

# OREGON PUBLIC EMPLOYEES RETIREMENT BOARD

<b>Friday October 21, 2005 1:00 P.M.</b>		<b>PERS 11410 SW 68<sup>th</sup> Parkway Tigard, OR</b>	
<b>ITEM</b>		<b>PRESENTER</b>	
<b>A. Administration</b>			
1.	September 23, 2005 Board Meeting Minutes	CLEARY	
2.	Director's Report		
a.	Forward-Looking Calendar		
b.	OIC Investment Report		
c.	Budget Report		
d.	Miscellaneous		
<b>B. Consent Action and Information Items</b>			
1.	Adoption of Non-Substantive Changes to Chapter 459 Administrative Rules	RODEMAN	
2.	First Reading of OAR 459-007-0015, Underpayment Interest Rate	RODEMAN	
3.	Notice of OAR 459-020-0025, Social Security Reporting Penalties	RODEMAN	
4.	Notice of OAR 459-010-0003, PERS Membership Eligibility	RODEMAN	
5.	Notice of OAR 459-010-0014, Creditable Service	RODEMAN	
6.	Notice of OAR 459-005-0610, Recovery of Overpayments	RODEMAN	
<b>C. Action and Discussion Items</b>			
1.	Strunk / Eugene Implementation Plan Update	STROUD	
2.	Adoption and Notice of Earnings Crediting Rules	RODEMAN	
3.	2004 Earnings Crediting and Reserving	RODEMAN / ORR	
4.	Financial Modeling of Actuarial Methods	HALLMARK	
<b>D. Executive Session Pursuant to ORS 192.660(2)(f), (h), and/or ORS 40.225</b>			
1.	Litigation Update	LEGAL COUNSEL	

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Michael Pittman, Chair * James Dalton * Thomas Grimsley * Eva Kripalani * Brenda Rocklin * Paul R. Cleary, Executive Director

# **PUBLIC EMPLOYEES RETIREMENT BOARD**

PERS Board Meeting  
11:00 A.M.  
September 23, 2005  
Tigard, Oregon

MEETING DATE	10-21-05
AGENDA ITEM	A.1. 9-23-05 Minutes

## **MINUTES**

### **Board Members:**

Mike Pittman, Chair  
Brenda Rocklin  
James Dalton  
Thomas Grimsley  
Eva Kripalani

### **Staff:**

Paul R. Cleary, Director  
Carolyn Johnsen  
Steve Rodeman  
Stephanie Vaughn  
Brendalee Wilson

Steve Delaney  
Gloria English  
Jeff Marecic  
Donna Allen  
Loren Cheel  
David Crosley  
Marsha Bacon  
Brian DeForest  
Craig Stroud  
Dale Orr  
Jane Beisell  
Joe DeLillo  
Dave Tyler

### **Others:**

See attached list of attendees.

Board Chair Mike Pittman called the meeting to order at 11:00 A.M. for the purpose of hearing contested case appeals. Brenda Rocklin and Tom Grimsley joined Chair Pittman in the contested case portion of the meeting.

## **CONTESTED CASE HEARINGS**

### **A.1. APPEAL OF JON RANDOLPH BROWN**

Steve Rodeman, Policy, Planning and Legislative Analysis Division (PPLAD) administrator, reviewed the history of the Appeal of Jon Randolph Brown, and described the related proposed order.

Attorney Nelson Hall spoke on behalf of Mr. Brown.

### **A.2. APPEAL OF STEVEN E. SCHWERDT**

Rodeman reviewed the history of the Appeal of Steven E. Schwerdt, and described the related proposed order.

### **A.3. APPEAL OF ALICE MITCHELL**

Rodeman reviewed the history of the Appeal of Alice Mitchell, and described the related proposed order.

PERS Board meeting

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#### A.4. APPEAL OF PEGGY BARLOW

Rodeman reviewed the history of the Appeal of Peggy Barlow, and described the related proposed order.

Attorney Ann Mercer spoke on behalf of Peggy Barlow.

The Board adjourned for lunch at 11:35 A.M.

The Board reconvened to open session at 1:00 P.M with all Board members in attendance.

#### A. CONTESTED CASE HEARINGS

It was moved by Brenda Rocklin and seconded by Tom Grimsley to adopt the draft final orders as presented with the modifications requested by Vice-Chair Rocklin for the following items:

- A.1. Appeal of John Randolph Brown
- A.2. Appeal of Steven E. Schwerdt
- A.3. Appeal of Alice Mitchell
- A.4. Appeal of Peggy Barlow

The motion passed unanimously.

#### D.4. STRUNK / EUGENE IMPLEMENTATION POLICIES AND METHODS

Director Paul Cleary said that PERS had received over 200 emails and letters regarding implementation of the *City of Eugene* settlement agreement. Cleary said the letters and comments were considered in the staff's analysis and in developing recommendations to the Board. Cleary said the three criteria that staff used to evaluate options were whether the option was (1) legally permissible (2) fiscally sound and (3) consistent with the Board's fiduciary obligation. Cleary also noted two key objectives of (1) minimizing the impact on current monthly benefits by spreading repayment over as much time as possible and (2) keeping implementation as simple as possible.

Chair Pittman acknowledged that all the letters and emails had been read by the Board and said there would be further opportunity for interested parties and stakeholders to share their views with the Board.

Steve Rodeman, Policy, Planning and Legislative Analysis Division (PPLAD) administrator and Craig Stroud, Benefit Payments Division administrator, gave a presentation detailing PERS obligations under the *City of Eugene* settlement agreement, and evaluating the options for meeting those obligations. Rodeman reviewed how 1999 earnings would be reallocated; the impacts on current members, retirees and others who received 1999 earnings to Tier One regular accounts; the possible sources of recovery; and the staff's legal, fiscal and fiduciary analysis.

Stroud explained the benefit recalculation process and the proposed actuarial reduction method, which would adjust monthly benefit payments to recover past overpayments. Stroud described a

system-wide approach that would minimize impacts by extending recovery over the actuarially determined member's lifetime. Stroud said that from an administrative standpoint, this one-time adjustment would not require future monitoring or recalculation, and would be done in conjunction with any necessary benefit recalculation to reflect the combined Strunk/Eugene implementation factors.

Rodeman described other issues that would eventually be addressed in the implementation plan, including collection of overpayments made to members who are not receiving monthly payments; a charge-off policy; waiver of recovery for amounts of under fifty-dollars as provided under ORS 238.715; and that no interest charges or collection costs would be assessed on repayments.

PERS Coalition Attorney Greg Hartman expressed disappointment that the Oregon Supreme Court declared the City of Eugene appeal moot and that this decision had left many unanswered questions. Hartman reviewed previous Board decisions, related 2003 Legislative actions, prior court decisions and the effects of those events. Hartman said that the PERS Coalition was not convinced recovery was necessary and was challenging the Eugene settlement agreement in separate legal action, but also appreciated the PERS staff's proposed methods to mitigate impacts on current monthly benefit recipients if recovery goes forward.

Attorney Bill Gary, representing various PERS employers, agreed that the staff's presentation of proposed implementation methods followed appropriate guidelines. Gary described historical events and the related court rulings and legislative decisions and detailed the current Board's settlement agreement to credit Tier One member regular accounts for 1999 at 11.33 percent and not the 20 percent that the prior Board had credited.

Board Counsel, Orrick Attorney Joseph Malkin said that the Board has a fiduciary duty to the members to maintain the fiscal soundness of the system and the PERS fund. Malkin said it was the Board's responsibility to act fairly and prudently to members as a whole: past, current and future. Malkin outlined the history surrounding the recent legal proceedings and said that Judge Lipscomb ruled that the previous Board's 1999 earnings crediting decision was illegal and voided that decision. Malkin quoted various passages of the Oregon Supreme Court Strunk ruling and the provisions of HB 2003. Malkin praised staff's work in considering all possible recovery methods, while complying with court and legislative directives. From a fiduciary standpoint and based on the analysis of the Strunk decision and PERS reform legislation, Malkin recommended to the Board that they accept the staff's proposal to implement the direct recovery method.

Janet Jackson, a 2003 retiree, spoke on behalf of Oregon Education Association (OEA) members. She said that, based on information that she received from OEA, her repayment obligation would total approximately \$3200 which would result in a \$70 per month decrease in her pension. Retiring at 55 years of age, after 32 years of teaching, Jackson said her retirement decision was based on the change of benefits related to PERS reform rather than any desire to retire, and that her fixed income was already being squeezed by increased health and energy costs.

Michael Arken, a 2002 City of Portland retiree, said that retirees made irrevocable life-changing decisions to retire based on information they received from PERS. Arken said that his notice of retirement did not say "subject to change without notice". If those decisions are now subject to change, Arken said he would like to have his job back, his age back and his benefits back.

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Steve Manton, representing the City of Portland, said that the PERS staff did a very good job of describing and analyzing a very difficult subject and finding a way to have the least amount of impact on current recipients' monthly benefits while still recovering the 1999 earnings over crediting.

Karen Artiaco, Lane County Risk and Benefits Manager, recommended that the Board adopt a plan of action based on good judgment, within the letter and spirit of court decisions, relying upon legal counsel and PERS staff. Artiaco stressed the importance of maintaining the continued financial stability of PERS as well as the Board's fiduciary responsibility to all PERS members.

Special Districts Association of Oregon representative Deborah Guzman encouraged the Board to make decisions that are legally defensible and to recognize its fiduciary responsibility to fairly and equitably allocate the fiscal impact among those who directly benefited from the 1999 over crediting. Guzman encouraged the Board to implement a recovery method that would be compassionate and fair and that would provide stability for retirees, employers, and taxpayers' throughout Oregon.

PERS members Linda Crane, Barney Gorter, Lynn Cleary, Michael McCoy, Dennis Tipton, Karen Mulligan, Ron Ostrander, James M. Schultz and Jim Blanchard addressed the Board, providing their concerns, questions and recommendations regarding the Board's implementation of the *Strunk/Eugene* decisions. These included the potential need to revisit purchases, transfers and option selections; taxation issues; legal issues; timing concerns; information needs; and concern that the actuarial recovery method could result in "over-collection" if one lives beyond the expected life-span.

Chair Pittman said that all comments would be taken under consideration in developing the policies and implementation plan to recalculate benefits and recover the existing over-payments. Vice-Chair Rocklin said the Board's legal, fiscal, and fiduciary obligations and fairness for active members, retirees, employers and the system were the foremost concerns. All Board members agreed that this was a difficult situation for all involved and supported the staff's effort to craft a direct recovery method that would have the least possible impact on current monthly benefit payments.

The Board directed staff to provide additional detail in the direct recovery implementation plan on the various issues and concerns raised in member comments

Director Cleary encouraged interested parties to send their implementation questions and recommendations to PERS, and noted that staff would create a link on the PERS website to receive such comments.

## **ADMINISTRATION**

### **A.1. BOARD MEETING MINUTES OF AUGUST 5, 2005**

Brenda Rocklin moved and Eva Kripalani seconded to approve the minutes of the August 5, 2005 meeting. The motion passed unanimously.

A.2. DIRECTOR'S REPORT

Director Paul Cleary presented the Forward-Looking Calendar and noted that updates on the *Strunk / Eugene* implementation plan and on the Individual Account Program (IAP) remediation plan will be included in the October, November and December Board meetings. Cleary said that staff would work on scheduling a Board Retreat in late November or early to mid-December, with topics to include review of strategic and tactical plans for the agency and its various divisions. Cleary announced that PERS would be hosting the 2005 Northwest Pension Peer Conference in late October involving state retirement system personnel from Oregon, Washington, Idaho, Montana and Nevada. Cleary provided the August 31, 2005 investment report for the Oregon Public Employees Retirement Fund, noting that the net asset value of the fund continues to increase and was at an all-time high of \$51.5 billion as of August, 2005. Cleary presented the September 2005 Budget Report and noted that the agency's overall 2003 – 2005 expenses fell below the budgeted projections. On the HB 2020 Employer Reporting update, Cleary noted a continuing improvement in employer reporting timeliness and accuracy as a result of the improved training, outreach, experience and commitment.

**CONSENT ACTION AND INFORMATION ITEMS**

C.1. NOTICE FOR RULEMAKING FOR OAR 459-007-0015, UNDERPAYMENT INTEREST RATE

Rodeman presented the notice of rulemaking that would implement 2005 legislation (SB 109). Rodeman said that staff is proposing to apply the Average Annualized Rate on benefit underpayments to be consistent with other distribution interest calculations and reflect the actual earnings on these dollars while they were held in the fund's cash account.

C.2. NOTICE FOR RULEMAKING FOR NON-SUBSTANTIVE CHANGES TO CHAPTER 459

Rodeman noted that rulemaking began in July 2005 for the proposed non-substantive changes to clean up typographical errors and correct citations and cross-references in various PERS rules. Staff was now amending that earlier notice to include changes related to 2005 legislation.

C.3. ADOPTION OF OAR 459-035-0001, HEALTH INSURANCE PROGRAMS DEFINITIONS

Rodeman presented the proposed rule amendments to continue to define "Dependent Domestic Partner of a PERS Retiree" so that it applies to the same persons who were included in the definition before the federal 2004 Working Families Tax Relief Act became law. Rodeman noted the rule would apply retroactively, making the provisions effective January 1, 2005.

It was moved by James Dalton and seconded by Tom Grimsley to approve the staff recommendation. The motion passed unanimously.

C.4. ADOPTION OF "EQUAL TO OR BETTER THAN" FINAL ORDER

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Rodeman presented the Equal To Or Better Than (ETOB) Final Determination and related Board order to provide an exemption from participating in PERS for selected employers that have met the ETOB requirements of OAR 459-030-0025 as confirmed by analysis of Mercer Human Resources Consulting.

It was moved by James Dalton and seconded by Tom Grimsley to approve the staff recommendation. The motion passed unanimously.

### **ACTION AND DISCUSSION ITEMS**

#### **D.2. ADOPTION OF DIVISION 015 DISABILITY RULES**

#### **D.3. ADOPTION OF DIVISION 076 DISABILITY RULES**

Brendalee Wilson, Policy, Planning and Legislative Analysis Division (PPLAD) manager described the process for proposing and revising amendments for Division 15 rules related to disability benefits for PERS Chapter 238 members and new Division 76 rules related to disability benefits for OPSRP Chapter 238A members. Wilson said that these rules would provide clear, consistent information for PERS members who apply for a disability retirement benefits, while also providing staff needed guidance on administrative and policy issues.

It was moved by Brenda Rocklin and seconded by Eva Kripalani to approve the staff recommendations. The motion passed unanimously.

#### **D.5. BOARD GOVERNANCE MATTERS**

Chair Pittman said that moving the Contested Case Hearings to the 11:00 A.M. time worked well and that this would be the standard procedure for all future meetings that involved contested cases.

### **EXECUTIVE SESSION**

Pursuant to ORS 192.660 (2) (f), (h) and ORS 40.255, the Board went into executive session at 3:15 P.M.

The Board reconvened to open session.

Chair Pittman adjourned the meeting at 3:48 P.M.

Respectfully submitted,

Paul R. Cleary  
Executive Director

*Prepared by Donna R. Allen, Executive Assistant*

<b>Other Attendees:</b>	R. A. Gilbert	N. Hall	R. Mullins	J. Beck
C. Counsell	L. Bowman	J. Hawkins	J. DeNicola	L. Gard
N. Lefson	R. G. Gouldry	S. Hanby	C. Standafer	K. Bonar
B. Brainard	T. Domenigoni	J. Grandy	H. Garner	D. Baker
D. Hulbert	D. Domenigoni	G. Hodges	E. LaBerge	L. Mellon
N. Matthews	J. McEchron	B. Keister	S. Wansley	L. Cleary
B. Brislawn	V. Anderson	S. Boyer	T. Querin	J. Doriss
J. Donde	T. ThompsonWestover	K.Sjoglom	S.A. Mulligan	G. Turney
B. Darby	S. Mowery	D.Westover	M. Thomas	H. Stags
P. Lidrich	L. Myllenbeck	J. Cheener	W.Thomas	S. Law
J. Essenbery	E. M. Laird	D. Cheener	B. Davis	M.G. Ruiz
C. Juenemann	B. Bentley	B. Adams	C. Bloom	R. Ruiz
K. Simpson	S. Sunder	J. Gilbert	T. Groubitt	P. Damm
D. Rutledge	G. Meissner	R. Kordub	P. Howell	B. Swanson
M. Krumdieck	V. Hellman	P. Broadus	N. Shire	C. Rieder
L. Krumdieck	K. Artiacio	J. Taylor	T. Brandon	D. Shell
K. Kruetzen	T. Saben	T. Taylor	C. Bridges	L. Califano
B. Griffiths	J. Hudson	M. Urlansky	L. DeLucia	L. Wilson
L. Hunter	R. Falco	J. Beaver	J. Brown	Y. Jenkins
J. Poujall	F. Falco	M. Federspiel	B. Toman	R. Rogers
C. Ristime-Rose	P. Billings	M. O'Gara	S. Esbenseu	P. Wyatt
R. Williams	D. Guzman	M. Hollomon	V. Nolan	E. Ast
M. Deister	S. Wise	B. Wise	W. Aldrich	K. Harper
G. Allen	D. Anderson	K. M. Yates	R. Hamilton	J. Grant
J. Villarreal	S. Tipton	J. M. Schultz	C. Miller	D. Bales
D. L. Rutledge	D. Tipton	P. White	D. Turman	W. Spurling
D. Cleveland	P. West	K. Olson	M. Arken	C. Okita
M. Botkin	G. Clark	J. Cook	G. Mier	L. Rathjo
S. Ruonale	R. Robinson	S. Skidmore	J. Hill	F. Jewell
M. Sizzbowkir	C. McCuth	B. Weitzel	V. Jack	J. Jackson
B. Wanker	D. Tremblay	E. Martin	M. Chapman	B. Hallmark
C. Rust	K. Scott	D. hardt	M. Daut	L. Osternis
J. Blankhard	C. Brown	S. Baker	M. Feldesman	M. Sartain
W. Legsmann	L. Crane	F. Waths	C. Sexton	S. Johnston
D. Pluth	T. Pluth	A. Mercer	S. Rickel	D. Weyand
B. McFree	R. Ostrander	E. Eustice	B. Stout	C. Chavez
P. S. Kuhns	P. K. Kuhns	D. Pierce	C. Smith	M. Keltner
K. Cook	D. Glatt	D. Granger	L. Ely	M. McCoy
P. Pittcok	K. Malmberg	D. Haskew	M. Brenier	D. Romain
D. Wimmer	J. A. Gerhardt	T. Fayringer	G. Rogers	G. Scott
M. Burr	P. Harmon	G. Mitbrath	E. McClain	C. Samuels
B. Hammond	V. Smith	G. Hartman	C. Johnson	R. Kaiser
B. Linden	M. Bronstein	J. Cantrell	A. Stonewall	T. Brown
M.K. Brown	P. Buliher	J. Meissner	H. Bace	A. Belknp
P. Hammond	M. Mesaros	M. Downey	J. Lelack	D. Aldrich
B. Koenig	B. Lee	D. Steves		



