

OREGON PUBLIC EMPLOYEES RETIREMENT BOARD

Friday November 17, 2006 11:30 A.M. & 1:00 P.M.		PERS 11410 SW 68th Parkway Tigard, OR	
ITEM		PRESENTER	
A. Contested Case Hearings – 11:30 A.M.			
1.	Contested Case Hearing for Kathleen Jones	KUTLER / WILSON	
2.	Contested Case Hearing for Linda Adams		
3.	Contested Case Hearing for Robin Martin		
4.	Status of Pending Contested Cases		
Break			
B. Administration – 1:00 P.M.			
1.	October 20, 2006 Board Meeting Minutes	CLEARY	
2.	Director's Report		
a.	Forward-Looking Calendar		
b.	OIC Investment Report		
c.	HB2020 Update		
d.	IAP Update		
e.	Actuarial Equivalency Factors Update		
C. Consent Action and Information Items			
1.	Action on Contested Cases	WILSON	
2.	First Reading of Chapter 238 Forfeiture and Restoration of Service Rights		
3.	First Reading of OPSRP and IAP Withdrawals Rules		
4.	Adoption of Employer Lump-Sum Payments Rules		
5.	Adoption of P & F Unit Benefit Program Rules		
6.	Adoption of USERRA Rules		
D. Action and Discussion Items			
1.	2007 - 09 Employer Contribution Rates	ORR / MERCER CLEARY CROSLEY / ZANG DELANEY	
2.	HB 2189 Lump Sum Payments Crediting		
3.	Customer Service Survey Results and Initiatives		
4.	Approval of 2007 Legislative Concepts		
E. Executive Session Pursuant to ORS 192.660(2)(f), (h), and/or ORS 40.225			
1.	Litigation Update	LEGAL COUNSEL	

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

Level 1 - Public

MEETING	11-17-06
DATE	
AGENDA	B.1.
ITEM	Minutes

PUBLIC EMPLOYEES RETIREMENT BOARD

PERS Board Meeting
1:00 P.M.

October 20, 2006
Tigard, Oregon

MINUTES

Board Members:

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

Staff:

Paul Cleary, Director
Stephanie Vaughn
Donna Allen
Steve Rodeman
Brendalee Wilson
Gloria English

Joe DeLillo
Dave Tyler
Craig Stroud
Dale Orr
Jeanette Zang
Kyle Knoll

Charlie Smith
Jeff Marecic
David Crosley
Jason Stanley
Dave Tyler
Vonn Judd

Others:

Molly Butler
Dick McQueen
David Wimmer
Brian DeLashmutt
Steve Manton
Ken Armstrong

Bill Hallmark
Keith Kutler
Karla Alderman
Deborah Tremblay
Hasina Squires
Maria Keltner

Ardis Belknap
Karen Artiaco
Annette Scarle
E. Marie Laird
Greg Hartman

Katie Saluels
P. Peg
Bruce Adams
Pat West
Molly Butler

Board Chair Mike Pittman called the meeting to order at 1:00 P.M.
James Dalton was excused from the meeting due to a scheduling conflict.

ADMINISTRATION

B.1. BOARD MEETING MINUTES OF SEPTEMBER 15, 2006

Brenda Rocklin moved and Tom Grimsley seconded to approve the minutes of the September 15, 2006 Board meeting. The motion passed unanimously.

B.2. DIRECTOR'S REPORT

Director Paul Cleary said that a detailed customer service report would be presented at the November 17 Board meeting. Cleary covered the OIC investment report for periods ending September 30, 2006, noting that the regular account had a year-to-date return of 9.05% while the variable fund had returned 7.93%. Cleary summarized the October budget report and discussed the potential agency workload and expenses in making additional *Young* case adjustments for some 1,800 state employee members, noting that PERS would seek administrative cost reimbursement from DAS Risk Management. Cleary described the enhanced employer outreach program focused on improving employer reporting timeliness and accuracy. Statistics on PERS workload and transition volumes were also presented. Cleary also provided staff recommendations on extending the contracts of the PERS retiree health insurance benefits consultant and third party administrator, and received feedback from the Board on contract terms, opt-out clauses and key person provisions.

CONSENT ACTION AND INFORMATION ITEMS

C.1. ACTION ON CONTESTED CASE HEARINGS

Vice-chair Brenda Rocklin reviewed the background and legal guidelines supporting the staff recommendations and proposed Board actions on the contested case hearings of Larry Lenon and Larry Hamblin held earlier in the morning of the Board meeting.

It was moved by Mike Pittman and seconded by Tom Grimsley to approve the staff recommendations. The motion passed unanimously.

Under that motion, the Board acted on each contested case item and directed staff as follows:

ITEM A.1. CONTESTED CASE HEARING FOR LARRY LENON

Adopted the draft final order as presented in the contested case hearing of Larry Lenon.

ITEM A.2. CONTESTED CASE HEARING FOR LARRY HAMBLIN

Adopted the draft final order as presented in the contested case hearing of Larry Hamblin.

At the conclusion of the consent agenda, Vice-chair Rocklin noted that Richard McQueen had submitted additional information related to his already decided contested case, which staff was asked to respond to as a courtesy to Mr. McQueen.

C.2. NOTICE OF RULEMAKING FOR OPSRP/IAP WITHDRAWAL RULES

Steve Rodeman, Policy, Planning and Legislative Analysis Division (PPLAD) administrator, presented the rulemaking notice, indicating that this proposed rulemaking would simplify procedures for account withdrawals under the Oregon Public Service Retirement Plan (OPSRP) and the Individual Account Program (IAP).

C.3. NOTICE OF RULEMAKING FOR CHAPTER 238 VOLUNTARY REDEPOSIT

Rodeman presented the rulemaking notice, indicating the proposed rule modifications were necessary to be consistent with statute and address the effect of "break in service" on Tier One / Tier Two membership restoration rights.

C.4. NOTICE OF RULEMAKING FOR P & F UNIT BENEFIT PROGRAM RULES

Rodeman presented the rulemaking notice, indicating the proposed rules would clarify the crediting of earnings to Police and Fire (P & F) unit accounts and lump-sum payments.

C.5. NOTICE OF RULEMAKING FOR POWER OF ATTORNEY RULES

Rodeman presented the rulemaking notice, indicating the proposed rules would add flexibility, explicitly cover guardians and conservators, and simplify the power of attorney process to help streamline transactions.

C.6. FIRST READING OF EMPLOYER LUMP-SUM PAYMENTS RULES

Rodeman presented the first reading of proposed rules to provide procedures for lump-sum payments by employers that do not have an existing unfunded actuarial liability and eliminate necessary intergovernmental agreement requirements.

C.7. FIRST READING OF P & F UNITS BENEFIT PROGRAM RULES

Rodeman presented the first reading of rules to clarify the administration of Chapter 238 unit benefits for police and fire members, and described the modifications that had been made to the rule since notice. Rodeman indicated that no public comments were received to date on the proposed rules.

C.8. FIRST READING OF USERRA RULES

Rodeman presented the first reading for rules to clarify the payment of make-up member contributions for time spent in military service under USERRA.

C.9. ADOPTION OF OAR 459-075-0200, P & F DEFINITION OF "IMMEDIATELY"

Rodeman presented the proposed rules for adoption that clarify the retirement eligibility requirements for OPSRP police and fire (P & F) members. Rodeman described the modification made since rule notice, and summarized the staff response to public comments.

It was moved by Brenda Rocklin and seconded by Tom Grimsley to adopt the proposed rules as presented. The motion passed unanimously.

C.10. SUMMARY OF THE FEDERAL PENSION PROTECTION ACT OF 2006

Rodeman presented information on recent Congressional enactment of the Pension Protection Act of 2006, describing key provisions affecting public pension plans and the potential impact on the PERS plan, including OSGP.

ACTION AND DISCUSSION ITEMS

D.1. BIENNIAL REVIEW OF ACTUARIAL EQUIVALENCY FACTORS

Bill Hallmark of Mercer provided a letter describing the results of Mercer's study of actuarial equivalency factors. Hallmark recommended that the Board adopt revised actuarial equivalency factors as described in the letter based on the new mortality tables adopted as a result of the 2005 Experience Study. In addition to the updates based on mortality table changes, Mercer recommended the Board adopt:

- Early retirement reduction factors based on the simplified approximations shown in the letter.
- Separate actuarial equivalency factors for disabled retirees based on the mortality assumption used in the valuation as opposed to an adjustment to the healthy retiree factors, and
- A single blended mortality table basis for Tier 1, Tier 2, and OPSRP actuarial equivalence factors.

Hallmark and Dale Orr, Actuarial Analysis Coordinator, responded to questions from the Board on the actuarial equivalency factor recommendations and the information contained in the Mercer letter on police and fire (P & F) member life expectancies. Chair Pittman noted that he and Board Member Dalton would have additional conversation with Hallmark and staff on the P & F life expectancy analysis, with a report back at the November Board meeting. The other Board members concurred with that approach. Greg Hartman, representing the PERS Coalition, asked

that there also be a review of whether a look-back provision for the recommended changes in actuarial equivalency factors was required to protect the federal tax qualified status of the plan.

It was moved by Mike Pittman and seconded by Eva Kripalani to adopt the revised actuarial equivalency factors and updates as recommended by Mercer in their letter to the Board. The motion passed unanimously.

D.2. FINANCIAL MODELING STUDY PROPOSAL – TIER ONE RATE GUARANTEE RESERVE FUNDING LEVEL

Dale Orr, Actuarial Analysis Coordinator, presented background on the Tier One Rate Guarantee Reserve and the statutory requirements that must be met before the Board, in its discretion, could consider crediting Tier One regular accounts in excess of the assumed earnings rate. Orr described the staff recommendation to authorize the Board's actuary, Mercer, to conduct a financial modeling study of the Reserve requirements.

It was moved by Tom Grimsley and seconded by Brenda Rocklin to authorize Mercer to conduct a financial modeling study of the Tier One Rate Guarantee Reserve requirements. The motion passed unanimously.

D.3. RIMS CONVERSION PROJECT UPDATE

Information Services Division Administrator (ISD) Jeff Marecic provided an update and overview of the on-going RIMS conversion project. Marecic said the multi-year project is composed of several components including the software development, data preparation and migration, process modeling and workflow, RIMS de-commissioning and functionality transfers, and business procedures and training. Marecic provided a conversion schedule that outlined various stages of the project through November 2009. Marecic reviewed several computer applications that will be combined into the Oregon Retirement Information On-Line Network (ORION) as well as the project staffing and governance structure. Marecic answered questions from the Board on project budgeting and scheduling, and finished with an overview of the agency's data quality assurance program.

EXECUTIVE SESSION

Pursuant to ORS 192.660 (2) (f), (h), and ORS 40.255, the Board went into executive session at 3:10 P.M.

The Board reconvened to open session.
Chair Pittman adjourned the meeting at 3:45 P.M.

Respectfully submitted,



Paul R. Cleary
Executive Director

MEETING	11-17-06
DATE	
AGENDA	B.2.a
ITEM	Calendar

PERS Board Meeting Forward-Looking Calendar

December 2006

OIC Meeting: 9:00 A.M. December 6, 2006

Joint meeting with OIC on OPERF Asset/Liability Study

No PERS Board Meeting Scheduled

January 2007

Tentative: 1:00 P.M. January 12, 2007

Contested Case Hearing for Kathleen Jones
Contested Case Hearing for Linda Adams
Contested Case Hearing for Susan Abbott
Notice of OPSRP Disability Benefit Rules
Adoption of Oregon Savings Growth Plan (OSGP) Rules
Adoption of Chapter 238 Forfeiture and Restoration of Service Rights Rules
Adoption of OPSRP and IAP Withdrawals Rules
Adoption of P & F Unit Earnings Crediting Rules
Adoption of Power of Attorney Rules

February 2007

Tentative: 1:00 P.M. February 16, 2007

Adoption of OPSRP Disability Benefit Rules
Preliminary 2006 Earnings Crediting
Tier One Rate Guarantee Reserve Analysis

March 2007

Tentative: 1:00 P.M. March 30, 2007

2006 Earnings Crediting

Returns for periods ending 9/30/06

Oregon Public Employees Retirement Fund

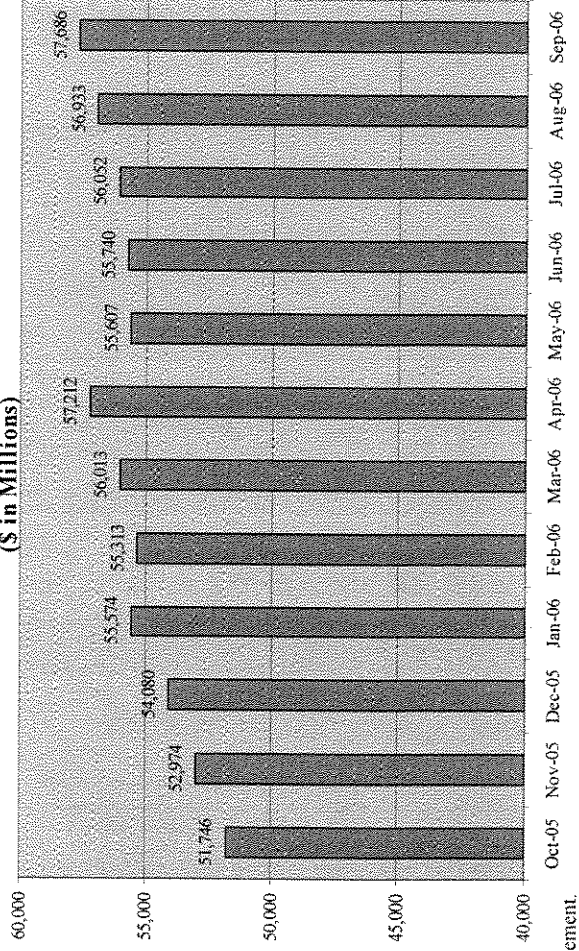
B.2.b.

OPERF		Regular Account				Historical Performance				
		Policy ¹	Target ¹	\$ Thousands ²	Actual	Year-To-Date	1 YEAR	2 YEARS	3 YEARS	4 YEARS
Domestic Equity	30-40%	35%	\$ 19,402,842	34.6%	6.75	9.54	12.89	13.55	16.77	8.92
International Equity	15-25%	20%	11,525,943	20.6%	14.13	19.64	24.69	24.33	25.47	16.98
Alternative Equity	7-13%	10%	5,376,633	9.6%	13.42	24.67	30.47	29.39	18.67	11.70
Total Equity	60-70%	65%	36,305,418	64.8%						
Opportunity Portfolio		0.0%	10,300	0.0%	3.96	4.76	4.87	5.17	6.74	6.58
Total Fixed	22-32%	27%	15,732,942	28.1%						
Real Estate	5-11%	8%	3,970,536	7.1%	20.80	31.16	31.78	27.19	23.25	20.31
Cash	0-3%	0%	-	0.0%	3.67	4.66	3.65	2.86	2.50	2.45
TOTAL OPERF Regular Account		100%	\$ 56,019,196	100.0%	9.05	12.99	15.63	15.57	15.96	10.82
OPERF Policy Benchmark					8.49	11.35	12.97	13.36	14.56	9.65
Value Added					0.56	1.64	2.66	2.21	1.40	1.17

Asset Class Benchmarks:

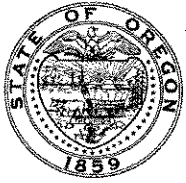
Russell 3000 Index	8.02	10.22	12.37	13.00	16.10	8.08
MSCI ACWI Free Ex US	14.34	19.36	24.32	23.92	25.18	16.38
Russell 3000 Index + 300 bps--Quarter Lagged	7.61	12.66	12.54	16.74	14.27	8.58
LB Universal--Custom FI Benchmark	3.32	4.00	3.87	4.01	4.69	5.29
NCREIF Property Index--Quarter Lagged	13.63	18.67	18.35	15.79	13.69	12.00
91 Day T-Bill	3.55	4.50	3.56	2.73	2.38	2.30

TOTAL OPERF NAV
(includes variable fund assets)
One year ending September 2006
(\$ in Millions)



¹OIC Policy 4.01.18

²Includes impact of cash overlay management.



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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November 17, 2006

TO: Members of the PERS Board
FROM: Paul Cleary, Executive Director
SUBJECT: HB2020 Update

MEETING DATE	11-17-06
AGENDA ITEM	B.2.c. HB2020 Update

The agency is in its third year of administering the HB2020 program and using the new employer electronic reporting system. The Membership and Employer Relations Section (MERS) is working with 805 employer-reporting units to process outstanding 2005 and 2006 employer reports. In addition, PERS implemented a new accounts receivable process and revised its employer outreach program in 2006. Updates on each are provided below.

EMPLOYER REPORTING

The table below shows the status as of November 1, 2006 of employer reports and member records for calendar years 2005 and 2006.

	Calendar Year 2005	Calendar Year 2006
Reports due (estimated):		
▪ Number	12,726	9,942
▪ Percent received	99.7 %	97.6 %
Outstanding reports	38	238
Reports fully posted at 100%:		
▪ Number	12,463	8,570
▪ Percent received	97.9 %	86.2 %
Records due (estimated)	3,130,785	2,394,610
Records not posted	3,405	37,249
Contributions posted	\$ 407,452,310	\$ 332,983,220
Contributions not posted	\$ 128,969	\$ 1,305,656

Employers' year-over-year statistics have improved. Last year at this time, 99% of prior year reports due were submitted and 96% of the prior year reports were 100% posted. Currently for 2005, we have 99.7% of all required reports submitted and 98% of those are 100% posted. Likewise last year at this time, only 95% of the current year reports were submitted and only 80% of those reports were 100% posted. For 2006, about 98% of current year reports have been submitted and 86% of those reports are 100% posted.

ENHANCED EMPLOYER OUTREACH PROGRAM

During 2005, PERS began its employer outreach program by issuing more frequent all-employer communiqués and conducting a series of headquarter-based training sessions for employers to better learn the jClarety/EDX reporting system. Since this program's inception, more than 450 employer-staff have attended the 24 formal training sessions.

In mid-2006, PERS expanded the jClarety/EDX training sessions to include locations throughout the state. Since May 2006 we have conducted five offsite jClarety training sessions, with a total of 60 employer-staff attending the sessions. Given the receptivity by the attendees, PERS has decided to continue the offsite training sessions on a monthly basis, as well as continuing the monthly PERS headquarter-based training sessions.

Since the inception of the employer outreach program, PERS has seen a significant improvement in the employers' timely and complete submission of payroll reports and records. However, the accuracy of the reported data needs to be improved. To meet this data accuracy void, in October 2006 PERS escalated its outreach efforts by scheduling aggressive statewide data quality training sessions. The sessions cover subject-specific training on complex program provisions such as eligibility and part-timers, and focus on data quality reporting issues like waiting-time reporting and service/FTE reporting codes. A total of 21 presentation sessions will be completed during the last quarter 2006, with 14 sessions scheduled in November alone. PERS expects more than 400 employer staff to attend these sessions.

Initial Employer feedback on the statewide sessions has been very positive. Overall PERS Employers have rated the sessions a 4.35 out of a possible 5.00 score (how effective were the presentations/were they worth the time attending). As one employer said, *"I finally feel that PERS is approachable!"* Other responses include: *"Being able to hear that other employers have the same questions we have was wonderful"* and *"So nice to meet the person I talk with on the phone! Thank you!"*

ACCOUNTS RECEIVABLE PLAN

Besides assisting employers with overdue reports and electronic payment, PERS implemented an accounts receivable plan to proactively collect receivable balances that are more than 30 days overdue. As of November 1, 2006, we have 252 outstanding invoices (14 employers) with an aggregate balance of less than \$300,000. This is a significant improvement since the inception of the accounts receivable plan when PERS had 82 employers with outstanding invoices that totaled in excess of \$2.1 million. We have cut the delinquent invoice amount by 85%, but our goal is to collect all outstanding invoices that exceed 30 days by following up with these employers by phone and letters each month.



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November 17, 2006

MEETING	11-17-06
DATE	
AGENDA	B.2.d.
ITEM	IAP

TO: Members of the PERS Board

FROM: Dave Tyler, Administrator, Fiscal Services

SUBJECT: IAP Update

For the past several months, staff has been working on the Individual Account Program (IAP) remediation project. PERS created the project to simplify the program for members and employers and ensure that contributions and earnings are fully and accurately posted. Staff will present an up-to-date status report on the IAP remediation project and the status of the IAP member statements for 2004 and 2005 at the November 17, 2006 Board meeting.



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November 17, 2006

TO: Members of the PERS Board
FROM: Paul R. Cleary, Executive Director
SUBJECT: Actuarial Equivalency Factors Update

MEETING DATE	11/17/06
AGENDA ITEM	B.2.e. Act. Equiv.

This is a follow-up on three issues raised during the Board's October 20, 2006 discussion on adoption of revised actuarial equivalency factors (AEF) to be effective January 1, 2007. Those issues are:

1. *Evaluation of Separate Police and Fire Member AEF*

Mike Pittman and James Dalton participated in a conference call with Bill Hallmark, Mercer and PERS staff on October 23, 2006 to further discuss whether separate actuarial factors are required for police and fire members pursuant to ORS 238.608 (see attachment 1). It was first concluded that the Board's earlier study of police and fire life expectancy and subsequent action in April 2005 concurring with the actuary's recommendation to *not* adopt separate actuarial factors fulfilled the Board's statutory obligations under ORS 238.608.

Additional information provided by Mercer (see attachment 2) was also reviewed to determine if it may be prudent to develop separate AEF tables for any class of PERS members under the biennial actuarial factor review provisions of ORS 238.607. As detailed in the Mercer analysis, there is less than one-year difference in longevity between police and fire and general service members when adjusted for group gender blends. This difference is within the range of other accepted group life expectancy variations (e.g., general service vs. school district members). Creating separate AEF tables for police and fire members under the Board's general authority regarding actuarial factors is not recommended at this time.

