

# OREGON PUBLIC EMPLOYEES RETIREMENT BOARD

**Friday  
May 16, 2008  
1:00 P.M.**

**PERS  
11410 SW 68<sup>th</sup> Parkway  
Tigard, OR**

ITEM	PRESENTER
<b>A. Administration – 1:00 P.M.</b>	
<ol style="list-style-type: none"> <li>1. March 28, 2008 Board Meeting Minutes</li> <li>2. Director's Report                             <ol style="list-style-type: none"> <li>a. Forward-Looking Calendar</li> <li>b. OIC Investment Report</li> <li>c. Budget Report</li> <li>d. One-Time Variable Transfer (OVT) Report</li> </ol> </li> </ol>	CLEARY
<b>B. Consent Action and Information Items</b>	
<ol style="list-style-type: none"> <li>1. Contested Case Hearing of Derek Smith</li> <li>2. Adoption of Creditable Service/Retroactive Salary Payments Rules</li> <li>3. Temporary Adoption of Rollovers to Roth IRAs Rules</li> <li>4. Notice of Public Records Rule</li> <li>5. Notice of Employer Participation Rules</li> <li>6. Notice of OUS Optional Retirement Plan Rule</li> </ol>	RODEMAN
<b>C. Action and Discussion Items</b>	
<ol style="list-style-type: none"> <li>1. Delegation of Final Order Authority for Contested Cases</li> <li>2. 2009-11 Agency Budget Development Process and Strategic Outlook</li> <li>3. Employer Side Account Financial Modeling</li> </ol>	RODEMAN KNOLL MERCER
<b>D. Executive Session Pursuant to ORS 192.660(2)(f), (h), and/or ORS 40.225</b>	
<ol style="list-style-type: none"> <li>1. Litigation Update</li> </ol>	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	5-16-08
DATE	
AGENDA	A.1.
ITEM	Minutes

## PUBLIC EMPLOYEES RETIREMENT BOARD

PERS Board Meeting  
1 P.M., March 28, 2008  
Tigard, Oregon

### MINUTES

**Board Members:**

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

**Staff:**

Donna Allen  
Paul Cleary  
Helen Bamford  
David Crosley  
Joe DeLillo

Yvette Elledge  
Rick Howitt  
David Larson  
Dale Orr  
Susan Riswick

Daniel Rivas  
Steve Rodeman  
Patrick Teague  
Dave Tyler

**Others:**

Bruce Adams  
Ken Armstrong  
Joe Dunne  
Linda Ely

Bill Hallmark  
Blake Johnson  
Greg Hartman  
Erica Kleiner

Steve Manton  
Gary Martin  
Deborah Tremblay  
Pat West

Dallas Weyand  
Brenda Wilson  
Scott Winkels  
Denise Yunker

Chair Mike Pittman called the meeting to order at 1:02 P.M.

**ADMINISTRATION**

**B.1. BOARD MEETING MINUTES OF FEBRUARY 15, 2008**

The Board unanimously approved the February 15, 2008 Board meeting minutes.

**B.2. DIRECTOR'S REPORT**

Director Paul Cleary presented the Forward-Looking calendar, noting that the next Board meeting will be May 16, 2008.

In May, the agency's budget development process for the 2009-11 biennium budget and the Strategic Outlook will be presented for the Board's review. In June, the Board will review health insurance plan renewals and rates, as well as approval of the PERS budget for submission to the Department of Administrative Services (DAS). In July, Mercer will present the 2007 actuarial valuation results and the initial review of employer rates for the 2009-11 biennium. Cleary also noted there will be no Board meeting in August.

Cleary presented the OIC investment returns through the end of February. The regular account is down 4.05 percent, and the variable account (all equities) is down 8.87 percent. Cleary said Ron Schmitz, Chief Investment Officer with the OIC, will present the first quarter performance and market outlook at the May Board meeting. Chair Pittman asked that Schmitz also discuss the valuation practices for the OIC's private equity and real estate investments.

Cleary presented the March 2008 Budget Report, which continues to show a negative variance of approximately \$500,000. Cleary said PERS anticipates some budget limitation adjustment at the June Emergency Board meeting to cover salary adjustments granted under the state's collective bargaining agreement. Internally, Cleary said a hiring freeze has been initiated to diminish the \$500,000 negative variance.

Cleary noted that PERS presented its first quarter progress report to the Legislative Joint Ways and Means Committee in February and will present to the Committee again at the end of the 3<sup>rd</sup> quarter.

Chair Pittman asked if the agency had been given instructions to meet the current budget expenditure projections without requesting additional budget limitation. Cleary answered that the instruction was to take some initial savings steps, but the agency has not been given any specific budget reduction or savings target. Cleary said further instructions will likely be issued following the state's May, 2008 revenue forecast.

Chair Pittman asked if the agency was on track with the anticipated phase out of project-related limited duration positions. Cleary answered that PERS is on track with the *Strunk/Eugene* project phase down, with the first staffing reductions having already occurred.

### **CONSENT ACTION AND INFORMATION ITEMS**

#### **B.1. NOTICE OF MODEL RULES PROCEDURE**

#### **B.2. FIRST READING OF DEFINITION OF SALARY RULES**

Steve Rodeman, Policy, Planning, and Legislative Analysis Division (PPLAD) administrator, presented the above two agenda items. He said the Definition of Salary rules were still in process and would be presented for adoption when stakeholder questions are resolved.

#### **B.3. ADOPTION OF ADMINISTRATIVE REVIEW AND APPEALS PROCESSES RULES**

#### **B.4. ADOPTION OF REVIEW OF STAFF ACTIONS AND DETERMINATIONS FOR EMPLOYERS RULE**

#### **B.5. ADOPTION OF EMPLOYER CONTRIBUTIONS FOR PRIOR PERIODS RULE**

#### **B.6. ADOPTION OF SELECTION OF BENEFIT OPTION AND COMMENCEMENT OF ALLOWANCE (DISABILITY) RULE**

#### **B.7. ADOPTION OF OSGP UNFORSEEABLE EMERGENCY WITHDRAWAL APPEALS COMMITTEE RULE**

#### **B.8. TEMPORARY ADOPTION OF CREDITABLE SERVICE/RETROACTIVE SALARY PAYMENTS RULE**

Rodeman presented the above six agenda items involving various administrative rules presented for adoption. Rodeman noted where stakeholder comments had been submitted and addressed, and highlighted the substantive changes made in the rules in response to those comments and further staff review. All were moved for adoption by Eva Kripalani, seconded by Tom Grimsley and passed unanimously. Chair Pittman requested that staff provide, at a later date, the number of requests for emergency withdrawals from OSGP accounts, and the number denied and appealed.