# PERS Board Meeting Forward-Looking Calendar

MEETING DATE	10-21-05
AGENDA ITEM	A.2.a. Forward Calendar

## November 2005

**Meeting: 11:00 A.M. and 1:00 P.M. November 18, 2005**

Adoption of OAR 459-007-0015, Underpayment Interest Rate  
Adoption of OAR 459-020-0025, Social Security Reporting Penalties  
First Reading of OAR 459-010-0003, PERS Membership Eligibility  
First Reading of OAR 459-010-0014, Creditable Service

## December 2005

**Meeting: 11:00 A.M. and 1:00 P.M. December 16, 2005**

Adoption of OAR 459-010-0003, PERS Membership Eligibility  
Adoption of OAR 459-010-0014, Creditable Service  
Adoption of Earnings Crediting Rules  
First Reading of OAR 459-005-0610, Recovery of Overpayments

## January 2006

**Meeting: 11:00 A.M. and 1:00 P.M. *January 20, 2006* (tentative date)**

2007 Legislative Process  
Adoption of OAR 459-005-0610, Recovery of Overpayments



# Oregon

Theodore R. Kulongoski, Governor

October 21, 2005

(503) 598-7377  
TTY (503) 603-7766  
www.pers.state.or.us

**TO:** Members of the PERS Board  
**FROM:** Brian DeForest, Budget and Fiscal Operations  
**SUBJECT:** October 2005 Budget Report

MEETING DATE	10/21/05
AGENDA ITEM	A.2. Budget Report

## 2005-07 ACTUAL EXPENDITURES AND PROJECTIONS

Operational expenditures for September were \$2,551,142, reflecting a decrease of \$72,915 from the prior month. Total expenditures fell \$635,116 below projections. There are two driving factors making up this variance. First, the agency continues to experience significant vacancies despite an increased level of hiring. This is reflective of the much-discussed “churning” effect of new and limited duration positions as more recently hired staff seek promotions and/or stability in permanent positions, leaving vacated positions that must be filled often multiple times. Second, initial forecasts for the RIMS Conversion Project (RCP) anticipated expenditures to occur on scheduled delivery dates and did not allow adequate time to perform acceptance testing or invoice processing. RCP expenditure forecasts have been revised by pushing scheduled payments out into future months of the 2005-07 biennium in an effort to more accurately reflect the time it takes to perform acceptance testing activities and process invoices.

## ISSUES/OPPORTUNITIES

Agency issues for the next six months include the annuals project; implementation of Board decisions surrounding the Strunk and Eugene rulings; and, implementing the IAP remediation plan. The agency may also need to identify resources (e.g., vacancy savings) to fully fund increases in Personal Services costs associated with the new collective bargaining agreement. Each of these activities will be added to budget projections based on adopted project plans in order to evaluate the agency’s true budgetary position and will have a dampening effect on the current variance balances.

## BUDGET VARIANCES

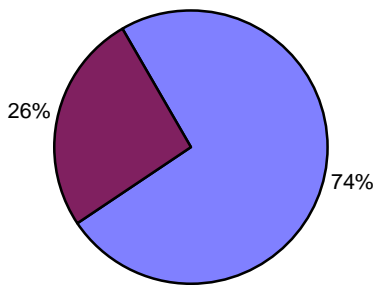
Each section level budget is reviewed and updated at least once per month by a section manager and budget staff. Projections have been made for the annuals project and for large contracted activities such as RCP project management and programming, actuarial activities and for legal services. Contract payment forecasts are based on anticipated invoice billing dates for each of the various contracts. A delay of one month was built in for each of the contract forecasts to account for delays in billings and invoice processing time. Budget staff is evaluating whether to increase that delay by another month based on past experience. Positive budget variances are expected for the Personal Services category and in the RCP. The positive variance is growing as the agency continues to experience a higher than average vacancy rate. A large Services & Supplies variance is anticipated as RCP contains budgeted contingency funding.

**2005-07 Agency-wide Operations - Budget Execution  
Summary Budget Analysis  
For the Month of: Sep. 2005**

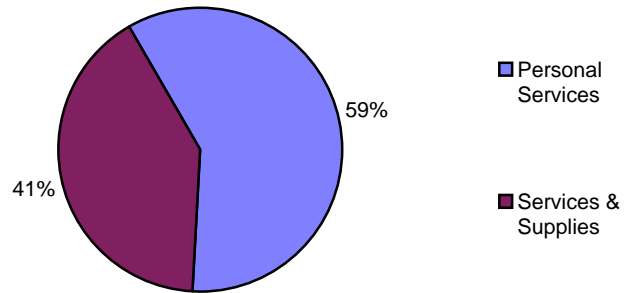
**Biennial Summary**

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2005-07 LAB	Variance
Personal Services	4,891,915	38,983,635	43,875,549	44,564,938	689,389
Services & Supplies	1,737,852	27,025,139	28,762,992	30,384,327	1,621,335
Capital Outlay	181,877	713,275	895,152	1,033,494	138,342
Special Payments					
<b>Total</b>	<b>6,811,644</b>	<b>66,722,049</b>	<b>73,533,693</b>	<b>75,982,759</b>	<b>2,449,066</b>

**Actual Expenditures**



**Projected Expenditures**

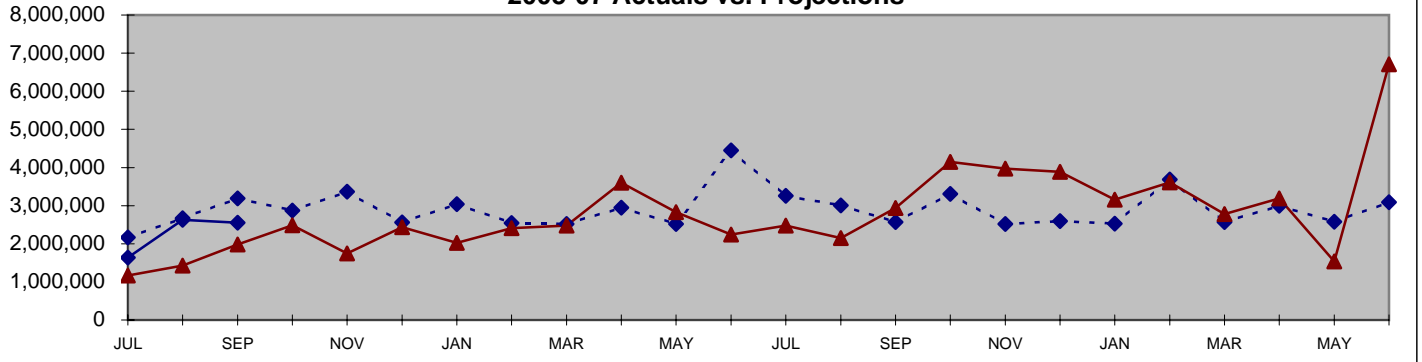


**Monthly Summary**

Category	Actual Exp.	Projections	Variance	Avg. Monthly Actual Exp.	Avg. Projected Expenditures
Personal Services	1,655,020	1,775,282	120,261	1,630,638	1,856,364
Services & Supplies	714,244	1,410,976	696,732	579,284	1,286,911
Capital Outlay	181,877		(181,877)	60,626	33,965
Special Payments					
<b>Total</b>	<b>2,551,142</b>	<b>3,186,258</b>	<b>635,116</b>	<b>2,270,548</b>	<b>3,177,240</b>

**2005-07 Actuals vs. Projections**

---◆--- Projections      —◆— Actuals  
—▲— 2003-05 Actuals



**2005-07 Agency-wide Operations - Budget Execution**  
**Spending Plan - Actual and Estimated Expenditures**  
 2005-07 Summary

	1st QTR	2nd QTR	3rd QTR	4th QTR	5th QTR	6th QTR	7th QTR	8th QTR	ACTUAL EXPEND. TO DATE	EST. EXPEND.	ENC. & PRE-ENC.	TOTAL ESTIMATED EXPEND.	05-07 LAB BUDGET	VARIANCE
<b>Personal Services</b>														
Salaries & Wages	3,102,084	3,484,130	3,529,771	3,553,751	3,583,604	3,609,453	3,632,453	3,654,725	3,102,084	25,047,886		28,149,971	28,490,581	340,610
Temporary Appointments	40,406	13,600	5,200	5,600	1,600	6,200	21,600	25,137	40,406	78,937		119,342	156,924	37,582
Overtime	33,466	18,730	47,630	44,530	18,100	14,230	52,130	36,330	33,466	231,680		265,146	540,501	275,355
Shift Differential	1,326	375	375	375	375	375	375	375	1,326	2,625		3,951	1,978	(1,973)
All Other Differential	34,599	6,358	6,391	6,424	6,325	6,358	6,391	6,424	34,599	44,671		79,270	209,351	130,081
ERB Assessment	1,289	1,862	1,862	1,862	1,862	1,862	1,862	1,862	1,289	13,037		14,326	12,096	(2,230)
Workers' Comp. Insurance (SA														
PERS	449,000	513,645	524,555	527,616	527,909	531,130	540,044	540,996	449,000	3,705,896		4,154,896	4,278,123	123,227
Pension Bond Contribution	207,759	217,840	220,693	222,192	223,975	225,591	227,028	228,420	207,759	1,565,739		1,773,498	1,375,395	(398,103)
Social Security Taxes	243,827	269,624	274,687	276,318	276,165	278,201	284,041	284,809	243,827	1,943,845		2,187,672	2,249,083	61,411
Unemployment Comp.													37,390	37,390
Workers' Comp. Assess.	2,484	3,381	3,381	3,381	3,381	3,381	3,381	3,381	2,484	23,665		26,149	26,835	686
Mass Transit Tax	19,249	20,913	21,186	21,330	21,502	21,657	21,795	21,928	19,249	150,311		169,560	177,399	7,839
Flexible Benefits	756,424	882,192	882,192	882,192	882,192	882,192	882,192	882,192	756,424	6,175,344		6,931,768	6,976,368	44,600
Vacancy Savings													(155,537)	(155,537)
Reconciliation Adj.													188,451	188,451
Unscheduled P.S.														
<b>Total Personal Services</b>	<b>4,891,915</b>	<b>5,432,651</b>	<b>5,517,923</b>	<b>5,545,570</b>	<b>5,546,990</b>	<b>5,580,629</b>	<b>5,673,292</b>	<b>5,686,579</b>	<b>4,891,915</b>	<b>38,983,635</b>		<b>43,875,549</b>	<b>44,564,938</b>	<b>689,389</b>
	<i>actual</i>				<i>estimated</i>									
<b>Services &amp; Supplies</b>														
Instate Travel	12,995	22,985	20,785	25,285	23,185	29,085	21,485	26,130	12,995	168,940		181,935	116,894	(65,041)
Out-of-state Travel		300			300	300	300	300		1,500		1,500	31,127	29,627
Employee Training	30,385	37,815	37,815	37,815	37,815	37,815	37,815	38,915	30,385	265,805		296,190	488,069	191,879
Office Expenses	91,727	201,525	203,484	212,393	211,572	221,481	211,140	254,349	91,727	1,515,941		1,607,668	2,063,722	456,054
Telecommunications	25,713	68,249	68,249	68,249	68,249	68,249	68,249	68,249	25,713	477,745		503,458	537,685	34,227
St. Gov. Svc. Chg.	595,854	89,000	24,000	69,317	589,000	89,000	24,000	24,000	595,854	908,317		1,504,171	1,504,171	0
Data Processing	266,701	630,012	630,021	630,030	630,009	630,018	630,027	630,036	266,701	4,410,153	18,225	4,695,079	5,256,990	561,911
Publicity/Publications	7,318	16,900	29,750	12,100	28,600	16,100	14,200	22,100	7,318	139,750		147,068	292,704	145,636
Professional Services	393,674	329,950	478,750	342,950	326,050	330,900	485,550	407,600	393,674	2,701,750	423,604	3,519,028	2,862,534	(656,494)
IT Professional Services		1,575,021	692,790	2,573,709	979,563	1,026,185	1,227,303	1,035,966		9,110,537	4,043,612	13,154,149	13,897,953	743,804
Attorney General	48,913	124,500	124,500	124,500	124,500	124,500	124,500	135,500	48,913	882,500		931,413	947,681	16,268
Dispute Res. Svc.	957	6,100	4,800	5,900	8,300	5,500	6,200	10,000	957	46,800		47,757	73,736	25,979
Empl. Recruit./Devel.	8,863	15,000	15,000	15,000	15,000	15,000	15,000	15,000	8,863	105,000		113,863	58,036	(55,827)
Dues & Subscriptions	4,943	2,425	2,425	3,005	1,675	1,775	2,175	2,275	4,943	15,755		20,698	50,702	30,004
Facility Rental	104,691	92,718	94,068	94,068	94,068	97,368	99,018	132,024	104,691	703,332		808,023	703,597	(104,426)
Fuels/Utilities	23,497	15,000	15,000	15,000	15,000	15,000	15,000	20,000	23,497	110,000		133,497	121,063	(12,434)
Facility Maint.	47,868	76,251	76,251	76,251	76,251	76,251	76,251	101,668	47,868	559,174		607,042	724,698	117,656
Agency/Program S & S													6,500	6,500
Other COP Costs													2,700	1,605
Other S & S	1,095								1,095			1,095		
Expendable Property	72,658	13,850	6,350	6,350	7,350	7,350	7,350	7,600	72,658	56,200	14,000	142,858	193,465	50,607
IT Expendable Property		49,500	49,500	49,500	49,500	49,500	49,500	49,500		346,500		346,500	450,300	103,800
Unscheduled S & S														
<b>Total Services &amp; Supplies</b>	<b>1,737,852</b>	<b>3,367,101</b>	<b>2,573,538</b>	<b>4,361,422</b>	<b>3,285,987</b>	<b>2,841,377</b>	<b>3,115,062</b>	<b>2,981,211</b>	<b>1,737,852</b>	<b>22,525,698</b>	<b>4,499,441</b>	<b>28,762,992</b>	<b>30,384,327</b>	<b>1,621,335</b>
<b>Capital Outlay</b>														
Office Furn./Fixture													30,868	30,868
Telecomm. Equip.													5,589	5,589
Technical Equipment													57,161	57,161
Data Proc.-Software											300,019	300,019	447,019	147,000
Data Proc.-Hardware	181,877								181,877		413,256	595,133	492,857	(102,276)
Building & Structure														
<b>Total Capital Outlay</b>	<b>181,877</b>								<b>181,877</b>		<b>713,275</b>	<b>895,152</b>	<b>1,033,494</b>	<b>138,342</b>
<b>Special Payments</b>														
<b>Total Special Payments</b>														
<b>Total Expenditures</b>	<b>6,811,644</b>	<b>8,799,751</b>	<b>8,091,460</b>	<b>9,906,992</b>	<b>8,832,977</b>	<b>8,422,007</b>	<b>8,788,355</b>	<b>8,667,790</b>	<b>6,811,644</b>	<b>61,509,333</b>	<b>5,212,716</b>	<b>73,533,693</b>	<b>75,982,759</b>	<b>2,449,066</b>

Percent of 2005-07 LAB Expended: 8.96%  
 Percent of Biennium Expired: 12.50%



# Oregon

Theodore R. Kulongoski, Governor

October 21, 2005

Mailing Address:  
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**TO:** Members of the PERS Board  
**FROM:** Paul R. Cleary, Executive Director  
**SUBJECT:** Update of IAP Remediation

MEETING DATE	10-21-05
AGENDA ITEM	A.2. IAP

PERS staff continues to make progress towards implementing the IAP remediation program discussed with the PERS Board over the last few meetings. Briefly, the goal of the remediation program is to move to an annual earnings crediting structure by first deducting expenses and then applying net earnings to the year-end balance of the member's account.

The first step in developing the remediation plan was a brainstorming session with PERS managers to flesh out the areas that needed to be considered within the plan and assign individuals to be responsible for those particular areas. The principle areas are:

- Investments and Unitization – Dave Tyler
  - De-linking unit values and portfolio returns from mid-year account balances
  - Relations and duties among CitiStreet, State Street, Treasury, and PERS
  - Calculating annual and mid-year earnings factors
- Member Accounts – Yvette Elledge and Raul Torres
  - Employer reporting and payments, including adjustments and late reports
  - Process for withdrawals and payments
- Communication
  - Access, Statements, Remediation Information – Marsha Bacon and David Crosley
  - Legislative Advisory Committee review – Steve Delaney
  - BAM/LFO/E-Board – Brian DeForest
- Miscellaneous
  - Statutory, Administrative and Business Rule Changes – Brendalee Wilson
  - System (IT) Changes – Jay Masci

A core group of these staff are now meeting to develop the business case and project proposal to support this project. As the time line contemplates revising IAP accounts for 2004 and 2005 at the same time, remediation cannot proceed until the 2005 annuals close (probably in March 2006). Our goal at this point is to stage the remediation plan development so processes are in place to be executed once 2005 annuals close.



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**TO:** Members of the PERS Board  
**FROM:** Paul R. Cleary, Executive Director  
**SUBJECT:** Update of HB2020 Employer Reporting

MEETING DATE	<b>10-21-05</b>
AGENDA ITEM	<b>A.2. HB2020 Update</b>

The agency is in its second year of administering the HB2020 program and using the new employer electronic reporting system. The Membership and Employer Relations Section (MERS) is working with 875 employer-reporting units to process outstanding 2004 employer reports and current 2005 reports. The table below shows the status of 2004 and 2005 employer reports and member records.

	<b>Calendar Year 2004</b> (as of 10/10/05)	<b>Calendar Year 2005</b> (as of 10/10/05)
Reports due (estimated)	12,562	9,753
Outstanding reports (estimated)	17	519
Reports fully posted at 100%	12,093	7,796
Records due (estimated)	3,062,357	2,266,057
Records not posted	3,420	45,220
Contributions posted	\$387,771,893	\$297,132,030

As of October 10, 2005, employers have submitted 99.9 % and 94.6 % of the reports due for 2004 and 2005 respectively. Of those reports submitted, 96 % for 2004 and 80 % for 2005 are 100% accurate. These statistics indicate the major educational effort and progress employers have made in providing member demographic and wage information from 2004 to 2005. Last year at this time, only 92 % of reports due were submitted, and of the reports submitted only 67 % were 100% accurate.