2. *Look Back Requirements*

During comments on the AEF adoption, Greg Hartman with PERS Coalition raised the issue of whether there was any requirement in federal tax law to compare benefits under a look-back provision upon changing actuarial factors. Staff confirmed with the Board's federal tax counsel, Ice Miller, that a look-back analysis is not required under federal law for the change in actuarial factors in 2007.

Actuarial Equivalency Factors Update

11/17/06

Page 2 of 2

3. Operational Issues

Staff has reviewed the operational issues associated with incorporating the new AEF tables into PERS systems, tools and operations. Staff is working with Mercer to facilitate the changes and will accommodate the January 1, 2007 effective date.

Attachment 1 – ORS 238.607-238.608

Attachment 2 – October 23, 2006 Mercer Email

Oregon Revised Statutes
Actuarial Equivalency Factors
ORS 238.607-238.608

238.607 Actuarial equivalency factor tables. (1) Once every two calendar years, the Public Employees Retirement Board shall adopt actuarial equivalency factor tables for the purpose of computing the payments to be made to members and their beneficiaries, alternate payees and judge members and their spouses and beneficiaries. The tables may be adopted in conjunction with the system evaluation required by ORS 238.605. Tables adopted under this section must use the best actuarial information on mortality available at the time the board adopts the tables, as provided by the actuary engaged by the board. Actuarial equivalency factor tables adopted under this section become effective on January 1 of the calendar year following adoption of the tables by the board. All computations of payments must use the actuarial equivalency factor tables that are in effect on:

- (a) The effective date of retirement for any member, judge member or alternate payee;
 - (b) The date that the first payment is due for any death beneficiary; or
 - (c) The date that the first payment is due for any recalculation of payments that is not attributable to error, including but not limited to recalculations under ORS 238.465 (2).
- (2) The board may not defer or delay implementation of the actuarial equivalency factor tables adopted under this section. [2003 c.68 §2]

Note: Sections 3 and 4, chapter 68, Oregon Laws 2003, provide:

Sec. 3. The Public Employees Retirement Board shall first adopt actuarial equivalency factor tables under section 2 of this 2003 Act [238.607] to become effective January 1, 2005. [2003 c.68 §3]

Sec. 4. (1) Subject to subsections (2) and (3) of this section, for the purpose of computing the retirement allowance of members and alternate payees with effective dates of retirement on or after July 1, 2003, and before January 1, 2005, the Public Employees Retirement Board shall use actuarial equivalency factor tables that are based on the mortality assumptions of the actuary's 2001 experience study as adopted by the board on September 10, 2002.

(2) The retirement allowance of any member or alternate payee who has an effective date of retirement on or after July 1, 2003, shall be the higher of the following amounts:

(a) The amount calculated for the retirement allowance selected by the member under ORS 238.300, 238.305, 238.320 or 238.325 determined as of the member's or alternate payee's effective date of retirement, using all calculations applicable to the member under ORS 238.300 (2) and using actuarial equivalency factor tables in effect on the effective date of retirement for the purpose of all calculations using actuarial equivalency factor tables; or

(b) The amount calculated under subsection (3) of this section.

(3) For each member or alternate payee described in subsection (2) of this section, the board shall establish years of service, an account balance and a final average salary as of June 30, 2003. Years of service for the member as of June 30, 2003, shall include all creditable service of the member determined as of June 30, 2003, including any

retirement credit acquired by the member under ORS 238.105 to 238.175 before July 1, 2003. The account balance shall include all employee contributions made by or on behalf of the member as of June 30, 2003, and earnings on those contributions as of June 30, 2003, credited in the manner provided by board rules in effect on May 9, 2003, governing crediting of earnings upon retirement of a member. The board shall then calculate the retirement allowance selected by the member under ORS 238.300, 238.305, 238.320 or 238.325, using all calculations applicable to the member under ORS 238.300 (2), except that:

(a) The board shall use the actuarial equivalency factor tables in effect on June 30, 2003, for the purpose of all calculations using actuarial equivalency factor tables; and

(b) The board shall use the years of service, account balance and final average salary established by the board under this subsection for the member as of June 30, 2003.

(4) The board need not perform the calculations described in subsections (2) and (3) of this section for a member if the board actuarially determines that one of the calculations described in subsection (2) or (3) of this section necessarily provides the highest amount.

(5) Any monthly payments to be made to a death beneficiary under ORS 238.390, 238.395 or 238.405 for a member who dies on or after May 9, 2003, shall be calculated using the actuarial equivalency factor tables that are in effect on the date that the first payment is due to the death beneficiary.

(6) This section and section 2, chapter 68, Oregon Laws 2003 [238.607], do not apply to the calculation of the retirement allowance and surviving spouse pension of a person who is a judge member on June 30, 2003, and who makes an election under ORS 238.565 (4). The board shall use the actuarial equivalency factor tables in effect on June 30, 2003, for the purpose of calculating the retirement allowance and surviving spouse pension of a person who is a judge member on June 30, 2003, and who makes an election under ORS 238.565 (4), whether that election is made before, on or after June 30, 2003. [2003 c.67 §40; 2003 c.68 §4; 2003 c.625 §16]

238.608 Separate actuarial equivalency factor tables for certain police officers and firefighters.

(1) The Public Employees Retirement Board shall conduct a study of the life expectancy of members of the Public Employees Retirement System in the categories described in subsection (2) of this section. If the board determines that members in the categories described in subsection (2) of this section have a life expectancy that is substantially shorter than the life expectancy of members of the system generally, the board shall adopt and use separate actuarial equivalency factor tables under ORS 238.607 for the purpose of computing the payments to be made to members in the categories described in subsection (2) of this section and to the beneficiaries and alternate payees of those members. Any actuarial equivalency factor tables adopted under this section shall first become effective January 1, 2005.

(2) The provisions of this section apply to members of the system who are defined as firefighters under ORS 238.005 (9) or as police officers under ORS 238.005 (16)(a), (b), (d), (e), (f), (k), (L), (n), (o) or (p). [2003 c.68 §7; 2003 c.625 §18]

**Email from Bill Hallmark, Mercer Human Resource Consulting
October 23, 2006**

Here is some additional information for our call today.

The age 60 life expectancy under each of the mortality tables used in our valuation is as follows:

- Police & Fire males 22.6
- General Service males 23.4
- School District males 24.3
- Police & Fire females 25.7
- General Service females 25.7
- School District females 27.0

The system-wide blended life expectancy is 24.8 and reflects a 50/50 blend between males and females. If we blend Police & Fire on a 50/50 basis, the life expectancy is 23.9. If we blend Police & Fire reflecting their actual division between males and females (85/15), the life expectancy is 22.9.

Bill

Bill Hallmark

Principal

Mercer Human Resource Consulting



Oregon

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November 17, 2006

TO: Members of the PERS Board
FROM: Brendalee Wilson, Interim Administrator, PPLAD
SUBJECT: Action on Contested Cases

MEETING DATE	11/17/06
AGENDA ITEM	C.1. Contested Cases

OVERVIEW

Actions: Staff recommends the following action be taken in relation to the cases scheduled for deliberation at this meeting:

1. Adopt the Draft Final Order as presented in the contested case of Robin Martin.
2. Adopt a motion to delay consideration of the proposed orders in the contested cases of Kathleen Jones and Linda Adams until the January 2007 Board Meeting.

BOARD OPTIONS

The Board may:

1. Adopt the staff recommendations as presented above.
2. Adopt one of the alternative directions specified in the memos related to each of these contested cases.
3. Take no action. The proposed orders would become final as their deadlines are passed.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- If the Board does not adopt: The specific outcomes and alternatives vary but are more fully explained in the memos accompanying each individual case.



Oregon

Theodore R. Kulongoski, Governor

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November 17, 2006

TO: Members of the PERS Board
FROM: Brendalee Wilson, Interim Administrator, PPLAD
SUBJECT: First Reading for OAR 459-011-0050, *Forfeiture and Restoration of Service Rights*

MEETING DATE	11/17/06
AGENDA ITEM	C.2. Forfeiture

OVERVIEW

- Action: None. This is the first reading for OAR 459-011-0050, Forfeiture and Restoration of Service Rights.
- Reason: Update the rule to be consistent with statute and address the impact of “Break in Service.”
- Subject: Restoration of Service Rights (Voluntary Redeposit).
- Policy Issue: No policy issues have been identified at this time.

BACKGROUND

A PERS Chapter 238 Program member who withdraws his or her member account terminates membership in the Program and forfeits all creditable service accrued prior to the date of the withdrawal. ORS 238.105 provides a mechanism for a qualified member to restore the forfeited service and reestablish the member account upon reemployment. The process is commonly known as a voluntary redeposit. OAR 459-011-0050 was adopted to implement the provisions of ORS 238.105, but was last modified in 1996 and is inconsistent with current statutory provisions.

The proposed rule modifications address the issues that arise when a voluntary redeposit is made before or after a “Break in Service” (BIS), as provided under ORS 238A.025, has occurred. Currently, the rule provides that a voluntary redeposit restores the member’s previous rights in the PERS Chapter 238 Program. The BIS provisions, if applicable, operate to limit the restoration of rights in the PERS Chapter 238 Program to those accrued prior to the date of withdrawal. The proposed rule modifications reconcile the rule with the statutory provisions.

SUMMARY OF MODIFICATIONS TO RULE SINCE NOTICE

There have been no modifications to the proposed rule since notice.

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 rule is presented for adoption.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on October 24, 2006 at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ends on November 24, 2006 at 5:00 p.m. To date, no public comment has been received.

IMPACT

Mandatory: No, the Board need not adopt the rule.

Impact: Clarification of procedures and administration will benefit members and staff.

Cost: There are no discrete costs attributable to the rule. Statute requires the administration of voluntary redeposits.

RULEMAKING TIMELINE

August 15, 2006	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
September 1, 2006	<i>Oregon Bulletin</i> published the Notice.
October 20, 2006	PERS Board notified that staff began the rulemaking process.
October 24, 2006	Rulemaking hearing held at 2:00 p.m. in Tigard.
November 17, 2006	First reading of the rule.
November 24, 2006	Public comment period ends at 5:00 p.m.
January 12, 2007	Staff will propose adopting the permanent rule, including any amendments warranted by public comment or further research.

NEXT STEPS

The rule is scheduled to be brought before the PERS Board for adoption at the January 12, 2007 meeting.

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 011 – RETIREMENT CREDIT**

1 **459-011-0050**

2 **Forfeiture and Restoration of Service Rights**

3 (1) A member who, pursuant to ORS 238.265, *[leaves the service of all*
4 *participating employers and who]* withdraws the amount credited to the member's
5 account *[standing to his credit]* forfeits all *[his]* membership rights accrued under
6 ORS chapter 238 prior to the date of the withdrawal, including any service rights
7 attributable to employment prior to the date of the withdrawal *[, including prior*
8 *service rights. ORS 238.095(1); 238.265].*

9 (2) Any such person who reenters the service of any participating employer within
10 five years *[of]* from the date of *[his previous termination]* the separation from
11 employment that preceded the member's withdrawal may, at any time during the *[six*
12 *months]* one-year period immediately following the date of *[his]* re[-]employment,
13 repay to PERS in a single lump sum payment an amount equal to the amount
14 *[previously]* withdrawn plus the earnings the amount withdrawn would have
15 accumulated from the date of withdrawal to the date of repayment. *[, and the*
16 *effective date of the reinstatement of his membership at his former rate of contribution*
17 *shall be the first day of the pay period following the date of repayment of the amount*
18 *withdrawn. Thereafter employee and employer contributions to the Retirement Fund are*
19 *required and all rights in the system which were forfeited by the withdrawal shall be*
20 *restored].* A person who makes a repayment as described in this section shall
21 establish or reestablish membership in the system as provided in section (3) or (4) of
22 this rule.

1 (3) If the date of the former member’s repayment under section (2) is before the
2 date on which the former member would incur a “break in service” under ORS
3 238A.025, the PERS Chapter 238 membership and service rights forfeited by the
4 withdrawal will be revived. The withdrawn member account will be reestablished in
5 the amount of the repayment.

6 (4) If the date of the former member’s repayment under section (2) occurs on or
7 after the date the former member incurs a “break in service” under ORS 238A.025,
8 and the former member has not established membership in the OPSRP Pension
9 Program under ORS 238A.100 prior to the date of the repayment, whether the
10 former member establishes active membership in the OPSRP Pension Program will
11 be determined under the operation of that program without regard to the former
12 member’s previous membership in the PERS Chapter 238 Program. Membership
13 and service subsequent to the date of reemployment will be subject to the provisions
14 of the OPSRP Pension Program. The PERS Chapter 238 membership and service
15 rights forfeited by the withdrawal will be restored to the extent they existed
16 immediately prior to the withdrawal. The withdrawn member account will be
17 reestablished in the amount of the repayment.

18 (5) Notwithstanding the provisions of this rule, a member who withdraws
19 pursuant to ORS 238.265 and receives an additional amount pursuant to section 2,
20 chapter 276, Oregon Laws 2003, may not reestablish membership under section (2)
21 of this rule.

22 Stat. Auth.: ORS 238.650

23 Stats. Implemented: ORS 238.105, 238A.025



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November 17, 2006

TO: Members of the PERS Board
FROM: Brendalee Wilson, Interim Administrator, PPLAD
SUBJECT: First Reading for OAR 459-075-0020, *Withdrawal from OPSRP Pension Program* and OAR 459-080-0020, *Withdrawal of Individual Accounts*

MEETING DATE	11/17/06
AGENDA ITEM	C.3. Withdrawal

OVERVIEW

- Action: None. This is the first reading for OAR 459-075-0020, *Withdrawal from OPSRP Pension Program* and OAR 459-080-0020, *Withdrawal of Individual Accounts*.
- Reason: These new rules would establish and clarify procedures for withdrawals permitted under the Oregon Public Service Retirement Plan.
- Subject: *Withdrawal from the OPSRP Pension and the Individual Account Programs.*
- Policy Issue: Should the withdrawal process for the OPSRP programs generally parallel the process for withdrawals from the PERS Chapter 238 Program?

BACKGROUND

The Oregon Public Service Retirement Plan (OPSRP) provides for withdrawal from the OPSRP Pension Program and the Individual Account Program (IAP). ORS 238A.120 establishes that a vested, inactive member of the OPSRP Pension Program who has separated from all service with participating public employers may withdraw from the Pension Program if the actuarial equivalent of the member's pension benefit is \$5,000 or less at the time of the withdrawal. Upon payment of the actuarial equivalent of the pension benefit to the member, membership in the pension program is terminated and credit for any service prior to the separation from employment that precedes the withdrawal is permanently forfeited.

Under the provisions of ORS 238A.350, a member of the IAP may have up to three accounts in the IAP: the employee, rollover, and employer accounts. ORS 238A.375 establishes that an inactive member of the IAP may withdraw the amounts in these accounts to the extent that the member is vested. Upon distribution of the withdrawal amount to the member, membership in the IAP is terminated.

POLICY ISSUE

1. *Should the withdrawal process for the OPSRP programs generally parallel the process for withdrawals from the PERS Chapter 238 Program?*

For ease and consistency of administration, these new proposed rules parallel many concepts established by rule or statute for the PERS Chapter 238 Program. For example, the criteria for a bona fide separation is the same, as well as the process for mandatory repayments if the member fails that separation standard. One notable exception is that these rules would not allow a member to redeposit their withdrawal in installments; rather, they require a lump sum payment. Staff recommends this change because the withdrawal amounts should be relatively small and systems should identify these re-deposits more timely than under the PERS Chapter 238 Program. Also, requiring a lump-sum payment is more consistent with the intent of restoring membership immediately because the member proves to be ineligible to withdraw.

SUMMARY OF MODIFICATIONS TO RULES SINCE NOTICE

There have been no modifications to the proposed rules since notice.

LEGAL REVIEW

The attached draft rules have 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 hearing was held on October 24, 2006 at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ends on November 24, 2006 at 5:00 p.m.

To date, PERS has received two public comments. Gregory Hartman, representing the PERS Coalition, commented by letter. A copy of Mr. Hartman's letter is included with this memo. Mr. Hartman acknowledges the importance behind requiring a former member to repay the withdrawn amount should he or she fail to meet the conditions of a bona fide separation and the significance of the bona fide separation to the preservation of PERS' qualified tax status. He expresses concern, however, that the provisions of the rules that place an obligation upon the employer to terminate the employee or become liable for repayment of the withdrawal are most likely to result in the termination of the employee. He states, "[t]hus an individual who has received a mistaken payment from PERS in what may be a relatively small amount may find that the application of this rule also causes them to lose employment." He asks that staff revisit these provisions and determine if another mechanism that does not affect the employee's continued employment is available.

Staff feels that the obligation placed upon the employee to repay the ineligible distribution or face termination of employment is reasonable and critical to the avoidance of in-service distributions that would violate federal tax law and threaten the Plan's tax qualification status. The employee has the opportunity to resolve the issue by repayment within 30 days of the date of reemployment. The proposed rules provide that if the employee does not do so, the employer must terminate the employee until sufficient time has passed to establish a bona fide separation. Alternatively, the proposed rules provide

for the employer to repay the amount withdrawn. Staff feels the provisions of the rules are consistent with federal tax law and necessary to the proper administration of withdrawals.

Additionally, Nancy Brewer, Finance Director, City of Corvallis, commented by letter. A copy of Ms. Brewer's letter is also included with this memo. Ms. Brewer expresses concerns over the requirement that an employer terminate the employee or repay the amount of the employee's withdrawal if the former member is reemployed prior to completing a the requirements for a bona fide separation. She states that these provisions provide the opportunity for a member to withdraw, be reemployed, and reap a double benefit by having the employer repay the amount(s) withdrawn, essentially making contributions to the member's IAP account and/or the OPSRP Pension Program a second time. She also notes that it is difficult for employers to determine a potential employee's status, as many new hires claim they are unsure if they are or were ever members of the system, and that the employer would not discover the former member's status until some time after the first pay cycle reported to PERS via EDX. Ms. Brewer also expresses concern that termination of the employee based upon the employee's failure to repay the amount withdrawn may be inconsistent with the terms of a collective bargaining agreement, BOLI rules, and other employment laws. She recommends that the employee be permitted two months to repay and that failure to do so would result in the employee losing all previous service time and being prohibited from purchasing that service time at any future date.

Staff is currently reviewing Ms. Brewer's comments in light of federal and state law relevant to ineligible distributions. Whether the rules raise issues of employment law will be included in legal counsel's review of the proposed rules. Staff will address these issues further when the rules are presented for adoption.

IMPACT

Mandatory: No, the Board need not adopt the rules.

Impact: Clarification of procedures and administration will benefit members and staff.

Cost: There are no discrete costs attributable to these rules. Statute requires the administration of withdrawals.

RULEMAKING TIMELINE

- | | |
|-------------------|--|
| August 15, 2006 | Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State. |
| September 1, 2006 | <i>Oregon Bulletin</i> published the Notice. |
| October 20, 2006 | PERS Board notified that staff began the rulemaking process. |
| October 24, 2006 | Rulemaking hearing held at 2:00 p.m. in Tigard. |
| November 17, 2006 | First reading of the rules. |
| November 24, 2006 | Public comment period ends at 5:00 p.m. |

First Reading – OPSRP/IAP Withdrawal Rules

11/17/2006

Page 4 of 4

January 12, 2007 Staff will propose adopting the permanent rules, including any amendments warranted by public comment or further research.

NEXT STEPS

The rules are scheduled to be brought before the PERS Board for adoption at the January 12, 2007 meeting.

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 075 – OPSRP PENSION PROGRAM

1 459-075-0020

2 Withdrawal from OPSRP Pension Program

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

4 (a) "Controlled group" means a group of employers treated as a single
5 employer for purposes of maintaining qualified status under federal law.

6 (b) "Inactive member" has the same meaning given the term in ORS
7 238A.005(8).

8 (c) "Pension program" has the same meaning given the term in ORS
9 238A.005(12).

10 (2) An inactive member may withdraw from the OPSRP Pension Program
11 under ORS 238A.120 if:

12 (a) The member is vested in the pension program under ORS 238A.115;

13 (b) The member has separated from employment with all participating
14 employers and all employers in a controlled group with a participating employer;

15 (c) The member has been absent from service with a participating employer for
16 at least one full calendar month following the month of separation;

17 (d) The member files with PERS a written request for withdrawal on a form
18 acceptable to PERS; and

19 (e) The actuarial equivalent of the member's pension benefit is \$5,000 or less on
20 the date PERS receives the withdrawal request. The actuarial equivalent may not
21 include any value attributable to cost-of-living adjustments under ORS 238A.210.

1 (3) Any amount payable to the member under the provisions of this rule must
2 be paid to the member in a single lump-sum payment.

3 (4) A member may revoke a request for withdrawal from the pension program
4 if PERS receives the member's written revocation of the request before the earlier
5 of:

6 (a) The date of distribution; or

7 (b) The date PERS receives a valid court order requiring PERS to pay the
8 distribution to someone other than the withdrawing member.

9 (5) A member who withdraws from the pension program terminates
10 membership in the pension program as of the date of distribution.

11 (6) A member who withdraws from the pension program forfeits any service
12 performed by the member prior to the date of the separation required under
13 subsection (2)(b) of this rule and may not use that service for any purpose including,
14 but not limited to, establishing membership under ORS 238A.100, vesting under
15 ORS 238A.115, and the accrual of retirement credit under ORS 238A.140,
16 238A.150, or 238A.155.

17 (7) If a former member who has withdrawn from the pension program returns
18 to employment with any participating employer prior to the first day of the second
19 calendar month following the month of the separation required under subsection
20 (2)(b) of this rule and has not repaid to PERS the full amount of the lump-sum
21 payment attributable to the withdrawal, the employer shall be obligated to the Fund
22 for the full amount of the lump-sum payment unless:

1 (a) The employer immediately terminates the former member’s employment
2 and does not reemploy the former member unless the requirements of section (2) of
3 this rule are satisfied; or

4 (b) The former member repays the full amount of the lump-sum payment
5 within 30 days following the effective date of such employment.