## **ACTION AND DISCUSSION ITEMS**

### **C.1. 2007 FINAL EARNINGS CREDITING**

Actuarial Analysis Coordinator Dale Orr presented the 2007 final earnings crediting report. Orr said the preliminary earnings crediting report was submitted to the Joint Ways and Means Committee on February 20, 2008 and was accepted without comment.

Orr reported the final earnings crediting results and reserve balances were generally very similar to the preliminary report. The final report reflects an earnings crediting rate for the OPSRP pension plan of 6.70 percent rather than the preliminary 8.32 percent. The difference was due to final accounting of OPSRP administrative costs that were not factored into the preliminary crediting rate.

Orr said Tier One member regular accounts will be credited 7.97 percent after deducting the member's attorney fees award for the *Strunk* case; the Benefits-In-Force Reserve, Tier Two member regular accounts and Employer Reserves will be credited 9.47 percent; OPSRP Pension Reserve will be credited 6.7 percent; the Employer Lump-Sum Payments Side Accounts will be credited an average of 10 percent; IAP accounts will be credited 9.46 percent; and Variable account earnings remain at 1.75 percent. Orr also noted that \$357.9 million will be added to the Contingency Reserve and \$253.8 million to the Tier One Rate Guarantee Reserve under the staff recommendations.

Chair Pittman asked for further clarification of the effect of administrative costs on earnings available to credit to the OPSRP Pension Reserve. Orr noted OPSRP expenses include debt service on program start-up costs, and those expenses disproportionately impact OPSRP earnings because of the relatively small size of the reserve. Bill Hallmark, Mercer Actuaries, reported that the OPSRP administrative costs are consistent with previous years' costs. However, the administrative costs should drop after about two years when the debt service falls off.

Kripalani moved to adopt the staff's final earnings crediting and reserving recommendations and Tom Grimsley seconded with a caveat that the Board should revisit reserving and administrative costs issues with each annual earnings crediting. The motion passed unanimously.

Cleary introduced the Mercer financial modeling project that staff commissioned to evaluate the potential impact negative investment returns (as in 2001-02) would have on the PERS system.

Hallmark presented the Negative Earnings System Impact Report. Hallmark summarized the report by stating that investment returns do have a significant impact on PERS member accounts, employer rates, unfunded liabilities and reserves. Cleary said the modeling was a simulation and not a prediction, and while the impacts are significant, the system is in much better shape than it was going into the 2001- 02 downturn. The Board noted that both members and employers need to be aware of the volatility in system earnings, and of the potential impact an extended downturn could have on employer rates and budgets.

### **C.2. FURTHER DEVELOPMENT OF 2009 LEGISLATIVE CONCEPTS**

Rodeman reviewed three potential legislative concepts that staff will further develop with DAS. Once the concepts have been developed and drafted by Legislative Counsel, the PERS Board will again review the concepts for approval for introduction in the 2009 legislative session. The three concepts currently being considered are *Re-employed Retirees and 1039 Hour Limitations*, *Tier Two Disability Benefits*, and *Plan Tax Qualification Updates*.

PERS Board meeting

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C.3. DELEGATION OPTIONS IN CONTESTED CASES

Rodeman presented the Board's options for delegation of authority to enter final orders for contested cases, and described the various categories and considerations involved in those cases.

Kripalani requested an opportunity for stakeholder comment on this agenda item. Rodeman said the options will be circulated to the Board's Legislative Advisory Committee for review and comment, and further information will be provided at the May Board meeting.

EXECUTIVE SESSION

There being no further business, Chair Pittman adjourned the meeting at 2:45 P.M.

Respectfully submitted,

A handwritten signature in cursive script that reads "Paul R. Cleary".

Paul R. Cleary  
Executive Director

## **PERS Board Meeting Forward-Looking Calendar**

### **June 2008**

#### **1:00 P.M. June 27, 2008**

First Reading of Rollovers to Roth IRAs rules  
First Reading of Public Records Requests rules  
First Reading of Employer Participation rules  
First Reading of Oregon University System Optional Retirement Plan rule  
Approval of Retiree Health Insurance 2009 Plan Renewals and Rates  
Approval of Agency 2009-11 Budget Policy Option Packages for Submission to DAS

### **July 2008**

#### **1:00 P.M. July 25, 2008**

Adoption of Rollovers to Roth IRAs rules  
Adoption of Public Records Requests rules  
Adoption of Employer Participation rules  
Adoption of Oregon University System Optional Retirement Plan rule  
2007 Actuarial Valuation Results and Employer Contribution Rate Summary  
Audit Committee Meeting

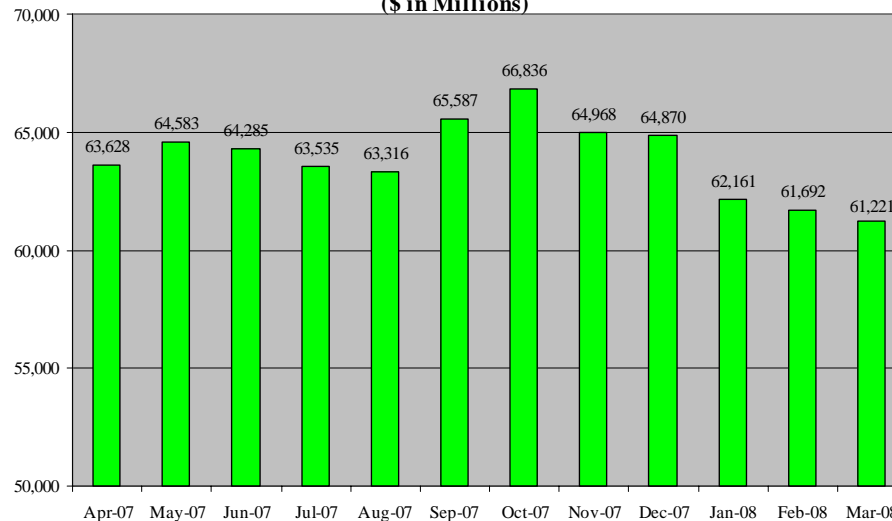
### **August 2008 – No Meeting Scheduled**