To help employers complete their reports, PERS created semi-monthly payroll reporting classes. Since April 2005, staff has conducted 13 classes for 186 employers. In addition, PERS organized teams to work with employers who have outstanding 2004 data. Since the inception of the teams in May 2005, PERS has helped employer's post approximately 9,600 members' records from 2004 out of approximately 13,000 un-posted records. We anticipate all 2004 member records will be cleared by the end of December 2005.



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**TO:** Members of the PERS Board  
**FROM:** Steven Patrick Rodeman, Administrator, PPLAD  
**SUBJECT:** Adoption of Rulemaking for Non-Substantive Changes to Miscellaneous Chapter 459 Rules

MEETING	10/21/05
DATE	
AGENDA	B.1.
ITEM	Misc. Rules

## OVERVIEW

- Action: Adopt non-substantive permanent rule modifications to various administrative rules.
- Reason: To correct typographical errors and citations, and make other non-substantive changes to PERS administrative rules.
- Policy Issue: There are no policy issues associated with this rulemaking.

## RULE MODIFICATIONS SINCE THE PRIOR BOARD MEETING

PERS staff undertook a comprehensive review of the agency's administrative rules to clean up errors in citations, spelling, cross-references, etc. This rulemaking is to incorporate these non-substantive rule modifications. These changes were first noticed in the July 2005 Oregon Bulletin, but staff amended the notice to include changes prompted by PERS-related 2005 legislation (SB 108, HB 2189 and HB 3262).

Minor changes were made to the rules since the last Board meeting. Five rules (OAR 459-005-0350, 459-010-0003, 459-010-0005, 459-010-0014 and 459-075-0010) were removed from the rulemaking and will be addressed in separate rulemakings. Also removed from this rulemaking was a reference to HB 3262 in OAR 459-005-0010, as this reference was deemed unnecessary (other minor changes to OAR 459-005-0010 remain in this rulemaking). Additionally, the Statutory Authority was updated in seven rules (OAR 459-010-0012, 459-010-0165, 459-010-0205, 459-020-0015, 459-020-0050 and 459-020-0055).

The following rules have modifications prompted by SB 108 and will be effective on the date the law goes into effect (January 1, 2006):

459-005-0001	459-010-0025	459-011-0110
459-005-0350	459-010-0045	459-045-0001
459-005-0525	459-011-0100	

The following rules have modifications prompted by HB 3262 and will be effective on the date the law goes into effect (November 4, 2005):

459-007-0530	459-009-0085	459-013-0260
459-009-0070	459-009-0350	459-050-0070
459-009-0084	459-010-0175	

The remainder of the rules will become effective upon filing.

#### SUMMARY OF RULE MODIFICATIONS

**459-001-0015**, *Conduct of Meetings of the Board*: Update statutory authority citation.

**459-001-0025**, *Delegation to Director and Staff*: Change the term “a hearings officer” to “an administrative law judge” in section (2) to be consistent with the terminology used in the Oregon Attorney General’s Administrative Law Manual and Uniform and Model Rules of Procedure; update statutory authority citation.

**459-001-0035**, *Contested Case Hearing*: Change the word “objections” to “exceptions” and change the term “Hearings Officer’s” to “administrative law judge’s” and the term “Hearings Officer” to “administrative law judge” in section (6) to be consistent with the terminology used in the Oregon Attorney General’s Administrative Law Manual and Uniform and Model Rules of Procedure; update statutory authority cite.

**459-005-0001**, *Definitions, Generally*: Add “Qualifying Position” to definitions (SB 108 section (5)); in section (9), “Elected Official” should cite ORS 238.015(5) (SB 108 section (6)); in section (11)(b)(C), change cite to 238.015(6) (SB 108 section (6)); in section (20), “Legislator” definition should cite ORS 238.015(5) (SB 108 section (6)); in section (25), “Salary” definition should cite ORS 238.005(21) (SB 108 section (5)).

**459-005-0010**, *Public Employees Retirement Fund, A Trust*: Delete “(s)” in section (1); add space after (a) in section (2)(a).

**459-005-0150**, *Effective Date of Power of Attorney Rules*: Correct spelling of “Employees” in first paragraph.

**459-005-0210**, *Transmittal of Reports and Documents*: Correct citation in section (2)(b).

**459-005-0215**, *Transmittal of Remittances or Payments*: Correct statutory citation in section (3)(b).

**459-005-0220**, *Receipt Date for Reports, Documents and Remittances*: Correct typographical error in section (4)(a), change the word “it” to “its” in section (5)(a); remove the word “thirty” in section (4)(b)(C) to be consistent with the Oregon Attorney General’s style guide for administrative rules (as found in the Administrative Law Manual).

**459-005-0525**, *Ceiling on Compensation for Purposes of Contributions and Benefits*: Change 238A.005(16)(i) to 238A.005(16)(c)(I) in Stat. Auth., (housekeeping change); the “Annual Compensation” definition in section (2)(d) should cite ORS 238.005(21) (SB 108 section (5)).



**459-005-0560, *Required Minimum Distributions, Generally:*** Capitalize "Regulations" in section (1); make "requirement" plural (add "s" at end) in section (2)(b); add additional parens after "ORS 238A.190(1)(a)" in section (2)(f); remove "s" in "benefits" and change "or" to "of" in "...under section (2) or this..." in section (3); add "d" to end of word "designate" in section (4)(a); change effective date to January 1, 2003 in section (5). (All are housekeeping changes).

**459-005-0599, *Election Procedures – Direct Rollovers:*** Add space after "(f)" in section (1); remove the word "thirty" in sections (1)(a), (2) and (4); remove the word "ninety" in section (2) to be consistent with the Oregon Attorney General's style guide for administrative rules (as found in the Administrative Law Manual).

**459-007-0050, *Crediting Earnings for a Deceased Tier One Active or Inactive Member:*** Correct statute cited in "Statutes Implemented" line.

**459-007-0060, *Crediting Earnings to the Tier One Employer Death Benefit:*** Correct statute cited in "Statutes Implemented" line.

**459-007-0530, *Crediting Earnings To Employer Lump Sum Payments:*** Change cite for 238.225(11) to Section 13(4) of legislation in (2) (HB 3262 sections (10), (13))

**459-009-0020, *Public Employer:*** Correct citation in section (1).

**459-009-0070, *Actuarial Pooling of Employer Liability:*** Change cite in (2), (5), (7), (7)(a), (7)(b), and (10) for 238.225(8) to Section 13(1) of legislation (HB 3262 sections (10), (13)); Statutes Implemented should cite Sections 12, 13 and 14 of the legislation (HB 3262 sections (12), (13), (14)); add space between "(7)(b)" and "of" in Section (15)(b).

**459-009-0084, *Unfunded Actuarial Liability Lump-Sum Payments by Employers Participating in an Actuarial Group:*** Change cite in (9)(e)(B) for 238.225(1) to 238.225 (HB 3262 section (10)).

**459-009-0085, *Unfunded Actuarial Liability Lump-Sum Payments by Employers Not Participating in an Actuarial Group:*** Change cite in (9)(e)(B) for 238.225(1) to 238.225 (HB 3262 section (10)).

**459-009-0120, *Employer Recordkeeping for Multiple Qualified Retirement Plans:*** Correct spelling of "Employees" in section (1).

**459-009-0350, *Allocation of PERS Employer Actuarial Assets and Liabilities:*** Statutes Implemented should cite Sections 12, 13 and 14 of the legislation (HB 3262 sections (12), (13), (14)).

**459-010-0010, *Leave of Absence:*** Correct citation in section (2)(b).

**459-010-0011, *Authorized Paid Leave of Absence:*** Correct citations in sections (1), (2) and (3). In section (3)(b), add a dash between "12" and "month."

**459-010-0012, *Membership of Community College Employees:*** Correct citations in sections (3), (5), (6) and (7). In section (1), add a dash between "12" and "month," update Statutory Authority.

- 459-010-0025**, *Student Employee*: (1) should cite 238.015(4) (SB 108 section (6)); Statutes Implemented should cite 238.015(4) (SB 108 section (6)).
- 459-010-0030**, *Determination of Employee Status*: Corrected citations in section (1) and in the “Statutes Implemented” line.
- 459-010-0045**, *Substitution of Annuity*: (1) should cite 238.015(7) (SB 108 section (6)); Stat. Auth. should cite 238.015(7) (SB 108 section (6)).
- 459-010-0165**, *Transfer into a New Classification*: Correct spelling of “Employees” in section (1), update Statutory Authority.
- 459-010-0175**, *Computation of Prior Credit Service for Accumulated Seasonal Employment*: Statutes Implemented should cite Sections 12, 13 and 14 of the legislation (HB 3262 sections (12), (13), (14)).
- 459-010-0205**, *Retention of Membership by School Employees*: Correct spelling of “Employees” in the title and the first paragraph, update Statutory Authority.
- 459-011-0100**, *Credit for Service in Armed Forces*: (3)(a) cites section of statute that was deleted (ORS 238.015(4)) (SB 108 section (6)).
- 459-011-0110**, *Limited Service Credit for Time Spent in Armed Forces*: (1)(b) cites section of statute that was deleted (ORS 238.015(4)) (SB 108 section (6)).
- 459-011-0200**, *Re-Establishment of Membership*: Correct spelling of “Employees” in the first paragraph.
- 459-013-0060**, *Payment of Retirement Benefits*: Correct spelling of “Employees” in section (2).
- 459-013-0260**, *Effective Date Used in the Establishment of Service Retirement Benefits*: In (2), change cite for 238.435(3) to 238.435(5) (HB 3262 section (33)).
- 459-014-0030**, *Designation of Beneficiary*: In section (1), delete “ORS 238.390.” Correct spelling of “Employees” in section (3), update Statutory Authority.
- 459-015-0030**, *Hearings on Denial or Discontinuance of Disability Retirement Allowances*: In section (3), replace the term “hearings officer designated by the Board” with “administrative law judge designated by the Office of Administrative Hearings” and in section (4), change the term “hearings officer’s” to “administrative law judge’s” to be consistent with the practices described in and the terminology used in the Oregon Attorney General’s Administrative Law Manual and Uniform and Model Rules of Procedure. Update Statutory Authority.
- 459-015-0035**, *Evidence -Contested Case Hearings*: In sections (1)(a), (1)(b) and (2), change the term “hearings officer” to “administrative law judge” to be consistent with the terminology used in the Oregon Attorney General’s Administrative Law Manual and Uniform and Model Rules of Procedure. Update Statutory Authority.
- 459-015-0040**, *Proof of Case -- Contested Case Hearings*: In section (3)(c), change the term “hearings officer” to “administrative law judge” to be consistent with the

terminology used in the Oregon Attorney General’s Administrative Law Manual and Uniform and Model Rules of Procedure. Update Statutory Authority.

**459-020-0015**, *Collection of Pro Rata Share of Expenses*: Correct spelling of “Employees” in section (1), update Statutory Authority.

**459-020-0050**, *Governmental Unit Contracting with Board Must Have Legal Status*: Correct spelling of “Employees” in the first paragraph and remove reference to “Public Law 96-88”, update Statutory Authority.

**459-020-0055**, *All Prior Rules Superseded*: Correct spelling of “Employees” in the first paragraph, update Statutory Authority.

**459-035-0150**, *Continuation of Insurance Coverage Under COBRA*: Remove hyphen from “Admin-istrator” in section (2).

**459-045-0000**, *Authority and Purpose*: Correct spelling of “Employees” in the first paragraph.

**459-045-0001**, *Definitions*: Correct statutory reference in section (21); “Vested” definition in (14) should cite ORS 238.005(24) (SB 108 section (5)).

**459-045-0010**, *Division of Benefits*: Change cite in (2)(b)(A) for 238.005(4) to 238.005(5).

**459-050-0070**, *Catch-Up Programs*: Change cite in (1)(b) for 238.280(2) to 238.280(3) (HB 3262 section (37)).

**459-060-0000**, *Purpose*: Correct spelling of “Employees” in the first paragraph.

**459-080-0150**, *Employee Contributions into the IAP Account*: Correct typographical error in section (2)(b).

**459-080-0250**, *IAP Account Installments*: Correct statutory authority citation.

#### LEGAL REVIEW

The aforementioned administrative rules were submitted to the Department of Justice for review. Assistant Attorney General Keith Kutler reviewed the drafts and his recommendations have been incorporated into these modifications.

#### PUBLIC COMMENT AND HEARING TESTIMONY

No one testified on these rules at the rulemaking hearing held on September 27, 2005 in the PERS headquarters building in Tigard. PERS received no public comment on the proposed changes to the rules.

#### IMPACT

**Mandatory:** No, although not amending the rules would allow incorrect statutory citations and typographical errors to remain in the agency’s administrative rules.

**Impact:** None. The rule modifications are non-substantive in nature.

**Cost:**

- *Members*: There will be no new costs to members.
- *Employers*: There is no new cost to employers.
- *Administration*: There is no added administrative cost.
- *Fund*: There is no cost to the fund.

#### RULEMAKING TIMELINE

June 10, 2005	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
June 24, 2005	Board notified that staff began the rulemaking process.
July 1, 2005	<i>Oregon Bulletin</i> published the first Notice.
August 15, 2005	Due to enacted legislation, staff re-initiated the rulemaking process by filing an amended Notice of Rulemaking Hearing with the Secretary of State.
September 1, 2005	<i>Oregon Bulletin</i> published the second Notice.
September 23, 2005	Board notified that staff re-initiated the rulemaking process.
September 27, 2005	Rulemaking hearing held at 2:00 in Tigard.
October 3, 2005	Public comment period ended at 5:00 p.m.
October 21, 2005	Rule is presented to the PERS Board for adoption, including any changes resulting from public comment or reviews by staff or legal counsel.

#### BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt the permanent rule modifications to the various Chapter 459 rules, as presented.”
2. Take no action and direct staff to make changes to the rules or take other action.

#### STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

**Reason:** The rule modifications correct typographical errors, incorrect citations, and make other non-substantive changes to PERS administrative rules.

**If the Board does not adopt:** Staff would return with rule modifications that more closely fit the Board’s policy direction if the Board determines that a change is warranted.



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**TO:** Members of the PERS Board  
**FROM:** Steven Patrick Rodeman, Administrator, PPLAD

MEETING DATE	10/21/05
AGENDA ITEM	B.2. Underpayment Interest Rate

**SUBJECT:** First Reading of OAR 459-007-0015, *Interest Rate Applied to Underpayment of Estimated Benefits*

## OVERVIEW

- Action: None. This is the First Reading of the rule.
- Reason: To determine which interest rate to apply to the underpayments of estimated benefits.
- Policy Issue:
  - What rate should be used to credit interest on underpaid estimated payments under ORS 238.455(5)?

## SUMMARY OF RULE AND POLICY ISSUES

Prior to the enactment of Senate Bill 109 by the 2005 Oregon legislature, ORS 238.455(5) required that if an estimated payment results in an underpayment of \$10 or more a month, the PERS Board shall pay interest on the underpaid balance “at the rate credited to the Public Employees Retirement Fund for the prior year” until the underpayment is paid. Under OAR 459-007-0015, that rate was set as simple interest based on the prior year’s rate that was credited to the member’s respective Tier.

SB 109, which went into effect on June 28, 2005, gives the Board authority to determine the rate to be applied to these underpaid estimated benefits. The rate is applicable to members who have effective dates of retirement that are on or after January 1, 2006. Those who retired prior to January 1, 2006 will receive the rates as provided under the current OAR 459-007-0015 as described above.

- *Policy Issue: What rate should be used to credit interest on underpaid estimated payments under ORS 238.455(5)?*

There are several possible rates the Board could choose to apply to underpayments. Briefly, they are described below:

- *Assumed Rate:* As defined in OAR 459-007-0001, the Assumed Rate is “the actuarial assumed rate of return on investments as adopted by the Board for the most recent actuarial valuation.” It is currently set at 8.00%. From an administrative perspective, using a stable rate like the assumed rate rather than a rate that fluctuates would simplify the process. On the other hand, the 8.00% rate is the assumed rate of return over the portfolio’s long-term performance. Underpayments do not typically stretch over such spans of time, so locking in an assumed rate would not reflect the actual return on those dollars in years of low returns or losses.

- *A Tier One and Tier Two factor showing the latest year to date earnings:* PERS calculates a factor for Tier One and Tier Two accounts based on year-to-date investment performance. The Tier One factor is no less than 8.00%, to reflect the assumed rate guarantee on those accounts. The Tier Two factor is updated monthly to reflect actual year-to-date gains and losses in the Fund, less anticipated charges for administrative expenses. Using these factors would pose two concerns: first, it would imbed the Tier One rate guarantee where it's not mandated by statute and, second, these factors reflect the long-term investment performance of the fund when these payments are made from the short-term investment pool. Another consideration may be that, for Tier Two members, using their factor may result in a negative return and decrease in payment. That result doesn't seem consistent with a statute that awards interest when PERS owes the recipient additional benefits.
- *Average Annualized Rate:* This rate is applied to funds held in the short-term account out of which PERS makes periodic payments. The PERS Board previously chose this rate to use for "distribution interest," which is interest paid on a payment between the time that an amount is determined and then actually paid. The Board selected this rate in October 2003 from this same list of alternatives. Using the Average Annualized Rate, which is updated monthly, would be consistent with other distribution interest calculations.

To ease administrative complication, staff proposes that the Average Annualized Rate in effect at the time the payment is made be used to credit interest, rather than tracking each month's change in the rate and applying them incrementally. This rate does not change much from month to month, so using the most recent rate would still reasonably approximate the actual return on those dollars while in the PERS Fund.

- Other rates to be considered are U.S. Treasury short-term rates, Oregon's 9.00% statutory rate on money owed (ORS 82.010) or a rate chosen by the Board that is not associated with a PERS Fund or external rate. The Treasury rates fluctuate and, as noted, staff prefers to use a known rate. The state's statutory rate is higher than the return actuarially expected for the Fund. And, it is not recommended that the Board apply an unrelated rate because such rates would not bear any relation to what the dollars would have earned while remaining invested in the PERS Fund.

#### LEGAL REVIEW

The proposed rule modification will be submitted to legal counsel for review and any comments or changes will be incorporated before the rules are presented for adoption.

#### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on Tuesday, September 27, 2005. One person, Martha Sartain, showed up to testify on the rule.

- Ms. Sartain believes the title of the rule ("Distribution of Earnings on Underpayment of Estimated Benefits") does not accurately describe the focus of the rule. Staff proposes to change the name of the rule to "Interest Rate Applied to Underpayment of Estimated Benefits" and this modification is incorporated into the attached draft of the rule.

- Ms. Sartain proposed that the rule should use terms that are readily identifiable. The rule refers the reader to the definition of “average annualized rate,” which is defined in OAR 459-007-0001(3). This definition states that the term “means the monthly rate provided by the Oregon State Treasury representing the rate credited to cash accounts.” Ms. Sartain claimed to have a difficult time finding out from Treasury what the rate was, as she said that Treasury does not use the term “average annualized rate”.

Staff’s response is that the term is what the agency uses both internally and externally and it is defined and used consistently in administrative rule. PERS communicates this rate every month to staff and it can be readily obtained by calling Customer Service.

- Ms. Sartain also stated, “PERS should not make money on the debt owed. The rate should be set as the minimum of 8 percent or the rate the PERS fund overall earns, whichever is greater.” She believes that whatever rate is chosen should be high enough to provide a disincentive for PERS to underpay benefits.

Staff’s response is that the average annualized rate is the closest equivalent to what these amounts would earn, since it is the rate PERS receives for the money held in its short-term investment account, so PERS would not make money on the debt owed. Using this rate comes closest to paying the recipient what PERS earned on the money while it remained with us in a readily accessible account.

The comment period ends on November 1, 2005 at 5:00 p.m. To date, PERS has received two comments via e-mail, one from Martha Sartain (restating her issues addressed above) and one from Paul Gornick, a Tier 1 member.

Mr. Gornick objected to the rule modification. He wrote, “The current method of interest crediting (based on the tier where the funds reside) reflects the ACTUAL earnings on the underpayment, and the proposed method of utilizing the interest rate paid to cash accounts will significantly understate the earnings on an underpayment. To this future retiree, this appears to be yet another attempt to "nickel and dime" future retirees with another method whose goal is reducing employer rates.”

As stated in the response to Ms. Sartain’s oral testimony, PERS staff responds that the average annualized rate is still preferred for the aforementioned reasons. Using this rate in no way provides PERS an incentive to underpay benefits. Rather it protects members from market downturns while also reflecting earnings made on the account from which the payments will be made.

### IMPACT

**Mandatory:** No. The Board can choose to retain the existing language in the administrative rule. However, this language is imprecise and staff recommends the modifications explained above.

**Impact:** The rule modifications apply to underpayments of estimated benefits to members who have effective dates of retirement that are on or after January 1, 2006.

**Cost:**

- *Members:* There will be no new costs to members.
- *Employers:* There is no new cost to employers.
- *Administration:* There will be some costs in changing to the rate specified by the Board, but since estimated payment adjustments are ad-hoc calculations, the incremental costs of changing to whatever rate the Board selects is minimal.
- *Fund:* If the Board adopts the rate recommended by staff, the earnings rate paid should closely reflect the actual earnings on these dollars while they were in the fund, so there should be little or no cost to the Fund.

**RULEMAKING TIMELINE**

August 15, 2005	Staff initiated the rulemaking process by filing a Notice of Rulemaking Hearing with the Secretary of State.
September 1, 2005	<i>Oregon Bulletin</i> published the Notice.
September 23, 2005	Board notified that staff began the rulemaking process.
September 27, 2005	Rulemaking hearing held at 2:00 p.m. in Tigard.
October 21, 2005	First Reading
November 1, 2005	Public comment period ends at 5:00 p.m.
November 18, 2005	Rule is presented to the PERS Board for adoption, including any changes resulting from public comment or reviews by staff or legal counsel.

**NEXT STEPS**

This is the first reading of the rule. PERS staff will return with this rule to request adoption by the Board at the November 18, 2005 meeting.



**OREGON ADMINISTRATIVE RULE**  
**PUBLIC EMPLOYEES RETIREMENT BOARD**  
**CHAPTER 459**  
**DIVISION 007 – DIVISION TITLE**

MEETING DATE	10/21/05
AGENDA ITEM	B.2. Underpayment Interest Rate

1 **459-007-0015**

2 *[Distribution of Earnings on Underpayment of Estimated Benefits]* Interest Rate

3 Applied to Underpayment of Estimated Benefits

4 In accordance with ORS 238.455(5), earnings credited to an underpayment of either  
 5 Tier One or Tier Two estimated benefits shall be simple interest, prorated from date of  
 6 underpayment to date of distribution by PERS of the underpaid amount based on:

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

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

12 Stat. Auth.: ORS 238.650

13 Stats. Implemented: ORS 238.455



# Oregon

Theodore R. Kulongoski, Governor

October 21, 2005

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**TO:** Members of the PERS Board

**FROM:** Steven Patrick Rodeman, Administrator, PPLAD

**SUBJECT:** Notice of Rulemaking for OAR 459-020-0025,  
Social Security Reporting Penalties

MEETING DATE	10/21/05
AGENDA ITEM	B.3. Penalty

## OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: This rule establishes the penalty for a public employer's failure to submit timely or accurate Old-Age and Survivor's Insurance (Social Security)-related reports, remittances of contributions or remittances of administrative expenses. These modifications are to make the rule consistent with other employer penalty rules adopted by the Board.
- Policy Issue:
  - Should penalties for untimely public employer reporting and remittances be consistent with OAR 459-070-0100 and 459-070-0110?

## SUMMARY OF RULE AND POLICY ISSUES

PERS adopted employer reporting and remittance rules (OAR 459-070-0100 and 459-070-0110) that specify penalty provisions for late or inadequate reporting or remittance of contributions. OAR 459-020-0025, which outlines penalties for non-timely Social Security-related reports and remittances, was not included in that rulemaking. PERS staff now believes that administering all employer penalties under a single rule would provide clear and consistent guidelines to employers and to PERS staff.

- *Policy Issue: Should penalties for untimely public employer reporting and remittances be consistent with OAR 459-070-0100 and 459-070-0110?*

There are minor differences between the Division 70 rules and the rule under consideration for modification. The Old-Age and Survivors Insurance Penalty rule provides for a "one percent for each month of fraction thereof during which the agency is delinquent." The total contributions due on a delinquent report, or the total amount of a delinquent remittance, whichever is greater, is subject to the penalty. This penalty may be waived by the Board in "highly unusual circumstances" for reasons of unavoidable delay or unintentional error.

Employers are liable for penalties under OAR 459-070-0100 for delinquent reports equal to one percent of the total amount of the prior year's annual contributions or \$2,000, whichever is less, for each month the employer is delinquent. Under OAR 459-070-0110, penalties for delinquent remittances of contributions are equal to one percent of the total amount of contributions for that pay period.

Both Division 70 rules allow for the PERS Executive Director to have the discretion to waive the penalty from January 1, 2004 through December 31, 2005. Following that period of time, penalties may be waived by the Director upon written petition from the employer. Staff considers these differences to be minor. Consistency in application and processing of penalties is preferable.

#### LEGAL REVIEW

The proposed rule modification will be submitted to legal counsel for review and any comments or changes will be incorporated before the rules are presented for adoption.

#### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing is scheduled for October 25 at 2:00 p.m. in PERS headquarters in Tigard. The comment period ends on November 1, 2005 at 5:00 p.m.

#### IMPACT

**Mandatory:** No, although the modifications would assist in clearly and consistently applying penalties to delinquent employer reports and remittances.

**Impact:** None.

#### **Cost:**

- *Members:* There will be no new costs to members.
- *Employers:* There is no new cost to employers. Those few (if any) that incur penalties would have them calculated under a different formula, but the change is not designed to increase penalties they would otherwise be required to pay.
- *Administration:* There is no added administrative cost.
- *Fund:* There is no cost to the fund.

#### RULEMAKING TIMELINE

September 14, 2005	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
October 1, 2005	<i>Oregon Bulletin</i> published the first Notice.
October 21, 2005	Board notified that staff began the rulemaking process.
October 25, 2005	Rulemaking hearing to be held at 2:00 p.m. in Tigard.
November 1, 2005	Public comment period ends at 5:00 p.m.
November 18, 2005	Rule is presented to the PERS Board for adoption, including any changes resulting from public comment or reviews by staff or legal counsel.

#### NEXT STEPS

Following the hearing and the public comment period, PERS staff will return to the Board for adoption, including any modifications.

**OREGON ADMINISTRATIVE RULE**  
**PUBLIC EMPLOYEES RETIREMENT BOARD**  
**CHAPTER 459**  
**DIVISION 020 – OLD-AGE AND**  
**SURVIVORS INSURANCE**

MEETING	10/21/05
DATE	
AGENDA	B.3.
ITEM	Penalty

1 459-020-0025

2 **Penalty**

3 Employers shall transmit reports, remittances of contributions or remittances  
4 of administrative expense in accordance with OAR 459-070-0100 and 459-070-0110.

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

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

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

16 Stat. Auth.: *[ORS 237]* [238.650](#)

17 Stats. Implemented:

18



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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October 21, 2005

TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Administrator, PPLAD

SUBJECT: Notice of Rulemaking for OAR 459-010-0003, *PERS Membership Eligibility*

MEETING DATE	10/21/05
AGENDA ITEM	B.4. PERS Membership

### OVERVIEW

- **Action:** None. This is notice that staff has begun rulemaking.
- **Reason:** The current provisions for determining membership eligibility for concurrent employment have proven to be administratively difficult for both the system and employers.
- **Subject:** Standards for determining membership and eligibility under the PERS Chapter 238 Plan.
- **Policy Issue:**
  - Should concurrent employment be defined as employment occurring within the same calendar year?

### BACKGROUND

Under the current rule, a concurrent position is defined as two or more positions that occur within any given calendar month. Given the current EDX reporting system requirements, it is often very difficult to determine if an employee is working concurrently and makes the determination of membership eligibility and creditable service for these employees difficult, if not impossible. The proposed amendments would make the determination of membership eligibility more efficient and easier to administer.

### SUMMARY OF PROPOSED RULE AND POLICY ISSUE

The current rule provides that a “concurrent position” means employment segments that occur together in any given calendar month.

- *Policy Issue: Should concurrent employment be defined as employment occurring within the same calendar year?*

Under the PERS Chapter 238 Program, an employee is in a qualifying position if they perform 600 or more hours in a calendar year. For employees who work in two or more eligible positions that may or may not be qualifying on their own, the determination of qualifying position becomes onerous. Currently, employers are reporting performance of hours, with other information, on their pay date. There is not an administratively efficient way to determine when the hours reported were actually performed. This makes the

determination of membership and creditable service based on a monthly standard difficult to administer.

Accordingly, because a qualifying position is determined on a calendar year basis, amending the provision for concurrency from monthly to yearly makes administrative sense. Additionally, the determination of membership and creditable service will more closely align with the requirements of OPSRP as well, making the reporting of information by employers consistent throughout the system. Staff recommends these new provisions apply to any eligibility determination made on or after the adoption of the rule.

The rule has also been amended to correct citations that changed with adoption of new statutory provisions during the 2005 Legislative session.

#### LEGAL REVIEW

The attached draft has been submitted to the Department of Justice for legal review and any comments or changes will be incorporated before the rules are presented for adoption.

#### PUBLIC HEARING AND TESTIMONY

A rulemaking hearing is scheduled for October 25 at 2:00 p.m. in PERS headquarters in Tigard. The comment period ends on November 29, 2005 at 5:00 p.m. Also, this rule will be discussed at an upcoming PERS Legislative Advisory Committee meeting.

#### IMPACT

**Mandatory:** No, but bringing certainty to this process is necessary for simplification. Even though no new members will join the PERS Chapter 238 Plan, the agency handles numerous eligibility determination questions that should be decided under a consistent, reasonable structure.

**Impact:** Adopting these rule modifications will simplify administration of membership eligibility for PERS and employers. Potentially, there may be some impact on the number of people that qualify for PERS membership, but those results will depend on individual circumstances and are not anticipated to have a significant impact.

#### **Cost:**

- *Members:* There will be no cost to members.
- *Employers:* There are no intrinsic costs to employers. These standards are not being developed with the thought that membership will increase or decrease, but to provide for membership determinations under a clear, consistent framework.
- *Administration:* Eligibility reviews will have to change to follow the established standards, but these processes already involve manual review and calculation so these standards will not substantially affect costs to review and process membership or eligibility issues.

- *Fund:* There will be no effect on the Fund.

#### RULEMAKING TIMELINE

September 14, 2005	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
October 1, 2005	<i>Oregon Bulletin</i> publishes the Notice and the public comment period began.
October 21, 2005	PERS Board notified that staff began the rulemaking process.
October 25, 2005	Rulemaking hearing scheduled at 2:00 p.m. in Tigard.
November 18, 2005	First reading of the proposed rule. Staff may present recommended changes to the draft rules.
November 29, 2005	Public comment period ends at 5:00 p.m.
December 16, 2005	Staff will propose adopting the permanent rule modifications, including any amendments warranted by public comment or further research.

#### NEXT STEPS

PERS staff will schedule this rule for hearings and a First Reading to provide extensive opportunities for public review and comment. Additionally, these modifications will be discussed with the Legislative Advisory Committee at a meeting in early November. Staff will first report on the results of hearings and comment received to date at the PERS Board's November 18, 2005 meeting, along with any suggested modifications. The comment period will extend beyond the November meeting to allow further reaction to any proposed changes, and adoption is currently scheduled for the Board's December 16, 2005 meeting.

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 010 – MEMBERSHIP**

MEETING DATE	10/21/05
AGENDA ITEM	B.4. PERS Membership

1 **459-010-0003**

2 **Eligibility and Membership for the PERS Chapter 238 Program**

3 (1) For the purpose of this rule:

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

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

7 *[means a position or concurrent positions in which an employee is expected to perform*  
8 *600 or more hours of service in a calendar year.]*

9 (A) For purposes of initially determining qualification for membership, but not for  
10 any other purpose, if an employee was employed in a position or concurrent positions for  
11 less than a full calendar year and performed less than 600 hours of service in that  
12 calendar year, but would have performed 600 hours of service or more if the employee  
13 had performed service in the same position or concurrent positions for the full calendar  
14 year, and if the employee performs 600 or more hours of service in the following  
15 calendar year, the position or concurrent positions will be considered qualifying as of the  
16 initial date of employment.

17 (B) For purposes of determining qualification upon separation from employment, but  
18 not for any other purpose, if an employee was employed in a position or concurrent  
19 positions for less than a full calendar year and performed less than 600 hours of service in  
20 that calendar year, but would have performed 600 hours of service or more if the  
21 employee had performed service in the same position or concurrent positions for the full  
22 calendar year, and if the employee performed 600 or more hours of service in the



1 previous calendar year, the position or concurrent positions will be considered qualifying  
2 up to the date of separation.

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

9 (D) Except as provided in paragraph (A) and (B) of this subsection, if an employee is  
10 employed in a position or concurrent positions designated as qualifying and performs less  
11 than 600 hours of service in a calendar year, the position or concurrent positions will be  
12 considered non-qualifying from the date of employment or January 1 of the calendar year  
13 in which the employee performed less than 600 hours of service, whichever is later.]

14 (c) "Non-qualifying position" means:

15 (A) Any position that does not conform to the requirements set forth in subsection  
16 (b) of this section;

17 (B) Positions with two or more PERS participating employers in which there is an  
18 employee/employer relationship, as defined in OAR 459-010-0030, that do not meet the  
19 definition of "concurrent positions" even though each position, when added together, may  
20 total 600 or more hours of service in a calendar year.

21 (d) "Service" means any calendar month an employee:

22 (A) Is in an employer/employee relationship, as defined in OAR 459-010-0030; and

1            (B) Received a payment of "salary," as defined in ORS ~~[238.005(20)]~~ 238.005(21)  
2 or similar payment from workers compensation or disability.

3            (2) An employee qualifies as a member of PERS under ORS 238.015 if the  
4 employee:

5            (a) Has completed a 6 month waiting period as defined in ORS 238.015(1);

6            (b) Has been employed in a qualifying position;

7            (c) Is not otherwise ineligible for membership; and

8            (d) Has not elected to participate in an optional or alternate retirement plan as  
9 provided in ORS Chapters 243 and 353.

10           (3) An employee shall remain an active member in PERS if the employee is  
11 employed in a qualifying position that totals 600 or more hours of service per calendar  
12 year.

13           (4) If an employee hired into a non-qualifying position completed service meeting  
14 the definition of "qualifying position" under section (1)(b) of this rule, the employee shall  
15 qualify as an active member for that calendar year.

16           (5)(a) If an active member in a qualifying position is terminated or they separate  
17 from employment prior to completing 600 hours of service in a year, the member shall  
18 not receive any service credit for that year unless they qualify under section (1)(b)(B)  
19 above.

20           (b) If an active member in a qualifying position is terminated or they separate from  
21 employment prior to completing 600 hours of service in a year and do not qualify under  
22 section (1)(b)(B), in addition to not receiving any service credit, all contributions for the  
23 year, employee and employer, shall be credited to the employer.

1           (6) The provisions of this rule are effective for all eligibility determinations made  
2 on or after the effective date of this rule *[on January 1, 2005]*.

3           Stat. Auth.: ORS 238.650

4           Stats. Implemented: ORS 238.015, 243.800 & 353.250



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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October 21, 2004

TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Administrator, PPLAD

SUBJECT: Notice of Rulemaking for OAR 459-010-0014, *PERS Creditable Service*

MEETING DATE	10/21/05
AGENDA ITEM	B.5. Creditable Service

### OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: PERS members receive “creditable service” for “full months and major fractions of a month” under the current provisions of the rule. While the need to perform 50 hours of qualifying service in a calendar month is well recognized, it has proved to be very difficult for employers to report the necessary information. These proposed rule amendments simplify the standards by which creditable service would be granted to members in the PERS Chapter 238 Program and ease the reporting of the necessary information by employers.
- Subject: Determining creditable service under the PERS Chapter 238 Program.
- Policy Issue:
  - Whether creditable service should be granted based on a presumption that a “major fraction of a month” has been performed in any given calendar month.

### BACKGROUND

Under ORS Chapter 238, a month of service credit is provided for PERS Chapter 238 Program members who perform a minimum of 50 hours a month (a major fraction of a month). Whether a member has performed a major fraction proves difficult to determine given the current EDX reporting structure.