6 (8) Upon receipt by PERS of repayment under subsection (7)(b) of this rule, the
7 withdrawal of the member is cancelled and membership is reestablished in the
8 pension program. Any service rights forfeited under section (6) of this rule are
9 revived.

10 (9) If a participating employer employs a person who has withdrawn from the
11 pension program and fails to notify PERS of the employment, the employer shall
12 hold PERS harmless for any actual or perceived loss of benefits resulting from the
13 withdrawal.

14 Stat. Auth.: ORS 238A.450

15 Stats. Implemented: ORS 238A.375

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 080 – OPSRP INDIVIDUAL ACCOUNT PROGRAM

1 **459-080-0020**

2 **Withdrawal of Individual Accounts**

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

4 **(a) “Controlled group” means a group of employers treated as a single**
5 **employer for purposes of maintaining qualified status under federal law.**

6 **(b) “Inactive member” has the same meaning given the term in ORS**
7 **238A.005(8).**

8 **(c) “Individual account program” has the same meaning given the term in ORS**
9 **238A.005(9).**

10 **(d) “Individual accounts” means the employee account, rollover account, and**
11 **employer account of a member of the Individual Account Program (IAP) to the**
12 **extent the member is vested in those accounts under ORS 238A.320.**

13 **(2) An inactive member may withdraw the individual accounts under ORS**
14 **238A.375 if:**

15 **(a) The member has separated from employment with all participating**
16 **employers and all employers in a controlled group with a participating employer;**

17 **(b) The member has been absent from service with a participating employer for**
18 **at least one full calendar month following the month of separation; and**

19 **(c) The member files with PERS a written request for withdrawal on a form**
20 **acceptable to PERS.**

21 **(3) A member must withdraw the entire balance in the individual accounts.**

1 (4) A member may revoke a request for withdrawal of the individual accounts if
2 PERS receives a written revocation of the request before the earlier of:

3 (a) The date of distribution; or

4 (b) The date PERS receives a valid court order requiring PERS to pay the
5 distribution to someone other than the withdrawing member.

6 (5) A member who withdraws the individual accounts terminates membership
7 in the IAP as of the date of distribution.

8 (6) An employer account not included in the withdrawn individual accounts by
9 reason of the member's failure to vest in the employer account is permanently
10 forfeited as of the date of distribution.

11 (7) A member who withdraws the individual accounts and is subsequently
12 employed with a participating employer forfeits any service performed by the
13 member prior to the separation required under subsection (2)(a) of this rule for the
14 purpose of vesting in an employer account.

15 (8) If a former member who has withdrawn the individual accounts returns to
16 employment with any participating employer prior to the first day of the second
17 calendar month following the month of the separation required under subsection
18 (2)(a) of this rule and has not repaid to PERS the full amount of the withdrawal, the
19 employer shall be obligated to the Fund for the full amount of the former member's
20 withdrawal unless:

21 (a) The employer immediately terminates the former member's employment
22 and does not reemploy the former member unless the requirements of section (2) of
23 this rule are satisfied; or

1 (b) The former member repays the full amount of the withdrawal within 30
2 days following the effective date of such employment.

3 (9) Upon receipt by PERS of repayment under subsection (8)(b) of this rule, the
4 withdrawal of the member is cancelled and membership is reestablished in the IAP.
5 The repayment amount received will be returned to the individual accounts and
6 credited pro rata to the accounts from which the withdrawal amount was derived.
7 Any rights forfeited under sections (6) and (7) of this rule are revived.

8 (10) If a participating employer employs a person who has withdrawn the
9 individual accounts and fails to notify the system of the employment, the employer
10 shall hold PERS harmless for any actual or perceived loss of benefits resulting from
11 the withdrawal.

12 Stat. Auth.: ORS 238A.450

13 Stats. Implemented: ORS 238A.375

BENNETT, HARTMAN, MORRIS & KAPLAN, LLP

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October 25, 2006

BY FAX AND MAIL



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

Re: Rulemaking: Proposed OAR 459-075-0020 and 459-080-0020
Our File No.: 5415-237

Dear Steve:

The purpose of this letter is to comment on behalf of the PERS Coalition on the proposed rules regarding withdrawal from the OPSRP pension and IAP program. Both proposed rules deal with the topic of withdrawal by OPSRP members when they have left covered employment.

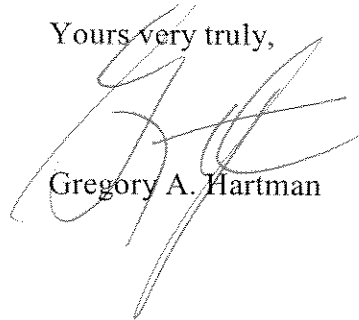
The concern we have is with the proposal for dealing with members who have mistakenly or improperly withdrawn from the system (OAR 459-075-0020(7) and OAR 459-080-0020(8)). As I understand these rules they are meant to deal with the situation where an employee has returned to covered employment so quickly that they should not have been entitled to a withdrawal of their funds from the system. Clearly a member who has improperly withdrawn funds from the system has an obligation to repay those funds. However, the rule places the obligation of repayment upon the employer who has hired that member. While from a member's perspective, placing the repayment obligation on the employer may have some surface appeal, it may well lead to unintended consequences. Under the proposed rules the employer can deal with this additional liability by the simple expedient of terminating the employment of the member. Thus an individual who has received a mistaken payment from PERS in what may be a relatively small amount may find that the application of this rule also causes them to lose employment.

I understand that this proposed rule is similar to rules that currently exist for ORS Chapter 238. I ask that the PERS staff revisit this concept to determine whether there is another way to approach this problem which would not put a member's continued employment at risk. There's no question that there needs to be a mechanism for recovering improperly paid funds if for no other reason than to preserve PERS's qualified tax status.

Steve Rodeman
October 25, 2006
Page 2

However I suspect there may be some other approaches to this problem which should merit consideration.

Yours very truly,

A handwritten signature in black ink, appearing to read 'G. Hartman', written over the typed name.

Gregory A. Hartman

GAH:kaj

G:\Hartman\AFSCME 5415\237 PERS 2\Rodeman 06-10-25.wpd

cc: PERS Coalition



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October 26, 2006

Daniel Rivas
PERS Administrative Rule Coordinator
PO Box 23700
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RE: Proposed Administrative Rules 459-075-0020 Withdrawal from OPSRP Pension Program and 459-080-0020 Withdrawal of Individual Accounts

I have comments on the two proposed rules cited above. Section 7 of 459-075-0200 and Section 8 of 459-080-0020 both state that if a member has terminated employment and withdrawn his/her account balances, then returns to work for a PERS subject employer within two calendar months and does not repay either OPSRP pension or IAP contributions, the employer will be obligated to the Fund to pay the full amount.

I have serious concerns about this section in both rules. First and foremost, I can see no reason why the employer should have any responsibility for making this member's account "whole". The member chose to take the monies from his/her account, including the fully employer funded pension program. Why in the world would the employer have any reason to fund the pension a second time? The beautiful scam here would be for an employee to terminate, take out his/her monies, then re-enter public employment and have the employer make the contributions all over again. This situation is the epitome of the term "having one's cake and eating it too."

In addition to the fact that employers should in no way be responsible, from a practical perspective even if the employee was hired back by the previous employer, the employer would have no way to know that the employee withdrew his/her account balances. If hired by a different employer, the employer may not know that the new employee was ever a member of OPSRP/PERS prior to employment (you would not believe the number of hires who have no idea if they are or ever were members). It is likely the employer will not find out about previous membership until sometime after the first pay cycle when the employee's record is sent via EDX. Presumably, the record would be suspended, causing an investigation to find the reason for the suspension, so several more months

SL1

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may have passed before the employer finally gets the issue resolved. In any case, it is most certainly going to take longer than 30 days for an employer to discover that the new employee had previously withdrawn his/her account balance and needed to pay it back.

Although the rule goes on to state that the employer may terminate an employee in this situation, that is an unrealistic statement. The employment agreement is between an individual and the employer, and is subject to rules promulgated by BOLI, labor agreements and so forth. I suspect any termination where the reason cited was “you withdrew your account balance from PERS and did not re-pay it and so PERS said we can terminate you” would be fodder for an arbitrator.

My recommendation for this section of the respective rules is to simply state that if the monies are not re-paid by the member within two months, the member loses all previous service time and cannot buy that service time later. To do anything else punishes the employer for the personal decisions of the employee over which the employer has absolutely no control.

Please feel free to contact me if you have any questions about these comments.

Sincerely



Nancy Brewer
Finance Director



Oregon

Theodore R. Kulongoski, Governor

November 17, 2006

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TO: Members of the PERS Board

FROM: Brendalee Wilson, Interim Administrator, PPLAD

SUBJECT: Adoption of Employer Lump-Sum Payments Rules
OAR 459-009-0084, *Unfunded Actuarial Liability Lump-Sum Payments by Employers Participating in an Actuarial Group*
OAR 459-009-0085, *Unfunded Actuarial Liability Lump-Sum Payments by Employers Not Participating in an Actuarial Group*
OAR 459-009-0090, *Lump-Sum Payments by Employers in Excess of an Existing Unfunded Actuarial Liability*

MEETING DATE	11/17/06
AGENDA ITEM	C.4. Lump-Sum

OVERVIEW

- Action: Adopt Employer Lump-Sum Payments Rules.
- Reasons:
 1. Adopt a rule to provide a procedure for lump-sum payments by employers that do not have an existing unfunded actuarial liability; and
 2. Amend current employer lump-sum payments rules to eliminate the requirement that PERS and the employer enter into an intergovernmental agreement for the actuarial calculation, and extend the deadline for completing the actuarial calculation.
- Subject: Employer Lump-Sum payments
- Policy Issue:
 1. Should employers be entitled to make lump-sum payments towards their PERS obligations when they do not have an existing unfunded actuarial liability?

BACKGROUND

ORS 238.225 allows a participating employer to make a voluntary lump-sum payment against its PERS liabilities. Current rules allow for such a payment by an employer with an unfunded actuarial liability, but do not provide a procedure for such a payment by an employer that is fully funded.

SUMMARY OF RULES AND POLICY ISSUE

OAR 459-009-0084 and 459-009-0085 are existing rules dealing with lump-sum payments for employers with a UAL. Those rules currently require that the employer and PERS enter into an intergovernmental agreement (IGA) under which the employer prepays the PERS actuary for the cost of the required UAL calculation. In practice, these IGAs have not proven to be necessary because the provisions they must contain are

already included in the rule language and/or in statute. The IGAs are therefore an unnecessary administrative burden; these rule modifications remove that requirement.

OAR 459-009-0084 and 459-009-0085 also provide a 30-day timeframe from receipt of the employer's initial UAL calculation request through completion of the calculation by the actuary. The current PERS actuary, Mercer Human Resource Consulting, uses a different billing process from the previous PERS actuary and cannot process the employer's prepayment and complete the requested UAL calculation in 30 days. The timeframe is therefore being extended to 45 days.

1. Should employers be entitled to make lump-sum payments towards their PERS obligations when they do not have an existing unfunded actuarial liability?

The lump-sum payment program was developed predominantly for employers with an unfunded actuarial liability ("UAL") to make a single payment to be applied against that liability. Employers who do not have a UAL, based on the most recent actuarial valuation, have inquired about having access to the lump-sum program so that they can "buy down" their PERS rate even if they are considered fully funded. The statute doesn't restrict lump-sum payments only to those employers who have a UAL, and no policy reasons against allowing employers that option were identified during the rulemaking process.

OAR 459-009-0090 is a new rule that would provide a procedure for a fully funded employer (based on the most recent actuarial valuation) to make a lump-sum payment, including establishing a timeline for making a request and calculating the employer's total liability; minimum and maximum payment amounts; and treatment of the payment upon receipt. Different minimum payment thresholds are established based upon the employer's total liability, to ensure that small employers have the same opportunity to make lump-sum payments as large employers.

SUMMARY OF MODIFICATIONS TO RULES SINCE NOTICE

A definition of the term "IAP" has been added to OAR 459-009-0090 because the term was used but not defined in the rule. Also, OAR 459-009-0090(14)(c) was amended to begin: "Except as provided in subsection (14)(d)," to recognize that subsection (14)(d) provides an exception to the general rule expressed in (14)(c).

LEGAL REVIEW

The proposed rules were submitted to the Department of Justice for legal review and any comments or changes have been incorporated in the rules as presented for adoption.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on September 26, 2006 at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended on October 27, 2006 at 5:00 p.m. and no public comment was received.

IMPACT

Mandatory: No, but the rule modifications are within the authority granted by statute.

Impact: The modifications conform to state law and do not have a material fiscal or economic impact.

Cost: Employers that elect to make a lump-sum payment under these rules will incur the cost of the actuarial calculation, the lump-sum payment amount, and administrative fees to maintain the resulting side account. There is not expected to be any significant cost incurred by members, PERS administration, or the PERS Fund.

RULEMAKING TIMELINE

- | | |
|--------------------|--|
| August 15, 2006 | Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State. |
| September 1, 2006 | <i>Oregon Bulletin</i> published the Notice. |
| September 15, 2006 | PERS Board notified that staff began the rulemaking process. |
| September 26, 2006 | Rulemaking hearing held at 2:00 p.m. in Tigard. |
| October 20, 2006 | First reading of the rules. |
| October 27, 2006 | Public comment period ended at 5:00 p.m. |
| November 17, 2006 | Board may adopt the permanent rule and rule modifications. |

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt OAR 459-009-0090, *Lump-Sum Payments by Employers in Excess of an Existing Unfunded Actuarial Liability* and permanent rule modifications to OAR 459-009-0084, *Unfunded Actuarial Liability Lump-Sum Payments by Employers Participating in an Actuarial Group* and OAR 459-009-0084, *Unfunded Actuarial Liability Lump-Sum Payments by Employers Not Participating in an Actuarial Group*, as presented.”
2. Take no action and direct staff to make changes to the rules or take other action.

STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

- Reason: Adopting these modifications will:

1. Provide a procedure for lump-sum payments by employers that do not have an existing unfunded actuarial liability; and
2. Eliminate the requirement that PERS and the employer enter into an intergovernmental agreement for the actuarial calculation, and extend the deadline for completing the actuarial calculation.

Adoption – Employer Lump-Sum Payments Rules

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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 009 – PUBLIC EMPLOYER**

1 **459-009-0084**

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

4 Purpose. The purpose of this rule is to establish procedures and requirements
5 pursuant to ORS 238.225 for the adjustment of employer contribution rates when an
6 unfunded actuarial liability lump-sum payment is made by an individual public employer
7 participating in an actuarial group.

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

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

11 (A) That is not regularly scheduled;

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

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

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

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

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

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

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

8 (2) Lump-sum payment amount. If an individual employer elects to make a UAL
9 lump-sum payment under this rule, the payment must be at least 25 percent of the
10 individual employer's UAL calculated under section *[(5)]* (6) of this rule or \$1 million,
11 whichever is less. Alternatively, an employer may elect to pay 100 percent of the
12 individual employer's UAL calculated under section *[(5)]* (6) of this rule.

13 (3) Requirements. In order to make a UAL lump-sum payment, an employer must
14 *[enter into an agreement with PERS for pre-payment of actuarial services and]* comply
15 with the process described in sections (4) through *[(9)]* (10) of this rule.

16 (4) Initiating UAL lump-sum payment process. At least *[30]* 45 calendar days prior
17 to the date the employer intends to make a UAL lump-sum payment, the employer shall
18 notify the PERS *[Actuarial Services]* Employer Liability Coordinator in writing that it
19 intends to make a UAL lump-sum payment. The notification shall specify:

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

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

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

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

12 ~~[(5)]~~ (6) Calculation of the individual employer's UAL. Upon receipt of a complete
13 notification and verification of payment to the actuary for actuarial services, PERS staff
14 shall request that the PERS consulting actuary ~~[to]~~ calculate:

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

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

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

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

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

4 (A) 100 percent of the individual employer's UAL calculated in subsection ~~[(5)]~~(6)
5 (a) of this rule;

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

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

10 ~~[(6)]~~ (7) Notification of calculation. PERS staff shall notify the employer in writing
11 of the results of the individual employer's calculation in section ~~[(5)]~~ (6) above, including
12 the effective date(s) for the reduced employer contribution rates based on the one or two
13 potential dates for payment. In addition, PERS shall send the employer a notification
14 describing risks and uncertainties associated with the calculation of the individual
15 employer's UAL.

16 ~~[(7)]~~ (8) Notification of UAL lump-sum payment. The employer or its agent shall
17 notify the PERS ~~[Actuarial Services]~~ Employer Liability Coordinator in writing at least
18 three business days prior to making a UAL lump-sum payment. This notification shall be
19 in addition to the notification in section (4) of this rule and shall specify the amount of
20 the payment and the date it intends to make the payment.

21 ~~[(8)]~~ (9) Method of payment. A UAL lump-sum payment must be made by either
22 electronic transfer or check payable to the Public Employees Retirement System.

1 ~~[(9)]~~ (10) Receipt of UAL lump-sum payment. In order to adjust the employer
 2 contribution rate to that reported by PERS in section ~~[(6)]~~ (7) of this rule, PERS must
 3 receive the correct funds no later than five business days after the corresponding intended
 4 date of the UAL lump-sum payment specified in the notification described in section
 5 ~~[(7)]~~ (8) of this rule.

6 (a) If the UAL lump-sum payment is received by PERS on or before the intended
 7 date specified in the notification described in section ~~[(7)]~~ (8) of this rule or within the
 8 five business days following the intended date, the new employer contribution rate will
 9 be effective for payrolls dated on or after:

10 (A) The date specified in the notification; or

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

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

16 (c) If the UAL lump-sum payment received is other than any amount specified in the
 17 notification under section ~~[(7)]~~ (8) of this rule, the employer's contribution rate shall be
 18 adjusted to ~~[that]~~ the rate ~~[in which]~~ the payment amount fully funds using the actuarial
 19 calculation in subsection ~~[(5)]~~ (6)(b) of this rule.

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

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

1 (A) Adjusting employer contribution rates based upon the date of receipt of funds or
2 errors in the notification described in section ~~[(6)] (7)~~ of this rule; or

3 (B) Taking action pursuant to ORS ~~[228.225] 238.225~~.

4 ~~[(10)] (11)~~ Actuarial treatment of the UAL lump-sum payment. For actuarial
5 purposes, the UAL lump-sum payment made by the employer shall first be applied to any
6 transition unfunded actuarial liabilities. The remainder of the payment shall offset any
7 pooled unfunded actuarial liabilities and shall be treated as pre-funded contributions and
8 additional assets for the payment of obligations of the employer under ORS ~~[Chapter]~~
9 ~~chapters~~ 238 ~~or 238A~~, rather than as a reduction of those obligations.

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

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

18 ~~[(11)] (12)~~ Crediting earnings or losses. For the purposes of this rule, ~~[UAL Lump-~~
19 ~~Sum] Side~~ Accounts shall be credited with all interest and other income received from
20 investment of the account funds during the calendar year, less any amounts withheld from
21 earnings for administrative expenses under ORS 238.610 or paid into the reserve account
22 established under ORS 238.670(1).

1 ~~[(12)]~~ **(13)** Nothing in this rule shall be construed to convey to an employer making
2 a UAL lump-sum payment any proprietary interest in the Public Employees Retirement
3 Fund or in the UAL lump-sum payment made to the fund by the employer.

4 ~~[(13)]~~ **(14)** Effective date of rule. This rule shall apply to all UAL lump-sum
5 payments initiated on or after the effective date of this rule.

6 Stat. Auth.: ORS 238.650

7 Stats. Implemented: ORS 238.225

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 009 – PUBLIC EMPLOYER**

1 **459-009-0085**

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

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

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

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

11 (A) That is not regularly scheduled;

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

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

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

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

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

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

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

8 (2) Lump-sum payment amount. If an employer elects to make a UAL lump-sum
9 payment under this rule, the payment must be at least 25 percent of the employer's UAL
10 calculated under section *[(5)]* (6) of this rule or \$1 million, whichever is less.

11 Alternatively, an employer may elect to pay 100 percent of the employer's UAL
12 calculated under section *[(5)]* (6) of this rule.

13 (3) Requirements. In order to make a UAL lump-sum payment, an employer must
14 *[enter into an agreement with PERS for pre-payment of actuarial services and]* comply
15 with the process described in sections (4) through *[(9)]* (10) of this rule.

16 (4) Initiating UAL lump-sum payment process. At least *[30]* 45 calendar days prior
17 to the date the employer intends to make a UAL lump-sum payment, the employer shall
18 notify the PERS *[Actuarial Services]* Employer Liability Coordinator in writing that it
19 intends to make a UAL lump-sum payment. The notification shall specify:

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

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

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

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

12 ~~[(5)]~~ (6) Calculation of an employer's UAL. Upon receipt of a complete notification
13 and verification of payment to the actuary for actuarial services, PERS staff shall request
14 that the PERS consulting actuary ~~[to]~~ calculate:

- 15 (a) 100 percent of the employer's UAL. This calculation shall be:
- 16 (A) Based on the fair value UAL from the most recent actuarial valuation; and
- 17 (B) Adjusted to reflect the effect of time from the most recent actuarial valuation to
18 the intended date(s) of payment, using generally recognized and accepted actuarial
19 principles and practices.

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

1 (A) 100 percent of the employer's UAL calculated in subsection ~~[(5)]~~(6)(a) of this
2 rule;

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

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

7 ~~[(6)]~~ (7) Notification of calculation. PERS staff shall notify the employer in writing
8 of the results of the employer's calculation in section ~~[(5)]~~ (6) above, including the
9 effective date(s) for the reduced employer contribution rates based on the one or two
10 potential dates for payment. In addition, PERS shall send the employer a notification
11 describing risks and uncertainties associated with the calculation of the individual
12 employer's UAL.

13 ~~[(7)]~~ (8) Notification of UAL lump-sum payment. The employer or its agent shall
14 notify the PERS ~~[Actuarial Services]~~ Employer Liability Coordinator in writing at least
15 three business days prior to making a UAL lump-sum payment. This notification shall be
16 in addition to the notification in section (4) of this rule and shall specify the amount of
17 the payment and the date it intends to make the payment.