OPERF	Regular Account				Historical Performance					
	Policy <sup>1</sup>	Target <sup>1</sup>	\$ Thousands <sup>2</sup>	Actual	Year-To-Date <sup>3</sup>	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS
Domestic Equity	11-21%	16%	\$ 10,020,741	16.8%	(10.35)	(7.26)	1.04	6.00	6.25	12.35
Non-US Equity	17-29%	23%	13,737,243	23.0%	(8.86)	1.75	10.18	16.70	16.41	24.18
Global Equity	4-10%	7%	4,281,695	7.2%	(11.51)	(5.92)				
Private Equity	12-20%	16%	9,314,164	15.6%	1.32	15.49	20.07	22.30	24.93	22.31
<b>Total Equity</b>	<b>57-67%</b>	<b>62%</b>	<b>37,353,843</b>	<b>62.5%</b>						
Opportunity Portfolio			599,643	1.0%	(0.74)	(2.17)				
<b>Total Fixed</b>	<b>22-32%</b>	<b>27%</b>	<b>16,692,444</b>	<b>27.9%</b>	<b>(0.29)</b>	<b>2.85</b>	<b>5.18</b>	<b>4.80</b>	<b>4.37</b>	<b>5.36</b>
<b>Real Estate</b>	<b>8-14%</b>	<b>11%</b>	<b>5,102,751</b>	<b>8.5%</b>	<b>1.90</b>	<b>2.31</b>	<b>12.63</b>	<b>21.52</b>	<b>21.05</b>	<b>22.01</b>
<b>Cash</b>	<b>0-3%</b>	<b>0%</b>	<b>40,113</b>	<b>0.1%</b>	<b>0.98</b>	<b>5.04</b>	<b>5.19</b>	<b>4.68</b>	<b>3.91</b>	<b>3.38</b>
<b>TOTAL OPERF Regular Account</b>		<b>100%</b>	<b>\$ 59,788,794</b>	<b>100.0%</b>	<b>(4.65)</b>	<b>1.14</b>	<b>7.09</b>	<b>10.68</b>	<b>10.64</b>	<b>14.33</b>
<b>OPERF Policy Benchmark</b>					<b>(4.52)</b>	<b>2.68</b>	<b>7.76</b>	<b>9.76</b>	<b>9.61</b>	<b>13.49</b>
<b>Value Added</b>					<b>(0.13)</b>	<b>(1.54)</b>	<b>(0.67)</b>	<b>0.92</b>	<b>1.03</b>	<b>0.84</b>
<b>TOTAL OPERF Variable Account</b>			<b>\$ 1,431,819</b>		<b>(9.34)</b>	<b>(8.81)</b>	<b>0.10</b>	<b>5.17</b>	<b>5.79</b>	

Asset Class Benchmarks:

Russell 3000 Index	(9.52)	(6.06)	2.24	6.10	6.35	12.07
MSCI ACWI Ex US	(9.06)	2.58	11.08	16.49	16.41	24.04
Russell 3000 Index + 300 bps--Quarter Lagged	(2.48)	8.31	13.42	12.09	13.33	17.61
LB Universal--Custom FI Benchmark	1.71	6.53	6.67	5.43	4.55	4.90
NCREIF Property Index--Quarter Lagged	3.21	15.84	16.21	17.48	16.73	15.13
91 Day T-Bill	0.88	4.62	4.85	4.41	3.72	3.18

**TOTAL OPERF NAV**  
(includes variable fund assets)  
One year ending March 2008  
(\$ in Millions)



<sup>1</sup>OIC Policy 4.01.18, as revised September 2007.

<sup>2</sup>Includes impact of cash overlay management.

<sup>3</sup>For mandates beginning after January 1, YTD numbers are "N/A". Performance is reflected in Total OPERF.



# Oregon

Theodore R. Kulongoski, Governor

A.2.c.

## Public Employees Retirement System

Headquarters:  
11410 S.W. 68<sup>th</sup> Parkway, Tigard, OR  
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May 16, 2008

TO: Members of the PERS Board  
FROM: Kyle J. Knoll, Business Operations Manager  
SUBJECT: March 2008 Budget Report

### 2007-09 BUDGET UPDATE

Operating expenditures for the month of March 2008 were \$2,952,818. Through the first nine months (37.5%) of the biennium, the Agency has expended a total of \$26,739,494, or 32.91% of our 2007-09 operating budget.

The negative budget variance for the biennium is currently projected at \$539,657.

- This is an increase of \$45,441 over the \$494,216 negative variance identified in the March 28, 2008 Board Report; and is attributable to an increase in projected expenditures, primarily for training, for the remainder of the 2007-09 biennium. Since actual expenditures for March are currently lower than anticipated, this is a good reminder that the projected biennial variance reflects the balance of both actual and projected expenditures. The Business Operations Section will continue to monitor this closely to ensure that expenditure projections are accurate and supported by the existing budget limitation.
- The variance continues to include the costs of the COLA increases granted under the 2007-09 Collective Bargaining Agreement totaling \$2.8 million, but does not include the additional budget limitation needed to cover those costs. PERS anticipates receiving approval for the additional budget limitation in response to DAS / Budget & Management (BAM)'s request on PERS' behalf during the June 27, 2008 Emergency Board Meeting.

