(c) Whether the employer will participate for one or more designated groups of employees or for all employees. If the employer already provides coverage for some but not all employees, the application must designate which additional group(s) will be added to the program or programs;

(d) Whether the employer will offer the OPSRP Pension Program, the OPSRP IAP, or both;

(e) Whether the employer will offer the PERS Chapter 238 plan to qualifying employees that it currently employs or may hire in the future;

(f) If the employer elects to participate in the PERS Chapter 238 plan for qualifying employees, whether the employer will provide the unused sick leave benefit for those employees; and

(g) The date on which the employer proposes to commence coverage under the specified program or programs.

(3) If the employer elects to participate in the PERS Chapter 238 plan for qualifying employees, and the employer also elects to participate in the State and Local Government Rate Pool (SLGRP) for those employees, the employer shall provide PERS with a resolution electing to participate in the SLGRP before the coverage agreement is signed by the parties.

(4) Upon receipt of the properly completed application, PERS will prepare a coverage agreement, which will be forwarded to the person designated by the employer under (2)(b) above. In no event will coverage commence before the agreement has been executed on behalf of the employer’s governing body (or equivalent), the PERS Executive Director, and the PERS Board.

(5) The employer will provide any and all information requested by PERS to ensure that the employer is eligible to participate, including whatever information PERS deems necessary to determine that the employer qualifies as a public employer. Factors to be addressed in that determination include but are not limited to:

(a) If the employer is a public corporation, whether a governmental entity retains essential control over the employer’s activities, with delegated powers for administration or discharge of public duties;

(b) Whether a state or local governmental body controls management of the employer;

(c) If the employer is a public corporation, whether it generates profits for private investors or stockholders;

(d) Where the employer derives its funding for operations;

(e) Whether the employer performs a governmental function; and

(f) Any information deemed necessary to determine that the employer’s coverage will not adversely affect PERS’ status as a qualified governmental retirement plan under the Internal Revenue Code.

(6) Unless the coverage agreement specifically provides otherwise, no retirement or service credit will be provided under OPSRP or the PERS Chapter 238 plan for the service performed with that employer prior to the employer becoming a participating employer, including service towards the member’s six-month waiting period.

(7) An employee who is employed in a qualifying position with a newly participating employer and who had previously established membership in the PERS system as of August 29, 2003, shall be an active member of the applicable OPSRP or PERS Chapter 238 program(s) as of the coverage agreement effective date, to the extent eligible under OAR 459-075-0010 and 459-080-0010.

Stat. Auth.: ORS 238A.450
Stats. Implemented: ORS 238A.070
Hist.: PERS 1-2005, f. & cert. ef. 1-31-05

459-070-0100

Employer Reporting

(1) Definition. “Pay period” means the span of time covered by an employer’s report to PERS.

(2) Unless otherwise agreed upon between the PERS Executive Director and the employer, the employer shall transmit to PERS an itemized report of all information required by PERS. Reports shall include wage, service, and demographic data related to that pay period.

(3) The report required under section (2) of this rule shall be acceptable to PERS and transmitted on forms furnished by the agency or in an equivalent format. The report shall be transmitted electronically, faxed, or postmarked, as applicable, no later than three business days following the end of each pay period listed in section (4) below.

(4) PERS shall assign the employer to one of the following pay periods which most closely matches the employer’s pay cycle:

(a) Monthly: the pay period ends on the last day of the month;

(b) Semi-monthly: the pay period ends on the fifteenth of the month and the last day of the month;

(c) Weekly: the pay period ends the Friday of every week, commencing January 2, 2004; or

(d) Biweekly: the pay period ends every other Friday, commencing January 9, 2004.

(5) If the report required under section (2) of this rule is accepted by PERS, PERS shall notify the employer of any exceptions and the employer will have 10 business days to reconcile its report. The corrected report must be transmitted electronically, faxed, or postmarked, as applicable, to PERS no later than 10 business days from the date of notification to avoid the penalty described under section (6) of this rule.

(6) Failure of an employer to transmit the report required under section (2) of this rule shall make the employer liable for a penalty equal to one percent of the total amount of the prior year’s annual contributions or \$2000, whichever is less, for each month the employer is delinquent.

(7) The PERS Executive Director will have the discretion to waive the penalty described in section (6) of this rule for all reports due from January 1, 2004 through December 31, 2005. Following that period of time, penalties may be waived by the Director only upon written petition from the employer.

(8) The effective date of this rule is January 1, 2004.

Stat. Auth.: ORS 238A.450
Stats. Implemented: ORS 238A.050 & 238.705
Hist.: PERS 25-2003, f. 12-30-03 cert. ef. 1-1-04; PERS 29-2004, f. & cert. ef. 11-23-04; PERS 13-2005, f. & cert. ef. 7-5-05

459-070-0110

Employer Remittance of Contributions

(1) Definition. “Statement date” means the date a statement of contributions or penalty due is generated by PERS.

(2) Once PERS receives the report described in OAR 459-070-0100(2) and (5), it shall issue a statement of contributions and any penalty due, if applicable.

(3) Unless otherwise agreed upon by the PERS Executive Director and the employer, an employer shall transmit the amount of employee contributions, employer paid employee contributions, and employer contributions for the Individual Account Program along with the corresponding contributions to fund the pension programs, for each pay period to the Board so that it shall be electronically transferred no

later than five business days from the statement date, under the provisions of OAR 459-005-0225.

(4) Failure of any employer to transmit contributions within the time limit specified in section (3) will make the employer liable for a penalty equal to one percent of the total amount of contributions due for that pay period for each month the employer is delinquent.

(5) If an employer transmits an amount less than the contributions required by section (3) of this rule, PERS shall allocate the contributions received in the following order:

- (a) To the Individual Account Program;
- (b) To the Pension Program;
- (c) To the PERS Fund.

(6) The PERS Executive Director will have the discretion to waive the penalty described in section (4) of this rule for all contributions due from January 1, 2004 through December 31, 2005. Following that period of time, penalties may be waived by the Director only upon written petition from the employer.

(7) If PERS is required to invoice an employer for employee contributions and corresponding employer contributions on wages paid in previous reporting periods, an amount equal to the earnings that would have been credited to affected members and employers for those years, if any, may be added to the applicable account and charged to the employer.

(8) The effective date of this rule is January 1, 2004.

Stat. Auth.: ORS 238A.450

Stats. Implemented: ORS 238A.050 & 238.705

Hist.: PERS 25-2003, f. 12-30-03 cert. ef. 1-1-04; PERS 29-2004, f. & cert. ef. 11-23-04; PERS 13-2005, f. & cert. ef. 7-5-05

DIVISION 75

OPSRP PENSION PROGRAM

459-075-0010

Eligibility and Membership

(1) Eligibility. An employee is eligible to become a member and receive benefits under the OPSRP pension program, and ineligible to become (or remain) a member of PERS or accrue benefits under PERS, if the employee:

- (a) Begins employment in a qualifying position with a participating public employer on or after August 29, 2003;
- (b) Was not a member of PERS before August 29, 2003; and
- (c) Did not perform any period of service before August 29, 2003, that is credited to the six-month period required under ORS 238.015 for membership in PERS; or
- (d) Was an active or inactive member of PERS on August 28, 2003, and incurs a "Break in Service."

