

OREGON PUBLIC EMPLOYEES RETIREMENT BOARD

Friday
December 16, 2005
1:00 P.M.

PERS
11410 SW 68th Parkway
Tigard, OR

	ITEM	PRESENTER
A. Contested Case Hearings		
1.	Appeal of Carolyn Bigelow	RODEMAN / KUTLER
2.	Reconsideration of Peggy Barlow Appeal	RODEMAN / KUTLER
B. Administration		
1.	November 18, 2005 Board Meeting Minutes	CLEARY
2.	Director's Report	
	a. Forward-Looking Calendar	
	b. OIC Investment Report	
	c. Budget Report	
	d. HB2020 Update	
	e. Miscellaneous	
C. Consent Action and Information Items		
1.	Notice of Rulemaking of OAR 459-017-0060, Reemployment of Retired Members	RODEMAN
2.	First Reading of OAR 459-005-0610, Recovery of Overpayments	RODEMAN
D. Action and Discussion Items		
1.	Adoption of OAR 459-070-0001, OPSRP Definitions	RODEMAN
2.	Adoption of OAR 459-010-0003, PERS Membership Eligibility	RODEMAN
3.	Adoption of OAR 459-010-0014, Creditable Service	RODEMAN
4.	Strunk/Eugene Implementation Plan Update	STROUD
5.	Mercer Financial Modeling Results	ORR / HALLMARK
E. Executive Session Pursuant to ORS 192.660(2)(f), (h), and/or ORS 40.225		
1.	Litigation Update	LEGAL COUNSEL

In compliance with the Americans with Disabilities Act, PERS will provide this document in an alternate format upon request. To request this, contact PERS at 888-320-7377 or TTY 503-603-7766.

Note: If you have a disability that requires any special materials, services or assistance, call (503) 603-7575 at least 48 hours before the meeting.

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

PUBLIC EMPLOYEES RETIREMENT BOARD

PERS Board Meeting
1:00 P.M.
November 18, 2005
Tigard, Oregon

MEETING	12-16-05
DATE	
AGENDA	B.1.
ITEM	11-18 Minutes

MINUTES

Board Members:

Mike Pittman, Chair
Brenda Rocklin, Vice-chair
James Dalton
Thomas Grimsley
Excused: Eva Kripalani

Staff:

Paul R. Cleary, Director
Donna Allen
Steve Delaney
Steve Rodeman
Brendalee Wilson
Brian Harrington
Joe Delillo
David Crosley
Helen Bamford
Jeannette Zang
Brian DeForest
Jeff Marecic
Gloria English
Dave Tyler
Riki Vang

Others:

Gordon Allen
Myrnie Daut
Steve Manton
Dallas Weyand
Victor Nolan
Denise Yunker
Jim Schilmoeller
Karen Artiaco
Eric Carlson
Ken Armstrong
Michelle Diester
Bill Hallmark
Ron Schmitz
Keith Kutler
Richard Gilbert
Bob Andrews
Marie Laird
Deborah Tremblay
Bill Maya
Martha Sartain
Pat West
Linda Ely
Bruce Adams
DeeAnn Hardt
Greg Hartman
Hasina Squires

Board Chair Mike Pittman called the meeting to order at 1:00 P.M.

ADMINISTRATION

A.1. BOARD MEETING MINUTES OF SEPTEMBER 23, 2005

Tom Grimsley moved and Brenda Rocklin seconded to approve the minutes of the October 21, 2005 meeting. The motion passed unanimously.

A.2. DIRECTOR'S REPORT

Director Paul Cleary presented the Forward-Looking Calendar and noted that the December 16th meeting will include a report from the Board's actuaries on financial modeling of actuarial methods and related policy alternatives. Cleary announced that a Board retreat is being planned for December 17th. Cleary provided an update on the HB2020 employer reporting program that included a comparison of 2004 and 2005 postings of employer reports and member records. Cleary introduced Jeanette Zang, Administrator of the Customer Service Division, who replaced Marsha Bacon who retired in October, and Helen Bamford who was recently promoted to Human Resource Director.

PERS Board meeting

11/18/05

Page 2 of 3

Ron Schmitz, Director of Investments for Oregon State Treasury, reported on the investment performance of the Oregon Public Employees Retirement Fund through September 2005. Schmitz reported new net asset value records for the portfolio with the regular account valued at just under \$51 billion and the variable account at \$1.7 billion. Schmitz said the portfolio has outperformed both policy and asset class benchmarks and the overall performance is doing well.

Brian DeForest, Budget and Fiscal Operations Manager, presented updated 2005-2007 actual budget expenditures and projections. DeForest noted a continued positive variance in the budget projections attributed to staff vacancies. DeForest said staff salary adjustments are being projected as a result of the ratification of the 2005 collective bargaining agreement and extension of similar benefits for management staff. DeForest anticipated that in the spring of 2006, all State agency budgets will be adjusted to accommodate the increased salary expenditures for the 2005 -- 07 biennium. DeForest said that accumulated vacancy savings will be used to help support implementation of the *Strunk / Eugene* project.

CONSENT ACTION AND INFORMATION ITEMS

- B.1. NOTICE OF RULEMAKING OF OAR 459-070-000, OPSRP DEFINITIONS
- B.2. FIRST READING OF OAR 459-010-0003, PERS MEMBERSHIP ELIGIBILITY
- B.3. FIRST READING OF OAR 459-010-0014, CREDITABLE SERVICE

Steve Rodeman, Policy, Planning and Legislative Analysis Division (PPLAD) administrator, presented these three related rulemaking agenda items that address membership and creditable service determinations. Rodeman said these rules would create reasonable and consistent standards for such determinations, and would simplify the administrative process for PERS staff while also clarifying the process for employers and employees.

B.4. EARNINGS CREDITING AND RESERVING POLICY UPDATE

Rodeman provided a brief review of the Earnings Crediting and Reserving materials that were presented at the November 4, 2005 Legislative Advisory Committee (LAC). LAC representatives are reviewing the information and have agreed to meet again after the results of the Mercer financial modeling runs are available. Staff will also discuss these materials further with Board members to develop recommendations for policy adoption at the January 2006 Board meeting.

ACTION AND DISCUSSION ITEMS

C.1. ADOPTION OF OAR 459-007-0015, UNDERPAYMENT INTEREST RATE

Rodeman presented the proposed final rule modifications to utilize the average annualized interest rate to apply to the underpayments of estimated benefits for members who have effective dates of retirement that are on or after January 1, 2006. Rodeman also presented the public comments submitted on the proposed rule modifications and staff responses, and described the rationale supporting the staff's recommendation.

PERS Board meeting

11/18/05

Page 3 of 3

It was moved by Brenda Rocklin and seconded by Tom Grimsley to adopt the permanent rule modifications to OAR 459-007-0015, as presented, to be effective upon filing. The motion passed unanimously.

C.2. STRUNK / EUGENE POLICY ISSUES

Rodeman presented an overview of five key policy issues associated with implementation of the *Strunk / Eugene* court decisions. Rodeman said staff has researched the legal, fiscal and fiduciary aspects of the policy issues and developed recommendations on the basis of that research. Three additional policy issues are still being researched for discussion at a future Board meeting.

The Board concurred with the staff's recommendations on how to address each of the five policy issues and requested that staff continue to research all options and implications for the additional policy issues that have been identified.

C.3. STRUNK / EUGENE PROJECT BUSINESS PLAN UPDATE

Craig Stroud, Benefit Payments Division (BPD) administrator, presented a *Strunk / Eugene* Project Business Plan update. The project overview included an updated overall project timeline, a 2004 member statement timeline, and described ongoing planning to address the accounts of those members that require a benefit adjustment. Stroud noted that automated processes are being developed to make the necessary financial adjustments. Stroud gave an example of the workflow steps involved in recalculating, documenting, and adjusting a basic service retirement benefit.

EXECUTIVE SESSION

No executive session was held.

Chair Pittman adjourned the meeting at 2:20 P.M.

Respectfully submitted,

Paul R. Cleary
Executive Director

Prepared by Donna R. Allen, Executive Assistant

PERS Board Meeting Forward-Looking Calendar

MEETING DATE	12-16-05
AGENDA ITEM	B.2.a. Calendar

January 2006

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

First Reading of OAR 459-017-0060, Reemployment of Retired Members
Adoption of OAR 459-005-0610, Recovery of Overpayments
2007 Legislative Process
Earnings Crediting and Reserving Policy and Rule Adoption
Strunk/Eugene Implementation Plan Update

February 2006

Meeting: 11:00 A.M. and 1:00 P.M. *February 17, 2005* (tentative date)

2004 Valuation Results
2005 Preliminary Earnings Crediting
Strunk/Eugene Implementation Plan Update

March 2006

Meeting: 11:00 A.M. and 1:00 P.M. *March 17, 2005* (tentative date)

2005 Final Earnings Crediting



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR
Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
(503) 598-7377
TTY (503) 603-7766
www.pers.state.or.us

December 16, 2005

TO: Members of the PERS Board
FROM: Paul Cleary, Executive Director
SUBJECT: Update of HB2020 Employer Reporting and Accounts Receivable Plan

MEETING DATE	12-16-05
AGENDA ITEM	B.2.d. HB2020

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.

	Calendar Year 2004 (As of 11-30-05)	Calendar Year 2005 (As of 11-30-05)
Reports due (estimated)	12,551	11,098
Outstanding reports	15	466
Reports fully posted at 100%	12,157	9,259
Records due (estimated)	3,067,076	2,636,568
Records not posted	2,282	46,309
Contributions posted	\$ 387,840,761	\$ 350,698,800

As of December 2, 2005, employers have submitted 99.9 % and 95.8 % of the reports due for 2004 and 2005, respectively. Of those reports submitted 96.9 % for 2004 and 83.4 % for 2005 are 100% accurate. These statistics indicate the major PERS educational effort and the progress employers have made to provide member demographic and wage information from 2004 to 2005. Last year at this time, only 92.7 % of reports due were submitted, and of the reports submitted only 72.0 % were 100% accurate.

To help employers complete their reports, PERS created semi-monthly payroll reporting classes. Since April 2005, staff has conducted 16 classes for 200 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 9,800 members' records from 2004 out of approximately 12,100 un-posted records.

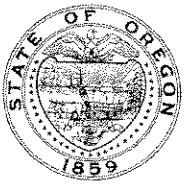
Currently three employers are responsible for 15 outstanding 2004 reports (with 50 outstanding records). Staff who report information to PERS for two of these employers have legal problems that have resulted in reporting delays. PERS is working with these employers to identify other staff members who can report data to PERS to resolve the reporting delays. The remaining employer is working with PERS staff to complete their outstanding 2004 reports by the end of the year.

HB2020 Update

12/16/2005

Page 2 of 2

Besides assisting employers with overdue 2004 and 2005 data reports, PERS implemented an accounts receivable plan to proactively collect receivable balances that are more than 30 days overdue. As of November 18, 2005 we had 53 employers with an overdue receivable balance of \$2.11 million. As of November 30, 2005, we have 51 employers with an aggregate overdue balance of \$ 974,899. We are following up with these employers by phone and letters each month.



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR
Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
(503) 598-7377
TTY (503) 603-7766
www.pers.state.or.us

December 16, 2005

TO: Members of the PERS Board
FROM: Brian DeForest, Budget and Fiscal Operations Manager

MEETING DATE	12-16-2005
AGENDA ITEM	B.2.c. Budget

SUBJECT: Preliminary December 2005 Budget Report

2005-07 ACTUAL EXPENDITURES AND PROJECTIONS

Preliminary operating expenditures for November are \$3,040,363, an increase of \$895,052 from October due to various professional services contract payments. Vacancy savings accounted for nearly \$135,000 of the overall monthly positive variance of \$352,516. The net remaining positive variance was driven primarily by contract payments that were forecast for the 2005-07 biennium, but more correctly charged to the 2003-05 biennium. Final 2003-05 biennium expenditures will be available at the January Board meeting, which follows the biennial accounting closeout period.

ISSUES/OPPORTUNITIES

This report contains preliminary accounting data for the month of November 2005, the fifth month of the 2005-07 biennium. Accounting records are scheduled to close on December 16th with final data made available to agencies in a downloadable format on December 19th. Accounting adjustments and corrections may occur between the time this report was generated and the actual accounting close date. However, the total amount of expenditures is not expected to change. Any changes to preliminary information will be included in the January 2006 Budget Report.

BUDGET VARIANCES

Budget variances continue to remain within expected parameters at an aggregate level. Budget staff will be reviewing individual account variances with section managers during the next 3 months. One expected outcome is a shifting of budget resources from accounts carrying positive variances to accounts carrying negative variances, if such a shift is appropriate. Budget staff anticipates this process to "rebalance" the Agency's base budget in preparation for 2007-09 biennial budget development next spring. If additional budget resources become available during this analysis they will be earmarked for use on the Agency's highest priorities such as the Strunk/Eugene implementation project.