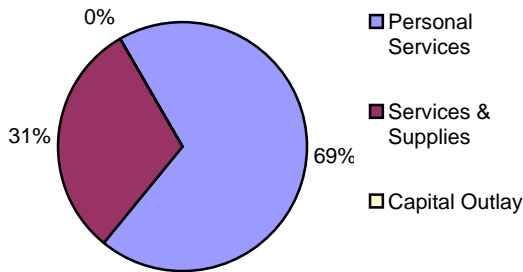


## 2007-09 Agency-wide Operations - Budget Execution Summary Budget Analysis For the Month of: March 2008

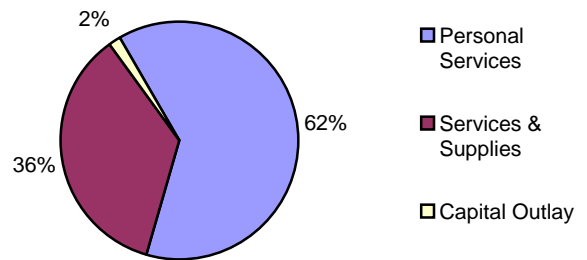
**Biennial Summary**

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2007-09 LAB	Variance
Personal Services	18,458,723	34,581,866	53,040,590	50,692,368	(2,348,222)
Services & Supplies	8,269,747	19,570,328	27,840,075	29,611,077	1,771,002
Capital Outlay	11,024	899,114	910,138	947,701	37,563
Special Payments					
<b>Total</b>	<b>26,739,494</b>	<b>55,051,309</b>	<b>81,790,803</b>	<b>81,251,146</b>	<b>(539,657)</b>

**Actual Expenditures**

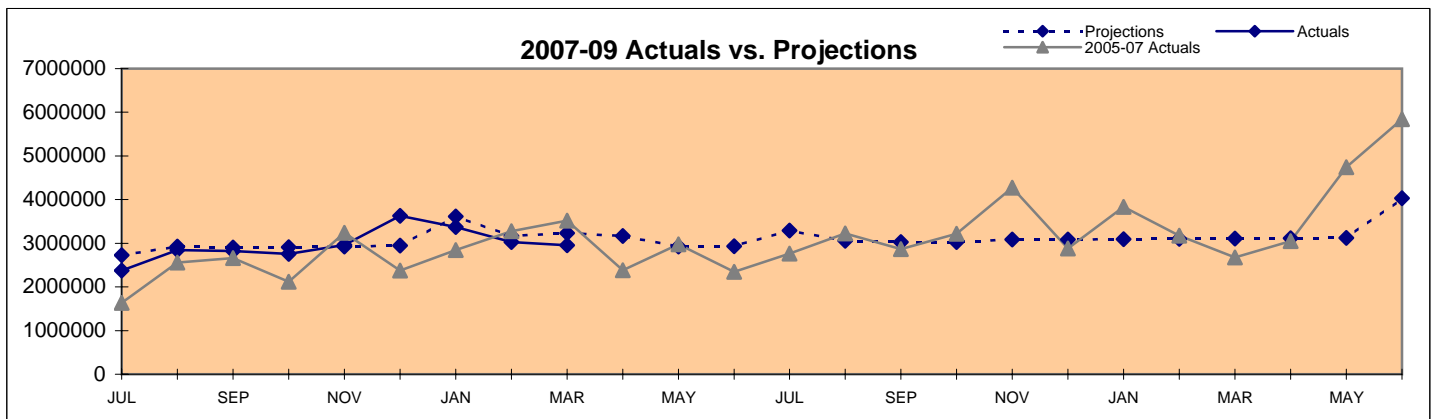


**Projected Expenditures**



**Monthly Summary**

Category	Actual Exp.	Projections	Variance	Avg. Monthly Actual Exp.	Avg. Projected Expenditures
Personal Services	2,054,623	2,212,944	158,321	2,050,969	2,305,458
Services & Supplies	887,172	1,019,394	132,222	918,861	1,304,689
Capital Outlay	11,024		(11,024)	1,225	59,941
Special Payments					
<b>Total</b>	<b>2,952,818</b>	<b>3,232,338</b>	<b>279,519</b>	<b>2,971,055</b>	<b>3,670,087</b>



**2005-07 Biennium Summary**

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2005-07 LAB	Variance
Personal Services	42,804,552		42,804,552	46,875,869	4,071,317
Services & Supplies	31,107,541		31,107,541	27,460,026	(3,647,515)
Capital Outlay	534,468		534,468	679,533	145,065
Special Payments					
<b>Total</b>	<b>74,446,561</b>		<b>74,446,561</b>	<b>75,015,428</b>	<b>568,867</b>



# Oregon

Theodore R. Kulongoski, Governor

A.2.d.

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May 16, 2008

**TO:** Members of the PERS Board  
**FROM:** Yvette Elledge, Customer Service Division Administrator, and Elaine King, Customer Service Center Manager  
**SUBJECT:** 2007 One-Time Variable Transfer Results

PERS Tier One and Tier Two members who participated in the variable account on or after January 1, 1982 can request a one-time variable transfer (OVT) to move their variable account balance into their regular account if they meet one of the following criteria (ORS 238.260(14)). The member must have:

1. Attained age 45 if a police officer or firefighter; **or**
2. Attained age 50 if other than a police officer or firefighter; **or**
3. Completed 25 or more years of creditable PERS service.

Statistics for members who requested an OVT during 2007 are shown below.

Members	Ineligible	Passed	Total Requests	Contributions (\$)	Earnings (\$)	Total \$ Transferred
Tier One	5	571	576	10,757,226	26,332,627	37,089,853
Tier Two	1	20	21	93,511	58,707	152,219
<b>TOTAL</b>	6	591	597	10,850,737	26,391,334	37,242,072

<b>Mean:</b>	\$ 63,021
<b>Median:</b>	\$ 46,878
<b>Minimum:</b>	\$ 136
<b>Maximum:</b>	\$ 449,559

The effective date for eligible OVTs received in 2007 was January 1, 2008. The transfer usually occurs in April after earnings are credited for the prior year, and is retroactive to January 1. Members were notified in April 2008 whether they met the eligibility criteria. The transfer will be reflected on their 2008 Annual Member Statement that will be mailed in spring 2009. Members who failed to meet the OVT eligibility criteria can submit a new request once they meet the criteria.