(2) "Break in Service":

(a) For purposes of this section, ORS 238A.025 and section 2a of chapter 733, Oregon Laws 2003:

(A) "Active member of PERS" means an employee who is a member of PERS and not separated from service in a qualifying position with a participating public employer.

(B) "Inactive member of PERS" means an employee who is a member of PERS but was separated from service in a qualifying position with a participating public employer, including a member who was on a leave of absence without pay as described in OAR 459-010-0010.

(b) An employee will not incur a "Break in Service" if the employee was an inactive vested member of PERS on August 28, 2003, and returns to a qualifying position before January 1, 2006 with the same participating public employer the employee was employed with before the employee became inactive.

(c) If an employee who was an active member of PERS on August 28, 2003, incurs a "Break in Service", the employee shall be entitled to benefits under PERS for all service performed prior to the "Break in Service", and benefits under the OPSRP pension program for all service performed after the "Break in Service."

(d) If an employee who was an inactive member of PERS on August 28, 2003, incurs a "Break in Service" concluding prior to January 1, 2004, the employee shall be entitled to benefits under PERS for all service performed prior to the "Break in Service" and benefits

under the OPSRP pension program for all service performed on or after January 1, 2004.

(e) If an employee who was an inactive member of PERS on August 28, 2003, incurs a "Break in Service" concluding on or after January 1, 2004, the employee shall be entitled to benefits under PERS for all service performed prior to the "Break in Service" and benefits under the OPSRP pension program for all service performed after the "Break in Service"

(f) If a member of PERS ceases performance of service for one of the reasons described in ORS 238A.025(3)(c) or (d), the member returns to a qualifying position if the member resumes performance of hours of service: and

(A) Performs 600 hours of service in the calendar year(s) of absence; or

(B) Performs a total of 600 hours of service in the calendar year prior to leaving service, with no less than 50 hours per month performed in the last six months of that year, and performs 600 hours of service in the calendar year following the return to service, with no less than 50 hours per month performed in the first six months of that year.

(g) If a member of PERS ceases performance of service for reasons other than those described in ORS 238A.025(3)(c) or (d), the member returns to a qualifying position if the member resumes performance of service and performs 600 hours in the calendar year of the return to service.

(h) If a member of PERS ceases performance of service to serve as a legislator, the absence from regular employment for that purpose shall not be considered a "Break in Service."

(i) If a member of PERS ceases performance of service to serve in the uniformed services, as defined in the 1994 federal Uniformed Services Employment and Reemployment Rights Act (USERRA), and meets the eligibility requirements for reemployment under USERRA, the absence from service for that purpose shall not be considered a "Break in Service."

(j) If a member of PERS ceases performance of service and receives a disability retirement allowance under ORS 238.320, the absence from regular employment during that period, regardless of when the disability period begins or ends, shall not be considered a "Break in Service."

(k) If a member of PERS ceases performance of service on or after August 29, 2003, due to the seasonal nature of the employee's employment, the absence from regular employment during that period shall not be considered a "Break in Service" as long as the employee returns to the same public employer before 12 full calendar months have elapsed.

(3) Membership:

(a) Except as provided in subsection (c) of this section, an employee who meets the requirements in section (1) of this rule shall become a member of the OPSRP pension program on the first day of the calendar month after the employee completes six full calendar months of employment in a qualified position with the same participating public employer.

(b) If the six months required by subsection (a) of this section are interrupted by 30 or more consecutive working days in which the employee performs no paid service for the same participating public employer, the period of employment prior to the interruption shall not count toward the six-month requirement.

(c) An employee who was an active or inactive member of PERS on August 28, 2003, and incurred a "Break in Service." shall become a member of the OPSRP pension program on the first day of the calendar month after the return to employment.

Stat. Auth.: ORS 238A.450

Stats. Implemented: ORS 238A.025, OL 2003 Ch 733(2)(a)

Hist.: PERS 4-2004, f. & cert. ef. 2-18-04; PERS 8-2006, f. & cert. ef. 4-5-06

459-075-0030

Calculation of Overtime for Purposes of Final Average Salary

(1) For purposes of calculating final average salary, a member's salary shall not include any amounts attributable to hours of overtime that exceed the average number of hours of overtime for the same employee class.

(2) The average number of hours of overtime for an employee class shall be determined by the employer based on a reasonable expectation of the average number of hours of overtime employees in that class would perform over the course of a calendar year. The employer shall maintain records of the average number of hours of

overtime for each employee class for each calendar year and provide those records to PERS upon request.

(3) Under the provisions of ORS 238A.130(5) the Oregon Department of Administrative Services shall establish by rule more than one overtime average for a class of state employees based on the geographic placement of the employees.

Stat. Auth.: OL 2003 Ch. 733

Stats. Implemented: OL 2003 Ch. 733

Hist.: PERS 25-2003, f. 12-30-03 cert. ef. 1-1-04; PERS 4-2006, f. & cert. ef. 4-5-06

459-075-0100

Credit for Military Service under USERRA

(1) **Purpose.** The purpose of this rule is to implement section 13, chapter 733, Oregon Laws 2003 (Enrolled HB 2020).

(2) **Limitation of scope of rule.** Contributions, benefits and service credit provided under this rule shall not exceed contributions, benefits and retirement credit required under federal law for periods of military service.

(3) **Definitions.** For purposes of this rule:

(a) “Employee” means an employee, as defined in OAR 459-070-0001, who:

(A) Has established membership in the pension program in accordance with section 5(1), chapter 733, Oregon Laws 2003 (Enrolled HB 2020); or

(B) Is entitled to credit toward the probationary period required by section 5(1), chapter 733, Oregon Laws 2003 (Enrolled HB 2020).

(b) “Employer” means the legal entity that employed an individual at the time that individual left for military service. For purposes of this rule, the state of Oregon is a single legal entity. Each separate school district is a separate legal entity.

(c) “Military service” means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes:

(A) Active duty;

(B) Active duty for training;

(C) Initial active duty for training;

(D) Inactive duty training;

(E) Full-time National Guard duty;

(F) A period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any of the above types of duty; or

(G) A period for which a person is absent from employment for the purpose of performing funeral honors duty as authorized by 10 U.S.C. §12503 or 32 U.S.C. §115.

(d) “Uniformed services” means the following:

(A) Armed Forces;

(B) Army National Guard;

(C) Air National Guard;

(D) Commissioned corps of the Public Health Service; and

(E) Any other category of persons designated by the President in time of war or national emergency.