### SUMMARY OF PROPOSED RULE AND POLICY ISSUE

Initially, the advisory committee on this issue concurred that the cleanest solution was to divide the 600-hour yearly requirement by the twelve months, which would result in 50 hours of service constituting a major fraction of each month. Currently, the administrative rule reflects this standard and provides for creditable service on a 50 hour a month basis.

Prior to the implementation of the new jClarity system, PERS did not collect hours or days worked on a system-wide basis. Only when creditable service became an issue at the time of retirement did PERS request hourly payroll information from employers. Because creditable service research often involved decades-old information, reconciling accounts was a difficult and time-consuming process.

Under the new jClarity reporting structure, hourly information is currently being reported by employers with their payroll information. There is currently no easy or simple way to report the number of hours performed in any given calendar month.

- *Policy Issue: Whether a “major fraction of a month” should be presumed if a member performs at least 600 hours in calendar year.*

Using a presumption of hours, rather than have employers re-program their systems, allows for the continuance of the 50-hour standard and provides an easy alternative for employer reporting. The proposed rule amendments provide that if a member performs at least 600 hours of service in a calendar year, they will receive retirement credit for any month in which they are reported to have performed service. An exception to this is if a member has a leave without pay period spanning more than 11 working days. This would allow hours to be tracked and would not require a significant change in the way employers are currently reporting such information.

The rule has also been amended to correct citations that changed with adoption of new statutory provisions during the 2005 Legislative session.

#### LEGAL REVIEW

The attached draft has been submitted to the Department of Justice for legal review and any comments or changes will be incorporated before the rules are presented for adoption.

#### PUBLIC HEARING AND TESTIMONY

A rulemaking hearing is scheduled for October 25 at 2:00 p.m. in PERS headquarters in Tigard. The comment period ends on November 29, 2005 at 5:00 p.m. Also, this rule will be discussed at an upcoming PERS Legislative Advisory Committee meeting.

#### IMPACT

**Mandatory:** No, but bringing certainty to this process is necessary for simplification.

**Impact:** Adopting these rule modifications will simplify administration of creditable service for PERS and employers. Potentially, there may be some impact on the amount of service members are granted, but those results will depend on individual circumstances and are not anticipated to have a significant impact.

#### **Cost:**

- *Members:* There will be no cost to members.
- *Employers:* There are no intrinsic costs to employers. These standards are not being developed with the thought that membership will increase or decrease, but to provide for the granting of creditable service under a clear, consistent framework.
- *Administration:* Creditable service reviews will not have to change to follow the established standards since creditable service will continue to be granted under a major fraction of a month standard.

- *Fund:* There will be not effect on the Fund.

#### RULEMAKING TIMELINE

September 14, 2005	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
October 1, 2005	<i>Oregon Bulletin</i> publishes the Notice and the public comment period begins.
October 21, 2005	PERS Board notified that staff began the rulemaking process.
October 25, 2005	Rulemaking hearing scheduled at 2:00 p.m. in Tigard.
November 18, 2005	First reading of the proposed rule. Staff may present recommended changes to the draft rules.
November 29, 2005	Public comment period ends at 5:00 p.m..
December 16, 2005	Staff will propose adopting the permanent rule modifications, including any amendments warranted by public comment or further research.

#### NEXT STEPS

PERS staff will schedule this rule for hearings and a First Reading to provide extensive opportunities for public review and comment. These modifications will be discussed at a meeting of the Legislative Advisory Committee in early November. Staff will first report on the results of hearings and comment received to date at the PERS Board's November 18, 2005 meeting, along with any suggested modifications. The comment period will extend beyond the November meeting to allow further reaction to any proposed changes, and adoption is currently scheduled for the Board's December 16, 2005 meeting.

OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 010 – MEMBERSHIP

MEETING DATE	10/21/05
AGENDA ITEM	B.5. Creditable Service

1 459-010-0014

2 Creditable Service in PERS Chapter 238 Program

3 (1) For purposes of this rule:

4 (a) “PERS business day” means any day, Monday through Friday, when PERS  
5 is open for business.

6 ~~[(a)]~~(b) "Service credit" has the same meaning as "creditable service" in ORS  
7 238.005(5).

8 ~~[(b)]~~(c) "Major fraction of a month" means a minimum of 50 hours in any calendar  
9 month in which an active member is being paid a salary by a participating public  
10 employer and contributions are due to the system either by or on behalf of the member.

11 An active member will be presumed to have performed service for a major fraction  
12 of a month and will be granted a month of creditable service if:

13 (A) The member has performed at least 600 hours of qualifying service, as  
14 defined in OAR Chapter 459, in that calendar year; and

15 (B) The member’s employer(s) have reported them as performing service in  
16 that calendar month; and

17 (C) The member has not had a leave without pay that is equal to or greater than  
18 11 PERS business days in that calendar month, except for leave without pay for the  
19 following:

20 (i) On loan to the federal government.

21 (ii) Serving in the Uniformed Services.

1 *[(2) An active member, as defined in ORS 238.005(12)(b), shall accrue one full*  
2 *month of service credit if the employee:*

3 *(a) Is employed in a qualifying position as defined in OAR Chapter 459; and*

4 *(b) Works a major fraction of a calendar month.]*

5 *[(3)](2)* If the active member is a school employee, they may instead accrue one half  
6 year of service credit if the employee:

7 (a) Is or was employed in a qualifying position as defined in OAR Chapter 459; and

8 (b) Is employed for all portions of a school year when it is normally in session.

9 *[(4)](3)* Except as provided for under section *[(3)](2)* of this rule, an employee may  
10 not accrue more than one full month of service credit for any number of hours worked in  
11 a calendar month and no more than one year of service credit for any number of hours  
12 worked in a calendar year.

13 *[(5)](4)* The provisions of this rule are effective for eligibility determinations  
14 made on or after the effective date of this rule *[on January 1, 2005].*

15 Stat. Auth.: ORS 238.650

16 Stats. Implemented: ORS 238.015

17





# Oregon

Theodore R. Kulongoski, Governor

October 21, 2005

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**TO:** Members of the PERS Board

**FROM:** Steven Patrick Rodeman, Administrator, PPLAD

**SUBJECT:** Notice of Rulemaking for OAR 459-005-0610, *Recovery of Overpayments*

MEETING DATE	10/21/05
AGENDA ITEM	B.6. Recovery of Overpayments

## OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: These rule modifications incorporate statutory changes made in the 2003 legislative session and clarify the agency's processes in this area.
- Policy Issues: None; these modifications do not change the agency's policies in this area.

## SUMMARY OF RULE MODIFICATIONS

Staff began rulemaking on these proposed modifications principally to incorporate changes to the statute that were adopted by the 2003 Oregon Legislature and to better reflect the agency's practices in seeking recovery of overpayments. In summary, the major changes are:

- Definitions. Removing definitions of words that were deleted from the statute or not otherwise needed and incorporating consistent use of the term "payee" as defined in this rule.
- Section 3. Clarifying the distinction between the notice required by statute to commence recovery and the invoice that details the overpayment.
- Sections 4-6. Providing more clear explanation of the methods staff uses to calculate and collect overpayments, including reducing the payee's obligation to PERS by applying any lump-sum payment owed to them.
- Section 8. Incorporating the new statutory standard for collecting interest, fees, and costs in addition to the overpayment amount.

## LEGAL REVIEW

The proposed rule modification will be submitted to legal counsel for review and any comments or changes will be incorporated before the rules are presented for adoption.

## PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing is scheduled for November 29 at 2:00 p.m. in PERS headquarters in Tigard. The comment period ends on December 23, 2005 at 5:00 p.m.

IMPACT

**Mandatory:** Yes. The rule should be changed to conform to the statutory directives.

**Impact:** None.

**Cost:**

- *Members:* There will be no new costs to members.
- *Employers:* There is no new cost to employers.
- *Administration:* There is no added administrative cost.
- *Fund:* There is no cost to the fund.

RULEMAKING TIMELINE

October 14, 2005	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
October 21, 2005	Board notified that staff began the rulemaking process.
November 1, 2005	<i>Oregon Bulletin</i> to publish the Notice.
November 29, 2005	Rulemaking hearing to be held at 2:00 p.m. in Tigard.
December 16, 2005	First Reading of the proposed rule at the PERS Board meeting
December 23, 2005	Public comment period ends at 5:00 p.m.
January, 2006	Rule is presented to the PERS Board for adoption, including any changes resulting from public comment or reviews by staff or legal counsel.

NEXT STEPS

Following the hearing, PERS staff will return to the Board for the First Reading of the rule.

OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 005 – ADMINISTRATION

MEETING	10/21/05
DATE	
AGENDA	B.6.
ITEM	Recovery of Overpayments

1 459-005-0610

2 Recovery of Overpayments

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

9 *[(1)]* (2) [Definitions] For the purposes of this rule:

10 (a) "Overpayment" *[means a payment, or series of payments,]* refers to an amount  
11 that is in excess of the amount a *[member, beneficiary, or other person]* payee is entitled  
12 to under ORS chapter 238 and 238A;

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

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

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

21 *(A) Causing a result;*

1 *(B) Acting in a manner prohibited by law or regulation; or*

2 *(C) Failing to act in a manner required by law or regulation.]*

3 *[(e)]* (c) "Good cause" means a cause beyond the reasonable control of the person.

4 "Good cause" exists when it is established by satisfactory evidence that factors or  
5 circumstances are beyond the reasonable control of a rational and prudent person of  
6 normal sensitivity, exercising ordinary common sense;

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

12 *[(g)]* (e) "Lump-sum payment" means any *[gross]* one-time distribution or  
13 payment *[of a benefit]* made under ORS chapter 238 or 238A, or any other law directing  
14 PERS to make a *[benefit]* payment, including a retroactive adjustment, that is not  
15 scheduled to be paid *[monthly]* to or on behalf of a *[member, a member's beneficiary, an*  
16 *alternate payee or the beneficiary of an alternate]* payee on a regular monthly basis;

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

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

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

1 ~~[(k)]~~ **(f)** "Payee" means:

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

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

5 (C) An alternate payee, as defined in OAR 459-045-0001~~(9)~~**6**, a trust established  
6 by an alternate payee, or the estate of an alternate payee;

7 (D) The beneficiary of an alternate payee, a trust established by the beneficiary of an  
8 alternate payee, or the estate of the beneficiary of an alternate payee; ~~[and]~~ **or**

9 (E) Any other recipient of a **benefit** payment by PERS ~~[of a benefit payable]~~.

10 ~~[(2)]~~ **(3) In addition to the notice of an overpayment or erroneous payment**  
11 ~~[Notification]~~ to a payee **required by ORS 238.715(4), PERS** ~~[of an overpayment or~~  
12 ~~erroneous payment]~~ shall **also send an invoice to the payee including** ~~[include]~~:

13 ~~[(a) Invoice for overpayment or erroneous payment;]~~

14 ~~[(b) Explanation]~~ **an explanation** of the overpayment or erroneous payment **and** ~~;~~

15 ~~[(c) Methods for repayment or collection of overpayment or erroneous payment;~~

16 ~~[(d) Appeal rights under OAR 459-001-0030;]~~

17 ~~[(e)]~~ **(c) W**~~hether the Board asserts a~~ ~~[The Board's]~~ right to assess interest,  
18 penalties and costs of collection~~;~~ **and**~~].~~

19 ~~[(f) That the recovery process begins with the mailing of the notice and invoice.]~~

20 **(4) In determining the amounts owed by a payee and setting a repayment**  
21 **schedule under sections (5) or (6) of this rule, PERS shall reduce the amount owed**  
22 **by any lump-sum payment, as that term is defined above, then owed by PERS to**

1 that payee. If the payee should subsequently become entitled to any lump sum  
2 payment, it shall be applied against the amounts then owed by that payee. PERS, in  
3 its discretion, may revise the repayment schedule or continue on the established  
4 schedule until the remaining amounts owed are fully repaid.

5 *[(3) Voluntary methods, as approved by]* (5) The following list includes possible  
6 methods for PERS to[, for the] recover[y of] an overpayment under an agreement with  
7 the payee. Generally, these methods are listed in order of preference but PERS staff  
8 is granted the discretion to select the method deemed most likely to *[or erroneous*  
9 *payment of a PERS benefit shall be as follows, in priority order, and shall] effect a [one*  
10 *hundred] 100 percent [(100%)] recovery [within two years from the date of mailing*  
11 *notice and invoice:*

12 (a) A *[one hundred percent (100%)]* full repayment of all amounts owed in a single  
13 payment *[upon receipt of an invoice from PERS];*

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

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

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

20 *[(c)]* (b) A *[In the event there is no lump-sum payment due the payee, a]* deduction  
21 of a percentage or fixed dollar amount *[specified amount of not less than ten percent*  
22 *(10%)]* to be agreed upon between the payee and PERS, from future monthly

1 payments for a period not to exceed two years that will *[satisfy in full the PERS invoice]*

2 fully repay the amounts owed;

3 (c) A fixed monthly dollar amount to be agreed upon between the payee and

4 PERS that will fully repay the amounts owed;

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

7 (d) A deduction of a percentage or fixed dollar amount from future monthly

8 payments, to be agreed upon between the payee and PERS, for a specified period

9 greater than two years that will fully repay the amounts owed if PERS deems that a

10 longer repayment period is warranted by the payee's personal financial

11 circumstances.

12 *[(4)] (6) If the payee does not agree to [a voluntary] one of the recovery methods*

13 *[of recovery] under section [(3)] (4) of this rule, PERS shall[, if possible,] use one of the*

14 following *[involuntary]* methods *[for the] to effect a 100 percent recovery of any*

15 overpayment or erroneous payment*[ and shall effect a one hundred percent (100%)*

16 *recovery within two years from the date of mailing notice and invoice]:*

17 *[(a) A deduction of one hundred percent (100%) of the amount owed at the time of*

18 *any future lump-sum payment as described in subsection (1)(g) of this rule;]*

19 *[(b) A deduction of a specified amount of not more than ten 10 percent (10%) from*

20 *current and future monthly payments to a payee until the overpayment or erroneous*

21 *payment is recovered, not to exceed two years; ]*

1 (a) Deducting not more than 10 percent from current and future monthly

2 payments to a payee until the full amounts owed are recovered;

3 (b) Making an actuarially determined reduction, not to exceed 10 percent, to

4 current and future payments from PERS calculated to repay the full amount of the

5 overpayment or erroneous payment during the period which monthly payments will

6 be made to the payee;

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

9 *(A) A deduction of one hundred percent (100%) of the amount owed to PERS, less*  
10 *amounts recovered under subsection;*

11 *(b) of this rule, from the next annual lump-sum installment.*

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

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

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



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

4           ***[(c)] (c) Seeking [restitution] recovery*** of the overpayment or erroneous payment  
5 by using **any remedy available to the Board under applicable law; or**

6           **(d) Engaging** the services of ***[an]*** outside collection ***[agency]*** **agencies**; ***or***  
7 ***(d) Any other remedy available to the Board under applicable law].***

8           ***[(6)] (7)*** The base or original benefit payment used to calculate cost-of-living  
9 adjustments, ad hoc increases, or other benefit increases shall not be altered by an  
10 actuarial reduction provided for in subsection ***[(5)(b)] (6)(b)*** of this rule.

11           ***[(7)] (8)*** In the event that PERS determines that an overpayment or erroneous  
12 payment was **not caused by PERS or by the actions of a participating public**  
13 **employer, PERS** ***[the result of a fraudulent or intentional act of the person who received***  
14 ***the payment(s), the staff shall]*** **may include within** ***[assess the person who received the***  
15 ***payment]*** **the amounts owed by the payee:**

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

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

20           ***[(8)] (9)*** The Board authorizes the Director, or the Director's designee, to waive:

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

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

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

4 ~~[(9)]~~ (10) Recovery of an overpayment or erroneous payment shall not be effected if  
5 PERS has not initiated recovery of those payments within six years after the date the  
6 overpayment or erroneous payment was made. PERS initiates recovery on the date it  
7 mails the notification required by ORS 238.715(4) *[section (2) of this rule].*

8 ~~[(10)]~~ (11) The recovery of an overpayment or an erroneous payment shall take  
9 precedence over other deductions or reductions as set forth in OAR 459-005-0600.

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

11 Stats. Implemented: ORS 238.715



# Oregon

Theodore R. Kulongoski, Governor

October 21, 2005

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**TO:** Members of the PERS Board

**FROM:** Craig M. Stroud, Administrator  
Benefit Payments Division

MEETING	<b>10/21/05</b>
DATE	
AGENDA	<b>C.1.</b>
ITEM	<b>Strunk / Eugene</b>

**SUBJECT:** Draft Strunk and Eugene Project Business Plan

At the October 21, 2005 Board meeting, I will present the attached draft Strunk and Eugene Project Business Plan. The plan is a work in progress, but this draft includes the project's overview, core principles, planning team, timeline, and major components of work. Additionally, the draft includes an appendix with key risks, affected accounts, 2005-07 budgeted staffing, and anticipated additional staffing needs.

Strunk and Eugene Project

DRAFT

# **Strunk and Eugene Project Business Plan**

# Strunk and Eugene Project

DRAFT

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# Strunk and Eugene Project

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## Strunk & Eugene

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### Project Overview

The 2003 PERS Reform legislation and the Oregon Supreme Court decisions in the Strunk and City of Eugene cases have defined the parameters within which PERS can implement the Settlement Agreement. PERS is now required to implement the remainder of its obligations under that agreement and administer the law as it stands today. The project's goal is to implement these obligations.

The Court ruled that the Settlement Agreement and 2003 PERS Reform legislation have resolved the issues in the Eugene case. The Settlement Agreement requires PERS to reallocate 1999 earnings to Tier One member regular accounts at 11.33% instead of 20%. Other tenets of the Settlement Agreement have been met. PERS will also credit the assumed rate-- currently 8% -- to Tier One accounts for 2003 and 2004 as a result of the Oregon Supreme Court decision in the Strunk case. In addition, the Court held in Strunk that the Cost-of-Living Allowance (COLA) 'freeze' imposed by the 2003 PERS Reform Legislation was invalid. All members who retired between April 2000 and April 2004 that had their COLA 'frozen' are entitled to have those withheld amounts credited to them.