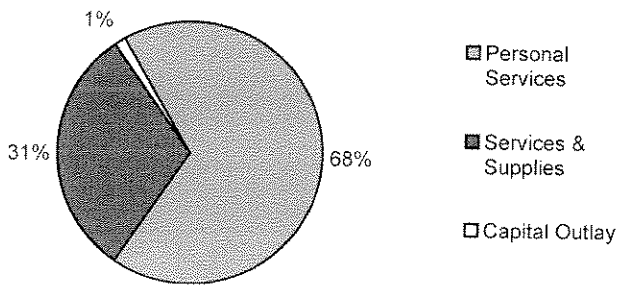
2005-07 Agency-wide Operations - Budget Execution Summary Budget Analysis

For the Month of: Nov. 2005 (preliminary)

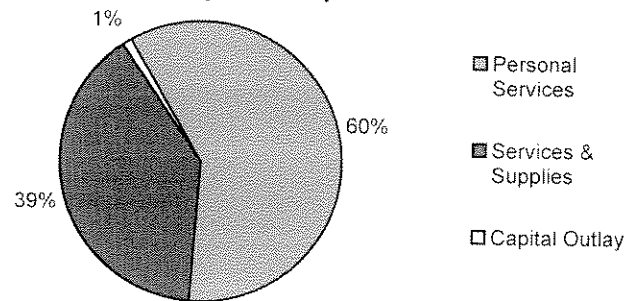
Biennial Summary

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2005-07 LAB	Variance
Personal Services	8,230,989	36,930,981	45,161,970	44,564,938	(597,032)
Services & Supplies	3,736,674	24,377,415	28,114,089	30,384,327	2,270,238
Capital Outlay	181,877	751,103	932,980	1,033,494	100,514
Special Payments					
Total	12,149,540	62,059,500	74,209,039	75,982,759	1,773,720

Actual Expenditures



Projected Expenditures

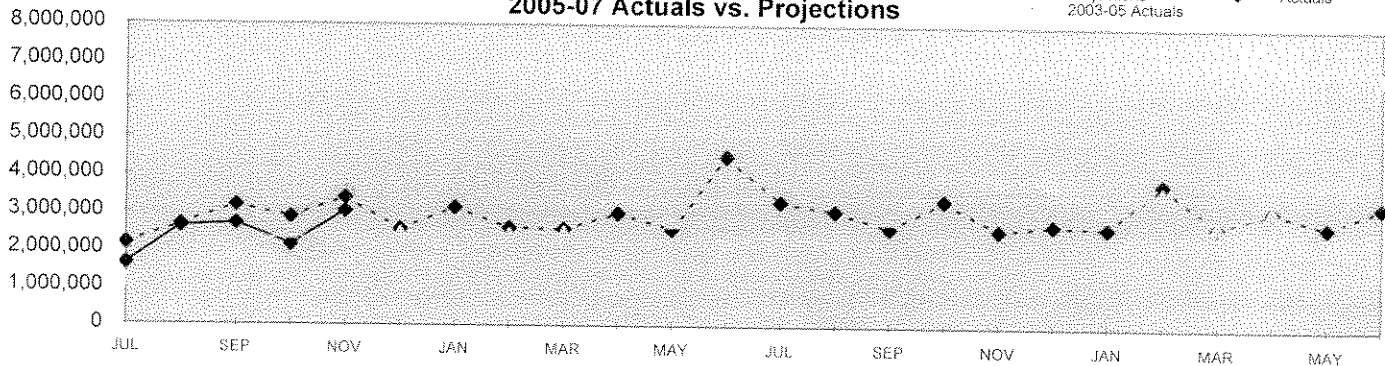


Monthly Summary

Category	Actual Exp.	Projections	Variance	Avg. Monthly Actual Exp.	Avg. Projected Expenditures
Personal Services	1,693,040	1,827,813	134,773	1,646,198	1,943,736
Services & Supplies	1,347,323	1,565,066	217,743	747,335	1,283,022
Capital Outlay				36,375	39,532
Special Payments					
Total	3,040,363	3,392,879	352,516	2,429,908	3,266,289

2005-07 Actuals vs. Projections

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



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

	Actual								EST. EXPEND.	ENC. & PRE-ENC.	TOTAL ESTIMATED EXPEND.	05-07 LAB BUDGET	VARIANCE
	1st QTR	2nd QTR	3rd QTR	4th QTR	5th QTR	6th QTR	7th QTR	8th QTR					
Personal Services													
Salaries & Wages	3,102,064	3,264,394	3,626,770	3,655,149	3,690,311	3,749,145	3,858,155	3,912,340	23,680,668		26,858,348	28,490,581	(367,767)
Temporary Appointments	40,406	31,043	6,700	5,600	1,600	6,200	21,600	25,137	70,337		138,286	156,924	(18,638)
Overtime	33,466	59,336	47,630	44,530	18,100	14,230	52,130	36,330	220,480		305,732	540,501	(234,749)
Shift Differential	1,326	1,154	375	375	375	375	375	375	2,375		4,730	1,978	(2,752)
All Other Differential	34,599	45,824	18,744	18,365	17,462	17,554	17,704	17,757	114,113		188,028	209,351	(21,323)
ERB Assessment	1,289	1,489	1,848	1,848	1,848	1,848	1,848	1,848	11,702		13,865	12,096	(1,769)
Workers' Comp. Insurance (SA)													
PERS	449,000	477,964	540,724	544,374	545,150	553,205	574,729	580,343	3,514,626		4,265,480	4,278,123	(12,643)
Pension Bond Contribution	207,759	214,915	234,087	235,919	238,025	241,820	248,851	252,346	1,527,777		1,873,731	1,975,395	(498,326)
Social Security Taxes	243,827	256,513	283,256	285,080	285,180	289,744	302,172	305,383	1,843,172		2,253,157	2,249,063	(4,074)
Unemployment Comp.		16,576									16,576	37,390	(20,814)
Workers' Comp. Assess.	2,484	2,750	3,354	3,354	3,354	3,354	3,354	3,354	21,243		25,359	26,835	(1,476)
Mass Transit Tax	19,249	20,382	21,775	21,946	22,142	22,495	23,149	23,474	142,119		174,613	177,399	(2,786)
Flexible Benefits	756,424	796,695	874,353	874,353	874,353	909,327	979,275	979,275	5,782,388		7,044,056	6,976,368	(67,688)
Vacancy Savings													
Reconciliation Adj.													
Unscheduled P.S.													
Total Personal Services	4,891,915	5,191,835	5,659,617	5,690,912	5,697,900	5,809,296	6,083,333	6,137,963	36,930,981		45,161,970	44,564,938	(597,032)
	<i>actual</i>							<i>estimated</i>					
Services & Supplies													
Instate Travel	12,995	29,463	20,785	25,285	23,185	29,085	21,485	26,130	154,750	142	187,555	116,894	(70,661)
Out-of-state Travel		300			300	300	300	300	1,500		1,500	31,127	29,627
Employee Training	30,385	50,164	37,815	37,815	37,815	37,815	37,815	38,915	240,595	2,710	311,249	488,069	(176,820)
Office Expenses	91,727	139,758	203,484	212,393	211,572	221,481	211,140	254,349	1,381,409		1,545,901	2,063,722	(517,821)
Telecommunications	25,713	63,249	68,249	68,249	68,249	68,249	68,249	68,249	432,245		498,457	557,685	(39,228)
St. Gov. Svc. Chg.	595,654	128,488	24,000	69,317	599,000	89,000	24,000	24,000	837,317		1,504,171	1,504,171	(39,487)
Data Processing	266,701	462,416	675,000	675,000	675,000	675,000	675,000	700,000	4,300,000	14,792	4,818,910	5,256,990	(438,080)
Publicity/Publications	7,318	5,249	29,750	12,100	26,000	16,100	14,200	22,100	11,867		135,417	292,704	(157,287)
Professional Services	545,896	1,225,484	518,750	342,500	326,050	330,900	485,550	407,600	2,823,100	372,199	4,555,389	2,862,534	(1,692,855)
IT Professional Services	105,614	692,790	2,573,709	979,563	1,026,185	1,227,303	1,227,303	1,035,866	7,635,962	3,700,000	11,341,130	13,897,953	(2,556,823)
Attorney General	48,913	83,910	124,500	124,500	124,500	124,500	124,500	135,500	799,500		890,823	947,681	56,858
Dispute Res. Svc.	997	2,853	4,800	5,900	8,300	5,500	6,200	10,000	41,300		44,510	73,736	29,226
Empl. Recruit./Devel.	8,863	16,785	15,000	15,000	15,000	15,000	15,000	15,000	95,000		117,649	58,036	(59,613)
Dues & Subscriptions	4,943	3,079	2,425	3,005	1,675	1,775	2,175	2,275	14,855		21,352	50,702	29,350
Facility Rental	104,691	94,231	94,068	94,068	94,068	97,368	99,018	132,024	641,970		809,535	703,597	(105,938)
Fuels/Utilities	23,497	21,360	15,000	15,000	15,000	15,000	15,000	20,000	100,000		139,888	121,063	(18,825)
Facility Maint.	47,868	65,034	76,251	76,251	76,251	76,251	76,251	101,668	508,340		595,825	724,698	(126,873)
Agency/Program S. & S													
Other C.O.P. Costs		277							277		277	6,500	6,223
Other S & S	1,085	5,370							6,455		6,455	2,700	(3,765)
Expendable Property	72,658	23,654	6,350	6,350	7,350	7,350	7,350	7,600	48,700	5,365	144,057	193,465	(49,408)
IT Expendable Property		23,613	60,000	60,000	60,000	60,000	60,000	60,000	381,155	20,929	404,542	450,300	(45,758)
Unscheduled S & S													
Total Services & Supplies	1,850,074	2,651,390	2,669,017	4,416,892	3,341,478	2,896,859	3,170,535	3,061,675	20,261,248	4,116,168	28,114,089	30,384,327	(2,270,238)
Capital Outlay													
Office Furn./Fixture													
Telecomm. Equip.													
Technical Equipment													
Data Proc. - Software													
Data Proc. - Hardware													
Building & Structure													
Total Capital Outlay	181,877	181,877							181,877	362,246	570,734	447,019	(77,873)
Special Payments													
Total Special Payments													
Total Expenditures	6,963,866	7,142,425	8,328,634	10,107,804	9,039,378	8,706,155	9,253,868	9,199,638	12,149,540	4,867,271	74,209,039	75,982,769	(1,773,720)

Percent of 2005-07 LAB Expended: 15.99%
 Percent of Biennium Expended: 20.83%



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR
Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
(503) 598-7377
TTY (503) 603-7766
www.pers.state.or.us

December 16, 2005

TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Administrator, PPLAD

MEETING	12/16/05
DATE	
AGENDA	C.1.
ITEM	Retirements

SUBJECT: Notice of Rulemaking for OAR 459-017-0060, *Reemployment of Retired Members*

OVERVIEW

- **Action:** None. This is notice that staff has begun rulemaking.
- **Reason:** The current rule needs to be amended to correct statutory citations, reflect the most recent Social Security annual compensation limitations, and include existing policy regarding reemployment restrictions for retirees who elected the total lump sum option. The current rule does not provide comprehensive guidance on the reemployment of retirees under ORS 238.078, including such issues as reestablishing active membership, rebuilding of the member account, earnings crediting, and the actuarial equivalency factors to be used for calculating the subsequent retirement benefit, so these issues are addressed by the proposed modifications.
- **Subject:** Reemployment of retired members of the Chapter 238 Program.
- **Policy Issues:**
 1. Should rebuilt member accounts of reemployed retirees be credited with earnings for the period the funds were in the Benefits in Force Reserve (BIF) and, if so, at what rate?
 2. When should these rule modifications be implemented to ensure the consistent treatment of members who have passed their first retirement and to provide adequate notice to future retired members?

BACKGROUND

Members who retire from the Chapter 238 Program may be reemployed by a participating employer as an active member under the provisions of ORS 238.078 or remain retired and be employed, subject to certain limitations, under ORS 238.082. If a retired member returns to work under ORS 238.078 and thereby reestablishes active membership, the member's retirement is canceled.

If the member returns to work less than six months after retirement, they are required to repay all retirement benefit amounts in a lump sum. If the member returns to work more than six months after retirement, their benefits cease and the statute directs that their account be rebuilt. Rebuilding their account entails transferring moneys back from the

Benefits-in-Force Reserve (“BIF”) but accounting for the fact that part of their original account has been disbursed to them in retirement benefit payments.

At some point subsequent to reestablishing active membership, the member will retire again. This subsequent or “second” retirement benefit is calculated using the rebuilt member account and the total creditable service, recalculated final average salary, and other calculation elements in effect on the subsequent retirement date, as affected by the second period of employment.

POLICY ISSUES

1. Should rebuilt member accounts of reemployed retirees be credited with earnings for the period the funds were in the Benefits in Force Reserve (BIF) and, if so, at what rate?