(e) “USERRA” means the 1994 federal Uniformed Services Employment and Reemployment Rights Act as in effect on the effective date of this rule.

(4) **Eligibility for retirement credit under USERRA.** An employee shall be entitled to the benefits of this rule if:

(a) The employee leaves employment with a participating public employer to perform military service;

(b) The cumulative length of the employee’s absence from employment with the employer for military service does not exceed the limits set forth in USERRA §4312;

(c) The employee initiates reemployment with the same participating public employer within the time limits specified in USERRA §4312; and

(d) All other eligibility requirements for benefits under USERRA are met.

(5) **Retirement credit for military service under USERRA.** An employee who meets the eligibility requirements of section (4) of this rule shall receive the amount of credit toward the period of employment required under section 29, chapter 733, Oregon Laws 2003 (Enrolled House Bill 2020), and the vesting requirements described under section 31, chapter 733, Oregon Laws 2003 (Enrolled House Bill 2020), as well as the retirement credit the employee would have accrued if he or she had remained in employment with the employer during the period of military service.

(6) Termination. An employee’s eligibility for the benefits of this rule terminates upon the occurrence of one of the disqualifying events listed in USERRA §4304.

(7) Employer contributions. Any employer contributions associated with credit for military service under this rule shall be made as directed by PERS in accordance with section 24, chapter 733, Oregon Laws 2003 (Enrolled HB 2020).

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: OL 2003 Ch. 733

Stats. Implemented: OL 2003 Ch. 733; USERRA §4312

Hist.: PERS 3-2004, f. & cert. ef. 1-22-04

459-075-0150

Retirement Credit

(1) **Credit for the six-month period required by OAR 459-075-0010(3).**

(a) Upon establishing membership in the pension program, a member shall receive credit for the hours of service required to establish membership under OAR 459-075-0010(3).

(b) The amount of credit awarded under this section shall be determined in accordance with subsections (1) and (3) through (6), section 11, chapter 733, Oregon Laws 2003 (Enrolled HB 2020).

(c) If the member’s period of employment prior to establishment of membership included an interruption of service as described in OAR 459-075-0010(3)(b), no credit shall be awarded for the period of employment prior to the interruption.

(d) No credit shall be awarded for hours of service performed prior to January 1, 2004.

(2) **Retirement credit.** A member shall accrue retirement credit in accordance with section 11, chapter 733, Oregon Laws 2003 (Enrolled HB 2020).

(a) **Retirement credit for school employees.** If a member performs a combined total of 600 or more hours in a calendar year in one or more positions as a school employee, prorated retirement credit will be calculated for each position by dividing the number of the member’s hours of service in each position by the number of hours of service required of a full-time school employee for that same position or comparable position.

(b) **Retirement credit for school employees employed in another qualifying position in a calendar year.** If a member performs a combined total of 600 or more hours of service in one or more positions as a school employee and another qualifying position or positions in a calendar year, prorated retirement credit will be calculated for each position in the following manner:

(A) For each position as a school employee, by using the method described in section (2)(a) of this rule; and

(B) For each non-school qualifying position, by dividing the number of the member’s hours of service in each non-school qualifying position by 2000.

(3) A member only accrues retirement credit for calendar years in which the member performs 600 or more total hours of service in one or more qualifying positions. No member may receive more than one full year of retirement credit for any calendar year.

Stat. Auth.: OL 2003 Ch. 733

Stats. Implemented: OL 2003 Ch. 733

Hist.: PERS 6-2004, f. & cert. ef. 2-18-04

459-075-0200

Retirement Eligibility for Police Officer and Firefighter Members

(1) “Police officer” and “firefighter” have the same meaning given them in ORS 238A.005.

(2) For the purpose of establishing eligibility for normal retirement under ORS 238A.160(2) and early retirement under 238A.165(2), an OPSRP Pension Program member will be considered to have held a position as a police officer or firefighter continuously for a period of not less than five years immediately preceding the effective date of retirement if:

(a) The member was employed in a qualifying position as a police officer or firefighter for five years prior to the date of the member’s separation from that employment; and

(b) The member did not return to a qualifying position after separation from that employment.

Stat. Auth.: ORS 238A.450

Stats. Implemented: 238A.160 & 238A.165

Hist.: PERS 15-2006, f. & cert. ef. 10-25-06

DIVISION 76

OPSRP DISABILITY BENEFIT

459-076-0000

Purpose

(1) The Legislative Assembly has established within the Oregon Public Service Retirement Plan (OPSRP) Pension Program a program for a disability benefit. The disability benefit program is solely intended to provide benefits to those members who have not reached normal retirement age as defined in OAR 459-076-0001(11) and who are unable to work because they are disabled and cannot perform any work for which they are qualified. A disability benefit is not in addition to a service retirement allowance and is payable until the member:

- (a) Is no longer disabled; or
 - (b) Reaches normal retirement age as defined in OAR 459-076-0001(11); or
 - (c) Dies.
- (2) A member who is no longer receiving a disability benefit due to conditions set forth under section (1)(a) or (b) and has not applied for a service retirement benefit after reaching normal retirement age will be considered an inactive member as defined in ORS 238A.005(8).

Stat. Auth.: ORS 238A.450

Stats. Implemented: ORS 238A.235

Hist.: PERS 16-2005, f. & cert. ef. 10-3-05

459-076-0001

Definitions

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

(1) Any work for which qualified: A job, not necessarily the last or usual job, which the applicant for disability benefits:

- (a) Is physically and psychologically capable of performing; and
- (b) Has, or may obtain with reasonable training, the knowledge, skills and abilities, to perform the job.

(2) Certified vocational consultant: A person who satisfies the criteria set forth under either of the following:

(a) A Master's Degree in vocational rehabilitation, and one year of experience in performing vocation 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; or

(b) 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 Specialists Commission; or a Certified Vocational Evaluation Specialist (CVE) or a Certified Work Adjustment Specialist (CWA) by the Commission on Certification of Work Adjustment and Vocational Evaluation specialists.

(3) Confidential information: Information of a personal nature such that disclosure would constitute an unreasonable invasion of privacy as defined by state law.

(4) Date of disability: The day an active member ceased to work because of injury or disease.

(5) Effective date of disability benefit: The first of the month following the later of:

- (a) The last day the member worked for a participating employer;
- (b) The last day the member was on paid leave; or
- (c) The last day the member received any salary or paid leave benefits from a participating employer, exclusive of the cash pay-off for accrued vacation or compensatory time, as long as that payment is made within the 31 days after the member separates from PERS covered employment.

(6) Extended duration: A period of not less than 90 consecutive calendar days unless the disability is expected to result in the death of the disabled member in less than 90 days.