18 ~~[(8)]~~ (9) Method of payment. A UAL lump-sum payment must be made by either
19 electronic transfer or check payable to the Public Employees Retirement System.

20 ~~[(9)]~~ (10) Receipt of UAL lump-sum payment. In order to adjust the employer
21 contribution rate to that reported by PERS in section ~~[(6)]~~ (7) of this rule, PERS must
22 receive the correct funds no later than five business days after the corresponding intended

1 date of the UAL lump-sum payment specified in the notification described in section
2 ~~[(7)]~~ (8) of this rule.

3 (a) If the UAL lump-sum payment is received by PERS on or before the intended
4 date specified in the notification described in section ~~[(7)]~~ (8) of this rule or within the
5 five business days following the intended date, the new employer contribution rate will
6 be effective for payrolls dated on or after:

7 (A) The date specified in the notification; or

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

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

13 (c) If the UAL lump-sum payment received is other than any amount specified in the
14 notification under section ~~[(7)]~~ (8) of this rule, the employer's contribution rate shall be
15 adjusted to ~~[that]~~ the rate ~~[in which]~~ the payment amount fully funds using the actuarial
16 calculation in subsection ~~[(5)]~~ (6)(b) of this rule.

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

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

21 (A) Adjusting employer contribution rates based upon the date of receipt of funds or
22 errors in the notification described in section ~~[(6)]~~ (7) of this rule; or

23 (B) Taking action pursuant to ORS ~~[228.225]~~ 238.225.

1 ~~[(10)]~~ **(11)** Actuarial treatment of the UAL lump-sum payment. For actuarial
2 purposes, the UAL lump-sum payment made by the employer shall ~~[first be applied to~~
3 ~~any transition unfunded actuarial liabilities. The remainder of the payment shall]~~ be
4 treated as pre-funded contributions and additional assets for the payment of obligations of
5 the employer under ORS ~~[Chapter]~~ **chapters** 238 ~~or 238A~~, rather than as a reduction of
6 those obligations.

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

12 (b) After earnings or losses have been credited for the year, the amount amortized
13 shall be transferred from the ~~[UAL Lump-Sum]~~ **Side** Account to the Employer
14 Contribution Account.

15 ~~[(11)]~~ **(12)** Crediting earnings or losses. For the purposes of this rule, ~~[UAL Lump-~~
16 ~~Sum]~~ **Side** Accounts shall be credited with all interest and other income received from
17 investment of the account funds during the calendar year, less any amounts withheld from
18 earnings for administrative expenses under ORS 238.610 or paid into the reserve account
19 established under ORS 238.670(1).

20 ~~[(12)]~~ **(13)** Nothing in this rule shall be construed to convey to an employer making
21 a UAL lump-sum payment any proprietary interest in the Public Employees Retirement
22 Fund or in the UAL lump-sum payment made to the fund by the employer.

1 ~~[(13)]~~ (14) Effective date of rule. This rule shall apply to all UAL lump-sum
2 payments initiated on or after the effective date of this rule.

3 Stat. Auth.: ORS 238.650

4 Stats. Implemented: ORS 238.225

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 009 – PUBLIC EMPLOYER

1 459-009-0090

2 Lump-Sum Payments by Employers in Excess of an Existing Unfunded Actuarial
3 Liability

4 Purpose. The purpose of this rule is to establish procedures and requirements
5 pursuant to ORS 238.225 for the adjustment of employer contribution rates when a
6 lump-sum payment is made by an individual public employer that does not have an
7 existing unfunded actuarial liability, or when an individual employer makes a lump-
8 sum payment in excess of the employer’s unfunded actuarial liability.

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

10 (a) “Actuarial Surplus” means the excess of the actuarial value of an employer’s
11 assets over the employer’s actuarial liability.

12 (b) “Employer Contribution Account” means that portion of the Fund
13 designated by the Board, as a portion of the net assets of the Fund, that is funded by
14 employer contributions to be used for the sole benefit of members of the trust with
15 the purpose of paying future retirement and death benefits.

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

18 (d) “IAP” means the Individual Account Program of the Oregon Public Service
19 Retirement Plan.

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

1 (f) “Surplus Lump-Sum Payment” means any employer payment:

2 (A) That is not regularly scheduled;

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

4 (C) That is made for the express purpose of creating an actuarial surplus or

5 increasing an existing actuarial surplus; and

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

7 payment.

8 (g) “UAL Lump-Sum Payment” means any employer payment:

9 (A) That is not regularly scheduled;

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

11 (C) That is made for the express purpose of reducing the employer’s unfunded

12 actuarial liability; and

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

14 payment.

15 (h) “Unfunded Actuarial Liability” or “UAL” means the excess of an

16 employer’s actuarial liability over the actuarial value of assets.

17 (2) For employers making a combined surplus lump-sum payment and UAL

18 lump-sum payment, the provisions of this rule apply only to the surplus lump-sum

19 payment unless otherwise indicated.

20 (3) Minimum surplus lump-sum payment amount. If an individual employer

21 elects to make a surplus lump-sum payment under this rule, the payment must be at

22 least:

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

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

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

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

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

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

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

1 (7) PERS staff shall notify the employer within five business days of receipt of
2 the notification if the notification is incomplete or the process cannot be completed
3 by the intended date(s) of the surplus lump-sum payment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (11) Notification of calculation. PERS staff shall notify the employer in writing
22 of the results of the individual employer’s calculation under section (9). In addition,

1 PERS shall send the employer a notification describing risks and uncertainties
2 associated with making a lump-sum payment.

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

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

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

15 (a) If the surplus lump-sum payment is received by PERS on or before the
16 intended date specified in the notification described in section (12) of this rule or
17 within the five business days following the intended date, the new employer
18 contribution rate will be effective for payrolls dated on or after the first of the
19 month following receipt of the payment by PERS.

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

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

6 (d) If the surplus lump-sum payment received by PERS is less than the
7 minimum amount described in section (3) of this rule, or greater than the maximum
8 amount described in section (4) of this rule, the funds will be returned to the
9 employer and no adjustment will be made to the employer contribution rate.

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

11 (A) Adjusting employer contribution rates based upon the date of receipt of
12 funds or errors in the notification described in section (11) of this rule; or

13 (B) Taking action pursuant to ORS 238.225.

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

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

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

1 (b) The surplus lump-sum payment shall be held in a Side Account for the
2 benefit of the employer making the surplus lump-sum payment. On an annual basis
3 the PERS consulting actuary shall notify PERS staff of the amount of pre-funded
4 contributions held in the Side Account that are to be amortized for that year.

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

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

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

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

20 Stat. Auth.: ORS 238.650

21 Stats. Implemented: ORS 238.225



Oregon

Theodore R. Kulongoski, Governor

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November 17, 2006

TO: Members of the PERS Board
FROM: Brendalee Wilson, Interim Administrator, PPLAD
SUBJECT: Adoption of OAR 459-016-0100, *Purchase of Units by a Police Officer or Firefighter to Provide Increased Benefits*

MEETING DATE	11/17/06
AGENDA ITEM	C.5. P & F Units

OVERVIEW

- Action: Adopt modifications to OAR 459-016-0100, Purchase of Units by a Police Officer or Firefighter to Provide Increased Benefits.
- Reason: To clarify the administration of unit benefits for police and fire (P & F) members of the PERS Chapter 238 Program.
- Subject: Chapter 238 Program P & F unit benefits.
- Policy Issue: No policy issues were identified during the rulemaking process.

BACKGROUND

Although the current rule sets forth the basic criteria for the purchase and distribution of unit benefits for P & F members of the PERS Chapter 238 Program, it provides no guidelines or direction for the administration of the unit benefit program. The proposed rule modifications clarify the statutory provisions for P & F unit benefits to provide clear direction, for both members and staff, on the requirements for eligibility in the unit benefit program and the process for administering the benefits.

SUMMARY OF MODIFICATIONS TO RULE SINCE FIRST READING

In sections (7)(d) and (8), plural references have been changed to the singular for consistency.

LEGAL REVIEW

The proposed rule was submitted to the Department of Justice for legal review and any comments or changes have been incorporated in the rule as presented for adoption.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on September 26, 2006 at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended on October 27, 2006 at 5:00 p.m. and no public comment was received.

IMPACT

Mandatory: No, but clarification of the unit benefit program will benefit both members and staff.

Impact: Minimal. Stakeholders will have a clearer understanding of the administration of P & F unit benefits.

Cost: There are no perceived costs to members, employers, stakeholders or the Fund as a result of the adoption of this rule. To the contrary, failure to adopt it could result in increased inquiries and appeals if the administration of unit benefits is not clearly established.

RULEMAKING TIMELINE

August 15, 2006	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
September 1, 2006	<i>Oregon Bulletin</i> published the Notice.
September 15, 2006	PERS Board notified that staff began the rulemaking process.
September 26, 2006	Rulemaking hearing held at 2:00 p.m. in Tigard.
October 20, 2006	First reading of the rule.
October 27, 2006	Public comment period ended at 5:00 p.m.
November 17, 2006	Board may adopt the permanent rule modifications.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt permanent rule modifications to OAR 459-016-0100, *Purchase of Units by a Police Officer or Firefighter to Provide Increased Benefits*, as presented.”
2. Take no action and direct staff to make changes to the rule or take other action.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: Adopting the rule will clarify the requirements for eligibility in the P & F unit benefit program.

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 016 – POLICE OFFICERS AND FIRE FIGHTERS

1 459-016-0100

2 Purchase of *[Additional]* Units *[of Income]* by a *[Policeman]* Police Officer or
3 *[Fireman]* Firefighter to Provide Increased Benefits

4 (1) For the purposes of this rule:

5 (a) “Active” means an “active member” as defined in ORS 238.005(12)(b).

6 (b) “Current” means a member who is currently employed as a police officer or
7 firefighter.

8 (c) “Firefighter” has the same meaning as set forth in ORS 238.005(9).

9 (d) “Five years” means five full years ending on the fifth anniversary date of the
10 transfer from a police and fire position.

11 (e) “Inactive” means an “inactive member” as defined in ORS 238.005(12)(c).

12 (f) “Police officer” has the same meaning as set forth in ORS 238.005(16).

13 (2) Eligibility to Purchase Units. An active and current police officer or
14 firefighter may purchase a maximum of eight units to provide increased benefits
15 between the date of retirement and age 65. A member who retires prior to age 60
16 will receive unit payments over a minimum five-year period.

17 (3) Lump-Sum Purchase at Retirement. An active and current police officer or
18 firefighter may choose to make a lump-sum purchase of police and fire units within
19 the 60 days prior to the police officer’s or firefighter’s effective retirement date.

20 (a) If previous payroll contributions for unit benefits have been made, a lump-
21 sum purchase of any remaining units, for a maximum of eight units, may be made

1 within 60 days prior to the member's retirement date if the member is less than age
2 65.

3 (b) If no payroll contributions for unit benefits have been made, a lump-sum
4 purchase of units may be made within the 60 days prior to the member's retirement
5 date only if the member is less than age 60.

6 (4) Additional Contributions for Police Officers or Firefighters Retiring Prior
7 to Age 60. An active and current police officer or firefighter who retires prior to age
8 60 may make additional contributions to purchase actuarially reduced unit benefits
9 beginning at any date between the date of early retirement and age 60. [The

10 *additional contributions of a policeman or fireman who is purchasing additional units of*
11 *income to be payable upon retirement after age 60 but prior to age 65, who retires before*
12 *age 60, either voluntarily or because of disability, shall remain in his account, earning*
13 *interest, until he reaches age 60, at which time those contributions will purchase*
14 *additional income actuarially computed. The employee contributions in these instances*
15 *will purchase less than a ten dollar unit and the benefit purchased by the employer shall*
16 *be reduced to the same amount as the employee benefit. If death occurs after voluntary*
17 *retirement or disability retirement, but prior to age 60, the unit account shall be refunded*
18 *to the named beneficiary in a lump-sum.]*

19 (5) Police Officers or Firefighters Who Work Until the Age of 65. Contributions
20 for unit benefits are not permitted once the member reaches the age of 65. The
21 amount in the unit account of a member who works until age 65 will be refunded to
22 the member in a lump sum.

23 (6) Cancellation of Police and Fire Unit Contributions. A police officer or
24 firefighter who has elected to make unit contributions may elect, in writing, to

1 cancel the additional contributions at any time. Once canceled, the member will not
2 be permitted to participate in the unit benefit program at a future time.

3 (7) Refund of Unit Account.

4 (a) Voluntary Refund. A police officer or firefighter may request a refund of the
5 unit account if the police officer or firefighter is separated from all participating
6 employers and their control groups.

7 (b) Involuntary Refund. A police officer or firefighter who has elected to make
8 unit contributions and transfers to an inactive position or a non-police and fire job
9 class will:

10 (i) Retain the unit account for five years immediately following the transfer.

11 (ii) If at the end of the five years, the member has not turned age 50 or returned
12 to a qualifying police and fire position, the member's election will be canceled and
13 the amount in the unit account automatically refunded.

14 (c) A voluntary or involuntary refund results in a cancellation of the unit
15 account. Once a unit account is canceled, the member may not participate in the
16 unit benefit program at a future time.

17 (d) A police officer or firefighter who requests a withdrawal of the PERS
18 member account will automatically receive a refund of the unit account.

19 (8) Disability Retirement. A police officer or firefighter who is approved for a
20 PERS Chapter 238 Program disability retirement is eligible to purchase the balance
21 of the police and fire units or make an initial purchase equal to the maximum eight
22 units.

23 (9) Reemployment under USERRA. An eligible PERS Chapter 238 Program
24 police and fire member who leaves a qualifying position to serve in the Uniformed

1 Services is eligible upon initiating reemployment to make up the unit benefit
2 contributions which would have been made to the member's unit account had the
3 member not left to serve in the Uniformed Services.

4 (a) Contributions made under this section must be remitted to PERS by:

5 (A) Payroll deduction; or

6 (B) Monthly payment of no less than one month of contributions; or

7 (C) Lump-sum payment.

8 (b) Any individual, agency, or organization may pay the employee contributions
9 specified in subsection (a) of this section on behalf of the employee under the
10 payment provisions set forth in paragraph (B) or (C) of this section.

11 Stat. Auth.: ORS ~~237.650~~ 238.650

12 Stats. Implemented: ORS 238.440



Oregon

Theodore R. Kulongoski, Governor

November 17, 2006

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TO: Members of the PERS Board
FROM: Brendalee Wilson, Interim Administrator, PPLAD
SUBJECT: Adoption of OAR 459-011-0100 and 459-080-0100,
Credit for Military Service under USERRA

MEETING DATE	11/17/06
AGENDA ITEM	C.6. USERRA

OVERVIEW

- Action: Adopt modifications to OAR 459-011-0100 and 459-080-0100, Credit for Military Service under USERRA.
- Reasons: Clarify payment methods of member-paid contributions under USERRA.
- Subject: Make-up contributions under USERRA.
- Policy Issues: No policy issues were identified during the rulemaking process.

BACKGROUND

Under ORS 238.156 and 238A.415, an eligible employee who leaves a qualifying position to serve in the Uniformed Services is eligible, upon reemployment, to make-up the amount of member-paid contributions the member would have made if he or she had not left to serve in the Uniformed Services. The proposed amendments clarify how these contributions may be remitted to PERS.

SUMMARY OF MODIFICATIONS TO RULES SINCE NOTICE

OAR 459-011-0100(5)(d) was edited to clarify that contributions may be added to an employee's PERS Chapter 238 Program variable account.

LEGAL REVIEW

The proposed rules were submitted to the Department of Justice for legal review and any comments or changes have been incorporated in the rules as presented for adoption.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on September 26, 2006 at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended on October 27, 2006 at 5:00 pm and no public comment was received.

IMPACT

Mandatory: No, but the rule modifications are within the authority granted by statute.

Impact: The modifications conform to state law and do not have a material fiscal or economic impact.

Cost: There are no perceived costs to members, employers, stakeholders or the Fund.

RULEMAKING TIMELINE

August 15, 2006	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
September 1, 2006	<i>Oregon Bulletin</i> published the Notice.
September 15, 2006	PERS Board notified that staff began the rulemaking process.
September 26, 2006	Rulemaking hearing held at 2:00 p.m. in Tigard.
October 20, 2006	First Reading of the rules.
October 27, 2006	Public comment period ended at 5:00 p.m.
November 17, 2006	Board may adopt the permanent rule modifications.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt permanent rule modifications to OAR 459-011-0100 and 459-080-0100, *Credit for Military Service under USERRA*, as presented.”
2. Take no action and direct staff to make changes to the rules or take other action.

STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

- Reason: Adopting these modifications will clarify payment methods of member-paid contributions under USERRA.

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 011 – RETIREMENT CREDIT**

1 **459-011-0100**

2 **Credit for Military Service under USERRA**

3 (1) Purpose. The purpose of this rule is to implement ORS 238.156(1).

4 (2) Limitation of scope of rule. Contributions, benefits and service credit provided under
5 this rule shall not exceed contributions, benefits and service credit required under federal law
6 for periods of military service.

7 (3) Definitions. For purposes of this rule:

8 (a) "Employee" means an individual employed by a participating public employer in a
9 qualifying position, as defined in ORS 238.005(19) and who is not excluded from the
10 definition of employee as set forth in ORS 238.005(7).

11 (b) "Employee contributions" means contributions made to the Fund.

12 (c) "Employer" means the legal entity that employed an individual at the time that
13 individual left for military service. For purposes of this rule, the ~~is~~ State of Oregon is a single
14 legal entity. Each separate school district is a separate legal entity.

15 (d) "Military service" means the performance of duty on a voluntary or involuntary basis
16 in a uniformed service under competent authority and includes:

17 (A) Active duty;

18 (B) Active duty for training;

19 (C) Initial active duty for training;

20 (D) Inactive duty training;

21 (E) Full-time National Guard duty;

1 (F) A period for which an employee is absent from a position of employment for the
2 purpose of an examination to determine the fitness of the employee to perform any of the
3 above types of duty; or

4 (G) A period for which an employee is absent from employment for the purpose of
5 performing funeral honors duty as authorized by 10 U.S.C. § 12503 or 32 U.S.C. § 115.

6 (e) "Salary" means the rate of pay the employee would have earned if he or she had
7 remained employed during the period of military service, including any increases that would
8 have been awarded the employee based on longevity of employment or seniority of position.
9 If such rate of pay is not reasonably certain, the rate shall be based on the employee's average
10 rate of pay from the employer. The average rate of pay shall be calculated for a period not to
11 exceed the 12-month period immediately preceding the period of military service.

12 (f) "Uniformed services" means the following:

13 (A) Armed Forces;

14 (B) Army National Guard;

15 (C) Air National Guard;

16 (D) Commissioned corps of the Public Health Service; and

17 (E) Any other category of individuals designated by the President in time of war or
18 national emergency.

19 (g) "USERRA" means the 1994 federal Uniformed Services Employment and
20 Reemployment Rights Act as in effect on the effective date of this rule.

21 (4) Retirement credit under USERRA.

22 (a) Eligibility. An employee shall be eligible for the benefits of this section if:

23 (A) The employee leaves PERS-covered employment to perform military service;

1 (B) The cumulative length of the employee's absence from employment with the
2 employer for military service does not exceed the limits set forth in USERRA §4312;

3 (C) The employee initiates reemployment on or after December 12, 1994, with the same
4 PERS-covered employer within the time limits specified in USERRA §4312; and

5 (D) All other eligibility requirements for benefits under USERRA are met.

6 (b) Credit for military service. An employee who meets the eligibility requirements of
7 subsection (a) of this section shall be credited with the amount of retirement credit the
8 employee would have accrued if he or she had remained in employment with the employer
9 during the period of military service, only to the extent that the employee contributions have
10 been made.

11 (c) Termination. An employee's eligibility for the benefits of this rule terminates upon the
12 occurrence of one of the disqualifying events listed in USERRA §4304.

13 (5) Employee contributions.

14 (a) Employee contributions shall be made upon reemployment for eligible military
15 service in accordance with the following:

16 (A) Contributions to be made by the employer. If the employee was entitled to employer-
17 paid pre-tax (EPPT) contributions as described in OAR 459-009-0200(2) as of the date the
18 employee left employment to perform military service, the employer shall pay, in a lump sum
19 payment, the amount of employee contributions that would have been made if the employee
20 had remained in the employment of the employer during the period of military service, based
21 on salary as defined in section (3) of this rule.

22 (B) Contributions to be made by the employee. If the employee was entitled to only
23 member-paid pre-tax (MPPT) or member-paid after-tax (MPAT) contributions, the employee

1 may contribute part or all of the employee contributions that would have been made if the
2 employee had remained in the employment of the employer during the period of military
3 service, based on salary as defined in section (3) of this rule. Contributions made under this
4 paragraph must be remitted to PERS by:

- 5 (i) Payroll deduction; or
- 6 (ii) Monthly payment of no less than one month of contributions; or
- 7 (iii) Lump-sum payment.

8 (b) Any individual, agency, or organization may pay the *[amounts]* employee
9 contributions specified in paragraph (5)(a)(B) on behalf of the employee under the payment
10 provisions set forth in subparagraph (5)(a)(B)(ii) or (iii).

11 (c) Contributions made under this section must be made during the period beginning with
12 reemployment and whose duration is three times the period of the employee's military service,
13 such period not to exceed five years.

14 (d) Any contributions made under this section shall be added to the employee's regular or
15 variable account(s).

16 (e) Contributions made under this section shall not include nor be entitled to earnings or
17 losses that would have been credited during the period of military service.

18 (6) Employer contributions. Any employer contributions associated with credit for
19 military service under this rule shall be made as directed by PERS in accordance with ORS
20 238.225.