An analysis at retirement compares the earnings in the variable account to what the earnings would have been in the regular account as of the OVT effective date. The difference is multiplied by the appropriate actuarial equivalency factor, depending on the retirement calculation method, to arrive at the adjustment amount.

## **BACKGROUND**

Before January 1, 2004, all active PERS Tier One and Tier Two members could elect to participate in the variable account with 25, 50, or 75 percent of their member contributions to be invested in that account. Under PERS reform, the option to direct member contributions to the variable account was discontinued for all members except PERS judge members. Effective January 1, 2004, all member contributions (except judge members') go to the Individual Account Program (IAP).

To qualify for an OVT prior to January 1, 2004, the member had to meet one of the conditions shown above and his/her variable account balance had to pass the earnings "test." To pass the "test," accumulated earnings on contributions in the member's variable account had to exceed what would have been earned if the same amount of contributions were in the regular account.

More than 9,000 members failed the earnings "test" in 2002 keeping them from transferring their variable accounts at that time. The 2003 legislature passed HB 3020 in response to that concern.

HB 3020, effective for OVT elections made on or after January 1, 2004, removed the earnings "test" criteria for the transfer, leaving in place only the age or service eligibility requirement. An analysis of the member's variable account at retirement is still required. This analysis compares the earnings in the variable account to what the earnings would have been in the regular account as of the effective date of the OVT. The difference is multiplied by the appropriate actuarial equivalency factor, depending on the retirement calculation method, to arrive at the adjustment amount.

Approximately 55,000 members had variable accounts in 2006. In addition to the pre-retirement OVT process described above, members can transfer their variable account funds to their regular account at retirement. Alternatively, they can retain a variable account annuity at retirement and have their benefit payment adjusted annually based on the performance of the variable account compared to the assumed earnings rate in effect at their time of retirement (e.g. 8% since 1989). The vast majority of members who have variable accounts at retirement elect to transfer those funds to their regular account. The variable account assets were valued at a total of about \$1.43 billion as of March 31, 2008.



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Theodore R. Kulongoski, Governor

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May 16, 2008

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator, PPLAD  
SUBJECT: Adoption of Creditable Service and Retroactive Salary  
Payments Rules:  
OAR 459-010-0014, *Creditable Service in PERS Chapter  
238 Program*  
OAR 459-010-0042, *Retroactive Salary Payments*

MEETING DATE	<b>05/16/08</b>
AGENDA ITEM	<b>B.2. Creditable Srvc</b>

### OVERVIEW

- Action: Adopt permanent rule modifications to the Creditable Service and Retroactive Salary Payments Rules, OAR 459-010-0014 and 459-010-0042.
- Reason: The rules would establish parameters for providing creditable service to an employee who receives a retroactive payment of wages incident to resolving an employment dispute.
- Subject: Creditable service and retroactive salary payments in the PERS Chapter 238 Program.
- Policy Issue: Under what parameters should an employee who receives a retroactive payment of wages receive creditable service for the time associated with that award?

### BACKGROUND

PERS regularly receives court orders, administrative orders, settlement agreements, and other documents representing the resolution of a dispute between an employer and employee. Often, the resolution results in payment of back wages for a period the employee was absent from employment. Generally, the order or agreement directs that the employee be “made whole,” including in regards to the PERS benefits the employee would have accrued.

ORS 238.005(21)(b)(C) includes these back wages as “salary” and provides specific authority to attribute them to the period they would have been earned. No statute contains a similar parallel for creditable service during that same period. Before 2003, “creditable service” was awarded for periods that members made contributions. Retroactive salary payments triggered contributions, which resulted in creditable service. When the 2003 PERS Reform legislation re-routed contributions from the member’s Regular Account to the IAP, the “creditable service” standard changed from contributions to present employment. These rule modifications clarify that this statutory change does still allow for creditable service during the period of absence under the specified circumstances. The modifications were adopted as temporary rules by the Board at the March 28, 2008 meeting.

## POLICY ISSUE AND SUMMARY OF PROPOSED RULE MODIFICATIONS

*Under what parameters should an employee who receives a retroactive payment of wages receive creditable service for the time associated with that award?*

If a dispute is resolved with an order that the employee be “made whole,” directing that the employee be restored to the status they would be in if the absence had not occurred, PERS contributions and creditable service need to be addressed. Without creditable service for the period, the employee’s status is not completely restored, and the parties would need to craft another solution outside of the retirement system that compensates the employee for their lost creditable service. Crafting that solution could be very difficult, trying to account for the costs of delayed retirement eligibility, potentially lower benefit payments, etc.

The proposed rule modifications allow for creditable service in limited circumstances consistent with the current statutory structure. More specifically:

OAR 459-010-0014: This rule provides standards used to determine the accrual of creditable service in the PERS Chapter 238 Program. The rule was modified to reference the accrual of creditable service incident to a retroactive payment under OAR 459-010-0042.

OAR 459-010-0042: This rule outlines the administration of retroactive salary payments. The modifications to the rule clarify the definition of “retroactive payment” and provide standards for allocating such payments. The modifications further clarify that payments allocated to periods of non-membership will not trigger contributions or benefits. Also, a condition to receiving creditable service for periods to which retroactive payments are attributed is that the employee be an active member on the date of the retroactive payment. It also clarifies the time limit within which a member who receives a retroactive payment may restore rights forfeited by withdrawal during the period of absence. Lastly, the rule applies retroactively to July 31, 2003, the effective date of the statutory changes, to provide for consistency in the administration of retroactive payment and creditable service determinations.

## PUBLIC COMMENT AND HEARING TESTIMONY

A temporary rulemaking hearing was held on March 25, 2008 at 2:00 p.m. at PERS headquarters in Tigard. A second permanent rulemaking hearing was held on April 22, 2008. No members of the public attended. The public comment period ended on April 30, 2008 at 5:00 p.m.