(7) Independent medical exam: An exam or exams conducted by a physician chosen by PERS for purposes other than for treatment which results in the issuance of a report or reports based on those exams, giving an opinion regarding the claimed injury or disease.

(8) Material contributing cause: The efficient, dominant, and proximate cause of the disability, without which the member would not be disabled.

(9) Monthly salary: Salary as defined in ORS 238A.005(16) that is earned in the last full calendar month of employment:

(a) Retroactive payments or payments made due to clerical errors, paid in accordance with ORS 238A.005(16)(b)(E), are allocated to the period the salary was earned or should have been earned; ;

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

(10) Monthly salary received: The salary paid, as defined in section (9) of this rule, for the last full calendar month of employment prior to date of disability.

(11) Normal retirement age: The age at which a member can retire without a reduced benefit as set forth under ORS 238A.160.

(12) Other income: Includes, but is not limited to:

- (a) Salary or wages received as an employee;
- (b) Self-employment income from:

- (A) Services industry;
- (B) Sales;
- (C) Assembly or manufacturing;
- (D) Consulting;
- (E) Property management;
- (F) Hobby income; or
- (G) Book advances.

(c) "Other income" does not include:

- (A) Investment income;
- (B) Rent; and
- (C) Royalties.

(13) Physician: 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.

(14) Periodic review: A review of a member receiving a disability benefit to determine whether or not a continued benefit is warranted.

(15) Performance of duty: Mental or physical incapacitation arising out of and in the course of duty and is not intentionally self-inflicted. The injury or disease must be initially caused, aggravated or accelerated to cause incapacitation by the performance of the member's duties in the employment of a participating public employer. 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.

(16) Pre-existing condition: A condition that was not sustained in actual performance of duty with the current employer.

(17) Protected health information: Health information created or received by a health care provider, health plan, or health care clearinghouse, where an individual has a reasonable belief that the information can identify the individual, which relates to:

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

(18) Qualifying position: One or more positions with a participating employer, in a participating class, which requires performance of 600 or more hours in a calendar year.

(19) Separation from all service: The date a member terminates from employment such that an employee/employer relationship no longer exists; 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.

(20) Similar in compensation: Salary or income, excluding overtime, equaling at least 80 percent of the monthly salary, as defined in section (9) of this rule.

(21) Similar location: A position in the same general area of the applicant's residence or last employment location.

(22) Vocational evaluation: An evaluation conducted by a certified vocational consultant, to determine the ability of an applicant to perform any work for which they are qualified.

(23) Work related stress: Conditions or disabilities resulting from, but not limited to:

- (a) Change of employment duties;
 - (b) Conflicts with supervisors;
 - (c) Actual or perceived threat of loss of a job, demotion, or disciplinary action;
 - (d) Relationships with supervisors, coworkers, or the public;
 - (e) Specific or general job dissatisfaction;
 - (f) Work load pressures;
 - (g) Subjective perceptions of employment conditions or environment;
 - (h) Loss of job or demotion for whatever reason;
 - (i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;
 - (j) Objective or subjective stresses of employment; or
 - (k) Personnel decisions.
- Stat. Auth.: ORS 238A.450
 Stats. Implemented: ORS 238A.235
 Hist.: PERS 16-2005, f. & cert. ef. 10-3-05; PERS 7-2007, f. & cert. ef. 4-4-07

459-076-0005

Eligibility for Disability Benefits

(1) Only disabilities arising while the member is an active member of the OPSRP Pension Program and are expected to last for an extended duration qualify for the disability benefit under ORS Chapter 238A. Members with disabilities arising after a member has terminated employment from a qualifying position(s) are not eligible for a disability benefit.

(2) A member fails to meet the eligibility criteria for an OPSRP disability benefit:

(a) If the member is able to perform any work for which qualified; and

(b) Is able to generate other income that is similar in compensation, as defined in OAR 459-076-0001(20), as of date of disability.

(3) In determining a member's eligibility for disability benefits, the burden of proof is upon the applicant. The Board is not required to prove whether the applicant is or is not eligible for disability benefits.

(4) Eligibility for duty disabilities.

(a) Applicants with less than ten years of OPSRP retirement credit must establish that they are active members of OPSRP and were disabled while in the actual performance of duty, as defined in OAR 459-076-0001(15).

(b) A member who has a pre-existing condition (as defined in OAR 459-076-0001(16)) must prove that the material contributing cause (as defined in OAR 459-076-0001(8)) of the disability was sustained while in actual performance of duty.

(c) Work related stress, as defined in OAR 459-076-0001(23), will not be considered as the material contributing cause, as defined in OAR 459-076-0001(8), of a duty disability unless the applicant establishes all of the following:

(A) The employment conditions producing the work related stress exist in a real and objective sense;

(B) The employment conditions producing the work related stress are conditions other than conditions generally inherent in every working situation or reasonable disciplinary, corrective or job performance evaluation actions by the employer, or cessation of employment or employment decisions attendant upon ordinary business or financial cycles;

(C) There is a diagnosis of a mental or emotional disorder which is generally recognized in the medical or psychological community; and

(D) There is evidence that the work related stress arose out of and in the course of employment.

(5) Eligibility for non-duty disabilities.

(a) Members, other than members who are school employees as defined by ORS 238A.140, must have a minimum of ten years of OPSRP retirement credit as calculated pursuant to ORS 238A.140, and the disability must arise while the applicant is an active member of the OPSRP Pension Program.

(b) Members, who are school employees as defined by ORS 238A.140, must have been active members in ten or more calendar years and the disability must arise while the applicant is an active member of the OPSRP Pension Program.

(6) Termination of OPSRP membership. Disability benefits are available only to OPSRP members. OPSRP membership is terminated by withdrawal under ORS 238A.120 or forfeiture of retirement credit

under ORS 238A.145. Therefore, former OPSRP members who have withdrawn or forfeited are not eligible to receive OPSRP disability benefit.

(7) Return to work. If a member who is receiving a disability benefit becomes employed, the member's disability benefit will be terminated, effective the first of the month following employment. PERS will invoice the member for, or recover under ORS 238.715, any overpayment of benefits.

(8) PERS may contact other public or private agencies, such as the Oregon Employment Department, the Oregon Department of Revenue, or the U.S. Internal Revenue Service to obtain employment information.

(9) Upon request by PERS, a member must provide PERS with a copy of the member's federal income tax returns, together with copies of IRS forms W-2.

Stat. Auth.: ORS 238A.120 & 238A.450
 Stats. Implemented: ORS 238A.140 & 238A.235
 Hist.: PERS 16-2005, f. & cert. ef. 10-3-05

459-076-0010

Criteria for Granting and Denying Disability Benefits

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

(2) The Board may deny any application or discontinue any disability benefit in the case of any person who refuses to submit to any medical examination or supply a completed application or review form.

(3) All claims of a disability must be supported by at least one physician's report resulting from a physical examination documenting how the injury or disease incapacitates the member.