21 Stat. Auth.: ORS 238.650 & 238.156

22 Stats. Implemented: ORS 238.156

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 080 – OPSRP INDIVIDUAL ACCOUNT PROGRAM**

1 **459-080-0100**

2 **Credit for Military Service under USERRA**

3 (1) Purpose. The purpose of this rule is to implement *[section 43, chapter 733,*
4 *Oregon Laws 2003 (Enrolled HB 2020)]* [ORS 238A.415](#).

5 (2) Limitation of scope of rule. Contributions, benefits and service credit provided
6 under this rule shall not exceed contributions, benefits and service credit required under
7 federal law for periods of military service.

8 (3) Definitions. For purposes of this rule:

9 (a) “Employee” means:

10 (A) An eligible employee, as defined in *[section 1, chapter 733, Oregon Laws 2003*
11 *(Enrolled HB 2020)]* [ORS 238A.005](#);

12 (B) An active member of PERS, as defined in ORS 238.005, on or after January 1,
13 2004; or

14 (C) An employee who is entitled to credit toward the probationary period required
15 by ORS 238.015.

16 (b) “Employer” means the legal entity that employed an individual at the time that
17 individual left for military service. For purposes of this rule, the state of Oregon is a
18 single legal entity. Each separate school district is a separate legal entity.

19 (c) “Military service” means the performance of duty on a voluntary or involuntary
20 basis in a uniformed service under competent authority and includes:

21 (A) Active duty;

22 (B) Active duty for training;

- 1 (C) Initial active duty for training;
- 2 (D) Inactive duty training;
- 3 (E) Full-time National Guard duty;
- 4 (F) A period for which an individual is absent from a position of employment for the
- 5 purpose of an examination to determine the fitness of the person to perform any of the
- 6 above types of duty; or

- 7 (G) A period for which an individual is absent from employment for the purpose of
- 8 performing funeral honors duty as authorized by 10 U.S.C. § 12503 or 32 U.S.C. § 115.

9 (d) “Salary” means the rate of pay the eligible employee would have earned if he or

10 she had remained employed during the period of military service, including any increases

11 that would have been awarded the employee based on longevity of employment or

12 seniority of position. If such rate of pay is not reasonably certain, the rate shall be based

13 on the employee’s average rate of pay from the employer. The average rate of pay shall

14 be calculated for a period not to exceed the 12-month period immediately preceding the

15 period of military service.

16 (e) “Uniformed services” means the following:

- 17 (A) Armed Forces;
- 18 (B) Army National Guard;
- 19 (C) Air National Guard;
- 20 (D) Commissioned corps of the Public Health Service; and
- 21 (E) Any other category of persons designated by the President in time of war or
- 22 national emergency.

1 (f) “USERRA” means the 1994 federal Uniformed Services Employment and
2 Reemployment Rights Act as of the effective date of this rule.

3 (4) Eligibility for retirement benefits under USERRA. An eligible employee shall be
4 entitled to the benefits of this rule if:

5 (a) The employee leaves employment with a participating public employer to
6 perform military service;

7 (b) The cumulative length of the employee’s absence from employment with the
8 employer for military service does not exceed the limits set forth in USERRA §4312;

9 (c) The employee initiates reemployment with the same participating public
10 employer within the time limits specified in USERRA §4312;

11 (d) All employee contributions have been made; and

12 (e) All other eligibility requirements for benefits under USERRA are met.

13 (5) Service credit for military service under USERRA. An employee who meets the
14 eligibility requirements of section (4) of this rule shall receive the amount of credit
15 toward the period of employment required under *[section 29, chapter 733, Oregon Laws*
16 *2003 (Enrolled House Bill 2020)]* [ORS 238A.300](#)*[,]* and the vesting requirements
17 described under *[section 31, chapter 733, Oregon Laws 2003 (Enrolled House Bill*
18 *2020)]* [ORS 238A.320](#), the employee would have accrued if he or she had remained in
19 employment with the employer during the period of military service.

20 (6) Termination. An employee’s eligibility for the benefits of this rule terminates
21 upon the occurrence of one of the disqualifying events listed in USERRA §4304.

22 (7) Employee contributions.

1 (a) Employee contributions shall be made upon reemployment for eligible military
2 service in accordance with the following:

3 (A) Employee contributions to be made by the employer. If the employee’s
4 employer had agreed to pay employee contributions under *[section 34(2)(b), chapter 733,*
5 *Oregon Laws 2003 (Enrolled HB 2020)]* [ORS 238A.335](#) as of the date the employee left
6 employment to perform military service, the employer shall pay, in a lump sum payment,
7 the amount of contributions that would have been made if the employee had remained in
8 the employment of the employer during the period of military service, based on salary as
9 defined in section (3) of this rule.

10 (B) Employee contributions to be made by the employee. If the employee’s
11 employer had not agreed to pay employee contributions, or had agreed to pay employee
12 contributions under *[section 34(2)(a), chapter 733, Oregon Laws 2003 (Enrolled HB*
13 *2020)]* [ORS 238A.335](#) as of the date the employee left employment to perform military
14 service, the employee may pay all or part of the contributions that would have been made
15 if the employee had remained in the employment of the employer during the period of
16 military service, based on salary as defined in section (3) of this rule. [Contributions](#)
17 [made under this paragraph may be remitted to PERS by:](#)

- 18 [\(i\) Payroll deduction; or](#)
- 19 [\(ii\) Monthly payment of no less than one month of contributions; or](#)
- 20 [\(iii\) Lump-sum payment.](#)

21 (b) Any individual, agency or organization may pay the *[amount]* [employee](#)
22 [contributions](#) specified in paragraph (7)(a)(B) on behalf of the employee [under the](#)
23 [payment provisions set forth in subparagraph \(5\)\(a\)\(B\)\(ii\) or \(iii\).](#)

1 (c) Employee contributions may only be paid during the period beginning with
2 reemployment and whose duration is three times the period of the employee’s military
3 service, such period not to exceed five years.

4 (d) Employee contributions shall be credited to the employee account established in
5 *[section 37(2), chapter 733, Oregon Laws 2003 (Enrolled HB 2020)]* [ORS 238A.350](#).

6 (e) Employee contributions shall not include nor be entitled to earnings or losses that
7 would have been credited during the period of military service.

8 (8) Employer contributions.

9 (a) If the employee’s employer had agreed to make employer contributions under
10 *[section 36, chapter 733, Oregon Laws 2003 (Enrolled HB 2020)]* [ORS 238A.340](#) as of
11 the date the employee left employment to perform military service, the employer shall
12 pay, in a lump sum payment, the amount of contributions that would have been made if
13 the employee had remained in the employment of the employer during the period of
14 military service, based on salary as defined in section (3) of this rule.

15 (b) Any contributions made under this section shall be added to the employee’s
16 employer account established in *[section 37(3), chapter 733, Oregon Laws 2003*
17 *(Enrolled HB 2020)]* [ORS 238A.350](#).

18 (c) Contributions made under this section shall not include nor be entitled to
19 earnings or losses that would have been credited during the period of military service.

20 (9) Military service that includes January 1, 2004. If an employee as defined in
21 section (3)(a)(B) or (C) of this rule performs military service over a period including
22 January 1, 2004:

1 (a) Retirement credit and contributions for military service prior to January 1, 2004,
2 shall be determined in accordance with OAR 459-011-0100.

3 (b) Retirement credit and contributions for military service on or after January 1,
4 2004, shall be determined in accordance with this rule and OAR 459-011-0100.

5 Stat. Auth.: *[OL 2003 Ch. 733]* [ORS 238A.450 & 238A.415](#)

6 Stats. Implemented: *[OL 2003 Ch. 733]* [ORS 238A.415](#)



Oregon

Theodore R. Kulongoski, Governor

November 17, 2006

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

TO: Members of the PERS Board

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

SUBJECT: 2007-09 Employer Contribution Rates

MEETING DATE	11-17-06
AGENDA ITEM	D.1. Cont. Rates

On November 17, 2006, PERS actuary, Bill Hallmark, will present new employer contribution rates for the Board's review and approval. These contribution rates are based on the results of the 2005 Valuation and, if approved, will be effective July 1, 2007 through June 30, 2009. These proposed rates will be for both the Tier One/Tier Two and OPSRP pension programs.

Upon Board approval of the rates, Mercer will work with PERS staff to provide individual employer valuation reports. In addition to new employer rates, these reports provide information needed for financial reporting disclosures, side account summaries and general information regarding the employer's PERS pension programs status.

We will forward the actuaries' presentation to the Board prior to the meeting.



Oregon

Theodore R. Kulongoski, Governor

Mailing Address:
P.O. Box 23700
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TTY (503) 603-7766
www.pers.state.or.us

November 17, 2006

TO: Members of the PERS Board

FROM: Paul R. Cleary, Executive Director

SUBJECT: HB 2189 and Employee Contributions on Lump-Sum Payments

MEETING DATE	11/17/06
AGENDA ITEM	D.2. HB 2189

The 2005 Oregon Legislature adopted HB 2189, which made a retroactive change to the definition of “salary” for the purposes of contributions to the Individual Account Program (“IAP”) by PERS Chapter 238 Program members. Under the 2003 reform legislation creating the OPSRP and IAP programs, certain lump sum payments to those Tier 1/Tier 2 members that were treated as “salary” for calculating final average salary under the PERS Chapter 238 Program (and for pre-reform employee contributions) did not qualify as “salary” from which the 6% employee contribution was to be paid under the IAP. The 2005 legislative change clarified that those lump sum payments were indeed subject to the 6% employee contribution, retroactive to the start of the IAP program, January 1, 2004.

The retroactive nature of the statutory change combined with programming challenges for both PERS and our reporting employers has created special complications in processing such transactions. As of May 1, 2006, all lump sum payments to PERS Chapter 238 Program members (approximately \$64 million in salary) were reversed out of the jClarety system. The associated employer contributions were credited back to the employers. Employers now are re-entering these lump sum payments and triggering the associated 6% IAP employee contribution, which can fall into one of three categories: (1) Employer Paid Pre-Tax or “EPPT”; (2) Member Paid Pre-Tax or “MPPT”; and (3) Member Paid After Tax or “MPAT”.

As discussed at the Board’s June and July 2006 meetings, staff has identified three alternatives to restoring these contributions and associated earnings:

1. All applicable employee IAP contributions and the earnings that they would have earned from when lump-sum payments were made are billed solely to the employer.
2. All applicable employee IAP contributions are billed to the employer. PERS would credit earnings to those contributions that they would have earned from when the lump-sum payments were made. The source for those earnings could be either the Contingency Reserve or current year (2006) earnings.
3. All applicable employee IAP contributions and the associated earnings calculated from when the lump-sum payments were made are paid from the Contingency Reserve.

The Board received a number of comment letters from employers and stakeholder groups on these alternatives (copies attached) and heard testimony at the June Board meeting. The Board also considered the legal, fiscal, and fiduciary aspects of the alternatives at the June Board meeting.

Based on that analysis and stakeholder input, staff recommends using the Contingency Reserve to pay for both HB 2189 retroactive employee contributions and associated earnings. Such an approach recognizes that employers were acting as instructed by PERS in not withholding or paying the subject employee contributions prior to the 2005 legislative change. Further, it recognizes that PERS was not capable of accepting the contributions on employee lump-sum payouts until employer reporting changes were programmed into the EDX system effective May 1, 2006. This approach also holds members harmless from both an IAP contributions and earnings standpoint. Finally, it allows members, employers, and the agency to resolve this matter in an amicable fashion and move forward with employer reporting and IAP administration.

Under this approach, employers would be credited back for all employee IAP contributions submitted on the subject lump-sum payments that were made to employees between January 1, 2004 and May 1, 2006. Earnings would also be covered out of the Contingency Reserve from the date the contributions would have been made, using the IAP remediation annual earnings crediting for the respective year(s). Employers would have until the close of 2006 annuals (about February 28, 2007) to re-enter the lump-sum payment data and receive credit for the employee contribution and have account earnings posted.

RECOMMENDATION

Staff recommends that the Board authorize use of the Contingency Reserve to credit employers for the employee contributions (approximately \$4 million) and to cover associated earnings (approximately \$1 million) related to the retroactive posting of employee IAP contributions for lump-sum payments pursuant to HB 2189 (2005).



Finance Department
501 SW Madison Avenue
P.O. Box 1083
Corvallis, OR 97339-1083
(541) 766-6990
Fax (541) 754-1729

July 3, 2006

PERS Board
c/o Steve Rodeman
Public Employee Retirement System
PO Box 23700
Tigard, OR 97281-3700

RE: HB 2189 Implementation

The City of Corvallis, employer #2155, is primarily a Member Paid Pre-Tax (MPPT) employer. I have been an active participant in the discussions with PERS staff and other employers about the issues surrounding HB 2189 implementation. I was also at the June 16 Board meeting where the Board took up this issue, then requested more time for public comments. Therefore, I am taking this opportunity to provide information to you and the Board.

First, a little bit about Corvallis demographics as they apply to the retroactive portion of HB 2189 implementation.

- Corvallis has 146 employees who had a lump sum payment in 2004 and/or 2005. This is about 32 percent of our regular full time employees.
- Of the 146, twenty were employees who got lump sum payments of accrued vacation and/or compensatory time at retirement; fifteen received these payments at separation for other than retirement purposes.
- The individual amounts owed for the member's 6% contribution range from \$1.48 to nearly \$1,700.
- Most of the lump sum payments were made to Police Officers and Firefighters who elect to "cash out" a portion of their accrued vacation, in compliance with the rules set forth in their collective bargaining agreements.

Second, a little bit about Corvallis' experience with the changing definition of subject salary. In January 2004 a long-time Corvallis Police Officer retired. Since he was a Tier 1 member, the City's Payroll Coordinator withheld the 6% of pay contribution on the lump sum payments made upon retirement. As soon as Corvallis could report January payroll data to PERS via EDX, we reported this payment and attempted to pay the employee's withheld 6% to PERS. PERS credited the monies back and reported that the lump sum payment was no longer subject salary and they would not take the employee's payment, although for the employer's contribution the

lump sum was subject salary so the employer contribution would be made. After arguing with the retired employee (who believed that the payment should be subject to the 6%), we returned the 6% we had withheld to that retiree.

I wholeheartedly support the PERS' staff recommendation to use contingency reserves to pay the employee's 6% contribution for the retroactive period of January 1, 2004 through April 30, 2006. I have the following reasons for this support:

- This solution keeps all members whole without disparate treatment where some members of a bargaining unit (mostly those who are currently employed with the same employer) are required to pay the 6% and others (retired or otherwise separated) do not pay the 6% (we have no paycheck to withhold the monies from). This type of disparate treatment amounts to providing a 6% employer paid bonus to some members of a bargaining unit but not others, leaving the employer open to an unfair labor practice claim.
- This solution addresses the problems inherent in finding and collecting monies from people who are no longer employees, or from former employees who are deceased.
- This solution will keep employers from having to go to collections agencies or small claims court to collect monies from retirees or deceased members – a politically unfeasible situation.
- This solution addresses the problem of asking a member to pay the 6% to the employer for the employer to pay to PERS for PERS to pay to the member either because the member has withdrawn or the member's IAP account was cashed out at retirement under *de minimus* rules.
- This solution has no tax liability issues that will arise if the employer makes the payment to PERS and the employee never pays the employer back.
- This solution does not "punish" employers who made every effort to actually withhold and remit the monies to PERS.

I also believe that PERS needs to be the lead in communicating information about this issue to their members. If the solution is to use contingency reserves, then some members' IAP accounts will suddenly have monies in them that have no "payroll" track record. If the ultimate solution the Board chooses is to require employers to pay, then this needs to be communicated from PERS to the members; to do otherwise implies that the employer's payroll staff made an error.

I plan to be at the PERS Board meeting on July 21 and will be available to answer any questions you may have.

Sincerely,



Nancy Brewer
Finance Director



July 6, 2006

JUL 07 2006

PERS Board of Directors
PO Box 23700
Tigard, Oregon 97281-3700

Dear Board Members:

The circumstances surrounding the requirements that employers retroactively charge, collect and report the 6% employee contributions on lump-sum payouts back to January 1, 2004 create complexities and complications for employees, employers and PERS that were not imagined when this law changed.

Prior to January 30, 2004, Washington County deducted the 6% employee contributions on all lump-sum payouts and remitted those amounts to PERS. PERS Employer announcement #14, dated January 30, 2004 advised employers to stop deducting the 6% on lump-sum payouts. From that time forward, the County stopped the deductions and at the advise of PERS, even refunded some deductions that had been made.

The new statute enacted by the 2005 legislature required the 6% to be deducted on lump-sum payouts retroactive to January 1, 2004. The County began deducting the 6% again from current lump-sum payouts in early November 2005 but the PERS EDX system was not programmed to accept the payments until just recently. Employers were not advised of the change in the law until October 2005 when the subject salary guide was updated on the PERS website.

Washington County has about 1,800 current employees and only picks up the 6% for about 350 public safety employees. All other employees pay the 6% out of their pay. Most lump-sum payouts are related to retiring employees or other employees leaving the employment of the County.

The County has been represented in the conversations with PERS over the past year or so. We appreciate the willingness of the PERS staff to recognize the issues and provide information to employers throughout this difficult process.

Employers are faced with a number of issues trying to collect from employees that in most cases no longer work for them. In addition, if employers treat these employees differently, it creates equity issues. If unions are involved, it adds another level of complexity. In addition to all this, there are potential tax issues if employers make these payments on behalf of employees.

Because of all these issues, it became evident that this would be a good use of the PERS contingency reserve. The reserve could be used to provide the funding to the system for all the 6% contributions on lump-sum payouts between January 1, 2004 and the present.

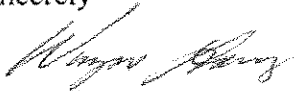
Washington County has been cooperative with PERS over the past several years in implementing the many changes to PERS and the substantial changes to the employer reporting and payment systems. We have absorbed programming and staff time to enable us to comply with PERS reporting requirements. Because of our size, we have been able to respond to the needs of PERS in a timely manner.

We do not believe we should be penalized with the burden of collecting the retroactive amounts from past employees. The circumstances were not created by the employer and therefore, the burden of complying with the new law should not be born solely by the employer.

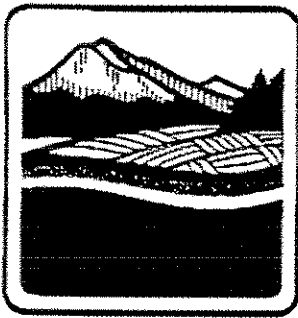
We believe this treatment is the most fair and equitable approach for employees and employers and will result in the least administrative costs for all parties. Thank you for the opportunity to provide input to your decision making process.

If you have any questions, please call.

Sincerely



Wayne Lowry
Chief Finance Officer



Marion County

OREGON

BUSINESS SERVICES DEPARTMENT

**BOARD OF
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DIVISIONS:
Administration
Facilities Management
Financial Services
Human Resources
Risk Management

July 10, 2006

Board of Directors
Oregon Public Employees Retirement System
P.O. Box 23700
Tigard, OR 97281-3700

RE: HB 2189 and Employee Contributions on Lump-Sum Payments

Thank you for this opportunity to voice our concerns regarding implementation of HB 2189 mandating IAP contributions on lump-sum payments retroactive to January 1, 2004. Marion County staff has been in attendance at many of the meetings discussing the administrative challenges involved.

Marion County is a member paid pretax (MPPT) employer. With the implementation of the JClarety EDX system in January 2004, the county continued to withhold 6% IAP contributions on lump-sum payments. However, the EDX system stopped accepting entry of IAP contributions on lump-sum payments in February 2004. As with other employers, Marion County was instructed by PERS staff to refund the employee contributions and reprogram our system to exclude lump-sum payments from IAP subject salary.

Approximately 1,100 of our current and former employees are subject to the retroactive contribution requirements for lump-sum payments – the county no longer employs over 180 of these, and several are deceased. We estimate the total amount to be collected from current and former employees at approximately \$266,000. The average contribution per employee is \$243 and some employees owe as much as \$1,900. We anticipate that many employees will have difficulty repaying the entire amount in a single payment, thus Marion County faces the daunting task of negotiating and monitoring individual repayment agreements for many of those affected by this change.

Requiring Marion County, as the employer, to make these contributions is not an acceptable alternative. This essentially puts the county in the position of

D.2. Attachment 3

PERS Board of Directors
July 10, 2006
Page 2 of 2

treating employees differently, creating the potential for lawsuits. Another concern is the need to treat such payments on behalf of employees as taxable fringe benefits.

For all of these reasons, Marion County strongly supports using the PERS Contingency Reserve to cover retroactive IAP contributions on lump-sum payments as mandated by HB 2189. We believe this represents the most expedient solution to a very complex issue. Thank you for your consideration.

Sincerely,



Cynthia A. Granatir, Chief Accountant

Retroactive IAP Contributions
"ARTIACO Karen R" 7/11/2006 1:25 PM

Lane County has continued to evaluate the work that would be required if PERS requires employers to collect the retroactive IAP contributions on Lump Sum Payments for calendar years 2004 and 2005 and part of 2006. Lane County employees make their own 6% contributions to IAP. Lane County does not "pick up" that contribution. Based upon PERS information, Lane County will need to collect payments from about 700 current employees and 200 past employees, included 6 who are now deceased. The total amount of these contributions is estimated to be about \$200,000.

The advice of our County Counsel is that Lane County would need to negotiate a written agreement with each of the 700+ employees who would have to pay these contributions. In the past we have done this with any employee who needed to pay PERS or IAP contributions on past earnings.

In order to clarify this further, I contacted BOLI on this question and was asked to put my question in writing. You will see my email addressing the issues below. As yet, I have not received an answer from BOLI. Unless BOLI contradicts our Counsel, Lane County will have no choice but to negotiate 700 separate agreements with employees.

At a conservative estimate of 2 hours per employee to draft the agreement, meet with the employee, answer questions, etc., this will require 1,400 hours of time, or at least 35 weeks, in order to set up these agreements. In addition, the County will need to locate and negotiate with 200 previous employees, retirees, and/or estates, in order to collect the additional IAP contributions. Using a 3 hour per contact estimate, this could require an additional 600 hours, or at least 15 weeks.