For those Tier One members who retired, withdrew, or received benefit payments after the 1999 earnings crediting was effective (April 1, 2000), PERS will:

- Pursue collection of overpaid amounts. This will correct past benefit overpayments and prevent future overpayments by adjusting benefits going forward.
- Use a recovery process that minimizes the effect on current monthly benefits and provides the longest possible repayment period.
  - Monthly benefit payments will be adjusted prospectively for the 1999 earnings allocation of 11.33%, and PERS will recover any overpayments that occurred up to the adjustment date. Comparing what should have been paid to a recipient against what was actually paid completes the adjustment. For those recipients who still owe a balance to the PERS Fund, PERS will calculate, based on each member's projected longevity and retirement option, the amount the benefit needs to be reduced to repay the balance over the remaining lifetime stream of payments. Benefit payments may be reduced in the short term, but would increase at the next, and subsequent, COLA dates.
  - Instead of this option, a recipient can opt to pay the entire amount owed in a lump-sum payment. The recipient's monthly payments will then only be adjusted going forward based on the 11.33% earnings reallocation for 1999 (and subsequent COLA adjustments).
  - For recipients who are no longer receiving PERS benefit payments (members, beneficiaries, or alternate payees who retired, withdrew, or received a death benefit), staff will calculate the lump-sum amount of their overpayment and pursue normal collection efforts and repayment plans to recover that amount.
- Waive collection of any overpayment that is less than \$50 on an aggregate basis, as allowed by statute.

# Strunk and Eugene Project

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- Not charge interest or costs on the recovery of overpaid amounts.

Tier Two members could be minimally affected if the Board re-credits different amounts to reserves as a result of the 1999 earnings re-crediting.

## Core Principles

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### Core Principles

The following principles guide the planning and execution of this project:

- The negative adjustment on the retiree's current benefit payment is as small as possible.
- The account processing priority and order is transparent and communicated to stakeholders for input.
- Communications are complete, understandable, concise, and we proactively answer potential questions.
- The project is completed in the most efficient method that does not put undue burden on other business operations.
- The impact to the Rims Conversion Project (RCP) is planned and managed for success.
- Members of the core *Strunk* and *Eugene* team are dedicated 100% to the project.
- One touch per account. This means we attempt to push the account through the process in the most efficient means as possible and present a final transaction to the affected benefit recipient.

### Success Criteria

The project is successful if:

- Recipients incur no disruption in the receipt of monthly PERS benefits.
- The identified population of accounts requiring adjustment includes all affected accounts.
- All account balance and benefit payment adjustments are complete, accurate, and fully auditable so we can accurately report on the process and results. This means all underlying data issues must be resolved.
- The invoicing and accounts receivable processes optimize collections.
- 2004 member statements can be created from Phase I of this project.
- No data are corrupted or lost as a result of our processing.

## Planning Team

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# Strunk and Eugene Project

## DRAFT

### Description

The planning effort for a project of this size represents a significant project unto itself. The purpose of the planning is to ensure that: all activities needed to make the project successful have been defined; the correct project team is defined, built, housed, and trained; any setup work is planned and started; and the necessary contracts are constructed and executed.

To ensure the project's success, PERS would like to assemble a dedicated team to define and conduct a series of planning activities. The team would make use of some of the original *Strunk* allocated resources. However, due to the additional work represented by the *Eugene* decision, the management control structure of the project team needs to expand. The planning team needed for this phase consists of:

- 1 Primary Business Manager
- 2 Supporting Business Managers
- 1 Information Services Division Project Manager
- 1 Business Project Manager
- 1 Operations and Policy Analyst 2
- 1 Quality Assurance Position

### Activities

The planning team is responsible for validating the types of affected accounts. For each defined type, the team must:

- ◆ Determine the best order and time frame in which to process the adjustments.
- ◆ Identify and document the processes and procedures required to perform the adjustments.
- ◆ Validate the initial time estimates of the amount of work needed to complete the adjustments.
- ◆ Determine the tool set necessary to calculate the adjustments.
- ◆ Based on the defined process, tool set, and time estimates determine the resources, both internal and external, needed to complete the work.
  - ◆ It is likely the amount of work to complete the adjustments is greater than current staff can accommodate. If so, the planning team must propose a solution to complete the work. To maximize project success, some account types may be outsourced.
- ◆ Determine if any pre-work can be started and if so when and by whom.

### Project Timeline



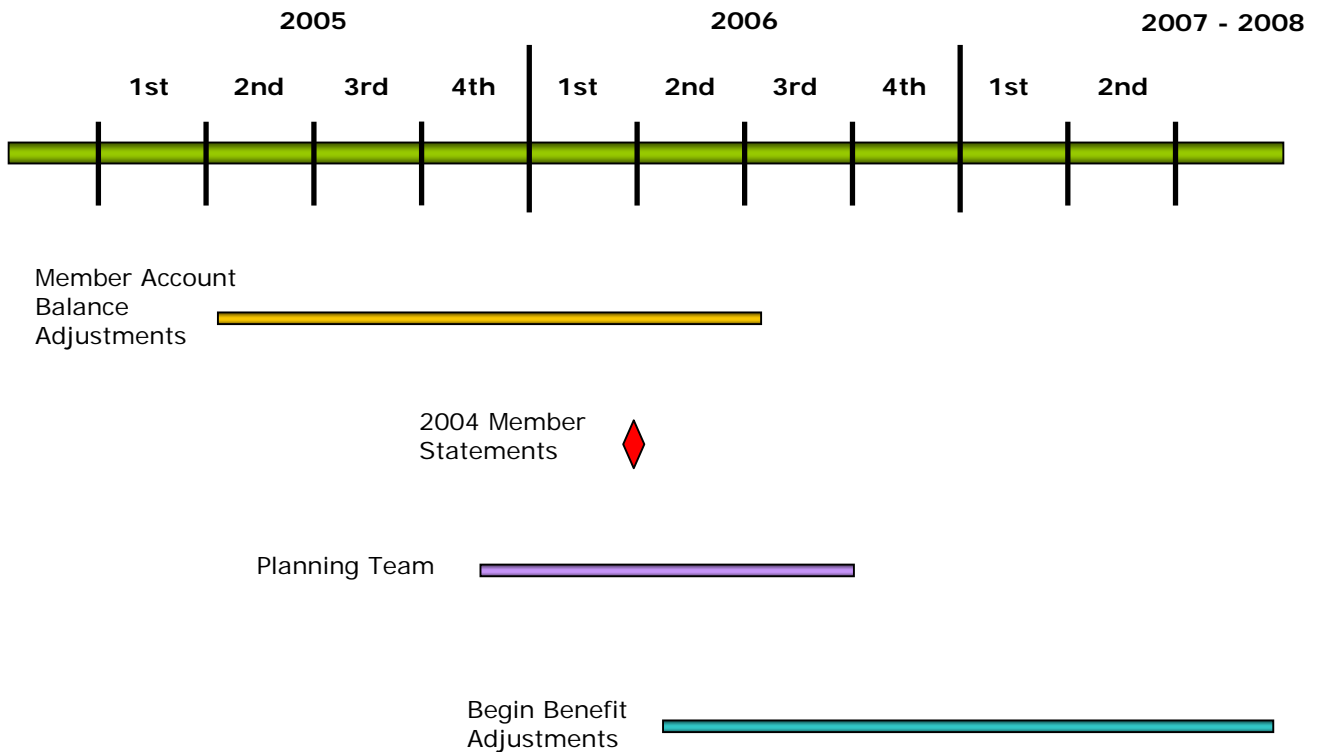
# Strunk and Eugene Project

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## Major Milestones

The following chart shows the high-level milestones for this project. Please note, we are still estimating the work for this project. Therefore, the estimated end date is not yet determined.

### Project Timeline



## Major Components

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### Complexity Factor

# Strunk and Eugene Project

## DRAFT

One of the overriding reasons that this project is more complex than other RIMS related projects at PERS is that it adjusts historical member's account information rather than just system screens or reports. In so doing, PERS must create programs to back out (or void) transactions to member accounts, determine historical adjustments to each account (i.e., recreate the account as of the appropriate date in time, recalculate and apply credits accurately), and ensure that audit trails and logging files are created appropriately). In addition, since retired member benefits will change, PERS needs to develop ways to recalculate the benefits, notify members, and either collect or pay over/under payments:

Our analysis to date identified the following issues that need to be addressed:

- The Strunk decision affects every PERS tier one member that received 2003 interest earnings. This includes 105,000 members and 4,300 retirees.
- The Eugene decision affects every PERS tier one member that received 1999 interest earnings. This includes 100,000 members and 35,000 retirees.
- The decision to postpone 2004 earnings crediting affected 180,000 members. As a result, Tier One and Tier Two Member Statements for 2004 are on hold.
- 21,563 Retired Members that are not receiving annual COLA increases are subject to COLA reinstatements and Strunk/Eugene adjustments. These adjustments must be communicated to the retiree and invoiced or paid.
- Every affected recipient will have 12 to 30 financial adjustment transactions applied their account.
- Up to 60% of the original retirements were processed with manual interventions as they moved through the computer systems.
- No automated processes currently exist to make the above-mentioned adjustments. These processes must be defined, built, tested and implemented.
- Each of the following categories requires specialized processing rules. Many accounts are affected by several of these categories and will require a combination of solutions:
  - Active/Dormant Member Accounts
  - Service Retirements
  - Disability Retirements
  - Police and Fire Units Retirements
  - Loss of Membership Accounts
  - Refunded Accounts
  - Deaths
  - Divorces
  - Lump Sum Settlements and Installments
  - Full Cost Purchases

# Strunk and Eugene Project

## DRAFT

- AEF Estimated Payments
- Police and Fire Units Purchases
- One Time Variable Transfers
- Re-Employed Accounts
- COLA Frozen Benefits

### **Membership Adjustments (Active / Dormant / 2004 Statements)**

#### ◆ Description

This first phase of this project addresses the requirement to adjust all Tier One member accounts. The phase has two goals: adjust the accounts so 2004 member statements can be created and, in the case where a member retires, stop unadjusted accounts from moving to the benefit calculation section. When this movement happens, it only adds to the number of accounts that must be reviewed and possibly recalculated.

#### ◆ Timeline

This phase started in the second quarter of 2005 and ends in the first quarter of 2006 when the last of the more difficult accounts is adjusted.

#### ◆ Dependencies

Receiving the 2004 final earnings crediting rates from the Board.  
Resolving testing issues in a timely fashion to produce 2004 statements.  
Re-splitting divorced accounts prior to the 2004 statements.

### **Payment Recipients**

This phase of this project addresses the requirement to adjust recipient's benefits. The phase has two goals: adjust the benefits according to the court cases and settlement agreement and complete this process in a manner that minimizes the impact to the recipient. The work in this phase has been divided into two categories: those recipients receiving monthly annuity payments and those recipients that received a lump sum payment.

# Strunk and Eugene Project

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## Annuity Accounts

- ◆ Description

This category includes all recipients receiving a monthly annuity payment at the adjustment date.

- ◆ Affected Accounts

See high-level account breakdown table in Appendix.

- ◆ Timeline

The timeline for this effort depends on the final estimates from the breakdown of the affected accounts shown above and the availability of staff to perform the work. Further analysis needs to be performed on this information before a final timeline can be developed.

- ◆ Dependencies

Building a plan to determine how to best complete the work.

Identifying and procuring the resources necessary to perform the work.

Receiving the actuarial values to complete the Actuarial Reduction Method (ARM) calculations.

Completing the tools necessary to complete the work.

Defining the needed processes and procedures to complete the work.

Implementing an accounts receivable solution.

Resolving the policy decisions associated with account adjustments.

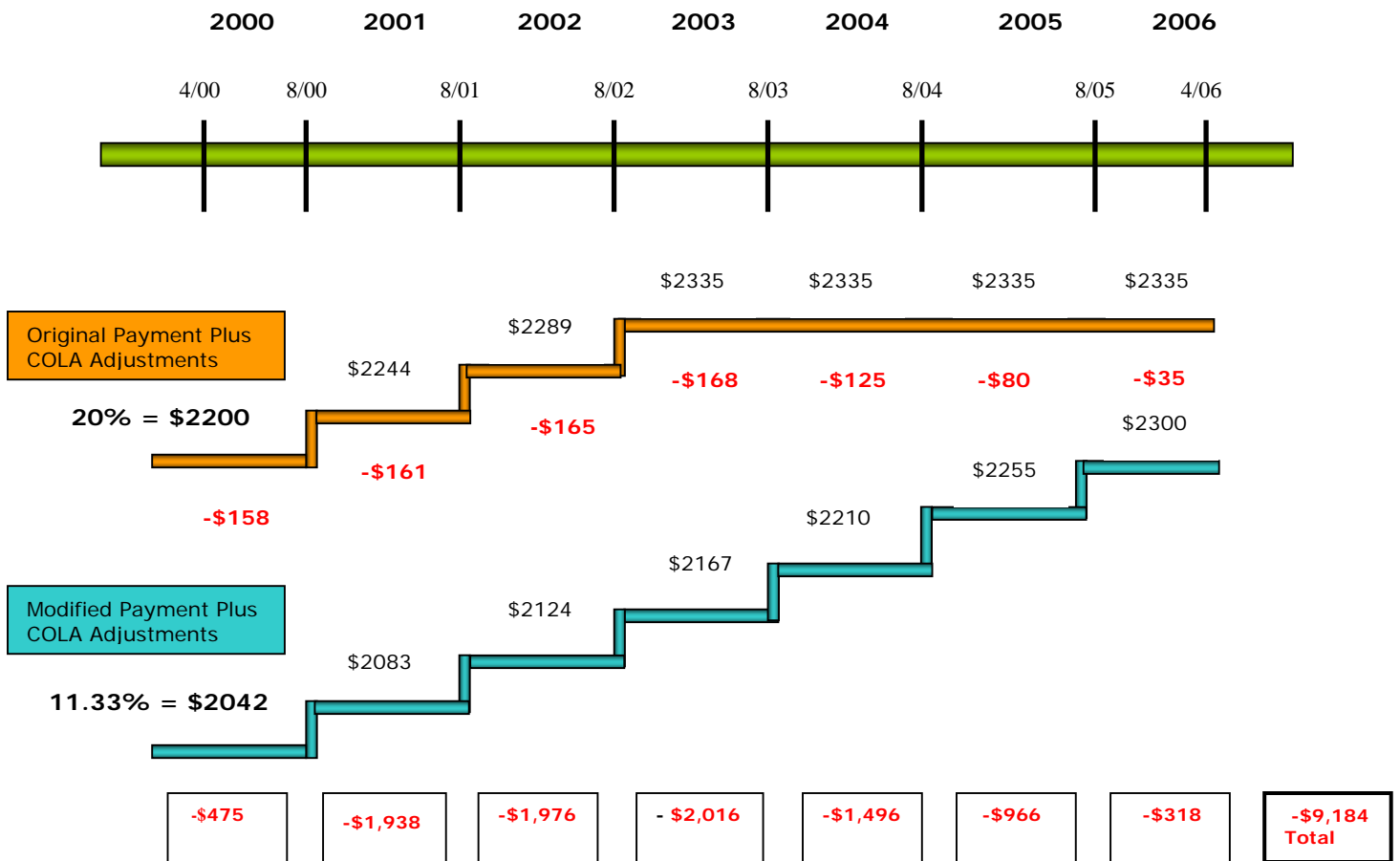
# Strunk and Eugene Project

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◆ Actuarial Reduction Method (ARM) Example

**Example 1:** The following example shows the affects of reducing the 1999 earnings rate from 20% to 11.33% and reapplying the Cost-of Living Allowance for 2003, 2004, and 2005. This examples shows that the recipient's monthly payment is reduced by \$36 plus the actuarially adjustment of \$28 that is necessary to recover the \$9,184 they owe PERS Fund as of the adjustment date (April 1, 2006).

***Strunk and Eugene Recalculation Example***  
***Retirement Date of April 2000 and Member Had No Variable***  
***The Benefit Adjustment Date is April 2006***



**NET RESULT:** The member's monthly benefit is reduced by \$35. The PERS Fund must also collect the \$9,184. We do this using an Actuarial Reduction Method. This adjustment results in an additional reduction of \$28 a month for a total reduction of \$63 a month as of the adjustment date.

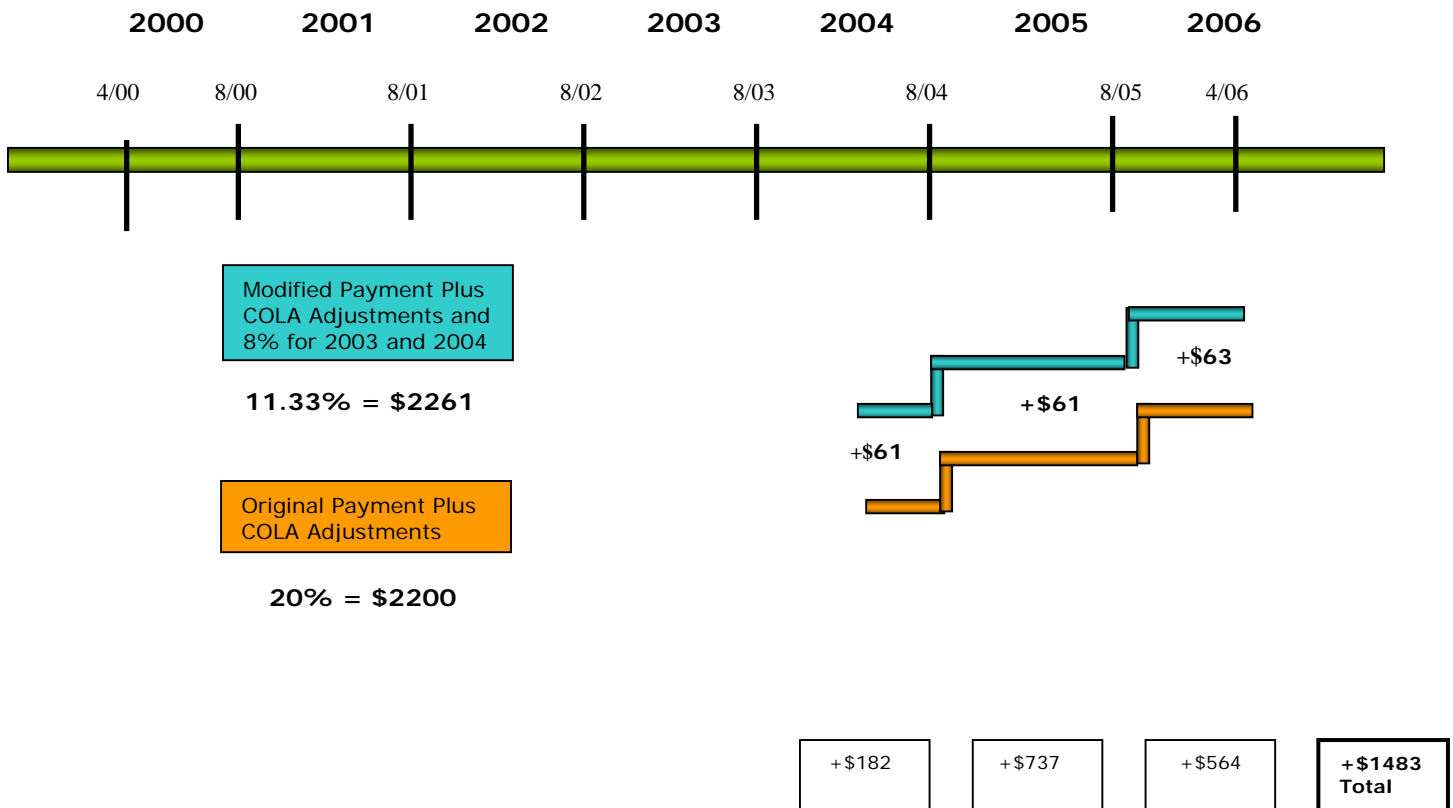
The **negative** numbers represent the amount the member owes the PERS Fund for each year. The box on the bottom right is the sum total of all money owed as of the adjustment date.