(4) In addition, a disability benefit 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 psychologist when accompanied by a report of physical examination by a treating or consulting physician;

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

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

(d) For claims of fibromyalgia, at least one report of a treating or consulting rheumatologist; and

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

(5) To demonstrate that he or she is unable to perform any work for which qualified, as defined in OAR 459-076-0001(1), the applicant shall document how the injury or disease incapacitates the applicant. 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, PERS may request, at PERS expense, a vocational evaluation be done by a vocational consultant who is fully certified as set forth in OAR 459-076-0001(2).

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

(6) When there is a dispute among medical experts, more weight will be given to those medical opinions that are both well reasoned and based on complete information.

(7) The Board may deny any application or discontinue any disability benefit if an applicant refuses to submit to an independent medical or vocational examination.

Stat. Auth.: ORS 238A.450
 Stats. Implemented: ORS 238A.235
 Hist.: PERS 16-2005, f. & cert. ef. 10-3-05

459-076-0020

Application Required

(1) No disability benefit will be paid unless the member files a timely and complete application with PERS:

(a) An inactive member who was disabled due to injury or disease while the applicant was an active member and is not separated from membership, must file an application for a disability benefit 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 have arisen while the applicant was an active member and be continuous from the date the member last worked to the date the application is filed;

(b) Members who become disabled due to injury or disease after the date of separation from all service entitling the member to active membership in the system, are not eligible for a disability benefit under ORS Chapter 238A.

(2) Applications will be made on forms prescribed by PERS. PERS may require the member to provide any information that PERS considers necessary to determine the applicant's eligibility for a disability benefit.

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

(4) A member may make application immediately after the last day worked even though the member is on a paid leave or on an official leave of absence without pay. No application will be accepted that predates the last day the member was actually on the job.

(5) In determining the effective date of a disability benefit PERS 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 first day of the month following the date of termination.

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

(7) When making application for a PERS disability benefit, PERS will request the applicant authorize any physician, health practitioner, hospital, clinic, pharmacy, employer, employment agency, or government agency to release and disclose to PERS, or independent physicians and vocational consultants retained by PERS, 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 PERS determines relates to the applicant's claim of disability and inability to perform any work for which qualified.

(8) When filing an application for disability benefit, if the applicant wishes to authorize release and disclosure of protected health information, as defined in OAR 459-015-0001(17), the applicant must complete and sign a consent form which specifically authorizes the release and disclosure of such information.

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

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

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

Stat. Auth.: ORS 238A.450 & 45 CFR Parts 160 & 164
 Stats. Implemented: ORS 238A.235
 Hist.: PERS 16-2005, f. & cert. ef. 10-3-05; PERS 7-2007, f. & cert. ef. 4-4-07

459-076-0025

Application Processing — Independent Examinations and Appeals

(1) Following the timely filing of a completed application, PERS may, at its discretion, request an independent medical exam or a voca-

tional evaluation. If PERS requests one or more of these exams or evaluations, PERS will pay the reasonable associated expenses.

(a) For independent medical exams, PERS will inform the applicant in writing and postmarked not less than ten days prior to a scheduled examination, of the identity of the physician(s) selected to examine applicant, together with location, date and time.

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

(c) 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.

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

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

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

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

(e) Good cause does not include:

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

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

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

(2) When PERS requires an applicant to travel to be examined by a physician, vocational consultant, or other professional, PERS will reimburse the applicant's reasonable transportation costs based on the least costly alternative and on availability. Travel by private vehicle will be compensated at the rate applicable to travel by unrepresented state employees on state business. Transportation by taxi, bus, rail, or other public carrier will be paid only upon presentation of receipts from the providers. Lodging and subsistence will be allowed only when a stop-over is necessary and will 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.

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

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

(b) If the disability application is approved:

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

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

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

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

(b) If the disability claim is denied, the staff will issue an Intent to Deny letter by regular and certified mail, return receipt requested. The Intent to Deny letter will 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 Intent to Deny letter.

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

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

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

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

(6) The final denial letter will 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.

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

Stat. Auth.: ORS 183.310 - 183.550 & 238A.450

Stats. Implemented: ORS 238A.235

Hist.: PERS 16-2005, f. & cert. ef. 10-3-05

459-076-0045

Cessation of Disability Benefits Upon Reaching Normal Retirement Age

(1) If a member who is receiving an OPSRP disability benefit reaches normal retirement age, as defined in OAR 459-076-0001(11), disability benefits will cease as of the first of the following month.

(2) The disability benefit will not automatically convert to a retirement benefit upon the member reaching normal retirement age. The member must apply for service retirement benefits before receiving them. In order to receive a service retirement benefit beginning in the month in which a disability benefit ceases under section (1) above, the member must:

(a) Complete the applicable Service Retirement application(s); and

(b) Submit the application(s) to PERS at least 92 days before the first of the month in which the disability benefit ceases under section (1). In no case will a service retirement benefit become payable during a month in which a member receives a disability benefit or earlier than the first of the month in which an application was submitted.

(3) The OPSRP retirement pension benefit will be based on:

(a) The adjusted salary as set forth in section (4) of this rule; and

(b) The total retirement credit accrued, set forth in section (5) of this rule.

(4) The salary the member was receiving immediately prior to leaving active employment as a result of disability will be adjusted for the cost-of-living for each year after the member left employment and before the member's effective date of service retirement.

(a) Cost-of-living adjustments will be based on the Portland-Salem, OR-WA CPI and may not exceed a two percent increase or decrease for any year.

(b) Cost-of-living adjustments will be made only for calendar years in which the member received an OPSRP disability benefit for at least six months during a calendar year.

(5) Retirement credit. A member receiving OPSRP disability benefits will accrue retirement credit, as well as hours of service credit toward vesting, for the entire period of disability until:

(a) The member is no longer disabled; or

(b) The member reaches normal retirement age.

(6) The retirement credit will accrue under the same employment classification in which the member was immediately employed prior to becoming disabled.

(7) A member who is receiving disability benefits who reaches normal retirement age and has not applied for a service retirement will become an inactive member on the first of the month following the month in which they reach normal retirement age.

Stat. Auth.: ORS 238A.450

Stats. Implemented: ORS 238A.155 & 238A.235

Hist.: PERS 16-2005, f. & cert. ef. 10-3-05

459-076-0050

Periodic Reviews

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

(2) Periodic reviews will be used to determine that continued disability benefits are warranted. In recommending the continuance or

discontinuance of a disability benefit, for the original approved disability or a new medical condition, PERS will follow the criteria established under OAR 459-076-0010.

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

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

(a) The reviews may be medical or vocational in nature, or both;

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

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

(B) Updated physician or specialist reports;

(C) Independent medical or vocational examinations; or

(D) Employment and wage information, including but not limited to, tax returns or information from the State Employment Department.