ORS 238.078 requires that the member’s account be rebuilt from BIF funds, which are subject to earnings crediting. The funds transferred to the BIF at the member’s retirement receive earnings crediting during the period they are in the BIF. The proposed rule would credit rebuilt accounts with earnings for the period the funds were in the BIF. Otherwise, the member’s account would lie fallow for the period between their retirement and subsequent re-employment. As PERS has use of those funds, they should be credited with earnings for that period. Otherwise, every second retirement would disadvantage the member because of this period when the account would not receive earnings, if it otherwise would have.

The BIF earnings crediting rate is determined by the Board (ORS 238.670(2)). Although funds are transferred to the BIF on the assumption that they will earn the assumed rate, the BIF in fact is subject to positive or negative earnings.

The funds transferred to the BIF at retirement are in fact credited with earnings at the BIF rate while held in the BIF. The proposed rule would use that rate to credit earnings (or losses) during that period in rebuilding the member’s account.

2. When should these rule modifications be implemented to ensure the consistent treatment of members who have passed their first retirement and to provide adequate notice to future retired members?

The proposed rule’s calculation methodology may result in a different benefit payment upon a member’s second retirement than they may have expected when they returned to work. Members who previously retired and returned to work may be under the impression that their payment amount cannot be less upon the second retirement. Under many prior paradigms (unchanging actuarial factors, continued contributions), this statement may have been true. With the 2003 PERS reforms (mandating updated actuarial factors, stopping future contributions), no such guarantee could be maintained.

Applying the proposed rule’s crediting method upon rebuilding member accounts could result in positive or negative earnings. Regardless of the actual impact, that policy was not in effect at the time members made their initial retirement and re-employment decisions. To apply it retroactively would create frustration and uncertainty in retirees and an administrative burden for the agency. Staff recommends that the proposed rule’s

calculation methods only apply to members whose initial effective retirement date is on or after the effective date of this rule. This would ensure adequate notice to members of the policy changes and allow the agency sufficient time to implement the policy changes prospectively.

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 COMMENT AND HEARING TESTIMONY

A rulemaking is scheduled for December 27, 2005 at 2:00 p.m. in PERS headquarters in Tigard. The public comment period ends on January 31, 2006 at 5:00 p.m.

IMPACT

Mandatory: No, the Board could retain the existing rule language. The current rule, however, is imprecise and does not provide policy guidance on a number of issues relevant to the re-employment of retirees.

Impact: PERS processes approximately 50 “second” retirements annually. The policies implemented by the rule will impact all “second” retirement benefit calculations for members whose initial retirement date is on or after the effective date of this rule. The impact upon each member will vary with the retirement data particular to each member at the time of the “second” retirement. Retired members will benefit from the updated Social Security annual compensation limitations. Members, employers, and staff will benefit from the clarification of policy.

Cost:

- *Members:* There will be no new costs to members.
- *Employers:* There will be no new costs to employers.
- *Administration:* The rebuilding of member accounts and the calculation of “second” retirement benefits will continue to be done manually. Ultimately, there may be a programming cost which cannot be determined at this time. There are no new administrative costs attributable to the other provisions of this rule.
- *Fund:* There will be no significant effect on the Fund. The effect of including BIF earnings in the amount transferred to the rebuilt member account is diminished by the minimal number of “second” retirements.

RULEMAKING TIMELINE

November 15, 2005 Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.

December 1, 2005 *Oregon Bulletin* published the Notice.

- | | |
|-------------------|---|
| December 16, 2005 | PERS Board notified that staff began the rulemaking process. |
| December 27, 2005 | Rulemaking hearing to be held at 2:00 p.m. in Tigard. |
| January 20, 2006 | First Reading of rule. |
| January 31, 2006 | Public comment period ends at 5:00 p.m. |
| February 17, 2006 | Staff will propose adopting the permanent rule modifications, including any amendments warranted by public comment or further research. |

NEXT STEPS

A hearing is scheduled for December 27, 2005. The rule is scheduled to be brought before the PERS Board for the first reading at the January 20, 2006 Board meeting.

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 017 – REEMPLOYED RETIRED MEMBERS

MEETING DATE	12/16/05
AGENDA ITEM	C.1. Retirements

1 **459-017-0060**

2 **Reemployment of Retired Members**

3 (1) **Reemployment under ORS 238.082[(2)]**. A retired member of the system
 4 receiving a service retirement allowance, who has elected an option other than the total
 5 lump sum option under ORS 238.305(3), including those who have retired at a reduced
 6 benefit under ORS 238.280(1) or (2), may be employed under ORS 238.082[(2)] by a
 7 participating employer without loss of retirement benefits provided:

8 (a) The period or periods of employment [by] with one or more public employers
 9 participating in the system do not exceed 1039 hours in a calendar year; or

10 (b) If [a] the retired member is receiving old age, survivors, or disability benefits
 11 under the federal Social Security Act, the period or periods of employment do not
 12 exceed [is limited to] the greater of 1039 hours in a calendar year or the total number of
 13 hours in a calendar year that, at [a] the retired member's specified hourly rate of
 14 pay, [so that the] results in annual compensation to[of] the [retiree] retired member in
 15 an amount that does not exceed the following Social Security annual compensation
 16 limits: [following:]

17 (A) For retired members who have not reached [the] full retirement age under Social
 18 Security, the annual compensation limit is \$12,480 [11,640 for the calendar year 2004];
 19 or

20 (B) For the calendar year in which the retired member reaches [the] full retirement
 21 age under Social Security and only for compensation for the months prior to reaching

1 [the] full retirement age, the **annual compensation** limit is \$33,240.*[\$31,080 for the*
2 *calendar year 2004.]*

3 **(2)[(c)] A [R]retired member[s] as described in section (1) of this rule** who **has**
4 **reached** *[the]* full retirement age under Social Security may work an unlimited number of
5 hours **without loss of retirement benefits.**

6 *[(2) Limitations on employment in section (1) of this rule will be based on the*
7 *number of hours employed on and after the retired member's effective retirement date.]*

8 (3) The limitations on employment in section (1) of this rule do not apply if:

9 (a) The retired member meets the requirements under ORS 238.082(3), (4), (5),₂ or
10 (6), and did not retire **at a reduced benefit** under the provisions of ORS 238.280(1) **or**
11 **(2)**; or

12 (b) The retired member **is on active state duty in the organized militia and** meets
13 the requirements under ORS 399.075(8).

14 (4) Except as provided under section (3) of this rule, limitations on employment in
15 section (1) of this rule shall also apply to retired members who, upon reemployment, elect
16 to participate in an Optional Retirement Plan under ORS 243.800, or an Alternative
17 Retirement Plan under ORS 353.250(2).

18 *[(5)] A participating employer may be required to certify to PERS that a retired*
19 *member has not exceeded the number of hours allowed in ORS 238.082(2) and this rule.*
20 *In addition, the participating employer may be required to provide PERS with business*
21 *and employment records to substantiate the actual number of hours a retired member*
22 *was employed.]*

1 (5) *[(6) Exceeding the hourly limitation.]* If a retired member is reemployed subject
2 to *[within]* the limitations of ORS 238.082~~[(2)]~~ and section (1) of this rule, but the period
3 or periods of employment subsequently exceed~~[s]~~ those *[limits]* limitations, the
4 following will occur if employment continues into the month following the date the
5 *[limits]* limitations are exceeded:

6 (a) PERS will cancel *[terminate]* the *[retired]* member's retirement *[benefits]*. The
7 last monthly service retirement allowance the member is entitled to will be for the month
8 in which the *[limits]* limitations were exceeded. A member who receives benefits to
9 which he or she is not entitled must repay those benefits to PERS.

10 (b) The member will reestablish active membership and their account shall be
11 rebuilt in accordance with ORS 238.078 and section 10 of this rule effective the first of
12 the calendar month following the date the *[limits]* limitations were exceeded. If the
13 member has incurred a break in service as defined in OAR 459-070-0001~~[(1)]~~, then the
14 *[employee]* member will *[become a member of]* establish membership in accordance
15 with the rules governing the Oregon Public Service Retirement Plan (OPSRP) pension
16 program.

17 *[(c) A member who receives benefits to which he or she is not entitled must repay*
18 *those benefits to PERS.]*

19 (6) Reemployment of retired member who elected the total lump sum option. A
20 retired member who has elected the total lump sum option under ORS 238.305(3)
21 may return to work with a participating employer without having to repay the
22 retirement benefits paid to them provided:

1 (a) The retired member is designated by the employer(s) as a casual,
2 emergency, or seasonal worker as defined in OAR 459-005-0001; and

3 (b) The period or periods of employment with one or more public employers
4 participating in the system do not exceed 599 hours in the six month period
5 following the member's effective retirement date.

6 (7) A retired member, as described in section (6) of this rule, may, after the six
7 month period following the member's effective retirement date, work an unlimited
8 number of hours without having to repay the retirement benefits paid to them.

9 (8) If a retired member, as described in section (6) of this rule, is working
10 subject to the limitation of section (6)(b) of this rule and the member exceeds that
11 limitation, the member's retirement will be cancelled. The member will reestablish
12 active membership in accordance with ORS 238.078 effective the first of the
13 calendar month following the date the member exceeded that limitation. The
14 member will be required to repay to PERS in a single payment the total amount of
15 all retirement benefits received. The member's account shall be rebuilt in
16 accordance with ORS 238.078 and section 10 of this rule effective the date that
17 PERS receives the single payment.

18 (9) Limitations on hours of employment in sections (1) and (6) of this rule will
19 be based on the number of hours employed on and after the retired member's
20 effective retirement date.

21 (10)/(7) Reemployment under ORS 238.078. If a retired member in service
22 retirement has been retired for more than six calendar months and is reemployed in

1 a qualifying position by a participating employer under the provisions of ORS
2 238.078(1), the following will occur *[and will be effective on the date of reemployment]*:

3 (a) PERS will **cancel** *[terminate]* the *[retired]* member's **retirement** *[benefits.]*
4 **effective the date of the member's reemployment.**

5 (b) The member will reestablish active membership **on the date the member is**
6 **reemployed.** If the member has incurred a break in service, as defined in OAR 459-070-
7 0001*[(1)]*, then the **member will establish membership in accordance with the rules**
8 **governing** *[employee will become a member of]* the OPSRP pension program.

9 *[The last monthly service retirement allowance to which the member is entitled will*
10 *be for the month prior to the calendar month the member is reemployed. A member who*
11 *receives benefits to which he or she is not entitled must repay those benefits to PERS;*
12 *and]*

13 **(c) If the member elected an option other than a lump sum option under ORS**
14 **238.305(2) or (3), the member need not repay any service retirement allowance**
15 **received that is attributable to the period the member was separated from service.**
16 **The last monthly service retirement allowance payment to which the member is**
17 **entitled will be for the month prior to the calendar month in which the member is**
18 **reemployed. A member who receives benefits to which he or she is not entitled must**
19 **repay those benefits to PERS. Upon subsequent retirement, the member may choose**
20 **a different retirement option.**

21 **(A) The member's account shall be rebuilt effective the date of reemployment.**
22 **The amount transferred to the Benefits in Force Reserve (BIF) at the member's**
23 **retirement shall be reduced by the amount of retirement allowance payments**

1 received by the member in accordance subsection (c) above and adjusted to reflect
2 the crediting of BIF earnings on the balance from the date of retirement to the date
3 of reemployment. The remaining amount will be credited on a pro rata basis to the
4 funds from which it was derived.

5 (d) If the member elected a partial lump sum option under ORS 238.305(2), the
6 member need not repay any service retirement allowance received that is
7 attributable to the period the member was separated from service. The last monthly
8 service retirement allowance to which the member is entitled will be for the month
9 prior to the calendar month in which the member is reemployed. A member who
10 receives benefits to which he or she is not entitled must repay those benefits to
11 PERS. No repayment of lump sum payment(s) received during the period the
12 member was separated from service is required. Upon subsequent retirement, the
13 member may not choose a different retirement option unless the member has repaid
14 to PERS an amount equal to the lump sum payment(s) received and the interest that
15 would have accumulated on that amount.

16 (A) The member's account shall be rebuilt effective the date of reemployment.
17 The amount transferred to the BIF at the member's retirement shall be reduced by
18 the amount of retirement allowance payments and lump sum payment(s) received
19 by the member in accordance subsection (d) above, increased by the amount of any
20 lump sum repayment by the member, and adjusted to reflect the crediting of BIF
21 earnings on the balance from the date of retirement to the date of reemployment.
22 The remaining amount will be credited on a pro rata basis to the funds from which
23 it was derived.

1 (e) If the member elected the total lump sum option under ORS 238.305(3), no
2 repayment of the lump sum payment received is required. Upon subsequent
3 retirement, the member may not choose a different retirement option unless the
4 member has repaid to PERS in a single payment an amount equal to the lump sum
5 payment received and the interest that would have accumulated on that amount.