Public comment encouraging the Board to address the issue of creditable service and retroactive payments was received before the temporary rulemaking from Mr. Greg Hartman and the City of Eugene. The City of Eugene also commented during the temporary rulemaking. Those comments were presented in the walk-in packet at the March 28, 2008 Board meeting.

Mr. Hartman, representing the PERS Coalition, separately commented on the permanent rule modifications by letter dated April 25, 2008. A copy of that letter is included with this memo. Mr. Hartman characterizes the rule as a good first step but identifies a few areas of concern. The rule requires that a member be an active member on the date of the retroactive payment for creditable service to be awarded. Mr. Hartman points out that, for many reasons, this requirement presents an administrative obstacle to crediting retroactive service.

While staff agrees that the rule may not provide as broad an application as might be desirable, the rule does reflect the requirements imposed by the current statutes as they are administered. Statutory requirements tie creditable service to payments made during a period of active membership (ORS 238.005(5)) and “present employment” is critical to the determination of active membership (ORS 238.005(12)(b)). While the rule may not go as far as stakeholders would like, staff’s recommendation is based on its understanding of the boundaries imposed by the current laws.

Mr. Hartman correctly notes that section (4) of the rule extends the period during which a reemployed member may restore membership rights forfeited by a withdrawal and provides a mechanism for a withdrawn member to receive creditable service. A member who withdraws terminates membership and is not eligible to receive creditable service for the period of non-membership following the termination. However, should the member restore the membership rights forfeited by redepositing the withdrawn amount plus earnings, restoring membership as of the date of the withdrawal would permit the member to receive creditable service for the period after their previous withdrawal. He expresses concern that some withdrawn members may not have the resources to restore their membership rights and would not receive creditable service under the rule. Staff acknowledges that scenario is regrettable, but again feels that the rule goes as far as permissible under current statute. Staff can find no authority permitting contributions or creditable service for payments made to a person who is not a member of the system.

Mr. Hartman also proposes that the rule permit the award of creditable service to a member who retired during the period covered by the retroactive payment and subsequently returned to employment and active membership pursuant to the settlement agreement. The rule permits such a member to receive creditable service up to retirement. Staff can find no statutory support for the award of creditable service to a member while he or she is retired. The award of creditable service to a retired member would also present plan qualification problems.

Mr. Hartman’s last recommendation is that the text of ORS 238.005(21)(b)(C) regarding retroactive payment be incorporated into section (1) of the rule as it provides a broader scope. In practice, the text of the statute provides a basis for the broader interpretation provided in the rule. Staff feels the rule language clarifies that numerous types of agreements may give rise to a retroactive payment warranting creditable service. The statutory standard of “clerical error” is not included in the rule as that is a separate standard by which retroactive payments may be credited to prior periods, not limited to payments made pursuant to settlement agreements.

#### LEGAL REVIEW

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

#### IMPACT

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

Impact: Employers, members, and staff will benefit from the rules’ clarification of the standards used in these determinations. Administration of these resolutions will be closer to the parties’ intentions.

Cost: There are no significant costs attributable to these rules.

#### RULEMAKING TIMELINE

February 15, 2008	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
March 1, 2008	<i>Oregon Bulletin</i> published the Notice.
March 25, 2008	Rulemaking hearing held at 2:00 p.m. in Tigard.
March 28, 2008	PERS Board adopted the temporary rules.
April 1, 2008	<i>Oregon Bulletin</i> published the Notice.
April 22, 2008	Rulemaking hearing held at 2:00 p.m. in Tigard.
April 30, 2008	Public comment period ended.
May 16, 2008	Board may adopt the permanent rule modifications.

#### BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt permanent modifications to OAR 459-010-0014 and 459-010-0042.”
2. Direct staff to make other changes to the rules or explore other options.

#### STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: The rules clarify that an employee who successfully disputes an employer discharge or suspension, is reinstated, and receives a retroactive payment of wages for the period of absence can receive creditable service for the period associated with the retroactive payment. Also, provisions regarding retroactive payments made to terminated members are obsolete and in need of revision.

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.

B.2. Attachment 1 – OAR 459-010-0014, *Creditable Service in PERS Chapter 238 Program*

B.2. Attachment 2 – OAR 459-010-0042, *Retroactive Salary Payments*

B.2. Attachment 3 – Hartman letter dated April 25, 2008

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

1 **459-010-0014**

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

3 (1) For purposes of this rule:

4 (a) “Active member” has the same meaning as provided in ORS 238.005(12)(b).

5 (b) “Creditable service” has the same meaning as provided in ORS 238.005(5).

6 (c) “Major fraction of a month” means a minimum of 50 hours in any calendar  
7 month in which an active member is being paid a salary by a participating public  
8 employer and for which benefits under ORS Chapter 238 are funded by employer  
9 contributions.

10 (2) An active member accrues one month of creditable service for each month in  
11 which the member performs service for the major fraction of the month.

12 (3) An active member is presumed to have performed service for a major fraction of  
13 a month if:

14 (a) The member performs at least 600 hours of service in the calendar year and the  
15 member's employer(s) reports salary and hours for a pay period occurring within the  
16 calendar month;

17 (b) The member starts employment on or before the 15th day of the calendar month  
18 and the employment continues through the end of the month;

19 (c) The member starts employment on or before the first day of the calendar month  
20 and ends employment on or after the 16th day of the month; or



1 (d) The member starts employment on or before the first day of the calendar month  
2 and ends employment before the 16th day of the month, but is reemployed in a qualifying  
3 position before the end of the month.

4 (4) A member or employer may seek to rebut the determination of creditable service  
5 based on the presumptions in section (3) by providing to PERS records that establish that  
6 the member did or did not perform service for a major fraction of a month as defined in  
7 subsection (1)(c) of this rule.

8 (5) Sections (2) and (3) of this rule notwithstanding, an active member who is a  
9 school employee will accrue six months of creditable service if the member performs  
10 service for all portions of a school year that fall between January 1 and June 30, and six  
11 months of creditable service if the member performs service for all portions of a school  
12 year that fall between July 1 and December 31.