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

(A) If the disability claim is discontinued, the staff shall issue an Intent to Discontinue letter by regular and certified mail, return receipt requested. The discontinuation 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 Intent to Discontinue letter;

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

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

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

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

(D) The final discontinuation letter will 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 member has the burden to prove continuing eligibility for a disability benefit.

(6) In recommending the continuance or discontinuance of a disability benefit, PERS shall follow the criteria established under OAR 459-076-0010.

(7) The Director, or Director's designee, is hereby authorized to approve or deny the continuance of a disability benefit.

Stat. Auth.: ORS 238A.450

Stats. Implemented: ORS 238A.235

Hist.: PERS 16-2005, f. & cert. ef. 10-3-05; PERS 7-2007, f. & cert. ef. 4-4-07

459-076-0055

Payment of Disability Benefit

(1) The payment of a disability benefit will commence on the later of:

(a) The first of the calendar month in which the member files an complete application for disability benefits with PERS; or

(b) The first of the month following the first full calendar month after final payment by the employer of any wages or paid leave benefits to the member, excluding any cash payoff of accrued vacation or compensatory time.

(c) Notwithstanding subsections (a) and (b) of this section, no payment shall be made prior to the end of the period of 90 consecutive days beginning with the date of disability as defined in OAR 459-015-0001(4); and

(d) A disability benefit will be retroactive to the effective date of disability benefit, as defined in OAR 459-076-0001(5).

(2) If PERS cannot calculate the actual disability benefit payment, an estimated payment will be made until PERS receives all the necessary information needed to calculate the actual benefit payment. The payment will be made retroactive to the effective date of disability if the benefits become due before the ninety consecutive day period of incapacitation has elapsed.

(a) If the estimated payment results in an underpayment of \$10 or more a month, the member will receive interest under the provisions of OAR 459-007-0015.

(b) If the estimated payment results in an overpayment of any amount, the overpayments may be recovered by decreasing the monthly benefit amount until the difference between the amount the member received and the amount the member should have received is recovered.

(3) In the event a member applying for a disability benefit dies prior to the Director's approval of the application:

(a) The application will be considered cancelled effective on the date of the member's death.

(b) The member will be considered as dying prior to retirement.

(c) If the member was vested and married at the time of death, the spouse of the deceased member will be eligible for an OPSRP death benefit as set forth in ORS 238A.230.

(d) The amounts in the member's Individual Account Program (IAP) account(s), to the extent the member is vested in those accounts, will also be paid in a lump sum to the beneficiary or beneficiaries designated by the member for the purposes of the IAP.

(4) In the event a member applying for a disability benefit dies after the Director's approval of the application, the member will be considered as dying prior to retirement. If a married member is vested, the member's spouse will be eligible for an OPSRP death benefit as set forth in ORS 238A.230.

(5) For the period during which a member is receiving a disability benefit, retirement credit, as well as hours of service toward vesting, will be credited to the member if:

(a) The member accrued 10 years or more of retirement credit under the OPSRP pension Program prior to becoming disabled; or

(b) The member became disabled by reason of injury or disease sustained while in the performance of duty.

Stat. Auth.: ORS 238.450

Stats. Implemented: ORS 238A.230 & 238A.235

Hist.: PERS 16-2005, f. & cert. ef. 10-3-05

459-076-0060

Reduction Due to Workers' Compensation Payment

(1) The total payments received by an OPSRP member receiving both OPSRP disability benefits and payments from Workers' Compensation may not exceed 75 percent of the member's monthly salary as of the date the member becomes disabled. Other disability-related income, such as Social Security and/or private disability insurance plan payments will not affect the amount of OPSRP disability benefits.

(2) A member's disability benefit will be offset by any gross monthly workers' compensation 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 workers' compensation claim is based is related to the condition on which the OPSRP disability benefit claim is based:

(a) A monthly workers' compensation payment includes:

(A) Weekly gross payments;

(B) Semi-monthly gross payments;

(C) Monthly gross payments; and

(D) 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) A monthly workers' compensation payment does not include:

(A) Payments for medical services;

(B) Payments for vocational training;

(C) Reemployment assistance payments; and

(D) 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) The workers' compensation payment will be considered paid on the date that payment is issued, and will not be allocated to any period other than the month payment is issued.

(3) In the event a member is eligible to receive an OPSRP disability benefit, PERS will request of the Workers' Compensation Division, or any other public or private workers' compensation insurance company, documentation of the portion of a lump sum settlement that is made on account of a temporary total disability or a permanent total disability.

(4) The disability benefit of a member will be reduced by the amount by which the combined monthly benefits payable from both PERS and any monthly workers' compensation payment on account of temporary total disability or permanent total disability exceed 75 percent of the monthly salary of the member on the date of disability.

(5) In determining whether the combined monthly benefits exceed 75 percent of the monthly salary of the member on the date of disability, cost-of-living adjustments will not be considered.

(6) A member who is eligible to receive a disability benefit must report immediately to PERS the receipt or the award of any monthly workers' compensation payment as described in section (2)(a) of this rule.

(7) In the event a member receives one or more monthly workers' compensation payment(s) while also receiving a disability benefit as described in OAR 459-076-0015, but PERS is not notified of the workers' compensation payment until after making one or more disability benefit payments:

(a) PERS will recalculate the disability benefit, taking the monthly workers' compensation payments into account; and

(b) PERS will invoice the member for, or recover under ORS 238.715, any overpayment of OPSRP disability benefits.

Stat. Auth.: ORS 238.715 & 238A.450

Stats. Implemented: ORS 238A.235

Hist.: PERS 16-2005, f. & cert. ef. 10-3-05; PERS 7-2007, f. & cert. ef. 4-4-07

DIVISION 80

OPSRP INDIVIDUAL ACCOUNT PROGRAM

459-080-0010

Membership

(1) An employee who is eligible for membership in the pension program under OAR 459-075-0010 shall become a member of the individual account program on the same day membership is established in the pension program.

(2) An employee who was an active or inactive member of PERS on August 28, 2003, and retains membership in PERS through January 1, 2004, shall become a member of the individual account program on January 1, 2004.

(3) An employee who performed a period of service before August 29, 2003, that was credited to the six-month period required under ORS 238.015 for membership in PERS shall become a member of the individual account program on the date the employee becomes a member of PERS, or January 1, 2004, whichever is later.

Stat. Auth.: OL 2003 Ch. 733

Stats. Implemented: OL 2003 Ch. 733

Hist.: PERS 21-2003, f. 12-15-03 cert. ef. 1-1-04

459-080-0050

IAP Employer Account Contributions

(1) Employers shall not begin employer contributions under ORS 238A.340 to the employer account of a member under the OPSRP Individual Account Program (IAP) until the agreement by which those contributions will be made has been provided to PERS. The agreement must, at a minimum, provide the following information:

(a) The date those contributions are to commence; and

(b) The percentage of salary to be contributed.