6 (A) If the member repays PERS as described in section (e) the member's
7 account shall be rebuilt effective the date that PERS receives the single payment.
8 The amount transferred to the BIF at the member's retirement shall be reduced by
9 the amount of the total lump sum payment received by the member, increased by
10 the amount of the repayment from the member, and adjusted to reflect the crediting
11 of BIF earnings from the date of retirement to the date the total lump sum payment
12 was paid to the member. The remaining amount will be credited on a pro rata basis
13 to the funds from which it was derived.

14 *(11)/(c) If the member has been retired less than six months as of the [effective] date*
15 *of reemployment, all retirement benefits received by the member must be repaid to PERS*
16 *in a lump sum payment before the member can be reemployed.]* If a retired member
17 who has been retired for less than six calendar months is reemployed in a qualifying
18 position by a participating employer under the provisions of ORS 238.078(2), the
19 following will occur:

20 (a) PERS will cancel the member's retirement effective the date of the
21 member's reemployment.

22 (b) The member will reestablish active membership effective the date the
23 member is reemployed. If the member has incurred a break in service, as defined in

1 OAR 459-070-0001, then the member will establish membership in accordance with
2 the rules governing the OPSRP pension program.

3 (c) All retirement benefits received by the member must be repaid to PERS in a
4 single payment before the member can be reemployed.

5 (d) The member account shall be rebuilt effective the date that PERS receives
6 the single payment. The amount in the member account shall be the same as the
7 amount in the member account at the time of the member's retirement.

8 (e) Upon subsequent retirement, the member may choose a different retirement
9 payment option.

10 (12) Upon the subsequent retirement of any member who reestablished active
11 membership under ORS 238.078, the retirement benefit of the member shall be
12 calculated using the actuarial equivalency factors in effect on the effective date of
13 the subsequent retirement.

14 (13) The provisions of subsections (10)(c)(A), (10)(d)(A), (10)(e)(A), and section
15 (12) of this rule are applicable to members reemployed under ORS 238.078 whose
16 initial effective retirement date is on or after the effective date of this rule.

17 (14)/(8) Reporting requirement. The employer shall notify PERS under which
18 statute the retiree is reemployed in a format acceptable to PERS.

19 (a) A participating employer may be required to certify to PERS that a retired
20 member has not exceeded the number of hours allowed in ORS 238.082 and sections
21 (1) and (6) of this rule.

1 **(b) In addition, the participating employer may be required to provide PERS**
2 **with business and employment records to substantiate the actual number of hours a**
3 **retired member was employed.**

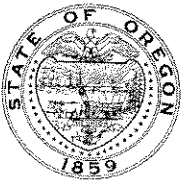
4 *[(9) The provisions of this rule are not applicable to a reemployed retired member*
5 *who is not defined as an employee under OAR 459-005-0001.]*

6 **(15)**~~**(10)**~~ Sick leave. Accumulated unused sick leave reported by the employer to
7 PERS upon retirement, as provided for in ORS 238.350, will not be made available to a
8 retired employee returning to work under the provision of sections (1), **(6)**, **(10)** or **(11)**
9 ~~**(7)**~~ of this rule.

10 *[(11) The provisions of this rule are effective January 1, 2004].*

11 Stat. Auth.: ORS 238.650

12 Stats. Implemented: ORS 238.078 & 238.082



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR
Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
(503) 598-7377
TTY (503) 603-7766
www.pers.state.or.us

December 16, 2005

TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Administrator, PPLAD

SUBJECT: First Reading of OAR 459-005-0610, *Recovery of Overpayments*

MEETING	12/16/05
DATE	
AGENDA	C.2.
ITEM	Overpayments

OVERVIEW

- **Action:** None. This is the first reading of OAR 459-005-0610, Recovery of Overpayments.
- **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 has been 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 November 29, 2005 at 2:00 p.m. in PERS headquarters in Tigard. No one attended the hearing.

The comment period ends on December 23, 2005 at 5:00 p.m. To date, PERS has received eight comments. Copies of the comments are included in this Board packet.

Mr. Al Shannon e-mailed PERS on November 8, 2005. He noted “there is no mention of the possibility for retired members to satisfy the overpayment via a fiduciary transfer. Such transfer could come from an individual IRA or 403b vehicle, and could come without income tax assessments (i.e., pre-tax). Please ask the PERS staff to make this part of their proposed rule.”

PERS staff is currently reviewing whether it can accept a rollover as Mr. Shannon describes in the context of the *Strunk/Eugene* recovery policies. The availability of that option, and any parameters or qualifications for using it, will determine how wide-spread the practice can be used in general recovery of overpayments. So, staff will address this issue further, based on the results of our research, when the rule is presented for adoption.

Mr. Richard Vohs, a “window” retiree e-mailed PERS on November 19, asking that a “hold harmless” section be added to the rule for “window” retirees. He also states that “the proposed rule does nothing to place the responsibility on the PERB or the staff who work for them.

These rule modifications apply to the recovery of all overpayments, not just those associated with the *Strunk/Eugene* case. Addressing that case in the context of an administrative rule that has more expansive application would be inappropriate.

The following comments are related to the same issue:

Ms. Sylvia Worrix, wife of a “window” retiree, e-mailed PERS on November 18, 2005 to oppose the proposed changes, requesting that retirees be given the “exact amount owed with the notice of ‘overpayment.’”

Ms. Donna Pluth, a “window” retiree, e-mailed PERS on November 19, 2005. She also requests that the rule allow for a notice to accompany her invoice. She also contends that the description of the rulemaking does not accurately describe the changes that are proposed.

Mr. Keith Johnson e-mailed PERS on November 21, 2005, stating that the rule modifications make it “impossible for the ‘payee’ to contest the proposed action, since the action is not defined.” He recommends deleting the proposed language in section (3).

Also, on November 22, 2005, PERS received an anonymous comment asking that the proposed OAR should be modified to include language that indicates that the notice will include all the pertinent information on the overpayment.

These comments proceed from the assumption that the notice described in the statute triggers the recipient’s appeal rights, and that if the notice does not contain all the information, the recipient would not be able to determine whether to appeal. The notice

described in the statute, however, does not have that effect. ORS 238.715(4) requires that, before reducing a benefit or taking other action to collect an overpaid benefit, the PERS Board shall give notice to the recipient. The statutory requirements for that notice are that it describes the recipient's appeal rights, what action the Board may take if the person does not respond, and the authority of the Board to assess interest, penalties, or costs.

The notice itself does not convey appeal rights to the recipient. The notice must be supported by a Board order or staff determination that the overpayment occurred. That order or determination triggers the recipient's appeal rights. The effect of the notice is to stop the tolling of the six-year statute of limitations on collecting overpayments in ORS 238.715(7). Thus, receiving the notice without a supporting invoice does not affect the recipient's appeal rights as the notice itself is not a triggering event.

Ms. Kathleen Beaufait, Chairperson of the Oregon PERS Retirees, Inc. (OPRI) wrote to PERS on behalf of OPRI on November 14, 2005. Staff's comments follow each of her bulleted points below.

- She would like to know which statutory changes are being addressed in this rulemaking, as the group believes that the changes go beyond the scope of the HB 2401 legislation.
 - There are changes beyond only those required by the statute, as described earlier in this memo.
- The rulemaking appears to be a response to the *City of Eugene* case, and the collections of overpayments that result from that decision. If that is correct, she believes that the suggestion that the rulemaking is “accommodating 2003 statutory changes” is not accurate.
 - The rule changes apply broadly to recovery of all overpayments. While in the near future the vast majority of those recovery efforts will be related to *Strunk/Eugene* implementation, the rule changes are needed for the reasons stated, and not for any particular purpose related to those cases.
- She asked if the invoice and the notice were to be two separate documents that may be sent at different times. “If so, the notice of appeal rights and explanatory material appear to be made a part of the invoice, not part of the notice of overpayments as ORS 238.715 requires.” ORS 238.715(4) requires notice of the appeal rights to be included with the notice of overpayment. If PERS intends to separate the notice and the invoice, this intent should be made clear. If they are to be sent at the same time, that intent should be made clear. The invoice is not the proper document to carry notice of appeal rights according to the statute. It is impractical, unfair and unlawful to separate the notice and invoice because it makes it impossible to contest the amount of overpayment.
 - As explained above, the notice and invoice serve different functions and receipt of the notice itself is not a triggering event for the recipient's appeal rights. The rule changes clarify this distinction. While the notice and invoice may (or may not) be

sent at the same time, they do serve different functions so separating them in the rule is prudent.

- Ms. Beaufait also suggested some editorial changes, which have been incorporated into the most recent draft of the rule.

On November 17, 2005, retired member Mr. George Schneider e-mailed PERS to oppose the proposed changes to the rule. He opposes the interpretation of the statute that a proposed benefit change notice and the invoice for moneys owing on a change do not have to be part of the same communications. Mr. Schneider states that under the rules of the Fair Credit Collections Act, the notice must be accompanied by an invoice. It is “patently absurd to force appellants to file such appeals without an invoiced amount that PERS will claim is owing.” He says that the rule is a “thinly-veiled attempt to disregard a statutory time limit imposed by law.” Mr. Schneider states his belief that this rulemaking is contrary to state and federal law and he believes the courts will rule against PERS, causing the PERS fund to be jeopardized by monetary penalties.

Again, the notice and invoice serve different functions and the receipt of each should relate only to the effect it is intended to have, rather than confusing their relative functions. Whether the rule violates federal law will, of course, be part of legal counsel’s review, but generally such acts don’t apply to a party collecting its own debts.

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> published the Notice.
November 29, 2005	Rulemaking hearing 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.

First Reading -- OAR 459-005-0610 Recovery of Overpayments

12/16/2005

Page 5 of 5

January 20, 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

This is the first reading of the rule. PERS staff will return with this rule to request adoption by the Board at the January 20, 2006 meeting.

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

MEETING	12/16/05
DATE	
AGENDA	C.2.
ITEM	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]* **full** *[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***whether 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]* **full** *[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 full** recovery of any overpayment
15 or erroneous payment*[and shall effect a one hundred percent (100%) recovery within*
16 *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)]* **(d) 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 assess the person who received the payment]* **may include**
15 **within 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

OPRI

OREGON PERS RETIREES, INC.

November 14, 2005

2410 Fisher Road N.E.
Salem, OR 97305
PH 503-363-7360
FAX 503-391-7140
Toll Free 1-800-376-7360

Steven Patrick Rodeman
Administrator PPLAD
PERS
P.O. Box 23700
Tigard, OR 97281-3700

Dear Mr. Rodeman:

This letter presents the Oregon PERS Retirees, Inc. (OPRI) public comment on proposed OAR 459-005-0610.

PERS's offered rationale to the proposed revision is that it is intended to incorporate 2003 statutory changes without indicating which statutory changes are being addressed. It would be very helpful to a reviewer of the PERS rule to know which statutory changes are involved. We assume that House Bill 2401 which amended ORS 238.715 is the source since that statute is referred to in the rule. The changes, however, seem to go beyond the HB 2401 amendments which to some extent is why we express our concern.

Currently, PERB is discussing means to collect "overpayments" resulting from City of Eugene. A reviewer might assume that the proposed rule is an effort to accommodate collection from "window retirees", an extremely large group, using a procedure that formerly was used only to collect from an occasional, isolated number of retirees. If that assumption is correct, it would help our understanding of the proposed rule if the offered rationale so stated or, at least set forth the appropriate rationale. "Accommodating 2003 statutory changes" does not suffice.

The explanation refers to a need to clarify the distinction between "notice" and "invoice" in section (3) of the proposed revision. ORS 238.715 does not refer to "invoice" but the current rule provides that notice of overpayment should include an invoice of the amount due. The proposal changes that requirement to include "shall also send an invoice." Are these then to be two separate documents that may be sent at different times? If so, the notice of appeal rights and explanatory material appear to be made a part of the invoice, not part of the notice of overpayments as ORS 238.715 requires.

The period to file an appeal runs from the date of notice. ORS 238.715 (4) requires notice of the appeal rights to be included with the notice of overpayment. Is it PERS's intent that the notice and the invoice are not only separate documents, but that they may be sent at different times? If so, that intent should be made clear. If they are sent to be sent at the same time, that should be made clear in the rule. In any event, the invoice is not the proper document to carry notice of appeal rights according to the statute.

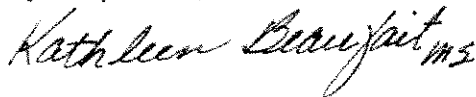
Page 2 - Beaufait to Rodeman
November 14, 2005

OPRI would be opposed to any practice that allows delivery of the notice and the invoice at separate times. As a practical matter, if the notice and the invoice are sent at different times, the right of appeal, which often turns on the amount being contested, is undermined. It might be convenient to make a mass mailing to "window retirees" (the group at which this proposal seems aimed) that their pensions are to be reduced and their COLAs applied as offsets without also specifying the amounts that will be claimed as overpayments. Administrative convenience cannot trump fairness or the statute. It is patently unfair and procedurally inadequate at law to give affected retirees notices of overpayment that start the appeal period without providing at the same time invoices stating the amounts being claimed.