Lane County will have to hire a full time employee for at least one year just to negotiate these retroactive IAP contributions. The estimated cost would be about \$70,000 for this person, in order to collect \$200,000 of retroactive IAP contributions. And, of course, these time estimates do not include the time that will be needed after the agreements have been negotiated to collect the contributions from employees whose employment is terminated before the entire amount has been collected; collect from those who may have insufficient earnings to pay the deductions in any given pay period; collect from non-employees who do not pay according to the agreement; process payments; and update PERS reporting.

Again, Lane County urges you to agree to some other method for payment of these IAP contributions. The cost to employers, plus the cost and confusion created with current and past employees, does not make actual collection from current and past employees a reasonable course of action. We have brainstormed other solutions with fellow employers and with PERS staff. The only option that seems viable to avoid the cost and confusion is to pay these retroactive contributions, and any appropriate earnings, from the Contingency Reserve.

We realize that there is a hesitancy to use the Contingency Reserves because of establishing a "past practice," or of reducing the reserve. However, there are good and valid reasons for using a reserve, and the total cost of these retroactive contributions will be less than 1% of the current Contingence Reserve balance.

At this time Lane County continues to support the option of using the Contingency Reserve for these reasons:

1. This is a retroactive rule that could not have been anticipated at the time the County should have actually deducted the contributions from employees' pay;
2. Employers could not remit these contributions to PERS from the time the legislation was passed until May, 2006.

PERS adamantly refused to accept contributions based upon the fact that their computer system could not record the transaction. Lane County, like other employers, did not want to collect contributions with no indication from PERS as to if, when, or how we would be able to remit the contributions.

Thank you for reviewing and considering this information. If I can answer any other questions regarding this matter, please contact me.

Karen Artiaco
Risk and Benefits Manager
Lane County

From: ARTIACO Karen R
Sent: Friday, June 30, 2006 12:00 PM
To: helen.russon
Cc: SCHIFFER Dave; 'Maria Keltner'
Subject: RE: PERS Deductions from Payroll

Hello Helen –

Sorry to be a nag right before the big summer holiday, but we still haven't received a response from BOLI on the questions posed below. The PERS Board is scheduled to address this issue at their July Board meeting, and BOLI's interpretation on this matter may influence their decision as to how to implement this retroactive change.

Can I expect an answer next week?

Thank you,

Karen

Karen Artiaco
Risk and Benefits Manager
Lane County

From: ARTIACO Karen R
Sent: Tuesday, June 20, 2006 10:56 AM
To: 'helen.russon'
Cc: SCHIFFER Dave; 'Maria Keltner'
Subject: PERS Deductions from Payroll

Hello Helen –

Lane County needs clarification from BOLI on the rules regarding Deductions from employee's wages.

Lane County is a PERS-covered employer. All Lane County employees participate in the PERS/OPSRP/IAP programs as a condition of employment, and become members of the PERS system once they have completed the waiting period required by PERS. However, the County does not "pick up" the employee's 6% contribution to the IAP (Individual Account Program) that is administered by PERS. Lane County deducts the 6% IAP contribution from employee wages each pay period and forwards that amount to PERS.

The IAP began January 1, 2004, and the rules for the employee's 6% contribution changed from the PERS 6% contribution program that was in existence prior to that date. In July of 2005, the State of Oregon Legislature modified these new rules and made some of the modifications retroactive to January 1, 2004. PERS was not able to process the contributions that were mandated by these modified rules until May 1, 2006.

The rule change addressed what kind of earnings are subject to the 6% IAP contribution. The original rules said that Lump Sum Payments were NOT subject to the 6% IAP contribution. (Lump Sum Payments can be earnings such as the "sale" of Vacation Pay, or pay out of accrued Compensatory Time, or even retroactive pay due to raises that aren't processing timely, or settlement of union contracts, etc.) In July of 2005 the rules were amended to say that Lump Sum Payments ARE subject to the 6% IAP contribution, AND that the change was retroactive back to January 1, 2004. At that time PERS said its computer system could not accept and record these contributions and refused to accept the current or retroactive 6% contributions on Lump Sum Payments from employers.

As of May 1, 2006, PERS system is now able to receive these contributions and has told employers that the 2 and ½ years of retroactive contributions must be made up by the end of this calendar year. Since Lane County does not "pick up" the employee's 6% contribution, we must collect the contributions from employees.

A review of Lane County payroll records indicate that this change affects almost 200 past employees and 700 current employees. The total contributions amount to slightly more than \$200,000. The contribution amount ranges from less than \$5 to \$3,900. Almost 500 of our current employees would owe contributions on past earnings of more than \$100.

Our questions to BOLI regarding this issue are:

1. ORS 652.610 (3) states that no employer may deduct part of an employee's wages unless (a) the employer is required to do so by law. Does the employee's 6% IAP contribution qualify as a deduction that is "required by law"?
2. If so, does the retroactive IAP contributions that we are now required to collect also qualify as a deduction that is "required by law"?
3. Would Lane County employees need to authorize the deductions for these retroactive IAP contributions in writing before Lane County could deduct these contributions?
4. If an employee refused to sign such an authorization, could Lane County deduct the contributions anyway, based upon the fact that the retroactive contributions are "required by law"?
5. Is there a maximum deduction from wages that an employee can authorize?

6. If the answer to (4) is YES, is there a maximum amount that can be deducted from wages if there is no signed authorization?
7. If there are any other BOLI rules that could affect this situation that I have not raised, please advise us about them.

If I can provide more information about this issue, please contact me directly. It would also help if I could receive your response by Friday, June 23. The employers that are affected by these PERS rules are meeting with PERS the first part of next week to explain our concerns and the work load that will be faced if PERS continues with its current directives.

Thank you for your assistance in this matter.

Karen

Karen Artiaco
Risk and Benefits Manager
Lane County



FINANCE DEPARTMENT

555 Liberty St. SE • Salem, OR 97301-3503
Phone: 503-588-6040 • Email: finance@cityofsalem.net • Fax: 503-588-6251

July 7, 2006

PERS Board
c/o Steve Rodeman
Public Employee Retirement System
PO Box 23700
Tigard, OR 97281-3700

RE: HB 2189 Implementation
IAP funding retroactive contributions

This letter is to provide the PERS Board with public comments on subject for the Board meeting of July 21, 2006.

Background

The City of Salem, employer #2101, was a Member Paid Pre-Tax (MPPT) employer for several employee classifications (per bargaining units).

Salem's demographics as they apply to the retroactive portion of HB 2189 implementation are:

- Salem has 829 employees who had a lump sum payment in 2004 through 2006. This is about 55 percent of our regular full time employees.
- Of the 829, 133 were employees who got lump sum payments of accrued vacation and/or compensatory time at termination from service.
- The individual amounts owed for the member's 6% contribution range from minimal amounts to nearly \$2,100.00.
- Most of the lump sum payments were made to Public Safety and General Services employees who elected to "cash out" a portion of their accrued vacation, in compliance with the rules set forth in their collective bargaining agreements.

The City of Salem initially implemented applying the 6% IAP to all lump sum and vacation payoffs on January 1, 2004. Subsequently, PERS credited the monies back and reported that the lump sum payment was no longer subject salary and would not take the employee's payment, although for the employer's contribution the lump sum was subject salary so the employer contribution would be made. After lively discussions with retirees (who believed that the payment should be subject to the 6%), we refunded the 6% withheld.

SL1

Conclusion

The City of Salem fully supports the PERS staff recommendation to use contingency reserves to pay the employee's 6% contribution for the retroactive period of January 1, 2004 through April 30, 2006. The following is a summary of our reasons for this support:


- 1) *Prevents disparate treatment* - Whereby active employees will be required to pay the 6%, while terminated employees may not, leaving the employer open to potential litigation
- 2) *Eliminates burdensome administration* –
 - a) Associated with collections
 - i) Finding and collecting monies from people who are no longer employees, or from former employees who are deceased.
 - ii) Utilizing collections agencies or small claims court to collect monies from retirees or deceased members.
 - b) Entering into over 100 payroll deduction agreements to collect monies from current employees.
 - c) Eliminates figuring out what happens to terminated employees that have cashed out their IAP on de minimus rules
 - d) Assessing and reporting potential tax liability arising from an employee never reimbursing the employer.
 - e) Eliminates union action against the City of Salem, for decisions made by PERS.
- 3) Solution acknowledges the employer's efforts to actually withhold and remit the monies to PERS.
- 4) Potential issues of accrued interest lost during this retroactive period which is a current issue with various unions who represent employees at the City.

If the PERS Board endorses utilizing the contingency reserves, then we would further recommend that the contingency reserve funds be credited to the employers that have already paid the 6% IAP through the PERS EDX system. Then, for the employers that have not paid the 6% IAP, the funds should be applied to the employer's accounts and the employer apply these funds through the PERS EDX system. This would assure that the employer's individual payroll system matches with the PERS EDX system historically. This will take into consideration the employers who have diligently worked to pay the retroactive liability over the past couple of months and prevent possible doubling up on the employee/retiree IAP account, further compounding this situation.

If the PERS Board adopts an alternative solution, we strongly request that PERS take the lead in communicating information to all members accordingly. To do otherwise would imply employers' negligence, which in this situation is clearly not the case.

Sincerely,


Constance L. Munnell
Director of Human Resources


Tony Mounts,
Director of Administrative Services/CFO

June 15, 2006

To: Chair, Michael Pittman, and Members of the PERS Board

Re: Retroactive contributions to the IAP required by HB 2189 (2005)

Employers participating in the PERS Alliance have spent considerable time and energy developing and reviewing numerous options to deal with the HB 2189 requirement that 6% contributions to the IAP are to be paid on additional subject salary retroactive to January 1, 2004. We have met with PERS staff to discuss and explore options.

Mr. Rodeman outlines four options in his June 16, 2006 memo to the Board.

The Alliance strongly supports using funds in the Contingency Reserve to cover all of the HB 2189 retroactive 6% IAP contributions. The retroactive period for the HB 2189 change in the definition of subject salary has been identified as January 1, 2004 through April 30, 2006. The estimated amount required is \$3.82 million.

This option is fair across the board. All of the HB 2189 retroactive IAP contributions for all members will be paid from the contingency reserve. Members and employers will not have amended or additional income tax reports to deal with. Members will not be receiving collection notices or entangled in legal collection proceedings. Neither PERS nor employers will be faced with trying to collect these retroactive contributions from members. Employers will not be forced to defend against union grievances or unfair labor practices. Employers will not be forced to deal with budget issues or fiscal year accounting issues. Use of the Contingency Reserve is the best option for the unexpected, unanticipated retroactive changes made in HB 2189.

The Alliance is opposed to the option that requires the employers to pay all of the retroactive HB 2189 IAP contributions. This option opens the door to grievances and unfair labor practices against employers. This option forces many employers (through no fault of the employer) to pay the 6% IAP contributions in direct violation of their policies that the 6% IAP contributions are deducted from employee pay.

The Alliance is opposed to the option that the Contingency Reserve cover the retroactive HB 2189 member paid 6% IAP contributions and not the employer paid 6% IAP Contributions. In fairness, the Contingency Reserve should be used to cover all of the additional HB 2189 6% IAP contributions. Both were unexpected and unanticipated additional costs.

The Alliance is opposed to the option that the Contingency Reserve only cover the retroactive HB 2189 MPPT and MPAT 6% IAP contributions for those members employers are not able to collect from.

The Alliance is also opposed to charging employers for imputed earnings on HB 2189 IAP contributions for 2004, 2005 and 2006. If imputed earnings are credited to IAP accounts for 2004, 2005 and/or 2006, the Contingency Reserve should be used to cover them.

Thank you for your consideration of Employers' PERS Alliance thoughts and recommendations on this matter.

Submitted by Maria Keltner On Behalf of the Employers' PERS Alliance.

BENNETT, HARTMAN, MORRIS & KAPLAN, LLP

ATTORNEYS AT LAW

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June 14, 2006

BY FAX AND MAIL

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



Re: HB 2189
Employee Contributions on Lump Sum Payments
Our File No.: 5415-237

Dear Steve:

The purpose of this letter is to comment on behalf of the PERS Coalition on your June 16, 2006 letter regarding the implementation of HB 2189, identified as agenda item D.2 for the upcoming board meeting. Prior to addressing the substance of the proposals contained in that letter I think it's appropriate to comment on the process which PERS staff has apparently followed in developing these recommendations. In the letter there are several references to employer proposals as well as employer meetings which apparently took place on this issue. To the best of my knowledge no member of the PERS Coalition has been given any opportunity to participate in these discussions nor to make any proposals regarding the implementation of HB 2189. This is particularly troubling since, as I'm sure you are aware, it was the PERS Coalition who lobbied for the passage of HB 2189 as the issues contained in that legislative enactment are of importance and concern to the PERS Coalition. It is not acceptable to the Coalition to find that all the alternatives have been fully discussed with employer representatives while the Coalition has been given a few short days to comment on those policy alternatives prior to the board meeting.

Turning to the substance of the policy discussion, as I've stated in previous correspondence the PERS staff discussion begins with the incorrect premise that the 2003 legislature changed the definition of salary for PERS Chapter 238 participants for purposes of calculating IAP contributions. That position fails to take into account the very clear language of ORS 238A.025(3)(a), which provides very specifically that PERS Chapter 238 members continue to receive all benefits as provided in Chapter 238. A review of the derivation of this legislative language shows that it was adopted at the same time that the legislature decided to move from the transition account concept to the inclusion of PERS Chapter 238 members in the IAP program. The language could not be more clear. As you know, there was no change to the definition of salary for ORS Chapter 238 participants and therefore it is our position that PERS employers continue to have the obligation to either deduct or pay the full 6% contribution based on the ORS Chapter 238 definition.

The reason the PERS Coalition lobbied for the passage of HB 2189 was to avoid the necessity for another long, drawn-out lawsuit involving PERS. The underlying premise of the PERS Coalition is that the 2003 legislature did not change the definition of salary for ORS Chapter 238 participants, and that HB 2189 clarified that issue. Most importantly, the reason for the passage of HB 2189 was to make sure that PERS participants were made whole on this issue. This includes not only the underlying payments but also accrued earnings.

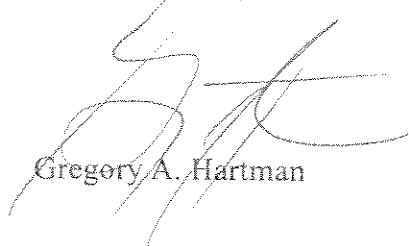
Given our different understandings of the law which applies in this instance, it is not surprising that the PERS Coalition would reach different conclusions about the proper disposition of these issues.

1. The obligation to either withhold the 6% contribution or to pay that contribution is and has always been the responsibility of the employer (ORS 238.200). It is unfortunate that there may have been a misunderstanding of the law in this instance but that does not change the basic fact that the employer bears the responsibility of paying the 6% on salary as defined under ORS Chapter 238. The issue of whether the employer can now collect those funds from their prior employee is an issue best resolved between the employer and the employee.

2. The PERS Coalition is very concerned about any proposal for the use of the contingency reserve. As you are aware on many occasions we have made it clear that the PERS Coalition does not share the broad view of the PERS staff that the contingency fund can be used for any purpose designated by the board. It is particularly troubling that at a time when the board has adamantly asserted its fiduciary duty to collect overpayments from PERS retirees that at the same time staff would suggest the possibility of the use of the contingency fund to deal with what is obviously an employer liability.

3. It is the position of the PERS Coalition that Tier One and Tier Two retirees have been entitled at all times to payment into the IAP account based on the salary definition contained in ORS Chapter 238. The specific purpose of the passage of HB 2189 by the 2005 legislature was to make certain that employees are made whole on this issue. Any solution to this problem which does not result in employees being made whole will not be acceptable to the PERS Coalition.

Yours very truly,



Gregory A. Hartman

GAH:kaj

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cc: PERS Coalition



Lane County Board of Commissioners

Bill Dwyer
Bobby Green, Sr.
Faye Hills Stewart
Anna Morrison
Peter Sorenson

June 14, 2006
WD bc/bd/06019/T

Mr. Michael Pittman, Chair
PERS Board of Directors
Public Employees Retirement System
P.O. Box 23700
Tigard, OR 97281

Dear Mr. Pittman:

Lane County appreciates the opportunity to share our thoughts with the PERS Board regarding the issues faced in implementing the section of HB2189 that mandates IAP contributions on Lump Sum Payments. Lane County staff has met with PERS staff and other stakeholders to understand the effect of this legislation on PERS, on employers, and on PERS participants, and to brainstorm options for the administrative challenges we all face in trying to implement this change.

The language in this bill directs PERS to collect 6% IAP contributions from current Lump Sum payments, as well as from Lump Sum Payments from January 1, 2004, forward. Lump sum payments include such earnings as Retroactive Pay due to settlement of labor contracts; payments for Compensatory Time that employees have elected to take instead of Overtime Pay; possible sell-back of Vacation Time; and any allowable payment for Vacation Time or Sick Time at time of termination/retirement, etc. Even if employers could have sent the IAP contributions on these earnings to PERS at the time the legislation was passed, PERS' reporting system was unable to accept these contributions until May 1, 2006.

Trying to now collect the 6% IAP contributions that should have been withheld over a two and one-half year period from employees, as well as retirees, terminated employees, and deceased employees, will require an inordinate amount of administrative time for employers who, like Lane County, do not pick up the employee's 6% IAP contribution.

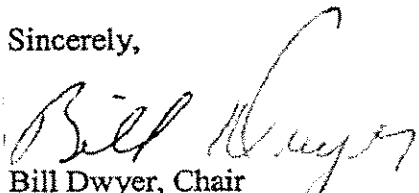
Almost 900 of our current and former employees are subject to these retroactive contributions on Lump sum Payments. Almost 200 are no longer employed by Lane County. The total amount Lane County would be expected to collect is over \$200,000. We would need to collect between \$1 and \$3900 from these current and former employees, with the average contribution being \$225. Even current employees would have difficulty paying this amount from one paycheck, so Lane County would be faced with negotiating and monitoring individual re-payment agreements with most of the persons affected by this change.

Therefore, Lane County supports Option 2 contained in the PERS staff memo on this subject. This option would allow the 6% IAP contribution to be paid from the Contingency Reserve for all employees who received Lump Sum Payments during this period, whether the employer picks up the 6% contribution, or the employee contributes the 6% payment. Of the four options described in the Board Memo, we believe that this is the most equitable solution for all employers and PERS participants. We would also support Option 3 that would allow only those employers who do not pick up the employees' 6% contribution to be reimbursed from the Contingency Reserve. Both of these solutions require significantly less administrative time to implement than the other two options.

We also agree with PERS' staff analysis of the ability to use the Contingency Reserve for this purpose. The legislature passed a retroactive rule that was not anticipated, and it could not be implemented for almost an additional year due to PERS reporting restrictions. Since the Contingency Reserve is not included in calculating Employer Rates, using a portion of the reserve will not affect those rates, nor will it affect earnings available for distribution to participant accounts. The potential \$3.82M cost to the Reserve is a very small portion of the \$250M+ in the Contingency Reserve, and does not affect the separate Rate Guarantee Reserve that supports Tier I Fixed Accounts.

Director Paul Cleary and other members of PERS staff have been very helpful in this evaluation, both in their research and clarification of the issues, as well as the time they devoted to several meetings with representatives of both employers and employee groups. This is yet another good example of the positive results of involving all stakeholders in trying to find the best solutions under sometimes difficult operational constraints.

Sincerely,



Bill Dwyer, Chair
Board of Lane County Commissioners



FINANCE DEPARTMENT
Finance Director
Alison Chan

www.ci.medford.or.us

CITY OF MEDFORD

Telephone: (541) 774-2033
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TO: Members of the PERS Board

FROM: Alison Chan, Finance Director, City of Medford, OR

SUBJECT: HB 2189 and Employee Contributions on Lump-Sum Payments

We have attended the last two meetings PERS held with employers to resolve how best to fund and administer this retroactive requirement. The administrative impact to our payroll department is tremendous. Please read our comments as they relate to each of the four options discussed at the June 2, 2006 meeting. The letter from Steven Patrick Rodeman, outlines several of the problems and issues municipalities face on this issue; therefore, I will not repeat them all and will focus primarily on the options discussed. We are in favor of option number 2 as the most reasonable choice. (The only other viable option is number 3, which causes problems with current operating budgets.)

OPTIONS

1. Employers pay all the contributions, whether EPPT, MPPT, or MPAT, in addition to their employer contribution, associated with these re-posted transactions. These lump-sum payments amounted to \$63.7 million in salary that was backed out of the employers' reports. When they re-post these transactions in the correct categories, IAP contributions of about \$3.82 million would become payable, all paid by employers. This option puts the onus of solving the financial implications of this retroactive legislative change wholly on the employer's shoulders.

"Option 1" is not an acceptable option for several reasons with regard to MPPT. The first and most obvious reason is that each employer would be treating their employees differently, both at the agency level and the state level which is asking for lawsuits. Some employers would pay these contributions in full on behalf of the employees which would require funds that were not budgeted during the current cycle and may cause financial hardship. Other employers would pay on behalf of the employee and attempt to collect from employees and former employees. This would be an administrative nightmare collecting from former employees as we may not be able to find them and if we do and they refuse to pay,

will we have to take them to court? In any case it wouldn't be fair to the current employees if we are collecting from them and not former employees. Another issue is that if these payments are treated as MPAT and the employer is unable to collect or only partially collects from the employee/(former employee) the employer now has a taxable fringe benefit that they must report and will have to pay both the employee and employer Social Security and Medicare taxes. This option creates too many problems and causes too many administrative burdens. We don't have the staffing to support this option.

2. Charge the Contingency Reserve for all the employee contributions due from the re-posting of these transactions. Employers would re-post the lump sum payments and would then receive a credit payment from the Contingency Reserve for the 6% employee contribution associated with that lump sum payment. The Contingency Reserve would be charged for the estimated \$3.82 million to pay all contributions due on these payments, regardless of whether those contributions were originally due from the employer (EPPT) or the employee (MPPT or MPAT). This option makes the system as a whole absorb the costs of this retroactive legislative change.