(2) ORS 238A.340(1) allows participating public employers to agree to provide these employer contributions for specific groups of employees. The employer will be solely responsible for reporting which groups of employees are eligible for the employer contributions, so long as those employees are eligible for membership under ORS 238A.300 and OAR 459-080-0010. PERS will rely on the employer's records to determine whether an employee was in a group that should have received employer contributions.

(3) Employer contributions made on behalf of a person who fails to meet the standards for IAP employee contributions under OAR 459-080-0150 will be returned pursuant to section (5) of that rule.

(4) Employer contributions made in error for an employee who is not entitled to those contributions under the employer's agreement will be returned less any fees or losses incurred since the contributions were submitted. Any earnings on these contributions will be credited to the forfeiture account established under OAR 459-080-0150.

(5) Whether contributions were erroneous will be based upon the employer's records as reported to PERS.

Stat. Auth.: ORS 238A.450
 Stats. Implemented: ORS 238A.340
 PERS 2-2005, f. & cert. ef. 1-31-05

459-080-0100

Credit for Military Service under USERRA

(1) Purpose. The purpose of this rule is to implement ORS 238A.415.

(2) Limitation of scope of rule. Contributions, benefits and service credit provided under this rule shall not exceed contributions, benefits and service credit required under federal law for periods of military service.

(3) Definitions. For purposes of this rule:

(a) "Employee" means:

(A) An eligible employee, as defined in ORS 238A.005;

(B) An active member of PERS, as defined in ORS 238.005, on or after January 1, 2004; or

(C) An employee who is entitled to credit toward the probationary period required by ORS 238.015.

(b) "Employer" means the legal entity that employed an individual at the time that individual left for military service. For purposes of this rule, the state of Oregon is a single legal entity. Each separate school district is a separate legal entity.

(c) "Military service" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes:

(A) Active duty;

(B) Active duty for training;

(C) Initial active duty for training;

(D) Inactive duty training;

(E) Full-time National Guard duty;

(F) A period for which an individual is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any of the above types of duty; or

(G) A period for which an individual is absent from employment for the purpose of performing funeral honors duty as authorized by 10 U.S.C. § 12503 or 32 U.S.C. § 115.

(d) "Salary" means the rate of pay the eligible employee would have earned if he or she had remained employed during the period of military service, including any increases that would have been awarded the employee based on longevity of employment or seniority of position. If such rate of pay is not reasonably certain, the rate shall be based on the employee's average rate of pay from the employer. The average rate of pay shall be calculated for a period not to exceed the 12-month period immediately preceding the period of military service.

(e) "Uniformed services" means the following:

(A) Armed Forces;

(B) Army National Guard;

(C) Air National Guard;

(D) Commissioned corps of the Public Health Service; and

(E) Any other category of persons designated by the President in time of war or national emergency.

(f) "USERRA" means the 1994 federal Uniformed Services Employment and Reemployment Rights Act as of the effective date of this rule.

(4) Eligibility for retirement benefits under USERRA. An eligible employee shall be entitled to the benefits of this rule if:

(a) The employee leaves employment with a participating public employer to perform military service;

(b) The cumulative length of the employee's absence from employment with the employer for military service does not exceed the limits set forth in USERRA §4312;

(c) The employee initiates reemployment with the same participating public employer within the time limits specified in USERRA §4312;

(d) All employee contributions have been made; and

(e) All other eligibility requirements for benefits under USERRA are met.

(5) Service credit for military service under USERRA. An employee who meets the eligibility requirements of section (4) of this rule shall receive the amount of credit toward the period of employment required under ORS 238A.300 and the vesting requirements described under ORS 238A.320, the employee would have accrued if

he or she had remained in employment with the employer during the period of military service.

(6) Termination. An employee's eligibility for the benefits of this rule terminates upon the occurrence of one of the disqualifying events listed in USERRA §4304.

(7) Employee contributions.

(a) Employee contributions shall be made upon reemployment for eligible military service in accordance with the following:

(A) Employee contributions to be made by the employer. If the employee's employer had agreed to pay employee contributions under ORS 238A.335(2)(b) as of the date the employee left employment to perform military service, the employer shall pay, in a lump sum payment, the amount of contributions that would have been made if the employee had remained in the employment of the employer during the period of military service, based on salary as defined in section (3) of this rule.

(B) Employee contributions to be made by the employee. If the employee's employer had not agreed to pay employee contributions, or had agreed to pay employee contributions under ORS 238A.335(2)(a) as of the date the employee left employment to perform military service, the employee may pay all or part of the contributions that would have been made if the employee had remained in the employment of the employer during the period of military service, based on salary as defined in section (3) of this rule. Contributions made under this paragraph may be remitted to PERS by:

(i) Payroll deduction; or

(ii) Monthly payment of no less than one month of contributions; or

(iii) Lump-sum payment.

(b) Any individual, agency or organization may pay the employee contributions specified in paragraph (7)(a)(B) on behalf of the employee under the payment provisions set forth in subparagraph (5)(a)(B)(ii) or (iii).

(c) Employee contributions may only be paid during the period beginning with reemployment and whose duration is three times the period of the employee's military service, such period not to exceed five years.

(d) Employee contributions shall be credited to the employee account established in ORS 238A.350(2).

(e) Employee contributions shall not include nor be entitled to earnings or losses that would have been credited during the period of military service.

(8) Employer contributions.

(a) If the employee's employer had agreed to make employer contributions under ORS 238A.340 as of the date the employee left employment to perform military service, the employer shall pay, in a lump sum payment, the amount of contributions that would have been made if the employee had remained in the employment of the employer during the period of military service, based on salary as defined in section (3) of this rule.

(b) Any contributions made under this section shall be added to the employee's employer account established in ORS 238A.350(3).

(c) Contributions made under this section shall not include nor be entitled to earnings or losses that would have been credited during the period of military service.

(9) Military service that includes January 1, 2004. If an employee as defined in section (3)(a)(B) or (C) of this rule performs military service over a period including January 1, 2004:

(a) Retirement credit and contributions for military service prior to January 1, 2004, shall be determined in accordance with OAR 459-011-0100.

(b) Retirement credit and contributions for military service on or after January 1, 2004, shall be determined in accordance with this rule and OAR 459-011-0100.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 238A.450 & 238A.415

Stats. Implemented: ORS 238A.415

Hist.: PERS 3-2004, f. & cert. ef. 1-22-04; PERS 16-2006, f. & cert. ef. 11-24-06

459-080-0150

Employee Contributions into the IAP Account

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

(a) "Forfeiture account" means the account set up by PERS to administer overpayments of employee contributions.