# Strunk and Eugene Project

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**Example 2:** The following example shows the affects of reducing the 1999 earnings rate from 20% to 11.33%. The recipient's account balance was recalculated using the new rate and accruing 8% earnings for 2003 and 2004. This examples shows that the recipient's monthly payment is increased by \$63 plus PERS owes them \$1,483 as of the adjustment date (April 1, 2006).

## *Strunk and Eugene Recalculation Example* *Retirement Date of April 2004 and Member Had No Variable* The Benefit Adjustment Date is April 2006



**NET RESULT:** The member's monthly benefit is increased by \$63 and the PERS fund must pay them an additional \$1,483 as of the adjustment date.

The **positive** numbers represent the amount PERS owes the member for each year. The box on the bottom right is the sum total of all money owed as of the adjustment date.

# Strunk and Eugene Project

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## Lump Sum Accounts

- ◆ Description

This category includes all recipients that received a lump sum payment.

- ◆ Affected Accounts

See high-level account breakdown table in Appendix

- ◆ Timeline

The timeline for this effort is dependant on the final estimates from the breakdown of the affected accounts shown in the appendix and the availability of staff to perform the work. Further analysis needs to be performed on this information before a final timeline can be developed.

- ◆ Dependencies

Building a plan to determine how to best complete the work.  
Building a project team to perform the work.  
Receiving the actuarial values from the ARM calculations.  
Completing the tools necessary to complete the work.  
Defining the processes and procedures needed to complete the work.  
Implementing an AR solution.  
Resolving the policy decisions dealing with benefit recalculations.

# Strunk and Eugene Project

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## Appendix

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### Key Risks

This section describes the key risks to the project

#### 1. Risk:

**Data Issues** – We may uncover more data-related issues in system testing than we had originally thought.

**Consequence:**

If this occurs we may not be able to complete the member account balance adjustments in time to run the 2004 statements this year.

**Contingency Plan:**

We are doing our best to uncover as many issues as early in the process as possible. However, our only strategy is to either omit some accounts from our 2004 statement processing or delay the statements.

#### 2. Risk:

**Rims Conversion Project Release** – We are currently scheduled to complete our user acceptance testing to adjust member accounts one week before the last release of HB 2020 programming and the first release of RCP programming.

**Consequence:**

The two projects may conflict with each other during the testing phase. The release of two large projects into production simultaneously greatly increases the risk. It may be difficult to determine which project caused the underlying issues and, therefore, resolution may be difficult.

**Contingency Plan:**

Consider the possibility of moving the member account balance adjustments and 2004 annual statement production/distribution to early next year.

#### 3. Risk:

**Rims Conversion Project (RCP)** – *Strunk* and *Eugene* project will not be completed by the end of Stage 2 of RCP when all the job segments and related data is moved to jClarety.



# Strunk and Eugene Project

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## **Consequence:**

The benefit recalculations can no longer be done in the RIMS system. This would end our Strunk and Eugene project as currently planned.

## **Contingency Plan:**

We have three possible options:

- Extend the project and adjust the RCP schedule accordingly,
- Migrate the functionality to jClarety and continue the project in jClarety or
- Back bridge (send) job segments to RIMS from jClarety.

## **4. Risk:**

**Staff** – The project plan and organization chart call for a team of 50+ people. It is very unlikely the agency can hire, train, and house a staff of this size.

## **Consequence:**

The timeframe for the project must be extended and the functionality must be added to jClarety so the work can be completed there.

## **Contingency Plan:**

We have three possible options:

- Extend the project and adjust the RCP schedule accordingly or
- Migrate the functionality to jClarety and continue the project in jClarety or
- Out source as much of this work as possible

## **5. Risk:**

**Contracts** – Implementing contracts for consultants and/or out sourcing is a lengthy process with little flexibility.

## **Consequence:**

The project timeline may have to be extended to account for the delay in this process.

## **Contingency Plan:**

Perform the work using existing resources and attempt to address contracting bottlenecks.

## **6. Risk:**

**New Legislative or court actions** – Future Legislative actions or court rulings could impact the scope of the project.

## **Consequence:**

Scope and /or schedule change.

## **Contingency Plan:**

Evaluate the impact and realign the plan.

# Strunk and Eugene Project

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## Affected Accounts

### Accounts Affected by Strunk/Eugene Re-crediting of Earnings

#### High-level Breakdown of Accounts

This table is a high level summary of the types of account affected by Strunk and Eugene.

#### UNIQUE ACCOUNTS (44,230)

Member & AP Retirements Post 3/1/00	33,792
Account Withdrawals (Members & AP's)	4,967
Final LSI for Retirements prior to 4/1/00	981
Pre Retirement Death Benefits	1,395
Non- Retired AP/Member Divisions	2,958
Re-employed Retiree's	137

#### ACCOUNTS THAT MAY OR MAY NOT BE PART OF ABOVE GROUP (6,387)

Failed One Time Variable Transfers	4,928
P & F Unit Benefits	1,459

## 05 – 07 Budget

### Operations 110 – Strunk Implementation

As a result of the Strunk opinion, the HB 2003 COLA team request has been reconfigured to meet the staff needs to implement the opinion. The 22 positions originally requested have been increased by three. The positions provided in the budget are:

1	FTE Project Manager 1
2	FTE Program Technician 1
7	FTE Retirement Counselor 2
13	FTE Retirement Counselor 1
<u>2</u>	FTE Office Specialist 2
<b>25</b>	<b>TOTAL</b>

### Anticipated Additional Needs

From the original estimates created 6 months ago, the number of additional staff needed to complete the adjustments required by the Eugene decision was 70 FTE. Although this estimate has not been re-verified, we are confident the 25 staff provided in the Strunk budget package is not sufficient to meet the workload and time frames of this project. We are working on the revised estimates and plan to have them available at future Board meetings



# Oregon

Theodore R. Kulongoski, Governor

October 21, 2005

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**TO:** Members of the PERS Board

**FROM:** Steven Patrick Rodeman, Administrator, PPLAD

MEETING DATE	10/21/05
AGENDA ITEM	C.2 Earnings Crediting

**SUBJECT:** Adoption of Temporary Rules; Notice of Rulemaking for Earnings Crediting Rules:  
OAR 459-007-0001, *Earnings and Interest Distribution Definitions*  
OAR 459-007-0003, *Determination of Tier One Year-to-Date Calculation*  
OAR 459-007-0005, *Annual Earnings Crediting*  
OAR 459-007-0090, *Crediting Earnings upon Tier One Service Retirement, Two or More Installment Payments*  
OAR 459-007-0095, *Crediting Earnings upon Tier One Service Retirement Prior to April 1, 2004, Two or More Installment Payments* (Repeal)  
OAR 459-013-0300, *HB 2003 Retirement Allowance Recalculations* (Repeal)

## OVERVIEW

- Action: Adopt temporary rule modifications to OAR 459-007-0001, 459-007-0003, 459-007-0005 and 459-007-0090 and suspend OAR 459-007-0095 and 459-013-0300. These rules were adopted to incorporate provisions of the 2003 PERS Reform Legislation that were subsequently found invalid by the Oregon Supreme Court in the *Strunk* case.
- Reason for Temporary Rulemaking: The *Strunk* decision voided certain portions of the legislation as unconstitutional. Consequently, the administrative rule provisions based on those statutes can no longer operate. Adopting these rule modifications as temporary rules allows the agency to move forward with earnings crediting in compliance with the court's decision.
- Policy Issue: None. These rule modifications put the administrative rules into compliance with the state of the law as articulated in the *Strunk* decision.

## SUMMARY OF RULE MODIFICATIONS

The Oregon Supreme Court determined two elements of the 2003 PERS Reform Legislation to be invalid. One was the crediting limitation on Tier One member regular accounts. The other was using the COLA Freeze method to recover overpayments as determined under the legislation.

Previously, the agency had adopted administrative rules that incorporated those elements. After the decision was announced, PERS staff identified the following rule provisions

that need to be modified to remove those elements and conform to the current state of the law after *Strunk*.

**OAR 459-007-0001, *Definitions*:** The only change in this rule is the verb tense used in reference to the Deficit and Rate Guarantee reserves as they will now be ongoing accounts, not just reflections of prior deficits.

Note that in this and the other rule modifications, an effective date is specified. These dates correspond to when the prior, now invalid, version of the rules became effective. These modifications will, by operation of these dates, supercede the non-conforming versions. These rule modifications would be effective back to July 1, 2003, which is the first date that the invalid statutory provisions became effective.

**459-007-0003, *Determination of Tier One Year-to-Date Calculation*:** This rule reflected the limitations on Tier One member regular account earnings crediting that were voided in *Strunk*. The rule modifications clarify that Tier One member regular accounts will be credited with no less than a pro-rate of the assumed interest rate. The rule also notes that such accounts cannot be credited with more than that rate until the conditions of ORS 238.255 are met. HB 2001 (2003 regular session) adopted limitations that prevent the PERS Board from crediting more than the assumed interest rate to Tier One member regular accounts. Those limitations were not challenged in the *Strunk* case, so the rule modifications acknowledge them.

The effective date of these rule modifications is also July 1, 2003.

**459-007-0005, *Annual Earnings Crediting*:** The substantive modifications are to sections (8) and (10) of the rule to reflect the assumed rate guarantee for Tier One member regular accounts. The other modifications correct terminology and references that were not consistent.

The effective date of these rule modifications is April 15, 2004, which corresponds to when the PERS Board first adopted this rule.

**459-007-0090, *Crediting Earnings upon Tier One Service Retirement, Two or More Installment Payments*:** This rule reflected an interim provision that credited lump sum installment retirements with a special rate up until April 1, 2004. That provision was struck down in *Strunk*, so this rule modification removes reference to the April trigger date.

The effective date of these rule modifications is April 1, 2004 because retirements prior to that date were, by operation of law, subject to the old earnings crediting rules.

**459-007-0095, *Crediting Earnings upon Tier One Service Retirement Prior to April 1, 2004, Two or More Installment Payments*:** This rule was adopted to reflect that interim provision referenced above. The provision required that lump sum retirements from August 2003 to April 1, 2004 that were paid in two or more installments be credited with actual earnings or losses. That restriction was invalidated in *Strunk*, so staff is asking the Board to repeal the rule implementing it.

**459-013-0300, *HB 2003 Retirement Allowance Recalculations*:** The *Strunk* court also found that the COLA Freeze method was not a permissible way to recover overpaid

amounts as determined under the legislation. This rule was adopted to define and support the COLA Freeze process, so staff is asking the Board to repeal the rule.

#### JUSTIFICATION FOR TEMPORARY RULEMAKING

These rule modifications respond to the holding in the *Strunk* decision that Tier One member regular accounts are to be credited with the assumed interest rate for each year. Previously, these rules had been drafted to conform to the 2003 PERS Reform Legislation provisions that prohibited crediting earnings to Tier One regular member accounts in any year in which a balance existed in the Deficit Reserve.

Transactions continue to be processed by the agency almost daily. These transactions (retirements, withdrawals, death benefits, etc.) should conform to the state of the law as articulated in *Strunk*. The proposed rule modifications should be adopted on a temporary basis so PERS has a conforming set of administrative rules in place as the basis for these transactions.

#### LEGAL REVIEW

The attached drafts of OAR 459-007-0001, 459-007-0003, 459-007-0005, 459-007-0090, 459-007-0095 and 459-013-0300 have been submitted to legal counsel for review. Any concerns will be brought forward before the rule is presented for adoption at the meeting.

#### EFFECTIVE DATE

These rules will become effective upon filing but will be retroactively applied back to the dates stated in the rules. The maximum period the temporary rules can remain in effect is 180 days, but staff will immediately begin permanent rulemaking to replace (and in the case of OAR 459-007-0095 and 459-013-0300, permanently repeal) these temporary rules.

#### RULEMAKING TIMELINE

- |                   |   |
|-------------------|---|
| October 14, 2005  | Staff initiated the rulemaking process by filing a Notice of Rulemaking with the Secretary of State.                            |
| October 21, 2005  | PERS Board may adopt the proposed temporary rules. PERS staff will proceed with permanent rulemaking unless otherwise directed. |
| November 1, 2005  | <i>Oregon Bulletin</i> publishes the Notice of Rulemaking.  |
| November 29, 2005 | Rulemaking hearing takes place at 2:00 p.m. in Tigard.  |
| November 29, 2005 | Public comment period ends at 5:00 p.m.   |
| December 16, 2005 | PERS Board may adopt the proposed new permanent rules.  |

#### IMPACT

**Mandatory:** Yes. Rule modifications must be adopted to conform to the current state of the law after the *Strunk* decision.

**Impact:** The rule modifications themselves do not carry a discrete impact since they just conform to the requirements established in the law as it exists after Strunk. The Strunk decision will have significant administrative and fiscal impacts that are addressed more fully under the staff reports provided separately to the Board.

**Cost:** There is no discrete cost associated with these rule modifications as, again, they are just conforming the rules to the state of the law after Strunk. That decision will incur substantial costs in crediting to Tier One member regular accounts, both in terms of the dollars needing to be credited and the administrative costs in implementing that decision, particularly on a retroactive basis for transactions that were previously completed under the former laws.

- *Members.* No discrete costs to members.
- *Employers.* No discrete costs to employers.
- *Administration.* No discrete costs to administer these rule modifications.
- *Fund.* No discrete cost impact to the PERS Fund by adoption of these rule modifications.

#### BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to OAR 459-007-0001, 459-007-0003, 459-007-0005 and 459-007-0090 as temporary rules and suspend OAR 459-007-0095 and 459-013-0300, as presented.”
2. Take no action and direct staff to make changes to the rule or take other action.

#### STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

- **Reason:** Adopting these modifications will conform the agency’s rules to the state of the law after the Strunk decision.

**If the Board does not adopt:** Staff would return with rule modifications that more closely fit the Board’s policy direction if the Board determines that a change is warranted.

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 007 – EARNINGS AND INTEREST  
DISTRIBUTION**

MEETING DATE	10/21/05
AGENDA ITEM	C.2. Earnings Crediting

OAR 459-007-0001 is Amended:

1 **459-007-0001**

2 **Definitions**

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

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

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

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

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

15 (5) "Capital Preservation Reserve" means the reserve established under ORS  
16 238.670(3).

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

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

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

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

3            (10) "Tier One Member Deficit Reserve" and "Deficit Reserve" mean the deficit  
4 reserves established in ORS 238.255(1) that *[have been]* **are** used to fund crediting of the  
5 assumed rate to Tier One regular accounts and that are used to reflect losses attributable  
6 to Tier One regular accounts.

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

10           (12) "Year-to-date calculation" means the factor used to credit a pro-rata distribution  
11 of year-to-date earnings, allowing for reserves and expenses, to Tier One regular  
12 accounts, Tier Two regular accounts, or member variable accounts. These factors are  
13 calculated by staff on a monthly basis using the market value of investments in the Fund  
14 as supplied by the Oregon State Treasury. Year-to-date calculations for Tier One member  
15 regular accounts will be determined in accordance with OAR 459-007-0003.

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

17           Stat. Auth.: ORS 238.650  
18           Stats. Implemented: ORS 238



**OREGON ADMINISTRATIVE RULE**  
**PUBLIC EMPLOYEES RETIREMENT BOARD**  
**CHAPTER 459**  
**DIVISION 007 – EARNINGS AND INTEREST**  
**DISTRIBUTION**

MEETING DATE	10/21/05
AGENDA ITEM	C.2. Earnings Crediting

OADR 459-007-0003 is Amended:

1 **459-007-0003**

2 **Determination of Tier One Year-to-Date Calculation**

3 (1) Any year-to-date calculation ("factor") used to credit earnings to Tier One  
 4 member regular accounts *[is subject to the following conditions:*

5 *(1) If the balance in the Deficit Reserve is other than zero at the time the factor*  
 6 *would be applied, the factor shall be zero.*

7 *(2) In any month in which the factor would be less than a year-to-date equivalent of]*  
 8 shall be a pro-rate of the assumed interest rate[, *the Rate Guarantee Reserve shall be*  
 9 *used to the extent available to credit Tier One regular accounts up to a year-to-date*  
 10 *equivalent of the assumed rate.*

11 *(3) The factor shall not] and cannot be greater [than a year-to-date equivalent of*  
 12 *the assumed rate] unless and until the conditions in ORS 238.255[(3)] have been met.*

13 *[(4) For purposes of crediting the regular accounts of Tier One members who retire*  
 14 *before April 1, 2004, and alternate payees of those members, the factor shall be*  
 15 *determined in accordance with the Oregon Administrative Rules in effect on June 30,*  
 16 *2003.]*

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

18 Stat. Auth.: ORS 238.650  
 19 Stats. Implemented: ORS 238

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 007 – EARNINGS AND INTEREST  
DISTRIBUTION**

MEETING DATE	10/21/05
AGENDA ITEM	C.2. Earnings Crediting

1 OAR 459-007-0005 is Amended:

1 **459-007-0005**

2 **Annual Earnings Crediting**

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

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

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

14 (4) **Employer lump sum payments.** All earnings or losses attributable to the  
15 employer lump sum payment accounts established under ORS 238.225(9) shall be  
16 credited to the accounts from which they were derived.

17 (5) **Administrative expenses.**

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

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

6            (6) **Member variable accounts.** All remaining earnings or losses attributable to the  
7 V[v]ariable A[a]nnuity A[a]ccount shall be credited to the participants of that account,  
8 as provided under ORS 238.260(6) and (7)(b).