"Option 2" is the preferred option and has the least administrative issues of all listed alternatives. This option is also the most fair, all members throughout the state are treated the same.

3. Have employers pay the EPPT portion of the resulting contributions (estimated to be \$2.84 million) and the Contingency Reserve pay for the MPPT and MPAT contributions (about \$980,000). This option would use the Contingency Reserve funds to pay for those employee's obligations without requiring employers to evaluate whether and how those contributions could be collected from the affected employee.

"Option 3" would be the second choice; however, this option will require adjustments to current operating budgets as this item was not anticipated and not budgeted for.

4. Have employers pay the EPPT portion of the contributions (again, about \$2.84 million), collect the balance of MPPT and MPAT contributions from employees that are available and able to pay, and only charge the Contingency Reserve for those employee-paid contributions (MPPT and MPAT) that employers certify that they are unable to recover from the employee. Under this option, employers and employees pay their share of the associated costs, and the Contingency Reserve is used as a back-up resource only when employers are unable to collect the contributions due.

"Option 4" is also not an acceptable option for all of the same reasons listed in "Option 1" and more. In addition to "Option 1" requirements, the employer would be required to report to PERS, all employees and former employees the employer couldn't collect from so the Contingency Reserve could fund that portion. This

option creates too many problems and causes too many administrative burdens for both the employer and PERS.

When you are making the decision, please consider the financial impact and the administrative impact your decision will have on employers. Thank you for listening to our concerns and suggestions.

Sincerely,

Alison Chan
Finance Director
City of Medford

Testimony at PERS Board Meeting 6-16-2006

Alison Chan, Finance Director, City of Medford

Thank you, my name is Alison Chan, I am the Finance Director for the City of Medford. We are in the situation where we have the mixed bag, where some employer paid, some member paid. Our biggest concern is on the member paid, they – and when you say that you don't think the contingency should be used for that, then when we got together with PERS several weeks ago, we said "Then you go after the members and try to get the money. Because we are going to be going after people that are deceased, that no longer work for the city; we don't know where they are, we said "You know where they are, because you pay retirement benefits." And the other thing we have said is "Give them the choice to pay it back." Because a lot of these people have already cleared out their IAP, why give PERS the money only to turn around and get it back. And PERS was saying that wouldn't work because you'd have to re-enter it with the boxes and from an EDX standpoint, that wasn't workable. But the flip is, then you, we're going to be treating the people from the City of Medford, as an example, differently, so we'll be able to collect it from the people that still work there but the people that are gone, we can't. We turn them over to collections? It raises a huge issue as far as that and then we have union issues. So then you're going to treat some union employees different than others? That's a lawsuit waiting to happen - so that's where the use of the contingency came in. Obviously, we'd like it for the employer portion as well, but I can understand what you're saying there, but at a minimum, I think the contingency should be used for the member-paid portion just from the collection standpoint. It's an administrative nightmare for the entity. That's my biggest concern.

ROCKLIN: In terms of numbers, any ideas for the City of Medford, because obviously not, at least not at my agency, not everyone would be subject to a lump-sum payment, but any idea what that means to the City of Medford in the terms of the number of employees?

CHAN: We have over seven-hundred and twenty-seven transactions that we have to re-post and from an administrative standpoint, we already have people working weekends to calculate that. But, the other thing that I wanted to say too, was ironically when you say "employers owe this money, they should pay it" – we tried to give it to you and you wouldn't take it. So to sit there and say now you're going to charge me interest on top is really a little-bit of a slap in the face 'cause we didn't agree with the interpretation when it was done.

ROCKLIN:in 2003?

CHAN: Um-huh. So that's where we stand.

ROCKLIN: So, that's helpful.



Oregon

Theodore R. Kulongoski

November 17, 2006

TO: Members of the PERS Board

FROM: Jeannette Zang, Administrator, Customer Service Division

SUBJECT: Customer Service Survey Results and Initiatives

MEETING	11/17/06
DATE	
AGENDA	D.3
ITEM	Survey

PERS conducted customer satisfaction surveys for members (including retirees) and employers in August 2006. Simultaneously, PERS contracted with Public Knowledge, LLC to conduct a PERS customer service and call center study. The results are presented below (including an earlier 2005 employer survey).

The 2005 Legislature adopted common customer service performance measures and survey questions for all agencies in all branches of state government. The measures require agencies to survey customers and report results in their budget presentations.

The 2006 surveys we conducted provide the baseline for future improvement. We will conduct yearly surveys that measure and trend improvement in our customer service.

PERS also contracted with Public Knowledge, LLC to assess the Customer Service Center's organization and operation and develop recommendations to improve customer service and better manage an escalating call center workload.

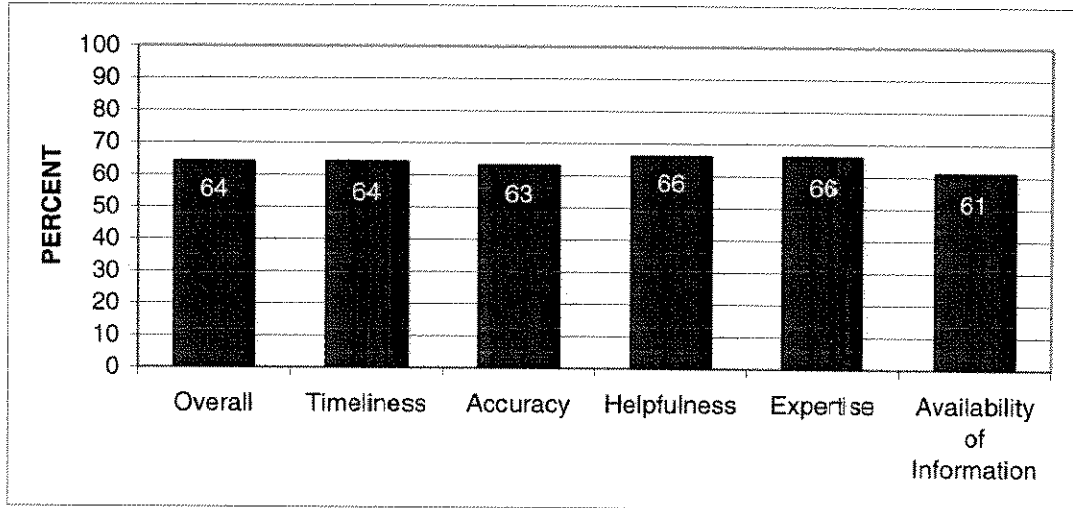
Member Customer Satisfaction Survey

Background

PERS posted a customer service survey on its website for approximately four weeks in August 2006. We also placed a hard copy of the survey in the August 1 retiree newsletter, *Perspectives*, that retirees could complete and mail to PERS. In total, we received nearly 2,000 responses, a number of which included individual comments.

We identified five key issues from the comments received as outlined below. We also describe our strategies to address the issues and the methodologies used in the survey.

Percent of respondents rating service good or excellent



Numerical results

How do you rate...	Percent				
	Excellent	Good	Fair	Poor	Don't Know
The overall quality of service?	36	28	14	19	3
The timeliness of services PERS provides?	37	27	13	20	4
PERS' ability to provide services accurately the first time?	38	25	12	20	5
PERS' helpfulness?	39	27	13	16	4
The knowledge and expertise of PERS employees?	37	29	13	13	9
The availability of information at PERS?	34	27	14	22	4

Key Issues

1. It is sometimes difficult to get consistent, accurate answers to questions.

Members request information through phone calls, e-mail, letters, and by visiting a PERS office. In calendar year 2005, PERS received approximately 180,000 member telephone calls and 32,000 member emails.

Survey comments indicate that regardless of the method members use to contact PERS, they sometimes cannot get satisfactory answers to their questions. The three most common complaints are:

- Members sometimes get inconsistent answers to questions from one staff member to another.
- Staff sometimes doesn't have answers to questions and doesn't get back with the correct answers as promised.
- Staff isn't knowledgeable in all aspects of the retirement plan.

Members also feel the wait can be too long on the phone, and that staff doesn't always return phone calls in the desired timeframes.

Resolution

To address this issue, we are:

- Continuing to offer core staff training in features of the PERS Chapter 238 (Tier One/Tier Two) and Chapter 238A (OPSRP) programs;
- Increasing customer service training for all CSD staff, including training designed specifically for Call Center staff;
- Creating an A-Z subject help directory that will be posted on the website, which Call Center staff will also use to answer member questions so members receive consistent answers;
- Distributing an internal newsletter to keep staff abreast of changes in business rules, OARs, policy decisions, and Board actions; and
- Ensuring Call Center response scripting uses the same verbiage as publications and the A-Z directory to provide consistent answers.

2. The website is difficult to navigate.

Survey comments indicate that members find the PERS website is sometimes too difficult to navigate, that information can be difficult to find, and that the website is not kept up to date in all aspects.

Resolution

We are in the process of adding features to the PERS website to simplify navigation and make information easier to find. The changes are scheduled to occur by the end of 2006. Recently announced changes in the state's website template that all agencies use will also improve navigation and usability.

We are developing separate A-Z subject help files for Tier One/Tier Two members and OPSRP members where topics will be listed alphabetically (i.e., account balance, address changes, annual statements, etc.). Visitors will be able to click on a particular topic for information, including any related forms from the homepage.

We are also developing sections dedicated to:

- Top Ten Telephone questions
- What do I do if I...
- Ready to retire?

3. Members are upset about benefit reductions.

Members feel strongly about benefit reductions that resulted from the *Strunk* and *Eugene* decisions. Some feel betrayed and frustrated because their retirement decisions were based on information provided by PERS. Some believe that they have a contract right to what was originally credited in 1999. Some are also angry about the schedule PERS is following to adjust accounts for all the factors affected by *Strunk/Eugene* (e.g., cost-of-living adjustments, earnings crediting adjustments, etc.).

Resolution

The *Strunk/Eugene* project affects approximately 38,000 benefit recipients who received benefits based on the now-revised 1999 Tier One regular account earnings crediting (revised from 20% to 11.33%). These individuals were notified of the benefit adjustment process in March 2006.

PERS is providing a detailed recalculation letter to each individual that shows the benefit adjustment and amount of overpayment, and how the actuarial reduction method recovers the overpayment.

The *Strunk/Eugene* account processing project is underway and PERS has created core principles and success criteria for the task.

Core Principles

- Negative adjustments to a retiree’s monthly payment are as small as possible, but collect the required funds,
- The account processing priority and order is transparent and communicated to stakeholders for input,
- Communications are complete, understandable, concise, and proactively answer potential questions,
- The project is executed efficiently, but does not put undue burden on other PERS operations,
- The impact to the RIMS Conversion Project is planned and managed for success, and
- All adjustments to an account are incorporated into a “one touch” calculation.

Success Criteria

- Recipients incur no disruption to monthly benefits,
- All accounts are identified and adjusted,
- Account and benefit adjustments are complete, accurate, and fully auditable,
- Invoicing and accounts receivable processes optimize collections,
- No data is lost or corrupted due to adjustments, and
- The project is completed within the approved budget and timeline.

An estimated timeline to recalculate benefits and notify individual benefit recipients of the specific effect on their benefit payments is shown below.

Benefit Type

Benefit Adjustment Timeline

Recipients with estimated benefits

Convert to actual benefits

February 2006 – September 2006

Recipients with monthly benefit payments

Divorce

April 2006 – June 2009

Non-COLA freeze benefits¹

September 2006 – March 2007

COLA freeze benefits²

April 2007 – June 2009

Death benefits

January 2007 – June 2009

Police and Fire units

April 2007 – June 2009

Recipients who had a lump-sum benefit payment(s)

Lump-sum benefits ³	April 2006 – December 2007
Total lump-sum benefits ³	September 2006 – March 2007
Death benefits (post-retirement deaths)	April 2007 – June 2009
Withdrawals ⁴	April 2007 – December 2008

¹. The group of benefit recipients not affected by the COLA freeze effective July 1, 2003.

². The group of benefit recipients affected by the COLA freeze effective July 1, 2003.

³. Those benefit recipients who took a partial or total lump-sum retirement.

⁴. Those recipients who withdrew their PERS accounts.

Additional *Strunk/Eugene* implementation information is available on the PERS website:
<http://oregon.gov/PERS>.

4. PERS has confusing forms and instructions.

Members feel that many PERS forms are complex and difficult to use.

Resolution

PERS tries to use plain language and best practices when creating forms and instructions. Because of the complexity of the PERS system, we frequently have more than one step in our processes and more than one division takes action when processing form requests. This means the forms have to work both for our members and support our processes. As a result, forms can become complex. However, staff will continue to work to simplify forms wherever possible.

We have a section that manages forms and a Forms Committee that strives to simplify forms whenever possible. In the past three years, the agency has reduced the number of forms from over 400 to 280, despite the fact that we had to create many new forms with the addition of the OPSRP Program and the Individual Account Program. The Forms Committee holds focus groups when possible to obtain member input before releasing forms.

Three years ago, the section that manages forms gathered numerous forms from other retirement systems to look for ways to simplify our forms, and we will continue to seek ways to simplify forms.

The agency offers online classes to help members to complete retirement forms and will pursue additional opportunities to assist members with form completion (e.g., Turn-In Forms sessions).

The agency is also creating a forms management program to ensure that all forms are easy for members to use, collect the necessary data, and can be processed efficiently.

5. Transactions sometimes take too long.

Survey comments indicate that members are sometimes dissatisfied with the length of time it takes to get benefits. Some members relayed stories about having to send in the same information a number of times. Others cannot understand why it takes up to three months for benefits to begin.

Resolution

By statute, the agency has 92 days to begin benefit payments. We strive to send benefits out earlier than that, but we must work with employers and verify that member information is correct before beginning benefits. Our six-year strategic plan performance objective is to begin benefit payments within 45 days of the effective retirement date.

To improve transaction time, we are:

- Working with employers to ensure data is correct and employment separations are reported in a timely manner
- Moving data validation upstream of the retirement calculation process,
- Using a new electronic employer reporting system structured to reduce the number of data errors, and
- Developing information workflow and document scanning processes to track information submittals and eliminate requests for duplicate information.

Methodologies

To maximize member response, PERS created this survey online and posted it in a prominent spot on our home page. We also published the location of the survey in our member and retiree newsletters, inviting members and retirees to participate. The online survey ran for four weeks.

Further, we placed a hard copy of the survey in the newsletter that goes to retired members and they had several weeks to complete and mail the survey to PERS.

We used surveymonkey.com to create the survey, using the six key questions the state requires all state agencies to use for the Customer Satisfaction Performance Measure survey. We also used surveymonkey's tools to analyze the survey responses.

The survey included a comments section. The comments have been summarized and addressed in the Key Issues section.

The survey report combines the online and hard copy responses, even though only retired members received hard copies.

Items of note:

1. The survey was posted on our website and while we asked if the respondent was a PERS member, anyone could take the survey.
2. While we limited survey responses to one per computer, someone could respond more than once by using a second computer.
3. Only retired members received hard copies of the survey. When evaluating hard-copy responses only, it appears that those who retired before 2000 are more satisfied with PERS than active members or more recent retirees whose benefits have been affected by legislation and court decisions.

Employer Customer Satisfaction Survey

Background

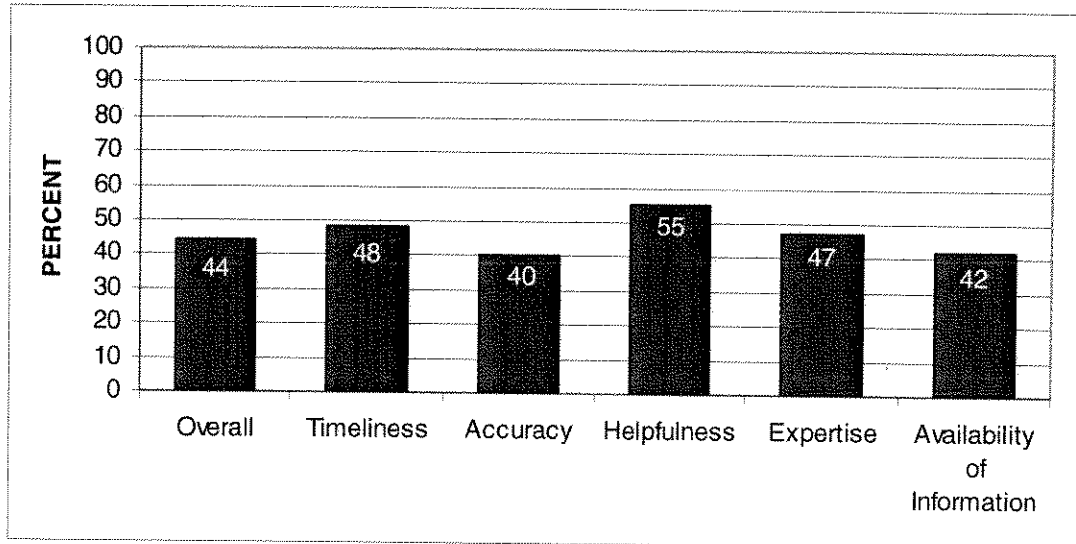
PERS surveyed employers in 2005 and 2006. The results are discussed below.

2006 Online Survey Summary

PERS posted an online employer satisfaction survey for approximately two weeks at the end of August 2006. Employers received an e-mail inviting them to take the survey; nearly 350 responses were received, a number of which included individual comments.

We identified five key issues from the comments received as outlined below. We also describe our strategies to address the issues and the methodologies used in the survey.

Percent of respondents rating service “good” or “excellent”



Numerical results

How do you rate...

	Percent				
	Excellent	Good	Fair	Poor	Don't Know
The overall quality of service?	8	36	40	17	0
The timeliness of services PERS provides?	10	38	38	14	1
PERS' ability to provide services accurately the first time?	8	32	34	24	1
PERS' helpfulness?	17	38	37	8	0
The knowledge and expertise of PERS employees?	10	37	38	14	1
The availability of information at PERS?	8	34	38	20	1

Key Issues

1. Electronic Data Exchange (EDX) is frustrating and too time consuming.

Survey comments indicate that many employers are frustrated with EDX. Employers feel there are too many changes to EDX, it is too time consuming, it has too many problems, and it does not do everything employers need.

Resolution

EDX has been developed over the last two years and continues to evolve to meet both existing and new reporting requirements. The reporting process can be more time consuming for employers because data is reported on a payroll basis instead of once a year. Also, more information is required from employers including work period begin/end dates, average overtime, and FTE. However, reporting such information on a regular basis will ultimately help employers in the long run and better serve our members in determining their membership eligibility and future benefits.

Recent EDX enhancements include:

- Improved layout of the Year-to-Date Wage & Contribution Summary,
- Status check screen to provide waiting time status,
- Eligibility and pension plan information,
- Ability to view demographic information and work history for employees,
- A new eligibility report for those nearing 600 hours,
- Electronic submission of salary certification and disability forms, and
- Increased ease of retroactive changes for job class, position status average overtime, and FTE.

EDX enhancements scheduled for mid-2007 include:

- Employers will be able to complete disability information and salary certifications for both PERS Tier One/Tier Two and OPSRP members on-line (there should be no paper forms for employers to complete after this release),
- New EDX Status check page: employers will be able to see the current plan, waiting time status, and eligibility information for someone before they begin reporting their hours,
- Ability to view and download all current employee home addresses listed in EDX; no need for an employer to “search” for the last Detail-1 address change record,
- Eligibility report will show for all employees nearing 600 hours: the report is split into those with and those without contributions to help reduce the end of year “contribution corrections” workload crunch,
- Simple “One Click” contribution correction option (for PERS use) will allow PERS to accurately “back out” or “back in” year-to-date contributions for a member (reduces employer’s workload), and
- More information will be included on employer statements including detailed UAL information and side account payments.

PERS has expanded training statewide (15 formal EDX training sessions held at PERS headquarters since August 2005). The subject-specific training focuses on complex program provisions such as eligibility and part-timers and communicates our focus on data quality and reporting issues like waiting-time and service/FTE reporting codes. A total of 21 presentation sessions will be completed during the last quarter 2006, with 14 sessions scheduled in November alone. PERS expects more than 400 employer staff to attend these statewide sessions.

The employer outreach program also includes speaking engagements to discuss PERS and employer reporting via EDX, such as at the recent OSBOA (Oregon School Board

Administrators) and OMFOA (Oregon Municipal Finance Officers Association) conferences, each with over 100 employer staff in attendance.

2. PERS does not always work in concert with employers.

Survey comments indicate that some employers feel that PERS has double standards, i.e., PERS fines employers for late reporting and payment, yet PERS takes a long time to return employer phone calls or to respond to employers' request for help.

Additionally, sometimes PERS is perceived as blaming employers for problems that are PERS' responsibility. For example, if a member calls PERS with a problem, PERS sometimes tells the member to call his/her employer or says the employer has not sent in required documents that the employer, in fact, has submitted.

Resolution

We recently assigned staff members to individual employers. This allows employers to have a single point of contact for continuity in solving problems and answering questions.

We have established service standards for employer responses that also allow employers to escalate any question or concern to PERS management.

PERS has recently taken steps to improve EDX availability and performance with network configuration and design changes. Due to the employer reporting process through EDX, there may be occasions when a member will be redirected to his/her employer because certain member data can only be provided by the employer rather than received directly from the member. In the past, PERS may have contacted employers directly on behalf of members but, given the volume and nature of data received, this is not always possible. With the pay-period based reporting process it is important that members and employers work together with PERS regarding any issues or questions that may affect the member's account.

3. It is difficult to get consistent, accurate answers to questions.

Employers request information through phone calls and e-mails. For the fiscal year ending June 30, 2006, the PERS Employer Call Center received nearly 29,000 telephone calls and 22,000 emails.

Survey comments indicate that regardless of the method members use to contact PERS, employers sometimes cannot get satisfactory answers to their questions. Responses indicate three primary reasons:

- They sometimes get inconsistent answers to questions from one staff member to another.
- Staff doesn't always have answers to questions and doesn't get back with the correct answers as promised.
- Staff isn't knowledgeable in all aspects of the system.