13 **(6) A member may accrue creditable service as provided in OAR 459-010-**  
14 **0042(3).**

15 ~~[(6)]~~ **(7)** A member may not accrue more than one month of creditable service for  
16 any calendar month and no more than one year of creditable service for any calendar  
17 year.

18 ~~[(7)]~~ **(8)** The provisions of this rule are effective for service credit determinations  
19 made on or after January 1, 2008.

20 Stat. Auth.: ORS 238.650

21 Stats. Implemented: ORS 238.005 & 238.300

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

1 **459-010-0042**

2 **Retroactive Salary Payments**

3 (1) For the purpose of this rule, “retroactive payment” means a payment of  
4 salary attributable to a prior period made pursuant to a court order, administrative  
5 order, arbitration award, conciliation agreement, or private settlement agreement  
6 that resolves a dispute or claim based upon an employee’s rights under employment  
7 and wage law or a collective bargaining agreement.

8 (2) A retroactive payment must be allocated to the period(s) in which the work  
9 was done or would have been done and deemed paid as so allocated pursuant to  
10 ORS 238.005(21)(b)(C). Payments allocated to any period during which the  
11 employee was an active or inactive member must be used in the determination of  
12 employee and employer contributions and in the calculation of benefits. Payments  
13 allocated to any period of non-membership or retired membership must not be used  
14 to determine contributions or calculate benefits.

15 (3) Except as provided in OAR 459-010-0014(7), an employee who is an active  
16 member on the date of a retroactive payment will receive creditable service for  
17 those periods of active or inactive membership to which the payment is allocated.

18 (4) An employee who is terminated from employment, withdraws the member  
19 account under ORS 238.265, and is reinstated to employment in connection with a  
20 retroactive payment may restore membership and service rights as provided in  
21 OAR 459-011-0050 within the time period described in section (2) of that rule or

1 within one year from the date the employee actually returns to employment,  
2 whichever is later.

3 (5) The provisions of this rule apply to retroactive payments made on or after  
4 July 31, 2003.

5 Stat. Auth.: ORS 238.650

6 Stats. Implemented: ORS 238.005, 238.105

7 *[(1) Retroactive payment of salary or wages due a member under the provisions of*  
8 *ORS 238.005(11)(b)(C) shall be allocated to the period(s) when the service was or would*  
9 *have been performed (when earned) for the purposes of determining employee and*  
10 *employer contributions and in computing benefits.*

11 *(2) For a Tier One member, a retroactive payment that is not made pursuant to ORS*  
12 *238.005(11)(b)(C) shall not be allocated to any prior period, but shall be treated as*  
13 *wages on the date when paid, and contributions shall be forwarded only if the member*  
14 *was an active member of PERS on the date of the payment.*

15 *(3) For a Tier Two member, a retroactive payment that is not made pursuant to ORS*  
16 *238.005(11)(b)(C):*

17 *(a) Shall be allocated to when earned for purposes of computing final average*  
18 *salary under ORS 238.435(2), exclusive of a lump sum payment for accrued vacation*  
19 *(ORS 238.435(1)); and*

20 *(b) Shall have contributions forwarded only if the member was an active member of*  
21 *PERS on the date of the payment.*

22 *(4) In the event a terminated member is successful in a claim for wrongful discharge*  
23 *and part of the settlement reinstates the terminated member to employment:*

1        *(a) A terminated member shall become an active member of PERS in accordance*  
2 *with ORS 238.015;*

3        *(b) A terminated member may elect to re-deposit the funds withdrawn as provided in*  
4 *ORS 238.105 or within one year of the date of the settlement, whichever is the later.*

5        *(5) If a terminated member elects to redeposit as provided in section (4) of this rule*  
6 *prior to the six-month period in ORS 238.015, the terminated member shall become an*  
7 *active member of PERS of the first of the calendar month following the date of redeposit.*

8        *(6) In the event a terminated member is successful in a claim for wrongful discharge*  
9 *and part of the settlement reinstates the member to employment retroactively to date of*  
10 *termination, the retroactive payment of wages shall be subject to both employee and*  
11 *employer contributions, regardless of whether the member received a refund or elects to*  
12 *re-deposit a refund. The retroactive payment of wages shall be allocated to and deemed*  
13 *paid in the period the work would have been done.*

14        *Stat. Auth.: ORS 238.005(11) & ORS 238.650*

15        *Stats. Implemented: ORS 238.055(11), ORS 238.055(15), ORS 238.200 – ORS*  
16 *238.230, ORS 238.300 & ORS 238.435]*

B.2. Attachment 3  
**BENNETT, HARTMAN, MORRIS & KAPLAN, LLP**

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April 25, 2008

*BY EMAIL AND FIRST CLASS MAIL*

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

Re: Proposed OAR 459-010-0042  
Our File No.: 5415-237

Dear Steve:

The purpose of this letter is to comment on the proposed creditable service rule on behalf of the PERS Coalition. First I want to thank both you and the other PERS staff members who worked to develop the temporary rule. While the temporary rule is a good first step, there are problems with the rule which will make it difficult to administer and may well create unintended barriers for those who want to obtain creditable service under the rule.

Active Service Requirement

Subsection 3 of the rule provides that creditable service will be awarded only to those employees who are in active status on the date of a retroactive payment. This provision will most likely cause the greatest difficulty in administering the rule. While virtually every court or administrative agency make-whole order would include the right of the employee to return to active employment, it is not uncommon for the employee to forego the right to return to active employment. This is true for a variety of reasons ranging all the way from the fact that the employer may not particularly want the employee back to the fact that the employee may not particularly care to return to work with that employer. While it may be possible to engineer a return to work for at least a brief period of active employment to satisfy the rule, it is not clear what is gained by forcing the parties to include a period of active employment to achieve creditable service in PERS. It can also reasonably be anticipated that unwary members and their attorneys who do not understand the need for at least a brief period of active membership may inadvertently resolve cases in a manner which would not permit them to obtain creditable service in PERS.