We are not sure of PERS's intent with this proposed rule revision. We also seek clarification about the timing because we do not believe ORS 238.715 contemplates two documents to be delivered at different times.

On an editorial note, you may wish to restore the "a" in line 11, page 1 of the proposed draft to keep usage consistent with line 11, page 1 et seq. In line 1, page 3, "For purposes of this rule" is redundant. In line 22, page 3, "as these terms are defined above" is also redundant.

Very Truly Yours,



Kathleen Beaufait
Chairperson, OPRI

KB: ms

CC: David K. Martin
PERS Administrative Rules Coordinator

005-0610

From: "George Schneider" <george_schneider@comcast.net>
To: MARTIN David <David.Martin@state.or.us>
Date: 11/17/2005 10:32:34 PM
Subject: Rulemaking: Proposed rule 459-005-0610

Mr. Martin:

Please pass this comment on the proposed rulemaking to the Board. It is in the form of an informal email at this point, but can also serve as the start of a contested procedure at my option.

In Rule 459-005-0610, PERS proposes to interpret ORS 238.715 to mean that a proposed benefit change notice and the invoice for monies owing on such a change do not have to be part of the same communication.

Since your proposed rule, on P.3 Line 19 lacks clarification as to this issue, I will assume that you intend to leave such interpretation open to the fiat of your executive.

I reject such vague rulemaking, as I am one of your intended targets of collection of funds.

Under any collection action contemplated by your executive, the rules of the Fair Credit Collections Act will apply, and such Act requires that such notice (dun) be accompanied by an invoice.

Since the notice (dun) will also start a clock for appeal rights, it is patently absurd to force appellants to file such appeals without an invoiced amount that PERS will claim is owing.

I have no doubt at all that if the notice (dun) is separated from the invoice, any Federal Court petitioned will rule that PERS has violated the Fair Credit Collections Act by splitting the notice (dun) and the invoice into separate communications, especially since this is a thinly-veiled attempt to disregard a statutory time limit imposed by law.

I also have no doubt that any State Court petitioned will likewise rule that PERS lacks standing to substantively change an Oregon Revised Statute (ORS 238.715) by such rulemaking process. I am sure that the Court will be delighted to interpret ORS 238.715 to mean that the notice of benefit change and the invoice for monies owing in an overpayment must be part of the same communication, and that the appeals process may not begin until the entire communication is received. There is plenty of precedent for interrupted communications to take an effective date-time group of the final transmission of data to assume that the Court would follow this precedent, and not permit PERS to start the appeals clock (and beat the 4-1-06 deadline) with an "empty" notice.

Rules for the collection of funds due from an individual to any corporate entity have been long established in this culture, sir, and PERS trifles with those precepts at their own peril.

You might refer to the penalties provided in the Fair Credit Collections Act. If PERS were to universally violate the Act with regard to tens of

thousands of "window" retirees, I have no doubt that the total of the penalties assessed on behalf of each and every violated PERS member would far exceed those monies that PERS intends to collect. Of course, that only covers action in Federal Court, and the State Courts could be expected to be even more protective of individual rights, just as the Oregon Constitution is recognized as being more protective of individual rights than is the Federal Constitution.

The Oregon Supreme Court, in reviewing and affirming parts of the Strunk decision, never intended that PERS, in its zeal to implement an unordered collection action, should run roughshod over the guaranteed Federal and State rights guaranteed to any individual who is involved in a collection action.

Play it straight, and you will get that which is due to you. Trifle with the rights of retirees that you wish to collect from, and you will not only have your collection offset by many penalties, but you will earn such political disfavor that your very tenure as executives of the PERS will be in vital jeopardy.

Thank you for your attention to this matter.

/s/ George Schneider,
PERS retired, '03
Member, OPRI
Past member, Executive Board,
MCDSA (Local 117)

CC: <feldesmanm@pdx.edu>, <msrx300@earthlink.net>

005-0610

From: Sylvia Worrix <sworrix@uoregon.edu>
To: MARTIN David <David.Martin@state.or.us>
Date: 11/18/2005 7:44:54 AM
Subject: Proposed rule change

Hello PERS,

I am hearing that there is a proposed rule change whereby PERS would not be required to send an invoice amount with the notice of the 1999 overcredit to the window retirees.

My husband is one of those retirees and our expectation is that we are given the exact amount owed along with that notice so that we can make an informed decision about whether to appeal or not.

The State of Oregon has already stolen millions of dollars from our pension accounts with their reform legislation. We now have no one on the PERS Board who cares about employee/retiree interests as evidenced by the Board's going after window retirees for repayment and recent proposed rule changes (the current one and also the one concerning interest).

Please reassure me that we will be given the exact amount owed with the notice of "overpayment."

Sylvia Worrix
Eugene, Or.

From: "Pluths" <tdpluth@hotmail.com>
To: MARTIN David <David.Martin@state.or.us>
Date: 11/19/2005 11:07:36 AM
Subject: 459-005-0610

I am a "window retiree" affected by proposed modifications to Administrative Rule 459-005-0610 regarding recovery of overpayment of funds. Please consider the following my comment regarding its implementation, as I will be unable to attend the hearing on November 29.

My comment:

To suggest that Section 3 is intended to "Clarify the distinction between the notice required by statute to commence recovery and the invoice that details the overpayment" is disingenuous, at best. The original rules say simply that the notice shall include an invoice. To imply that the invoice is separate from the notice is like saying Chapter 6, "Pap Struggles With the Death Angel" is separate from "The Adventures of Huckleberry Finn." While we can agree that both the chapter or the invoice could be separated out, it is clear that the whole -- whether the notice or the novel -- is not complete without all its parts. The reader needs to see that Huck's pap is an abusive alcoholic to understand Huck's running away. Likewise, the retiree needs to see what money is owed to know whether an appeal (to be filed in a specified time from receipt of the notice) is warranted..

Please -- clarify all the distinctions you want, but refrain from making distinctions where none exist. When I pick up a copy of Huck Finn at the bookstore, I don't expect to receive Chapter 6 in the mail, several months down the road. And when I receive my notice to commence recovery of funds, I expect to receive the invoice as well.

Sincerely yours,
Donna Pluth

From: <RSVPMV@aol.com>
To: MARTIN David <David.Martin@state.or.us>
Date: 11/19/2005 6:44:36 AM
Subject: OAR 459-005-0610

Dear Mr. Martin: I am one of the 45,000 so-called window retirees that are negatively affected by the errors and omissions of the PERS staff regarding the handling of the 1999 account distributions. This proposed rule does nothing to place the responsibility on the PERB or the staff who work for them.

I object to the rule based on the fact I have received my Notice of Entitlement in 2001 and based on that document I retired on 1-1-2002. I am being penalized by a lawsuit that was decided after the fact of my retirement.

I suggest you add a hold harmless section to the rule for window retirees.

Sincerely,

Richard S. Vohs
RSVPMV@aol.com (mailto:RSVPMV@aol.com)

From: "kjohnson" <kjohnson@crestviewcable.com>
To: MARTIN David <David.Martin@state.or.us>
Date: 11/21/2005 4:27:41 PM
Subject: ORS 459-005-0610

Re: Proposed ORS 459-005-0610 (3)

Dear Mr. Martin,

Proposed language in paragraph #3, to separate notice of a PERS error from an explanation of that error, effectively makes it impossible for the "payee" to contest the proposed action, since the action is not defined. I would think PERS officers still have the basic duty to provide for the due process rights of their clients. I believe the proposed language of paragraph #3 does not honor the mission of PERS, and I recommend it's deletion.

Sincerely,

Keith Johnson
2620 SE Bitterbrush Drive
Madras, OR 97741

From: <AlShannon22@aol.com>
To: MARTIN David <David.Martin@state.or.us>
Date: 11/8/2005 10:37:41 AM
Subject: Public Comment on proposed OAR 459-005-0610

Mr. Martin:

In reviewing the proposed amendments to OAR 459-005-0610 I noted that there is no mention of the possibility for retired members to satisfy the overpayment via a fiduciary transfer. Such transfer could come from an individual IRA or 403b vehicle, and could come without income tax assessments (i.e., pre-tax). Please ask the PERS staff to make this part of their proposed rule.

Thank you,

Al Shannon
7955 Portland Road NE
Salem, OR 97305-9401
503-463-8012 (home)

CC: <jgreen@osba.org>

From: <dd_imapple@comcast.net>
To: MARTIN David <David.Martin@state.or.us>
Date: 11/22/2005 7:35:25 PM
Subject: Proposed OAR 459-005-0610

Regarding the proposed OAR for "Recovery of Overpayments", 459-005-0610:

The proposed rule speaks to the requirement of notice according to ORS 238.715. The proposed rule further indicates that PERS would send a "notice" (apparently to let retirees know that an overpayment was made, but not what the overpayment actually is). This notice would be later followed by an "invoice" (apparently to let retirees know what the overpayment actually is).

However, ORS 238.715 states nothing about an "invoice." Rather, it states that a notice of the overpayment or erroneous payment is to be sent. The of the overpayment part of the ORS implies that the notice will include what the overpayment is. The ORS further states that the notice will include information regarding the manner in which the Board's decision may be appealed. This further implies that the notice will inform the retiree of just what he/she may want to appeal.

Thus, the language in the proposed OAR does not appear to be consistent with the ORS. And, how can a retiree appeal something that he/she doesn't even have the information on? I would be recommending that all retirees sent a notice appeal, since they won't have all the information they need.

Therefore, the language should be changed and the proposed OAR should have language that indicates that the notice will include all the pertinent information on the overpayment.



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR
Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
(503) 598-7377
TTY (503) 603-7766
www.pers.state.or.us

December 16, 2005

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

MEETING DATE	12/16/05
AGENDA ITEM	D.1. Definitions

SUBJECT: Adoption of Rulemaking for OAR 459-070-0001, *OPSRP Definitions*

OVERVIEW

- **Action:** Adopt permanent rule modifications to OAR 459-070-0001, OPSRP Definitions
- **Reason:** The current provisions for determining membership eligibility have proven to be administratively difficult for both the system and employers.
- **Subject:** Definition of “qualifying position” for the purposes of the OPSRP Pension Program and IAP.
- **Policy Issue:**
 - Should the determination of qualifying position be modified to permit an employer to make the eligibility determination at the onset of employment?

BACKGROUND

Under the current rule, for purposes of initial membership determination, an employee will be considered to be performing service in a qualifying position even if they perform less than 600 hours in the year of hire so long as they perform at least 600 hours in the following year. This provision may delay the determination of membership up to 2 years. Such delay prevents the timely remittance of required contributions and the granting of retirement credit and has proven to be very difficult to administer for both PERS and employers. The proposed amendments would make membership eligibility determination more efficient and easier to administer.

The OAR for the PERS Chapter 238 Program is currently also in rulemaking to address the same issue (see Agenda Item D.2. for this Board meeting).

POLICY ISSUE

- *Policy Issue: Should the determination of qualifying position be modified to permit an employer to make the eligibility determination at the onset of employment?*

The statutory standard for a qualifying position is 600 hours in a calendar year. The current rule contains a special provision for employees hired too late in the calendar year to accumulate 600 hours. For the purposes of initial membership determination only, an employee will be considered to be in a qualifying position even if they perform less than 600 hours in the first year so long as they perform at least 600 hours in the following year.

This provision requires employers and employees to wait until the end of the following year, or until the employee performs 600 hours, whichever comes first, before knowing that the employee qualified for membership. Contributions can be delayed and retirement credit accruals miscalculated because of this time lag, so this standard has proven to be very difficult to administer for both PERS and employers.

The proposed amendments allow the employer to designate that the employee is in a qualifying position from the onset of employment. This will make membership eligibility determinations more efficient and easier to administer.

LEGAL REVIEW

The proposed rule amendments were submitted to the Department of Justice for review. Counsel had no substantive comments or changes.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on November 29, 2005 at 2:00 p.m. in PERS headquarters in Tigard. No one attended the hearing to testify on this rule.

On November 4, 2005, this proposed rule was discussed at a PERS Legislative Advisory Committee meeting. The committee recommended that, for the purposes of initial membership determination, the employer should make the determination of qualification and remit contributions on the “contribution begin date” as determined by the jClarety system.

PERS received no additional public comment on this rule.

IMPACT

Mandatory: No, but simplifying this process benefits plan administration and clarifies employee’s expectations.

Impact: Potentially, there may be some impact on the number of people that qualify for OPSRP 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

October 14, 2005	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
November 1, 2005	<i>Oregon Bulletin</i> published the Notice.
November 18, 2005	PERS Board notified that staff began the rulemaking process.
November 29, 2005	Rulemaking hearing held at 2:00 p.m. in Tigard.
November 29, 2005	Public comment period ended at 5:00 p.m.
December 16, 2005	Rule is presented to the PERS Board for adoption.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt the permanent rule modifications to OAR 459-070-0001, 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 current provisions for determining membership eligibility have proven to be administratively difficult for both the system and employers.