Employers also feel the wait can be too long on the phone, that staff does not always return phone calls, and the Employer Call Center should not shut down at noon.

Resolution

To address this issue, we are:

- Increasing training for all CSD staff, including training designed specifically for staff that work with employers to enhance responsiveness;
- Creating an employer A-Z subject help directory that will be posted on the website for reference by employers. Staff will also use this directory to answer employer questions so employers receive consistent answers;
- Distributing an internal newsletter to keep staff abreast of changes in business rules, OARs, policy decisions, and Board actions (e.g., HB 2189 resolution); and
- Ensure that a subject-matter expert handles phone call escalations.

Methodologies

To maximize employer response, we created this survey online and e-mailed all employers inviting them to participate. The survey ran for two weeks. We set the survey so more than one employee per employer could respond since we often interact with more than one employer contact.

We used surveymonkey.com to create the survey, using the six key questions the state requires all state agencies to use for the Customer Satisfaction Performance Measure survey. We also used surveymonkey's tools to analyze survey responses.

The survey included a comments section. The comments have been summarized and addressed in the Key Issues section.

2005 Online Survey Summary

PERS posted an online employer survey for approximately two weeks in December 2005. We received nearly 350 responses. The focus was the use of the PERS electronic reporting system, EDX.

We used this survey to assist in strategic planning for our employer outreach, communications, and education offerings.

Numerical results

	Percent				
	Daily	Weekly	Monthly	Less than monthly	We don't
How frequently do you call or e-mail the EDX Support team?	3	14	22	58	4
How often do you refer to the PERS Employer Website?	4	23	42	26	4
How often do you refer to the PERS EDX guide?	1	4	17	55	23
How often do you refer to FAQs (Frequently Asked Questions)?	0	2	16	56	26
How frequently do you refer to PERS Employer Announcements?	1	9	37	41	12
How often do you use the Year-To-Date Wage & Contribution Summary feature to determine if your year-to-date payroll matches what has been reported to EDX?	2	4	26	43	25

On a scale of 1 (Novice) to 5 (Expert), please rate your knowledge and skill level in the following areas:

	Percent				
	(Novice) 1	2	3	4	(Expert) 5
Using EDX	7	10	42	36	6
Determining PERS/OPSRP eligibility	15	16	36	27	6
Creating reports and adding records	7	12	36	37	10
Correcting suspended records	11	19	33	32	5
Using EDX statements	12	13	30	33	12

Rate the following items on the level of importance to you:

	Percent				
	Not Important	Somewhat Important	Important	Very Important	Absolutely Critical
In-person beginning EDX training ("EDX 101")	17	19	27	24	14
Contact and help from PERS during Annual Reconciliation	1	6	19	35	39
Online EDX manual	5	17	36	31	11
Ability to e-mail PERS with EDX questions/problems	2	10	22	37	30
Quarterly newsletter	4	19	38	33	11
Beginning and Intermediate EDX classes	3	16	33	31	16

Methodologies

To maximize employer response, PERS created this survey online and e-mailed all employers inviting them to participate. The survey ran for two weeks.

We used surveymonkey.com to create the survey.

Public Knowledge's Customer Service and Call Center Study Results

SCOPE, OBJECTIVES, AND METHODOLOGY

PERS contracted with Public Knowledge, LLC to assess the PERS Customer Service Center's (CSC's) organization and operation and develop recommendations to improve customer service and better manage an escalating call center workload.

The assessment reviewed the staff levels and technology used in the call center and included internal and external reviews to assess the information types, delivery methods, and information flows used for both internal and external customers.

The internal assessment included interviews, job shadowing, researching industry "best practices," reviewing historical information, and developing business process maps.

The external assessment relied on member focus groups, visits to comparable organizations for benchmarking, reviews of similar organizations for use of technology, and researching industry "best practices."

Public Knowledge, LLC identified a number of agency strengths that form a solid foundation to improve customer service:

- A call center staff that is truly dedicated and hard working; they display both strong teamwork and a caring attitude toward their jobs.
- A centralized Information Services Division is available to support the agency's IT needs/solutions, complemented by a CSD Tech Team.
- An effective Computer Telephone Interface (CTI) Management System.
- PERS follows established project management objectives.
- The agency's leadership team desires change.

This report is an overview of the findings and recommendations, and includes a summary of the actions PERS is undertaking to improve customer service and make sure the customer has a positive service experience.

FINDINGS, RECOMMENDATIONS AND ACTIONS

Customer Service Culture

Findings: Customer service responsibility has been delegated to the call center and employer service teams, and is seen as a secondary responsibility in other divisions and units. As a result:

- There is limited focus on increasing first call resolution of customer requests.

- Customers are not assured of a single point-of-contact that will follow their inquiries through to completion.
- Customers frequently are handed-off to other units, but there are no service level agreements governing how quickly those units must respond.

Recommendation #1: Create a Customer Service Culture

Make customer service an enterprise-wide priority by creating a common definition of customer service at PERS which is shared by all business units, and define and quantify customer service standards to measure performance and set targets. In addition, the enterprise-wide model should improve cross-division collaboration and target complementary technology to better serve the customer.

Implementations Actions for Recommendation #1

Delivering high-quality customer service is one of the major goals included in PERS' six-year strategic plan. Critical to success will be creating a shared vision of customer service across the agency and making sure everyone knows their role and responsibility in delivering great service. In late 2006 and early 2007, PERS will articulate a common definition of customer service, and will conduct all-staff training on our customer service vision and service expectations. Also anticipated in our six-year strategic plan, are other customer service strategies and tactics to ensure cross-divisional pollination and collaboration, including expanding technology to help both internal and external customers meet their evolving customer service needs.

Customer Calls and Complaints

Findings: Compared to benchmarked states, PERS' call center has three times more calls and the average length of each call is longer. General customer satisfaction is higher in other jurisdictions and customer calls and complaints are resolved in fewer calls or contacts. In the member focus groups, members indicated they contact OPERS when:

- they cannot find the information on the website or do not trust the information;
- they receive confusing communications;
- emails and correspondence are not answered in a timely manner;
- application for benefits take longer than expected to process; or
- applications involve an iterative process that requires multiple customer contacts.

Recommendation #2: Attack Drivers of Calls and Complaints

- Foster communication between business units and call center management so that actions likely to increase call volume are anticipated and if possible, dissipated. If information needs to be sent that will cause higher call volumes and complaints, wherever possible push this information to customers in advance.
- Drive inquiries not requiring human interaction to the website and the automated phone line.
- Move away from the state's e-government website format and develop a customer-focused site that allows customers to answer more of their own questions via a self-service website. Self-service features should: include basic account information; allow forms to be submitted online; and give members access to benefit status information, etc.

- Refer low frequency/high complexity calls to subject-matter experts in the relevant divisions.
- Maximize the number of calls that can be resolved on first contact. If calls cannot be resolved on first contact (through a referral), divisional subject-matter experts should make an appointment to call members back with information/answer/resolution.

Implementation Actions for Recommendation #2

Numerous initiatives are underway to reduce call volume and eliminate complaints.

Specifically,

- On all mass communications, PERS is alerting both internal and external customers of the content of the communications in advance of the publication date, via postings on PERS' website and other partners' web sites, publication in *Perspectives*, and emails to employers for dissemination to PERS' members;
- On all correspondence, PERS is editing letters so the explanations and possible actions are written in simple and understandable language to limit misunderstanding and confusion;
- PERS has implemented a new telephone system that allow us to redirect high complexity calls to subject-matter experts, with the goal of achieving first-call resolution; and
- PERS is revising its website to make navigation more intuitive to the user and to make finding information easier (the goal is no more than three-clicks to the answer). The revisions will be rolled out by the first quarter 2007. In addition in 2007, PERS will be one of the first state offices to convert to the State of Oregon's new website templates that will enhance content organization, display, and navigation.

Call Center Environment

Findings: PERS' call center is partially dedicated (50% of the day staff performs a production line activity and 50% of the time they staff the phones). Currently, post-benefit reform calls are three times greater than peer organizations in other states (with dedicated call center staff) and the call volume has increased 22% since 2004 to an average of 2,663 calls per month per agent. Simultaneously, the length of calls has increased 57 % from 3.5 to 5.5 minutes per call. In addition, current staff levels, staff work schedules, non-focused call center recruiting, limited training, and a noisy work environment hinder delivering great customer service and result in PERS' call center performance statistics lagging its peers.

Recommendation # 3: Dedicate Adequate, Full-time Staff to the Call Center and Create a Call Center-Appropriate Physical Environment. Simultaneously,

- Create or rewrite position descriptions so they are call center focused;
- Recruit professional/experienced call center staff;
- Increase the intensity of training from 2, ½-hour sessions per week to 3 to 4, 1-hour sessions per week;
- Reduce the number of flexible work schedules; and
- Invest in environmental productivity enhancing sound technology (white noise generators and cubicles) and reader boards that display real-time call center statistics.

Implementation Actions for Recommendation #3

PERS is implementing all of the above recommendations. Specifically:

- The call center now has dedicated staff. In addition, more call center staff have been requested in the 2007 –2009 budget to assist in meeting the increasing information needs of our members and retirees;
- A reclassification study is underway to reclassify the call center positions and other jobs in PERS. The results should be implemented by 2008. The reclassification outcome should allow PERS to recruit and retain more experienced call center professionals;
- PERS' has increased the intensity of training for the phone center staff and has improved its phone scripting so the customer gets more accurate and consistent answers to their questions. In addition, PERS is now recording all incoming calls and is reviewing these calls in training sessions for phone staff; and
- PERS is working with a space planner to reconfigure the call center's physical space to ensure the confidentiality of information relayed to members and to improve staff productivity.

Information and Technology

Findings: PERS call center telephone technology is state-of-the art and will support its current and future needs. In addition, PERS staff has access to actively maintained internal and external websites and centrally maintained applications and databases. This information and technology infrastructure is both a blessing and a curse. Specifically,

- The telephony system (Symposium) is not being fully exploited because it is very sophisticated and staff has limited training on the technology. As a result, the technology is being underutilized.
- The PERS external websites, although actively managed, must follow-e-government guidelines. Staff and stakeholders are frustrated because the website is complex, tries to meet too many stakeholders' needs under one umbrella, and is difficult to navigate and search.
- Because of the transition to a new technology platform (ORION), call center staff has to navigate too many computer applications and interpret too many databases to answer a customer's call. This complexity causes longer call lengths, misinterpretation of data, and wrong or conflicting answers supplied to customers.

Recommendation #4: Maximize Existing Information and Technology

- Train call center supervisors on the nuances of the Symposium telephone system and fully implement its features to help reduce workload on call center agents.
- Determine if it is possible to move away from the state's e-government website guidelines and develop a customer-focused site(s) that assist with high profile/big workload areas (for example, completing the retirement application process).
- Constantly train the customer service staff and call center staff on the numerous applications and databases to help mitigate the chances of providing wrong information to customers.

Implementation Actions for Recommendation #4

Again, PERS is implementing the above recommendations with the exception of moving away from the state's e-government website guidelines. At the time of this study, the new State of Oregon guidelines and templates had not been published. Last month, new templates were released and the new templates incorporate most of Public Knowledge's suggestions and improvements for PERS' website. In 2007, PERS will re-engineer our website and release the next generation of functionality to take full advantage of the new state templates.

Finally over the next several years, PERS will continue to evolve the website and our web services, and will implement member self-service by the end of the RIMS Conversion Project (RCP).



Oregon

Theodore R. Kulongoski, Governor

November 17, 2006

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TO: Members of the PERS Board
FROM: Steve Delaney, PERS Deputy Director
SUBJECT: Approval of 2007 Legislative Concepts

MEETING DATE	11-17-06
AGENDA ITEM	D.4 Legislative

The Oregon State Legislature will convene in session on January 8, 2007. Any legislative concepts to be introduced and sponsored by the PERS Board must be submitted to the Department of Administrative Services no later than December 15, 2006 for pre-session filing.

The PERS Board previously approved the initial drafting of the agency's current nine legislative concepts. Those concepts still require final Board review and approval prior to filing.

With most stakeholders busy with election year activities, the PERS Board's Legislative Advisory Committee (LAC) has not yet commented on the current concept drafts. A meeting of the LAC is being scheduled prior to the Board's meeting of November 17. PERS staff will report any LAC comments at that meeting.

REVIEW OF 2007 LEGISLATIVE CONCEPTS

The following is a summary of the legislative concepts under consideration by the PERS Board. (Copies of the concepts as drafted are attached.)

LC 456-1 Equal To Or Better Than – Removes requirement that study be conducted every two years.

Summary: Eliminate the mandatory biennial actuarial review of retirement benefits provided to police officers and firefighters by non-PERS participating public employers to determine if those benefits are equal to or better than comparable PERS benefits.

Committee Comments: There is no opposition to this concept.

Fiscal/Actuarial Impact: None

Staff Recommendation: Approve for submission.

LC 457 Withdrawals – A withdrawal (refund) from one program shall be considered a request to withdraw (refund) from all programs.

Summary: A member of the PERS Chapter 238 or OPSRP Pension Program and the IAP does not have to withdraw from both programs at the same time. If the member later returns to work while still a member of one program but not the other, complications arise as to whether membership is restored and under what conditions (e.g., do they need to serve another waiting time in the program from which they withdrew but not the for the program in which they still have an account?). This concept requires a member who wishes to withdraw from any PERS program to withdraw from all programs at the same time

Committee Comments: There is no opposition to this concept.

Fiscal/Actuarial Impact: None

Staff Recommendation: Approve for submission.

LC 458 **Notice of Contest** – Change title of challenge to member’s retirement benefit calculation from Notice of Contest to Notice of Dispute.

Summary: Members challenging the calculation of their final benefit may file a Notice of Contest. If the member’s challenge is unsuccessful, the member’s only statutory recourse is to the Court of Appeals. Members often get confused due to the process title and believe they have a right to an administrative contested case. Changing the process name may reduce that confusion.

Committee Comments: There is no opposition to this concept.

Fiscal/Actuarial Impact: None

Staff Recommendation: Approve for submission.

LC 635 **Oregon Investment Council** - Removes requirement for a PERS Board member to also serve on the OIC.

Summary: Presently no member of the PERS Board serves concurrently on the OIC Board. That is scheduled to change on September 1, 2007, when statute mandates that a PERS Board member be so appointed. Rather than mandate PERS Board participation on the OIC, this concept allows instead for the appointment of any qualified individual, which does not preclude appointment of a PERS Board member if an individual Board member were so inclined.

Committee Comments: There is no opposition to this concept.

Fiscal/Actuarial Impact: None

Staff Recommendation: Approve for submission.

LC 636 & -1 Break In Service (Exception) - Exempts member restored to employment by arbitration from “break in service”.

Summary: On occasion an employee may challenge a termination of employment, and due to court or agency order be reinstated to his or her position. That order may require making the individual whole, however presently, if a Tier One/Tier Two member has been out of the service of the employer for more than six months, a “Break In Service” will have occurred and the individual will be reemployed as an Oregon Public Service Retirement Plan (OPSRP) member. There is no current statutorily provided method to make that individual whole upon reemployment. This concept would allow a court or agency ordered resolution as an exemption to the “Break In Service” provisions.

Committee Comments: The committee was split – employer representatives want the exception to require the employer and employee to obtain a court judgment or administrative order to resolve the issue. (See LC 636)

The labor representatives want to allow the exception on a broader basis - a court judgment, administrative order, settlement, or “other resolution” arrived at by the employer and the employee. (See LC 636-1)

Fiscal/Actuarial Impact: None

Staff Recommendation: Approve LC 636-1 for submission.

The PERS Board directed staff to look for simplicity in the system. LC 636-1 does not require the extra step of court resolution; therefore we recommend this version for submission.

LC 665 “Earned When Earned” - Use a modified “earned when paid” definition for all employers. Presently local governments use an “earned when earned” definition.

Summary: Three different standards for determining Final Average Salary (“earned when earned” and a modified “earned when paid”) creates complications in the administration of the PERS plan. This concept would eliminate the one of those concepts.

Committee Comments: Local government employers oppose this concept, as they believe it leaves open the risk of litigation due to possible impact on member benefits.

Fiscal/Actuarial Impact: Undetermined at this time. There would be an immediate cost to the system due to changing current IT programming. There would be an immediate savings to PERS as the need to review nearly 30,000 accounts compiled since 2004 to determine if a Break In Service had occurred would be avoided.

Staff Recommendation: Do not approve for submission.

It is difficult to quantify the fiscal impact of this concept. Coupled with general opposition from the employer group that would be impacted by the concepts language (local government employers), it does not appear this concept is ready for consideration.

LC 666 **Total Lump Sum Retirement Option** - Directs that members who take a total lump sum option may not return to PERS-covered employment for six months following retirement.

Summary: Presently members taking a total lump sum retirement can only return to employment within six months of retirement if the employer declares the individual to be a “casual employee.” This has led to confusion on the part of stakeholders, and possible inequitable treatment of retirees. This concept makes clear there are no exceptions to the statutory prohibition against returning to PERS-covered employment in the first six months of retirement for members who take the total lump sum option.

Committee Comments: There is no opposition to this concept.

Fiscal/Actuarial Impact: None

Staff Recommendation: Approve for submission.

LC 789 **Break In Service (Elimination)** - To simplify the plan and ease administrative burdens.

Summary: When HB 2020 was adopted, it established “Break in Service” provisions that placed Tier One/Tier Two members in the OPSRP pension plan if they were off the job six months or more (with certain exceptions). The multiple criteria and the retroactive application of some criteria make determining if an actual “Break In Service” has occurred administratively burdensome. This concept would eliminate “Break in Service” provisions. It would instead revert to the criteria for PERS Chapter 238 Program loss of membership and vesting standards.

Committee Comments: The PERS Employer Coalition is opposed to this concept. The employer coalition considers this concept a step back from reform.

Fiscal/Actuarial Impact: Employer rate increase of 0.01% of salary; \$295,000 one-time PERS administrative cost.

Staff Recommendation: Do not approve for submission.

Though the goal of this concept is simplicity, the outcome may have some impact on benefits, an area the Board has traditionally left solely to legislative discretion. Additionally, employer stakeholders have indicated

they will oppose this concept as presently drafted. It does not appear this concept is ready for consideration.

LC 790 **Modify Definition of Covered Salary** - Use a single definition (the FICA definition) for all programs.

Summary: Currently, the PERS Chapter 238 Program has a different definition of “salary” from that of the OPSRP Pension Program and IAP. The definitions have many additions and exclusions, making reporting by employers extremely complicated and confusing. This concept changes the definition to match one already known and understood by payroll personnel – FICA.

Committee Comments: Both employer and labor representatives oppose this concept.

Fiscal/Actuarial Impact: Undetermined. If the concept were accepted as presently written, it would have an impact. The overall impact is not known. For instance, lump sum sick leave payouts are not presently considered PERS covered salary, but they are FICA covered. That would raise some employer costs. It is unclear if there are offsetting salary categories that would drop from coverage, thus reducing costs.

Staff Recommendation: Do not approve for submission.

While a good vehicle for discussion of salary issues, the concept as written is too broad, with too many unknowns. It does not appear this concept is ready for consideration.

LC 790-1 **Oregon Savings Growth Plan** – Allow alternate payees to withdraw their account when desired.

Summary: A simple housekeeping measure that would allow an alternate payee to withdraw their account without requiring that the PERS member take a triggering action with his or her corresponding account.

Committee Comments: No opposition is anticipated, however concept has not been reviewed by the committee at the time of this memo. Any comment received will be shared at the November 17, 2006 meeting of the PERS Board.

Fiscal/Actuarial Impact: None

Staff Recommendation: Approve for submission.

Legislative Concepts

11/17/2006

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STAFF RECOMMENDATIONS

PERS staff recommends that the PERS Board:

Approve LC 456-1; 457; 458; 635; 636-1; 666 and 790-1 for submission to the 2007 session of the Oregon Legislature.

APPENDIX

LEGISLATIVE ADVISORY COMMITTEE REVIEW PROCESS

As a reminder, in December 2005 the PERS Board's Legislative Advisory Committee provided the following information regarding what they perceive their role to be in the legislative process.

BILLS AND CONCEPTS

- (1) During session bills (or concepts) pertaining to PERS will be provided via e-mail to Legislative Advisory Committee members for review one day after receipt by PERS staff.
- (2) PERS staff will provide a brief summary and fiscal impact statement if available with each bill (or concept).
- (3) Every Tuesday during session PERS staff will provide via e-mail a written summary of the prior week's legislative activity pertaining to PERS, as well as an index of those bills (or concepts) that are PERS-related.

COMMITTEE REVIEW

- (1) Committee members may provide comment to PERS staff for compilation and presentation to the PERS Board.
- (2) A meeting of the committee can be called at the request of any committee member and/or PERS staff. During session PERS staff will attempt to find locations within the capitol for such meetings.

COMMITTEE MEETINGS

- (1) PERS staff will provide administrative support at committee meetings.
- (2) PERS staff will be available to respond to committee questions regarding bills (or concepts) under consideration and share any related fiscal impact or other analysis.
- (3) The committee will not be asked to vote approval or disapproval of any bill (or concept) under consideration. PERS staff will provide the PERS Board with a compilation of committee comments regarding each bill (or concept) reviewed.

COMMENTS (from 2005)

Committee members did not object to the proposal, and PERS staff will proceed in accordance with the process outlined above.

Various committee members expressed clarifications to the process:

- The committee process is only one of many venues in which stakeholders may express their opinion regarding proposed bills.
- A committee member may choose not to comment on a proposed bill, and lack of comment is not to be interpreted as either support or opposition to the bill.
- If the PERS Board were prepared to take a position regarding a bill impacting benefits, notification to the committee members as early in the process as possible would be appreciated. To this same point, understanding the standards or criteria to be used by the PERS Board in deciding to take a position regarding a bill impacting benefits would also be appreciated.