9            (7) **Contingency Reserve.**

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

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

20           (8) **Tier One Member Deficit Reserve.**

21           [(a)] All remaining earnings attributable to Tier One member regular accounts and  
22 the Tier One Rate Guarantee Reserve shall be credited to the Tier One Member Deficit  
23 Reserve established in ORS 238.255(1) until the deficit is eliminated.

1 *[(b) Any losses attributable to Tier One regular accounts shall be charged to the*  
2 *Tier One Member Deficit Reserve in accordance with ORS 238.255(1).]*

3 (9) **Capital Preservation Reserve.** Remaining earnings attributable to the Tier Two  
4 member regular accounts, employer contribution accounts, the Benefits-in-Force  
5 Reserve, the Contingency Reserve and the Capital Preservation Reserve may be credited  
6 from those sources to one or more reserve accounts that may be established under ORS  
7 238.670(3) to offset gains and losses of invested capital.

8 (10) **Tier One member regular accounts.** All remaining earnings attributable to  
9 Tier One member regular accounts and the Tier One Rate Guarantee Reserve shall be  
10 credited to Tier One member regular accounts *[in accordance with the following:]*

11 *[(a) No earnings shall be credited in any year in which there is a balance other than*  
12 *zero in the Tier One Member Deficit Reserve, in accordance with ORS 238.255(2).]*

13 *[(b) Earnings shall be credited] at [to the greatest level possible without exceeding]*  
14 *the assumed rate in any year in which [there is a zero balance in the Deficit Reserve and]*  
15 *the conditions set out in ORS 238.255[(3)] have not been met. Crediting under this*  
16 *subsection shall be funded first by all remaining earnings attributable to Tier One*  
17 *member regular accounts and the Tier One Member Rate Guarantee Reserve, then*  
18 *moneys in the Tier One Member Rate Guarantee Reserve.*

19 *[(c) In any year in which remaining earnings attributable to Tier One regular*  
20 *accounts and the Rate Guarantee Reserve exceed the assumed rate, and the conditions*  
21 *set out in ORS 238.255(3) have been met, earnings in excess of the assumed rate may be*  
22 *credited to Tier One regular accounts.]*

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

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

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

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

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

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

19 Stat. Auth.: ORS 238.650  
20 Stats. Implemented: ORS 238

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 007 – EARNINGS AND INTEREST  
DISTRIBUTION**

MEETING DATE	10/21/05
AGENDA ITEM	C.2. Earnings Crediting

1 OAR 459-007-0090 is Amended:

1 **459-007-0090**

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

4 Notwithstanding 459-007-0070, if a Tier One member retires *[on or after April 1,*  
5 *2004, ]*and elects to receive installment payments under ORS 238.305(4), earnings shall  
6 be credited from the effective date of the last annual rate to the date of distribution of the  
7 final installment payment in the manner specified in this rule.

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

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

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

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

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

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

4 (c) In accordance with ORS 238.305(4)(a)(F), after crediting earnings or losses as  
5 provided in subsections (a) and (b) of this section, and prior to the distribution of the first  
6 installment, the adjusted balance of the member's variable account shall be transferred to  
7 the member's regular account as of the effective retirement date.

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

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

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

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

21 (a) The member's regular account balance as of December 31 of the year of  
22 retirement, excluding the remaining earnings credited to the member's regular account

1 under subsection (1)(b) of this rule and to the member's variable account under  
2 subsection (2)(b) of this rule; multiplied by

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

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

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

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

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

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

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

16 (B) The annual rate for that year, prorated from the date of distribution to December  
17 31.

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

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



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

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

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

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

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 007 – EARNINGS AND INTEREST  
DISTRIBUTION**

MEETING DATE	10/21/05
AGENDA ITEM	C.2. Earnings Crediting

OADR 459-007-0095 is Repealed:

1 ***[459-007-0095***

2 ***Crediting Earnings upon Tier One Service Retirement Prior to April 1, 2004, Two or***  
3 ***More Installment Payments***

4 *Notwithstanding 459-007-0070, if a Tier One member retires with an effective*  
5 *retirement date on or after August 1, 2003, and prior to April 1, 2004, and elects to*  
6 *receive installment payments under ORS 238.305(4), earnings shall be credited from the*  
7 *effective date of the last annual rate to the date of distribution of the final installment*  
8 *payment in the manner specified in this rule.*

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

11 *(a) Prior year earnings. If earnings for the calendar year prior to the effective*  
12 *retirement date have not yet been credited, earnings shall be credited for that year based*  
13 *on the greater of the assumed rate or the latest year-to-date calculation available for that*  
14 *year.*

15 *(b) Retirement year earnings. Earnings for the calendar year of the effective*  
16 *retirement date shall be based on the greater of the assumed rate or the latest year-to-*  
17 *date calculation as of the effective retirement date.*

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

20 *(a) Prior year earnings. If earnings or losses for the calendar year prior to the*  
21 *effective retirement date have not yet been credited to the member's variable account,*

1 *earnings or losses for that year shall be credited based on the latest year-to-date*  
2 *calculation available for that year.*

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

6 *(c) In accordance with ORS 238.305(4)(a)(F), after crediting earnings or losses as*  
7 *provided in subsections (a) and (b) of this section, and prior to the distribution of the first*  
8 *installment, the adjusted balance of the member's variable account shall be transferred to*  
9 *the member's regular account as of the effective retirement date.*

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

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

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

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

22 *(a) The member's regular account balance as of December 31 of the year of*  
23 *retirement, excluding earnings credited to the member's regular account under*

1 *subsection (1)(b) of this rule and to the member's variable account under subsection*  
2 *(2)(b) of this rule; multiplied by*

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

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

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

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

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

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

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

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

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

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

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

7            *(7) The provisions of this rule are effective on July 30, 2003.*

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

9            *Stats. Implemented: ORS 238.260, 238.300, 238.305 & 238.315; OL 2003 Ch.625*

10 *(Enrolled HB 3020)]*

11

OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 013 – RETIREMENT BENEFITS

MEETING DATE	10/21/05
AGENDA ITEM	C.2. Earnings Crediting

OAR 459-013-0300 is Repealed:

1 **[459-013-0300**

2 **HB 2003 Retirement Allowance Recalculations**

3 *(1)(a) The provisions of this rule apply to Tier One members, and the alternate*  
4 *payees and beneficiaries of Tier One members, who receive a service retirement*  
5 *allowance calculated under ORS 238.300(2)(b)(A) and who have an effective retirement*  
6 *date that is on or after April 1, 2000, and before April 1, 2004.*

7 *(b) The provisions of this rule do not apply to:*

8 *(A) Judge members and the beneficiaries or alternate payees of judge members.*

9 *(B) A member who receives a disability retirement allowance.*

10 *(2) Revised service retirement allowance. The "revised service retirement*  
11 *allowance" provided for in section 10, chapter 67, Oregon Laws 2003 (Enrolled HB*  
12 *2003, as amended by section 13, Enrolled HB 3020) shall be calculated as follows:*

13 *(a) An account balance for the member as of the member's effective retirement date*  
14 *shall be determined as though the balance in the member's regular account as of*  
15 *December 31, 1999, had been credited with 11.33 percent earnings for the calendar year*  
16 *1999.*

17 *(b) The member's service retirement allowance shall then be calculated for that*  
18 *member as of the member's effective retirement date using the account balance*  
19 *established in subsection (a) of this section. This calculation shall be made under ORS*  
20 *238.300; section 4, chapter 68, Oregon Laws 2003 (Enrolled HB 2004); and any other*

1 *provisions of ORS Chapter 238 that are applicable to the calculation or adjustment of the*  
2 *member's service retirement allowance.*

3 *(c) The retirement allowance calculated in subsection (b) of this section shall be*  
4 *converted to the form of benefit selected by the member under ORS 238.305, if any, and*  
5 *adjusted as required by section 4, chapter 68, Oregon Laws 2003 (Enrolled HB 2004), or*  
6 *by any other provision of ORS Chapter 238.*

7 *(d) The allowance calculated under subsection (b) or, if applicable, subsection (c) of*  
8 *this section shall then be adjusted as if the cost of living adjustment provided for in ORS*  
9 *238.360 had applied to that benefit for each calendar year after the member's effective*  
10 *retirement date.*

11 *(3) Fixed service retirement allowance. The "fixed service retirement allowance"*  
12 *provided for in section 10, chapter 67, Oregon Laws 2003 (Enrolled HB 2003, as*  
13 *amended by section 13, Enrolled HB 3020) shall be the amount payable to or on account*  
14 *of the member on July 1, 2003, or on the member's effective retirement date, whichever is*  
15 *later. The fixed service retirement allowance includes any benefit increases such as those*  
16 *provided by ORS 238.375, 238.385, or 238.387, and cost of living adjustments that have*  
17 *been made to the member's actual retirement allowance prior to July 1, 2003.*

18 *(4) The service retirement allowance payable to or on account of members described*  
19 *in section (1) of this rule shall be the greater of the revised service retirement allowance*  
20 *calculated under section (2) of this rule or the fixed service retirement allowance*  
21 *calculated under section (3) of this rule.*

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

23 *Stat. Auth: ORS 238.650*

24 *Stats. Implemented: OL 2003 Ch. 67 & Ch. 625 (Enrolled HB 2003 & HB 3020)]*



# Oregon

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October 21, 2005

**TO:** Members of the PERS Board  
**FROM:** Dale S. Orr, Actuarial Analysis Coordinator  
**SUBJECT:** 2004 Final Earnings Crediting

MEETING	<b>10/21/05</b>
DATE	
AGENDA	<b>C.3.</b>
ITEM	<b>Earnings Crediting</b>

## **EXECUTIVE SUMMARY**

Staff has prepared a series of recommended motions that will guide the Board through the process of crediting 2004 calendar year earnings to the various reserves and accounts in the PERS Fund. Although these recommended motions reflect statutory requirements and administrative rules, the Board does have discretion in the areas noted.

The motions will also allow the Board to complete two other actions: 1) credit 2003 earnings to Tier One member regular accounts to comply with the Oregon Supreme Court ruling in *Strunk*, and 2) credit 2004 earnings to Individual Account Program accounts.

## **HISTORY**

### **Preliminary Board Action:**

On February 18, 2005, the Board made a preliminary decision to:

1. Place a full 7.5% of 2004 earnings into the Contingency Reserve;
2. Credit sufficient earnings to eliminate the Tier One Deficit Reserve from earnings attributable to Tier One member regular accounts (including a portion of earnings from those accounts transferred to the Benefits-In-Force Reserve to recover from 2004 retirees who previously received crediting from the Deficit Reserve);
3. Credit 8.0% to Tier One member regular accounts;
4. Place all remaining earnings attributable to Tier One member regular accounts in the Tier One Rate Guarantee Reserve;
5. Credit from 0.0% to 7.5% of remaining 2004 available earnings to the Capital Preservation Reserve; and
6. Credit Tier Two member regular accounts, Benefits-In-Force Reserve, and employer reserves equally with the remaining available earnings.

### **Report to the Legislature:**

PERS submitted the Board's preliminary earnings crediting proposal to the Legislature on February 25, 2005. This report was presented to the Joint Ways & Means General Government Subcommittee on March 14, 2005 and the Committee acknowledged receiving the report. ORS 238.670(5) requires this action to give the Legislature an opportunity to review and comment on the report.

### **Impact of Intervening Supreme Court Rulings (*Strunk and Eugene*)**



Subsequent to the Board's February action and report, the Oregon Supreme Court issued its rulings in the *Strunk* and *Eugene* cases. The Board had delayed crediting 2004 earnings until these cases were resolved. Now that these decisions have been reached, they will affect the Board's action in relation to the 2004 earnings crediting.

Chiefly, the *Strunk* case requires that Tier One member regular accounts be credited with 8% earnings for 2003. One of the recommended motions below meets this requirement out of 2004 earnings (rather than re-do the 2003 reallocation, crediting from 2004 earnings has the same net effect against the balance in the Tier One Deficit Reserve).

Next, the consequences of the *Eugene* decision and reallocating 1999 earnings means the PERS Fund ends 2004 with revised balances in almost every account and reserve. For example, the Contingency Reserve will enter 2004 at a much higher balance than previously because it will now receive a substantial allocation of 1999 earnings. Also, recovering the 1999 earnings that are to be reallocated will affect the pace at which this reallocation is fully executed. Therefore, actual account balances are still being determined in many respects.

Reaching these exact dollar figures is not necessary for 2004 earnings crediting. Instead, Fiscal Services will return to the Board (probably at its January 2006 meeting) with new account and reserve balances that reflect the 1999 reallocation and a plan to deal with the as yet un-recovered 1999 over-credited earnings. Allocating 2004 earnings, however, allows staff to proceed with crediting and bring account and reserve balances to a close for subsequent reporting.

### **2004 EARNINGS CREDITING BOARD MOTIONS**

These motions are designed to guide the Board through the process of crediting 2004 earnings. It is important that the sequence of motions be followed, as each motion is dependent on the Board's decision on prior motions. These motions assume that the following actions, as outlined in OAR 459-007-0005, have already been initiated:

- o The health insurance accounts in the PERS Fund are credited with their actual earnings, less administrative expenses incurred.
- o Employer lump sum payment accounts are credited with their actual earnings, less administrative expenses as authorized by ORS 238.225(10).
- o Variable Annuity Accounts are credited with their actual earnings, less a proportional charge for administrative expenses.
- o Agency administrative expenses have been recovered from available earnings according to ORS 238.610 and ORS 238A.350 (as applicable).

#### **Motions:**

##### ***1. Individual Account Program Accounts***

This motion will credit all accounts within the Individual Account Program (IAP) with the same percentage of available 2004 earnings.

**“I move that available 2004 earnings attributed to the funds in the IAP be credited evenly to member accounts within the IAP in proportion to the account balance.”**

## ***2. Contingency Reserve***

This motion will fund the Contingency Reserve. The Board can specify the percentage of available earnings but, by statute, the maximum is 7.5%. Staff recommends funding this reserve at 7.5% at this time. When the Board adopts a comprehensive reserving policy later this year, the amount (if any) within the Contingency Reserve determined to be in excess of necessary reserves under that policy can be re-allocated.

**“I move that 7.5% of available 2004 earnings be credited to the Contingency Reserve as authorized by ORS 238.670(1).”**

## ***3. 2003 Tier One Member Regular Account Earnings***

This motion will credit 2003 Tier One member accounts with the assumed earnings rate (8%) in accordance with the *Strunk* ruling. This must be done to create the baseline for crediting 2004 earnings to these accounts. The funding for this action will come from the Tier One Deficit Reserve.

**“I move that Tier One member Regular Accounts be credited at 8% for the 2003 earnings year. This action is to be funded by a charge to the Tier One Deficit Reserve.”**

## ***4. Tier One Member Regular Accounts/Deficit Reserve***

This motion will credit Tier One member Regular Accounts with the assumed interest rate (8%) for 2004 and credit the remaining earnings attributable to Tier One member Regular Accounts to the Tier One Deficit Reserve until its balance is eliminated. Any remaining earnings will then be credited to the Tier One Rate Guarantee Reserve.

**“I move that Tier One member regular accounts be credited with 8% for calendar year 2004. All remaining earnings attributable to Tier One member Regular Accounts are to be credited to the Tier One Deficit Reserve to the extent that it attains a zero balance. Thereafter, all remaining related earnings, if any, will be credited to the Tier One Rate Guarantee Reserve.”**

## ***5. Capital Preservation Reserve***

This motion would fund the Capital Preservation Reserve (CPR). The Capital Preservation Reserve is funded from earnings attributable to Tier Two member Regular Accounts, employer reserves, and the Benefits-In-Force Reserve. There is no limit on the percentage of available earnings the Board may credit to this reserve. Given the impact of the *Strunk / Eugene* decisions on reserve balances and needs, staff does not have a firm recommendation on the appropriate funding level for this reserve. However, staff will present examples of how funding this reserve at various percentage levels would impact affected accounts and related earning creditings.

**“I move that \_\_\_% of remaining 2004 available earnings be credited to the Capital Preservation Reserve as authorized by ORS 238.670(3).”**

## ***6. Benefits-In-Force Reserves***

This motion will credit the Benefits-In-Force Reserve with available 2004 earnings and allocate a portion of those earnings to the Tier One Deficit Reserve to offset that portion of the Deficit Reserve that was previously credited to Tier One members who retired in 2004.

**“I move that from remaining 2004 earnings attributable to the Benefits-In-Force Reserve, \$137,963,579 be credited to the Tier One Deficit Reserve to the extent that it attains a zero balance, with any remaining amount, if any, being credited to the Tier One Rate Guarantee Reserve. The balance of 2004 earnings attributable to the Benefits-In-Force Reserve will be credited to the Benefits-In-Force Reserve.”**

#### *7. Tier Two Member Regular Accounts and Employer Reserves*

This motion will credit remaining earnings to Tier Two member Regular Accounts and Employer Reserves.

**“I move that Tier Two member regular accounts and Employer Reserves be credited evenly with the remaining earnings that are attributable to those accounts and reserves.”**

#### BOARD OPTIONS

The Board may:

1. Choose to adopt the motions as set forth in this memo, specifying a percentage to be allocated to the Capital Preservation Reserve.
2. Adopt the motions set forth in this memo, specifying a different percentage for the Contingency Reserve and the percentage to be allocated to the Capital Preservation Reserve.
3. Take no action and direct staff to make changes to return with further analysis or recommendations.

#### STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

**Reason:** Staff is ready to proceed with 2004 earnings crediting and needs the Board to take this action so it can proceed to calculate final account and reserve balances, as well as process member statements for 2004.

**If the Board does not adopt:** Staff would return with further analysis or recommendations that more closely fit the Board’s policy direction.



# Oregon

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October 21, 2005

MEETING DATE	<b>10/21/05</b>
AGENDA ITEM	<b>C.4. Financial Modeling</b>

**TO:** Members of the PERS Board

**FROM:** Dale S. Orr, Actuarial Analysis Coordinator

**SUBJECT:** Financial Modeling of Actuarial Methods

Bill Hallmark, PERS' actuary from Mercer Human Resource Consulting will provide a presentation on Financial Modeling of Actuarial Methods at the October 21, 2005 meeting. This will be a follow-up to the May 20, 2005 Mercer presentation entitled "First Steps in Managing Employer Rates: Actuarial Methods." That presentation was also shared and discussed at the Board's Legislative Advisory Committee meeting of September 13, 2005 to obtain stakeholder input on the various actuarial methods and financial modeling needs.