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 070 – OREGON PUBLIC SERVICE
RETIREMENT PLAN, GENERALLY

MEETING	12/16/05
DATE	
AGENDA	D.1.
ITEM	OPSRP

1 **459-070-0001**

2 **Definitions**

3 The words and phrases used in this Division have the same meaning given them in
 4 ORS 238A.005 unless otherwise indicated in this rule. Specific and additional terms for
 5 purposes of Divisions 70, 75 and 80 are defined as follows unless context requires
 6 otherwise:

7 (1) "Break in service" means a period concluding on or after August 29, 2003,
 8 during which a member of PERS performs no service, as defined below, with a
 9 participating public employer in a qualifying position for a duration of:

10 (a) Six or more consecutive calendar months; or

11 (b) 12 or more consecutive calendar months under one of the following
 12 circumstances:

13 (A) The member of PERS ceases performance of service for purposes that have
 14 qualified the member for family leave, as described in ORS 238A.025(3)(c), as
 15 determined by the employer; or

16 (B) The member of PERS ceases performance of service for career development
 17 purposes, as described in ORS 238A.025(3)(d).

18 (2) "Calendar month" means a full month beginning on the first calendar day of a
 19 month and ending on the last calendar day of the same month.

20 (3) "Calendar year" means 12 calendar months beginning on January 1 and ending
 21 on December 31 following.

22 (4) "Employee" has the same meaning as "eligible employee" in ORS 238A.005(4).

1 (5) "Employee class" means a group of similarly situated employees whose positions
2 have been designated by their employer in a policy or collective bargaining agreement as
3 having common characteristics.

4 (6) "Employee contributions" means contributions made to the individual account
5 program by an eligible employee under ORS 238A.330, or on behalf of the employee
6 under ORS 238A.335.

7 (7) "Member" has the same meaning given the term in ORS 238A.005(10).

8 (8) "Member account" means the account of a member of the individual account
9 program.

10 (9) "Member of PERS" has the same meaning as "member" in ORS 238.005(12)(a),
11 but does not include retired members.

12 (10) "OPSRP" means the Oregon Public Service Retirement Plan.

13 (11) "Overtime" means the salary or hours, as applicable, that an employer has
14 designated as overtime.

15 (12) "PERS" means the retirement system established under ORS chapter 238.

16 (13)(a) "Qualifying position" means a position or positions in which an employee is
17 expected to perform 600 or more combined hours of service in a calendar year.

18 (b) If an employee is employed in a position or positions not designated as
19 qualifying and performs 600 or more total hours of service in a calendar year, the position
20 or positions will be considered qualifying and the employee shall be considered to have
21 performed service in a qualifying position from the date of employment or January 1 of
22 the calendar year in which the employee performed more than 600 hours of service,
23 whichever is later.

1 (c) Except as provided in subsection (d) of this section, if an employee is employed
2 in a position or positions designated as qualifying and performs less than 600 hours of
3 service in a calendar year, the position will be considered non-qualifying from the date of
4 employment or January 1 of the calendar year in which the employee performed less than
5 600 hours of service, whichever is later.

6 *[(d) For purposes of determining qualification upon initial employment in a position
7 or positions, but not for determining a break in service or any other purpose, if an
8 employee is employed in a position or positions for less than a full calendar year and
9 performs less than 600 hours of service in that calendar year, but would have performed
10 600 hours of service or more if the employee had performed service in the same
11 position(s) for the full calendar year, and if the employee performs 600 or more hours of
12 service in the following calendar year, the position or positions will be considered
13 qualifying as of the date of employment.]*

14 *[(e)]* **(d)** For purposes of determining qualification upon separation from
15 employment in a position or positions, but not for any other purpose, if an employee was
16 employed in a position or positions for less than a full calendar year and performed less
17 than 600 hours of service in that calendar year, but would have performed 600 hours of
18 service or more if the employee had performed service in the same position or positions
19 for the full calendar year, and if the employee performed 600 or more hours of service in
20 the previous calendar year, the position or positions will be considered qualifying as of
21 the date of separation.

22 (14)(a) "Salary" has the same meaning given the term in ORS 238A.005(16).

1 (b) Salary is considered earned when paid except as provided in subsection (c) of
2 this section and as otherwise provided in ORS 238A.005(16)(b)(E).

3 (c) Salary is considered earned when earned for purposes of calculating final average
4 salary.

5 (15) "School employee" has the meaning given the term in ORS 238A.140(6).

6 (16) "Service." Except as provided in subsection (c) of this section, a person is still
7 providing "service," for purposes of determining whether a "break in service" has
8 occurred under Section 2a, Chapter 733, Oregon laws 2003 (Enrolled HB 2020), during
9 any calendar month that a member:

10 (a) Is in an employer/employee relationship; and

11 (b) Receives a payment of "salary," as that term is defined in ORS 238.005(20) or
12 similar payment from workers compensation or disability.

13 (c) A member who is a school employee will be considered to provide "service"
14 during any calendar month the institution is not normally in session so long as the
15 member is in an employer/employee relationship both before and after the period the
16 institution is not normally in session.

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

18 Stat. Auth.: 238A.450

19 Stats. Implemented: 238A.005, 238A.025, 238A.140, 238A.330, 238A.335



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR
Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
(503) 598-7377
TTY (503) 603-7766
www.pers.state.or.us

December 16, 2005

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

MEETING DATE	12/16/05
AGENDA ITEM	D.2. Membership

SUBJECT: Adoption of OAR 459-010-0003, *Eligibility and Membership for the PERS Chapter 238 Program*

OVERVIEW

- **Action:** Adopt permanent rule modifications to OAR 459-010-0003, Eligibility and Membership for the PERS Chapter 238 Program.
- **Reason:** The current provisions for determining membership eligibility and concurrent employment have proven to be administratively difficult for members, employers and staff.
- **Subject:** Standards for determining membership and eligibility under the PERS Chapter 238 Program.
- **Policy Issues:**
 - Should concurrent employment be defined as employment occurring within the same calendar year?
 - Should the determination of "qualifying position" be modified to permit an employer to make the eligibility determination at the onset of employment?

BACKGROUND

The current OAR defines a concurrent position as two or more positions that occur together within any given calendar month. This determination has always been problematic given the type and nature of information reported to PERS and usually has resulted in a manual review at retirement. The new jClarety reporting system makes this concurrency issue somewhat easier to administer, but as the reports are tied to pay periods (which span calendar months for some employers), the reported information is not definitive.

Additionally, the current rule provides that for the purposes of initial membership determination, an employee will be considered to be performing service in a qualifying position even if they perform less than 600 hours in the year of hire so long as they perform at least 600 hours in the following year. This provision may push membership determinations out up to 2 years after initial employment, delaying the timely remittance of required contributions and the granting of creditable service. The proposed amendments would make determining membership eligibility more timely and easier to administer.

SUMMARY OF PROPOSED RULE AND POLICY ISSUES

- *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. Currently, employers are reporting hours of service, with other information, on their pay date. There is not an administratively efficient way to determine what month the hours reported were actually worked. This makes determining 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, determining membership and creditable service will more closely align with the requirements of OPSRP as well, making employer reporting consistent throughout the system. Staff recommends these new provisions apply to any eligibility determination made on or after January 1, 2006 to provide a clean break by calendar year.

- *Policy Issue: Should the determination of qualifying position be modified to permit an employer to make the eligibility determination at the onset of employment?*

The statutory standard for a qualifying position is 600 hours in a calendar year. The current rule contains a special provision for employees hired too late in the calendar year to accumulate 600 hours. For the purposes of initial membership determination only, an employee will be considered to be in a qualifying position even if they perform less than 600 hours in the first year so long as they perform at least 600 hours in the following year.

This provision requires employers and employees to wait until the end of the following year, or until the employee performs 600 hours, whichever comes first, before knowing that the employee qualified for membership. Contributions can be delayed and retirement credit accruals miscalculated because of this time lag, so this standard has proven to be very difficult to administer for both PERS and employers.

The proposed amendments allow the employer to designate that the employee is in a qualifying position from the onset of employment. This will make membership eligibility determinations more efficient and easier to administer.

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

MODIFICATIONS TO RULES SINCE NOTICE

(1)(b): Clarified the definition of "qualifying position" to reflect recommendations made by the Legislative Advisory Committee (LAC) and staff to simplify the process and make the determination of eligibility and membership more consistent and easier to administer.

(1)(b)(A): Removed provision which provided for the determination of membership up to 2 years after employment date, which has proven to be difficult for both employers and staff to administer.

(1)(b)(B): Moved to (1)(b)(C).

(1)(c): Removed per public comment; not necessary given revision of "qualifying position" definition.

(6): Clarified that the rule would be effective for eligibility determinations made on or after January 1, 2006.

LEGAL REVIEW

The proposed rule amendments were submitted to the Department of Justice for review. Counsel had no substantive comments or changes.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on October 25, 2005 at 2:00 p.m. in PERS headquarters in Tigard. No one attended the hearing.

On November 4, 2005, this proposed rule was discussed at a PERS Legislative Advisory Committee meeting. The majority of the committee agreed that a concurrent position should be measured on a calendar year basis rather than a monthly basis.

The committee recommended that, for the purposes of initial membership determination, the employer should make the determination of qualification and remit contributions on the appropriate starting date as determined by the jClarety system.

The comment period ended on November 29, 2005 at 5:00 p.m. PERS received comment from Maria Keltner, representing the Association of Oregon Counties and Heidi B. Franklin, CPA, the Chief Financial Officer of Portland Public Schools.

Ms. Keltner raised three issues (a copy of her comment is attached to this board packet)

Her first contention expressed concern over the increase in the qualification of members by amending the definition of "concurrent position" from a monthly to a yearly determination. While it is true that additional members may be considered to be in qualifying positions under the new definition of concurrency, the yearly measurement more closely aligns with the statutory definition of qualifying position, which is measured yearly.

Her second contention raised a concern over the necessity of the definition of "non-qualifying position" given the proposed changes to "concurrent position." Staff agrees and has removed the definition.

Her third contention raised a concern over the retroactive determination of qualification and concurrency. Unfortunately, eligibility determinations are usually not made until retirement. Additionally, prior to the current rules being adopted, there was no clear standard for making eligibility determinations. These rules give a clearer standard for making that determination. As to the increase in cost and problems in collecting employee contributions, the number of members that would go from non-qualifying to qualifying under this definitional change is expected to be very small, and in most cases, employers have already submitted contributions for these members.

Ms. Franklin, of Portland Public Schools, submitted their concerns over the determination of eligibility and described the difficulties of complying under the current monthly reporting process (a copy of her letter is attached to this board packet). She proposes three changes to the administrative rules.

1. A public employee should begin making contributions after a six-month waiting period ends, regardless of the hours worked.
2. EDX should allow employers to look at all employee/member records prior to employment.
3. Collection of underpaid or overpaid funds should be managed by PERS.

Ms. Franklin's first proposed change would require a statutory amendment. Only employees who are performing service in a qualifying position, which the statute defines as 600 or more hours in a calendar year, may become active members. Accordingly, no changes were made in response to this proposal.

EDX is currently being programmed to allow employers to view membership and employment status to assist employers in making decisions regarding membership and contributions.

Staff is not sure what is meant by Ms. Franklin's third proposal, but the collection of underpaid and the return of overpaid contributions in these situations is handled consistently with other situations that require the remittance or return of contributions.

IMPACT

Mandatory: No, but bringing certainty to this process is necessary for simplification. Even though no new members will join the PERS Chapter 238 Program, 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 as a whole.
- *Employers:* There are no intrinsic costs to employers as a whole. 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.

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> published the Notice.
October 21, 2005	PERS Board notified that staff began the rulemaking process.
October 25, 2005	Rulemaking hearing held at 2:00 p.m. in Tigard.
November 18, 2005	First reading of the proposed rule.
November 28, 2005	Public comment period ended at 5:00 p.m..
December 16, 2005	Staff proposes adopting the permanent rule modifications, including any amendments warranted by public comment or further research.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt the permanent rule modifications to OAR 459-010-0003, 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 current provisions for determining membership eligibility and concurrent employment have proven to be administratively difficult for both the agency and employers.

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 010 – MEMBERSHIP**

MEETING	12/16/05
DATE	
AGENDA	D.2.
ITEM	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" **means:** *[means a position or concurrent positions in which*
7 *an employee is expected to perform 600 or more hours of service in a calendar year.]*

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

16 *[(B) For purposes of determining qualification upon separation from employment,*
17 *but not for any other purpose, if an employee was employed in a position or concurrent*
18 *positions for less than a full calendar year and performed less than 600 hours of service*
19 *in that calendar year, but would have performed 600 hours of service or more if the*
20 *employee had performed service in the same position or concurrent positions for the full*
21 *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)](A)~~ ~~[/]~~ **For** an employee **who** is employed in a position or in concurrent
4 positions designated as non-qualifying and performs 600 or more total hours of service in
5 a calendar year, the position or concurrent positions will be considered qualifying and the
6 employee shall be considered to have performed service in a qualifying position from the
7 date of employment or January 1 of the calendar year in which the employee performed
8 more than 600 hours of service, whichever is later.