(b) "Salary" has the same meaning provided in:

(A) ORS 238A.005 for members who established membership in the Individual Account Program under the provisions of OAR 459-080-0010(1); or

(B) ORS 238.005 for members who established membership in the Individual Account Program under the provisions of OAR 459-080-0010(2) or (3).

(2) Employee contributions under the OPSRP Individual Account Program ("IAP") are required from all eligible employees who qualify as members, as established under OAR 459-080-0010, who:

(a) Are working in a position designated as a "qualifying position" as defined in OAR 459-070 0001; or

(b) Perform a total of 600 or more hours in a calendar year with one or more participating employers in one or more classes the participating employer has designated as a participating class.

(3) Contributions for current members.

(a) For a member who meets the standard set forth in section (2)(a) of this rule, contributions of six percent of the member's salary are required to be transmitted for all pay periods assigned under OAR 459-070-0100 from the date of hire, or January 1 of the current year, whichever is later.

(b) Once a member meets the standard set forth in section (2)(b) of this rule, retroactive contributions of six percent of the member's salary are required to be transmitted following the member's performance of 600 hours in the calendar year. Contributions are due for all pay periods assigned under OAR 459-070-0100 from the date of hire, or January 1 of the current year, whichever is later.

(4) Contributions for new employees.

(a) For an eligible employee who meets the standard set forth in section (2)(a) of this rule, contributions of six percent of the member's salary are required to be transmitted after the employee has established membership in the IAP as set forth under OAR 459-080-0010.

(b) Once an eligible employee meets the standard set forth in section (2)(b) of this rule, retroactive contributions of six percent of the member's salary are required to be transmitted from the date of membership in the IAP, as established under OAR 459-080-0010.

(5)(a) If contributions are submitted on behalf of an eligible employee who does not meet the standards set forth under section (2)(a) or (b) of this rule, the actual amount of those contributions will be returned after the end of the calendar year during which the pay period triggering those contributions ended.

(b) Any net earnings, losses, or administrative fees attributable to the returned contributions will be applied to the forfeiture account.

Stat. Auth.: ORS 238A.450

Stats. Implemented: ORS 238A.330

Hist.: PERS 13-2004(Temp), f. 5-19-04, cert. ef. 6-21-04 thru 12-1-04; PERS 21-2004, f. & cert. ef. 9-22-04; PERS 21-2005, f. & cert. ef. 11-1-05; PERS 4-2006, f. & cert. ef. 4-5-06

459-080-0200

IAP Account Adjustments for Earnings or Losses

(1) Earnings and losses on employee, employer, and rollover contributions under the OPSRP Individual Account Program ("IAP") will be posted at least annually, in accordance with ORS 238A.350(1). In no event will earnings or losses be posted to individual accounts until funds are actually received by PERS and have been successfully reconciled with the corresponding wage and contribution record. Accounts will be adjusted at least annually thereafter to reflect any net earnings or losses and to pay reasonable administrative expenses.

(2) When a member requests a withdrawal of the member's employee, rollover and employer accounts under ORS 238A.375, those accounts will be adjusted to reflect any net earnings or losses and to pay reasonable administrative expenses only through the end of the month in which the request for withdrawal is received, regardless of when the payment is issued.

(3) The provisions of this rule are effective January 1, 2004.

Stat. Auth.: ORS 238A.450

Stats. Implemented: ORS 238A.350

Hist.: PERS 19-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-25-04; PERS 12-2004, f. & cert. ef. 5-19-04; PERS 24-2004, f. & cert. ef. 10-18-04; PERS 12-2006, f. & cert. ef. 6-26-06

459-080-0250

IAP Account Installments

(1) Definitions. "Payout Period" means the span of years over which the member elects to receive installment payments under section (2) of this rule.

(2) Upon retirement, a member of the individual account program who elects to receive the amounts in the member's employee and employer accounts in installments under ORS 238A.400(2) shall designate the number of years over which the installments are to be paid, selecting a period of 5, 10, 15, or 20 years. The member may also request that installments be made on a monthly, quarterly, or annual basis.

(3) Installments will be adjusted at each payment to reflect investment gains and losses on the unpaid balance. The member's adjusted balance will be divided by the number of installment payments left to determine the amount to be paid to that member.

(4) If a member requests installments under section (2) of this rule, but the amount of the requested installment would be less than \$200 as determined at the time of the initial request, the frequency and Payout Period of the installment payment will be modified so that the amount of the installment is at least \$200. If the member's account balance is \$1000 or less at the time of the initial request, the member will not be eligible for installments and the balance will be paid in a lump sum.

(5) Notwithstanding the Payout Period selected by the member under section (2) of this rule, any distribution will be adjusted to comply with the required minimum distribution requirements of 26 U.S.C. 401(a)(9) and regulations implementing that section, as in effect August 29, 2003.

(6) Members who elect a five year Payout Period or a lump sum payment may elect to directly roll over any portion of their IAP installment or lump sum payment to an eligible retirement plan, subject to the following limitations:

(a) Members will not be permitted to directly roll over any IAP installment payments if the total annual distribution from their IAP account is reasonably expected to total less than \$200.

(b) If members elect to have a portion of their IAP installment or lump sum payment paid directly to them and a portion directly rolled over, the portion to be rolled over cannot be less than \$500 or that portion will be paid directly to the member.

(7) Members who elect a 10, 15, or 20 year Payout Period cannot elect to have any portion of their installment payments rolled over.

(8) Members who are subject to the required minimum distribution requirements referenced in section (5) of this rule may only roll over that portion of their installment or lump sum payments that exceeds required minimum distribution requirements.

Stat. Auth.: ORS 238A.450

Stats. Implemented: ORS 238A.400

Hist.: PERS 23-2003(Temp), f. & cert. ef. 9-22-04 thru 3-15-05; PERS 30-2004, f. & cert. ef. 11-23-04; PERS 21-2005, f. & cert. ef. 11-1-05; PERS 14-2006, f. & cert. ef. 9-26-06

459-080-0500

Limitation on Contributions

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

(a) "Annual addition" has the same meaning given the term in 26 U.S.C. 415(c)(2) as in effect on August 29, 2003.

(b) "Compensation" has the same meaning given the term in 26 U.S.C. 415(c)(3) as in effect on August 29, 2003.

(2) **Annual addition limitation.** Except as otherwise provided in this rule, the annual addition to a member account for any calendar year shall not exceed the lesser of:

(a) \$41,000; or

(b) 100 percent of the member's compensation for the calendar year.

(3) **Purchase of military service.** If a member makes a payment to purchase retirement credit for military service under OAR 459-080-0100:

(a) The payment shall be treated as an annual addition for the calendar year of the military service 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's compensation shall be the amount described in OAR 459-080-0100(3)(c).

Stat. Auth.: OL 2003 Ch. 733

Stats. Implemented: OL 2003 Ch. 733

Hist.: PERS 21-2003, f. 12-15-03 cert. ef. 1-1-04