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

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

23 *[(c) "Non-qualifying position" means:*

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

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

7 *(d~~e~~) "Service" means any calendar month an employee:*

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

9 *(B) Received a payment of "salary," as defined in ORS [238.005(20)] 238.005 or*
10 *similar payment from workers compensation or disability.*

11 *(2) An employee qualifies as a member of PERS under ORS 238.015 if the*
12 *employee:*

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

14 *(b) Has been employed in a qualifying position;*

15 *(c) Is not otherwise ineligible for membership; and*

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

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

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

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

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

9 (6) The provisions of this rule are effective for all eligibility determinations made
10 on or after January 1, 2005/6.

11 Stat. Auth.: ORS 238.650
12 Stats. Implemented: ORS 238.015, 243.800 & 353.250

D.2. Attachment 1 Comments

From: "Maria Keltner" <MKeltner@orlocalgov.org>
To: MARTIN David <David.Martin@state.or.us>
Date: 11/28/2005 2:30:57 PM
Subject: Comments OAP 459-010-0003 w/attach

David,
Attached are comments submitted on behalf of AOC concerning proposed rulemaking on OAR 459-010-0003.
Thank you for your considerations.
Maria Keltner
503.588.2251

D.2. Attachment 1 Comments

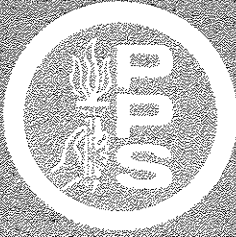
To: David Martin, PERS Administrative Rules Coordinator
From: Maria Keltner, AOC

Re: Comments Proposed Rulemaking – OAR 459-010-0003

We have several concerns about the proposed rule (version B.2.010-0003-4 dated 10/6/05).

1. Section (1)(a) Changing the definition of “concurrent positions” from in any given month to in any given year will obviously qualify more people not less and will increase costs.
2. Section (1) c (B) This is less of a concern to us. However, we cannot understand when the situation described would occur given the proposed change in the definition for “concurrent positions”.
3. Section (6) We are concerned about eligibility determinations for calendar year 2005 and prior calendar years which are made on or after the effective date of this proposed rule. These changes in definitions will cause some employees to go from being in a “non-qualifying position” to being in a “qualifying position” and/or from not being in “concurrent positions” to being in “concurrent positions”. This will not only increase costs but will also create additional problems in collecting employee contributions from employees and former employees.

Thank you for your consideration.



PORTLAND PUBLIC SCHOOLS

301 North Dixon Street / Portland, Oregon 97227
Mailing Address: P.O. Box 3107 / Portland, Oregon 97208-3107
Telephone: (503) 916-3302 • FAX (503) 916-3698

PAYROLL / BENEFITS

Public Employees Retirement System
11410 SW 68th Parkway
Tigard, OR 97223

November 21, 2005

RE: 459-010-0003 Eligibility and Membership for the PERS Chapter 238 Program
459-010-0014 Creditable Service in PERS Chapter 238 Program

To Whom It May Concern:

If there is an amendment to an Administrative Rule regarding P.E.R.S., we recommend CLARIFYING and SIMPLIFYING the processes necessary to comply with the rule.

The following are examples of how difficult compliance is under our current monthly reporting process.

Portland Public Schools is the largest K-12 school district in the state. The number of substitute/part-time and on call personnel is very large; there are approximately 1500 employees in this category. We also have a large number of employees who change positions on an ongoing basis between what P.E.R.S. deems as qualified and non-qualified. These workers do not have a "standard" schedule.

Tracking any employee who is not working a "standard" schedule is very problematic for the employer, the P.E.R.S. member, and P.E.R.S. Because of a lack of a "standard" schedule it is not known if their current employment is qualified or non-qualified and whether or not they should be making contributions until they have worked almost an entire year. At that point, it is entirely possible, given the current rules, it is necessary to go back with retro contributions or refunds...as much as a year.

This creates an enormous amount of work for the district in the way of collections and refunds to these employees. It creates a hardship on the employee financially if they now have to pay into P.E.R.S. in a lump sum, especially as many of these employees barely work 600 hours a year. And it creates much confusion to an employee who is trying to understand and manage their P.E.R.S. membership towards retirement. For instance, the rules are confusing to the point that in our opinion members aren't clear that if they work 599 hours in a given year that they run the risk of losing their contributions as well as their tier status.

It also creates work and rework for P.E.R.S. to manage these members data and funds.

To simplify the eligibility requirements would lessen the burden on P.E.R.S. to track each employee/member. It would lessen the burden on employers to comply with the rules. It would lessen the burden on members and enable them to better understand the program as well as it's impact on them personally, which in turn, lessens the burden on P.E.R.S. The largest benefit would be that all employees/members would be treated equally and allow for employees/members to be treated fairly.

Note: Any amendments to rules or statutes needs to be prospective not retroactive once eligibility has been determined.

PROPOSED SOLUTION: Legislative change/Administrative rule change to allow for the following:

1. If you work for a public employer, **REGARDLESS OF HOURS WORKED**, you serve your 6

D.2. Attach Comments

- month waiting period and begin contributions.
2. EDX allows each employer to look at "ALL" employees/members records prior to employment. (The prior system allowed this visibility which allowed employers to know more quickly if a potential employee was already a P.E.R.S. member or not)
 3. Collection of unpaid or overpaid funds to be managed by P.E.R.S.

Thank you for allowing us to participate in this rulemaking process. If you have any questions, please don't hesitate to contact us directly.

Sincerely,

A handwritten signature in cursive script that reads "Mauna-Ku'uipo, AP for Heidi B. Franklin, CPA".

Heidi B. Franklin, CPA
Chief Financial Officer



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR
Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
(503) 598-7377
TTY (503) 603-7766
www.pers.state.or.us

December 16, 2004

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

MEETING DATE	12/16/05
AGENDA ITEM	D.3. Cred. Service

SUBJECT: Adoption of OAR 459-010-0014, *Creditable Service in PERS Chapter 238 Program*

OVERVIEW

- **Action:** Adopt permanent rule modifications to OAR 459-010-0014, Creditable Service in PERS Chapter 238 Program.
- **Reason:** The current OAR provisions have proven to be very difficult for employers to report the necessary information. The proposed rule amendments simplify the standards by which creditable service would be granted to members in the PERS Chapter 238 Program and ease employer reporting of the necessary information.
- **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, members earn “creditable service” for any period of time during which the member is being paid a salary. Service credit is measured in full months and major fractions of a month; both of which add to full years of credit as one-twelfth of a year. Whether a member has performed a major fraction of a month proves difficult to determine given the current EDX reporting structure.

SUMMARY OF PROPOSED RULE AND POLICY ISSUE

Under the current OAR, the advisory committee 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, with one month of creditable service granted for each month a member performed 50 hours of service.

Employers must report through the EDX system with reports tied to payroll information. For many employers, payroll periods span across months and make determining the number of hours a member actually worked in a month (and, therefore, has met the 50-hour minimum for the granting of creditable service) impossible.

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

The proposed rule amendments provide that if a member performs at least 600 hours of service in a calendar year, they will be deemed as having performed a major fraction of a month for any month in which they are reported to have performed service. Adopting this presumption of hours, rather than have employers re-program their systems, keeps in place the yearly standard while avoiding administrative complications.

MODIFICATIONS TO RULES SINCE NOTICE

- (1)(a): Removed definition of "PERS business day" as that term was removed from the proposed rule.
- (2): Clarified the presumption that a member will be considered to have performed a major fraction of a month if they meet certain criteria, as reported by their employer(s).
- (3): Clarified the presumption that a member will not be considered to have performed a major fraction of a month and will receive no creditable service when a member has a Leave Without Pay (LWOP) for a specific period of time. That presumption can be overcome by the member proving they met the 50 hour standard during that month despite the extended leave period.
- (4): Added this provision to provide that the presumptions of performing or not performing service for a major fraction of a month may be rebutted by providing additional information.
- (7): Clarified that the rule would be effective for service credit determinations made on or after January 1, 2006.

LEGAL REVIEW

The proposed rule amendments were submitted to the Department of Justice for review. Counsel had no substantive comments or changes.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on October 25, 2005 at 2:00 p.m. in PERS headquarters in Tigard. No one attended the hearing.

On November 4, 2005, this proposed rule was discussed at a PERS Legislative Advisory Committee meeting. The committee understood the reporting issue and agreed that creditable service should be granted under the general provisions set forth in the proposed rule. They recommended that the 50-hour standard provision be removed as this provision was confusing. They also did not like the exception that removed creditable service if a member has a leave without pay period spanning more than 11 working days, so that provision has been modified as described below. Additionally, they recommended the effective date of the rule be January 1, 2006.

The proposed rule would have excluded any month during which a member has a period of leave without pay (LWOP) spanning more than 11 working days. The Legislative Advisory Committee, however, was uncomfortable with that provision since members could have still met the 50-hour standard with the remaining working days and taking

such a leave should not presumptively exclude a member from earning credit for that month. Accordingly, the proposed rule has been revised to deem these LWOP periods as not constituting major fractions of a month, allowing for that presumption to be rebutted.

The comment period ended on November 29, 2005 at 5:00 p.m. PERS received comment from Heidi B. Franklin, CPA, who is the CFO of Portland Public Schools and Greg Hartman of Bennett, Hartman, Morris & Kaplan, on the behalf of the PERS Coalition.

Ms. Franklin described the difficulties of complying under the current monthly reporting process (a copy of her letter is attached to this board packet). She proposes three changes to the administrative rules. Since her comments appear to address issues to the proposed amendments to OAR 459-010-0003, *Eligibility and Membership*, rather than 459-010-0014, staff has responded to her comments in the *Membership* board memo (Agenda Item D.2.).

Mr. Hartman shared his concerns about section (4) of the rule, which he states, “leaves open the potential for an employee or employer challenge to a determination made by PERS on creditable service.” He continues, “I am particularly concerned that there are no time limits on this potential for a challenge.” While Mr. Hartman is correct, this is not a change from current practice. Eligibility and service credit reviews are made at various points in a member’s career, most commonly at retirement. There is no time limit on an employer adjusting their reporting nor within which a member can challenge their records. Staff made no changes to the rule in response to this comment.

Mr. Hartman also alluded to his understanding that the LAC would have another opportunity to review this rule. Staff did send out an updated version with tracked changes to the LAC on November 21, 2005 and noted that the comment period ended on November 29, 2005. Given the fact that the LAC has already discussed this issue at length, staff did not believe these changes warranted another meeting. Also, with the holidays and short time frame, scheduling another meeting would have been difficult.

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 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> published the Notice.
October 21, 2005	PERS Board notified that staff began the rulemaking process.
October 25, 2005	Rulemaking hearing held at 2:00 p.m. in Tigard.
November 18, 2005	First reading of the proposed rule.
November 28, 2005	Public comment period ended at 5:00 p.m..
December 16, 2005	Staff proposes adopting the permanent rule modifications, including any amendments warranted by public comment or further research.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt the permanent rule modifications to OAR 459-010-0014, 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 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.

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 010 – MEMBERSHIP

MEETING	12/16/05
DATE	
AGENDA	D.3.
ITEM	Cred. Service

1 **459-010-0014**

2 **Creditable Service in PERS Chapter 238 Program**

3 (1) For purposes of this rule:

4 (a) "Service credit" has the same meaning as "creditable service" in ORS
5 238.005(5).

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

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

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

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

13 **(2) An active member will be considered to have met the definition of**
14 **performing service for a major fraction of a calendar month if:**

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

17 **(B) The member's employer(s) have reported salary and hours for a pay period**
18 **occurring within that calendar month.**

19 **(3) An active member will not be considered to have met the definition of**
20 **performing service for a major fraction of a calendar month if the member:**

21 **(a) starts employment after the 15th of a calendar month, or**

1 (b) ends employment prior to the 16th of a calendar month, unless the member
2 begins employment again in another qualifying position prior to the end of that
3 calendar month.

4 (4) The granting or denial of creditable service based on the considerations in
5 sections (2) and (3) above can be rebutted by the member or employer providing
6 records that establish that the member did or did not in fact perform service for the
7 requisite number of hours required to be considered a major fraction of a month
8 under section (1).

9 (/3/5) If the active member is a school employee, they may instead accrue one half
10 year of service credit if the employee:

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

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

13 (/4/6) Except as provided for under section (3) of this rule, an employee may not
14 accrue more than one full month of service credit for any number of hours worked in a
15 calendar month and no more than one year of service credit for any number of hours
16 worked in a calendar year.

17 (/5/7) The provisions of this rule are effective for service credit determinations
18 made on or after January 1, 200/5/6.

19 Stat. Auth.: ORS 238.650

20 Stats. Implemented: ORS 238.015

BENNETT, HARTMAN, MORRIS & KAPLAN, LLP

ATTORNEYS AT LAW

GREGORY A. HARTMAN

hartmang@bennetthartman.com
Direct Dial: 503-546-9601

SUITE 1650
111 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204-3627
(503) 227-4600
FAX (503) 248-6800
www.bennetthartman.com

November 29, 2005

BY FAX AND MAIL

Steve Rodeman
Public Employee Retirement System
PO Box 23700
Tigard, OR 97281-3700



Re: Proposed OAR 459-010-0014
Our File No.: 5415-237

Dear Steve:

The purpose of this letter is to comment on proposed Rule 459-010-0014 on behalf of the PERS Coalition. These comments are directed to the version of the rule which was shared with the Legislative Advisory Committee and are based in part on comments which were made at the last Legislative Advisory Committee meeting. My understanding was that the Legislative Advisory Committee would have an opportunity for additional comments on this rule but since the formal period for comment on the rule has not been extended I am sending this comment in order to make certain that we stay within the comment period.

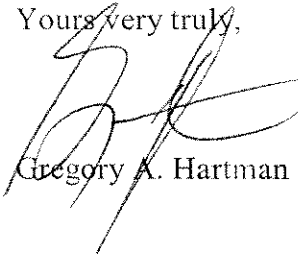
As you recall the major discussion at the recent Legislative Advisory Committee meeting was a desire for a simplified rule which would be to the advantage of all concerned, including PERS itself, from an administrative point of view. I think the current draft moves in that direction, however, I am concerned with subparagraph 4 which leaves open the potential for an employee or employer challenge to a determination made by PERS on creditable service. My understanding of the tenor of the comments which came from both sides of the table as the legislative advisory was that such a paragraph would not be helpful. Under the proposed rule there would be relatively few situations where either an employer or an employee would make use of this rule but it does remain a possibility. I am particularly concerned that there are no time limits on this potential for a challenge. If an employer, for instance, waited until the end of an employee's career to go back and examine records and make a challenge to that employee's creditable service, that challenge would be long after the employee would have retained any records which he or she could realistically use to respond to that challenge.

Steve Rodeman
November 29, 2005
Page 2

I suggest that rather than being helpful, subparagraph 4 may well cause more mischief for all parties concerned and would be better deleted from the rule.

Again I look forward to the opportunity to discuss this in the Legislative Advisory Committee context, but wanted to make sure that the comments on behalf of the PERS Coalition were on the record.

Yours very truly,

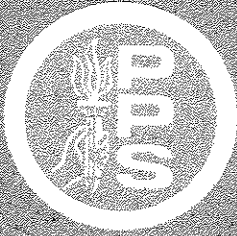


Gregory A. Hartman

GAH:kaj

G:\Hartman\AFSCME 5415\237 PERS 2\Rodeman 05-11-29.wpd

cc: Clients (by email)



PORTLAND PUBLIC SCHOOLS

301 North Dixon Street / Portland, Oregon 97227
Mailing Address: P.O. Box 3107 / Portland, Oregon 97208-3107
Telephone: (503) 916-3302 • FAX (503) 916-1698

PAYROLL/BENEFITS

Public Employees Retirement System
11410 SW 68th Parkway
Tigard, OR 97223

November 21, 2005

RE: 459-010-0003 Eligibility and Membership for the PERS Chapter 238 Program
459-010-0014 Creditable Service in PERS Chapter 238 Program

To Whom It May Concern:

If there is an amendment to an Administrative Rule regarding P.E.R.S., we recommend CLARIFYING and SIMPLIFYING the processes necessary to comply with the rule.

The following are examples of how difficult compliance is under our current monthly reporting process.

Portland Public Schools is the largest K-12 school district in the state. The number of substitute/part-time and on call personnel is very large; there are approximately 1500 employees in this category. We also have a large number of employees who change positions on an ongoing basis between what P.E.R.S. deems as qualified and non-qualified. These workers do not have a "standard" schedule.

Tracking any employee who is not working a "standard" schedule is very problematic for the employer, the P.E.R.S. member, and P.E.R.S. Because of a lack of a "standard" schedule it is not known if their current employment is qualified or non-qualified and whether or not they should be making contributions until they have worked almost an entire year. At that point, it is entirely possible, given the current rules, it is necessary to go back with retro contributions or refunds...as much as a year.

This creates an enormous amount of work for the district in the way of collections and refunds to these employees. It creates a hardship on the employee financially if they now have to pay into P.E.R.S. in a lump sum, especially as many of these employees barely work 600 hours a year. And it creates much confusion to an employee who is trying to understand and manage their P.E.R.S. membership towards retirement. For instance, the rules are confusing to the point that in our opinion members aren't clear that if they work 599 hours in a given year that they run the risk of losing their contributions as well as their tier status.

It also creates work and rework for P.E.R.S. to manage these members data and funds.

To simplify the eligibility requirements would lessen the burden on P.E.R.S. to track each employee/member. It would lessen the burden on employers to comply with the rules. It would lessen the burden on members and enable them to better understand the program as well as it's impact on them personally, which in turn, lessens the burden on P.E.R.S. The largest benefit would be that all employees/members would be treated equally and allow for employees/members to be treated fairly.

Note: Any amendments to rules or statutes needs to be prospective not retroactive once eligibility has been determined.

PROPOSED SOLUTION: Legislative change/Administrative rule change to allow for the following:

1. If you work for a public employer, **REGARDLESS OF HOURS WORKED**, you serve your 6

D.3. Attach. Comments

- month waiting period and begin contributions.
2. EDX allows each employer to look at "ALL" employees/members records prior to employment. (The prior system allowed this visibility which allowed employers to know more quickly if a potential employee was already a P.E.R.S. member or not)
 3. Collection of unpaid or overpaid funds to be managed by P.E.R.S.

Thank you for allowing us to participate in this rulemaking process. If you have any questions, please don't hesitate to contact us directly.

Sincerely,

A handwritten signature in cursive script that reads "Heidi B. Franklin, CPA". The signature is written in dark ink and is positioned above the typed name.

Heidi B. Franklin, CPA
Chief Financial Officer



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR
Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
(503) 598-7377
TTY (503) 603-7766
www.pers.state.or.us

December 16, 2005

TO: Members of the PERS Board

FROM: Craig M. Stroud, Administrator Benefit Payments Division

SUBJECT: Strunk / Eugene Project - Transaction Prioritization and Staging

MEETING DATE	12/16/05
AGENDA ITEM	D.4. <u>Strunk/Eugene</u>

OVERVIEW

- Subject: During the November 2005 Board meeting, the Board requested staff return in December with detailed information about the proposed prioritization and staging of Strunk and Eugene transaction adjustments.

The Strunk and Eugene project contains more than 50 thousand individual transactions that are categorized into several general types, such as: transitioning estimated benefits to final benefits and distributing Notices of Entitlement, paying additional benefits due, and invoicing overpaid benefits. The large number and complexity of these transactions requires that PERS spread the transactions over at least a three-year span to align with limited agency resources. Given the three-year project period, transaction categories must be prioritized.

- Action: Provide policy direction to staff on the general prioritization of Strunk and Eugene transaction categories.

ANALYSIS OF POLICY ISSUE

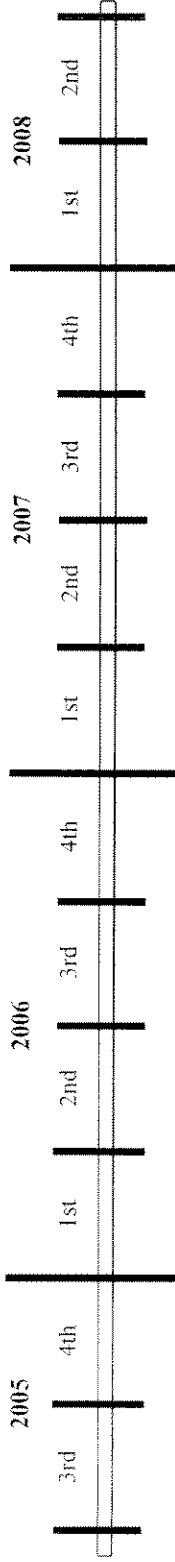
PERS staff identified four general conditions associated with the Strunk and Eugene adjustments that impact transaction prioritization. These conditions and general descriptions are:

1. Fiscal – Most transactions have a fiscal consideration in that PERS owes the recipient funds or the recipient owes PERS funds. For many transactions, the amount increases with time.
 - PERS Owes the Recipient Funds: Delaying payment of the funds negatively impacts the recipient. Staff proposes prioritizing recipients owed funds over other conditions.
 - Recipient Owes PERS Funds: Delaying receipt of the funds impacts the earnings potential of the PERS trust fund. Nonetheless, staff proposes prioritizing the adjustment of transactions for recipients that owe PERS funds below the adjustment of transactions for recipients owed funds.
 - Materiality: The relative size of funds associated with the transactions runs the spectrum from a few dollars to tens of thousands. Staff proposes that the larger the sum PERS owes or is owed, generally the earlier in the project the transaction be prioritized.

2. Date of Transaction – Transaction dates range from April 2000 to present. For recipients that owe PERS funds, the older the transaction date the more difficult collection may be due to the likelihood the recipient has moved to a new address, the likelihood the overpaid funds have been spent by the recipient, etc. Staff proposes transactions generally be prioritized by date, older transactions first. This is particularly relevant within the category of recipients that owe PERS funds.
3. Administrative – The project’s size and complexity significantly impacts PERS’ ability to administer the workload. Four general administrative constraints or issues were identified:
 - Workload Balance – For project efficiency reasons, staff recommends balancing the type and number of transactions processed in any given month as some transactions require more PERS support than others. For example, batch processing a thousand adjustments that result in corresponding invoices could overwhelm the accounts receivable process. Balancing transaction work across the project timeline makes sense.
 - Eligibility or other underlying account research questions – Planning efforts identified at least 4,500 recipient accounts that require research prior to finalizing the benefit adjustments. The research effort is time consuming, therefore, staff proposes spreading these accounts across the project timeline.
 - Adjustment Tool-Set Development –The Strunk and Eugene adjustments require new or revised processing tools. PERS has limited resources to create these tools and, therefore, must delay some transaction categories until staff creates the tool-sets.
 - Finalizing Estimated Benefits – Upon receipt of a finalized benefit and Notice of Entitlement, some retirees may opt to change their benefit option, or contest the information used to calculate their benefit. Staff proposes prioritizing these transactions earlier in the project to provide time to work these issues.
4. Cost of Living Allowance (COLA) Timing – The timing of benefit adjustments to coincide with future COLA benefit increases can help dampen the reduction to recipient monthly benefits. For example, if the recipient’s current monthly benefit is reduced due to Strunk and Eugene adjustments, future COLA increases will help close the gap between the recipient’s current benefit and the revised benefit. Staff proposes that COLA timing be considered in the prioritization process to help dampen monthly benefit reductions.

STAFF RECOMMENDATION: Staff recommends the PERS Board either concur with the above noted staff prioritizations or provide further direction for the general prioritization of Strunk and Eugene transactions. After applying the above conditions across the population of transaction categories, staff proposes a general staging timeline as depicted in Attachment A.

Strunk and Eugene Project
Transaction Prioritization and Staging



1. Recipients Who PERS Owes Money and/or Recipients Receiving Estimated Benefit Payments:

Estimated Benefits and Associated Notices of Entitlement: Dec 2005 thru May 2005

2. Recipients Receiving Annuity Payments Who Owe PERS Money:

Divorce Benefits -- Retired Members and Associated Alternate Payees: Apr 2006 thru June 2008

Non-COLA Freeze Benefits: Apr 2006 thru Sep 2006

COLA Freeze Benefits: Aug 2006 thru June 2008

Death Benefits: Jan 2007 thru June 2008

Police and Fire Units: Apr 2007 thru Mar 2008

3. Recipients Who Received a Lump Sum Payment and Owe PERS Money:

Lump Sum Benefits: Mar 2006 thru June 2007

Pre-2000 Lump Sum Installment Retirements -- Complete Final Installment: Mar 2006 thru June 2006

Total Lump Sum Benefits: July 2006 thru June 2007

Death Benefits: Jan 2007 thru June 2008

Member Withdrawals: Apr 2007 thru Mar 2008

Note: Accounts in each category may be delayed due to eligibility or other account research questions.



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR
Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
(503) 598-7377
TTY (503) 603-7766
www.pers.state.or.us

December 16, 2005

TO: Members of the PERS Board
FROM: Dale S. Orr, Actuarial Analysis Coordinator
SUBJECT: Financial Modeling Results

MEETING	12/16/05
DATE	
AGENDA	D.5.
ITEM	Modeling

On December 16, 2005, Bill Hallmark of Mercer Human Resource Consulting, will present the results of the financial modeling study alternatives approved by the Board on October 21, 2005.

The study results will be forwarded to the Board as they become available.

If you have any questions, please call me at (503) 603-7704.