Also as the rule is drafted it appears that the period of active service must be coincidental with the date on the check for retroactive payment. Again this requirement will

Steve Rodeman  
April 25, 2008  
Page 2

likely snare the unwary, who would not understand the need to date the check during a period of active service. It is my suggestion that the board consider eliminating this active membership requirement in its entirety as from a policy perspective it seems an unnecessary barrier to properly crediting retroactive service. If it is the conclusion of the board that the return to active service is mandated by the PERS statutes, then I suggest the board consider whether those statutes can be satisfied by an order or alternatively a settlement agreement which acknowledges the right to return to active employment but in which the employee waives this right. This would be simpler to administer and less likely to cause problems for members, but would limit the application of the rule to those members who had achieved, either through order or agreement, the right to return to active employment. In any event I suggest that at minimum this provision be redrafted so that there is no necessity that the period of active employment coincide with the date on a retroactive payment.

### Membership Status

Subsection 2 further restricts the ability to achieve creditable service to those periods during which a member was an active or inactive member and excludes those periods in which the member was retired or had withdrawn from the system. However this latter restriction seems to be further modified by subsection 4, which acknowledges a non-member's right to return to service and to reinstate membership rights during the year following his or her return to service by payment of any amounts withdrawn. Thus as I read the proposed rule active, inactive, as well as non-members who return to active status and reinstate their prior service can receive creditable service pursuant to a make-whole order.

This leaves only retired members and non-members who do not reinstate their service excluded from the benefits of the rule. There will be members who will be improperly dismissed by their employers, who will be forced by financial necessity to retire. If they are successful in challenging that termination and achieve a make-whole remedy those employees may return to employment. While this would require them to un-retire, I see no policy reason why they should not be able to achieve creditable service during this period of retirement. Once again the parties may be able to engineer a return to active employment to satisfy this rule, but again that would impose burdens which may not be necessary. I am not sufficiently familiar with the un-retirement process to make any practical suggestion on how to coordinate this process most efficiently with the proposed rule. However, I suggest that if at all possible the rule be redrafted to simplify this process to the greatest extent possible.

This leaves the final uncovered category of those who have become non-members presumably by withdrawing their accounts and who return to employment but may not be in a position to repay those accounts during the one-year period required under the regulations. I think this could well happen to a relatively young member whose withdrawn account may be relatively small but is simply not financially able to promptly repay that amount. Again it seems that nonetheless this individual should be entitled to a full make-whole remedy if we can craft a rule which would permit that to be accomplished.

Steve Rodeman  
April 25, 2008  
Page 3

Laws and Contracts

Section 1 of the proposed rule recites in general terms that it applies to remedies arising under employment and wage law or collective bargaining agreement. I assume that this language is a condensation of the language which appears in ORS 238.005(21)(b)(C). The statutory language is very broad indicating a desire to make the payment process generally available to members who receive a retroactive payment. I suggest that this statutory language be directly incorporated in the rule to preserve the broad scope of that language.

As you can see my purpose is to make the rule as broadly available and user-friendly as possible. Any adjustment in the rule which achieves these purposes would be to the benefit of members as well as employers and undoubtedly easier for PERS to administer.

Yours very truly,



Gregory A. Hartman

GAH:kaj

G:\Hartman\AFSCME 5415\237 PERS 2\Rodeman 08-04-25.wpd

cc: PERS Coalition



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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May 16, 2008

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator, PPLAD  
SUBJECT: Temporary Adoption and Notice of Permanent Rulemaking  
for Direct Rollover Rules:  
OAR 459-005-0591, *Definitions – Direct Rollovers*  
OAR 459-005-0595, *Limitations – Direct Rollovers*  
OAR 459-050-0090, *Direct Rollover (OSGP)*

MEETING DATE	<b>05/16/08</b>
AGENDA ITEM	<b>B.3. Rollovers</b>

### OVERVIEW

- Action: Adopt temporary modifications to the Direct Rollover Rules, OAR 459-005-0591, 459-005-0595 and 459-050-0090.
- Reason for Temporary Rules: The provision of the Pension Protection Act of 2006 that allows plan participants to transfer rollover eligible distributions to a Roth IRA was effective January 1, 2008. However, it was not until March of this year that the IRS indicated that it is mandatory for plans to provide this option to their participants.
- Subject: Rollovers to Roth IRAs.
- Policy Issue: None.

### BACKGROUND

The Pension Protection Act of 2006 (PPA) allows rollover eligible distributions to be rolled to a Roth IRA as of January 1, 2008. PERS staff had understood this to be an option a plan could provide and we anticipated incorporating this provision into jClarety. However, the IRS recently indicated that plan sponsors must offer this type of rollover to plan participants.

Accordingly, these rule modifications conform three administrative rules to reflect this rollover option, retroactive to January 1, 2008. Administratively, rollovers to Roth IRAs are generally handled in the same manner as a rollover to any other eligible retirement plan but there are different tax reporting requirements, which staff will resolve before reporting for the 2008 calendar year is due in early 2009.

### JUSTIFICATION FOR TEMPORARY RULEMAKING

Staff recommends temporary adoption of the rule modifications to conform our rules to the federal law changes that became effective January 1, 2008.



### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on May 27, 2008 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on July 1, 2008 at 5:00 p.m.

### LEGAL REVIEW

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

### EFFECTIVE DATE

These rule modifications will become effective upon filing. The maximum period they can remain in effect is 180 days, so staff has initiated permanent rulemaking to replace these temporary rules.

### IMPACT

Mandatory: Yes, the ability for a plan participant to transfer a rollover eligible distribution to a Roth IRA is required by the IRS.

Impact: Members will have an additional option for transferring rollover eligible distributions. Administratively, there is one outstanding issue, as the IRS has not yet provided guidance regarding how to report the distributions on the Form 1099R.

Cost: There are no significant costs attributable to these rules.

### RULEMAKING TIMELINE

April 15, 2008	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
May 1, 2008	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began.
May 16, 2008	PERS Board may adopt the proposed temporary rules; PERS staff will proceed with permanent rulemaking unless otherwise directed.
May 27, 2008	Rulemaking hearing held at PERS headquarters in Tigard.
June 27, 2008	First reading of the proposed rules.
July 1, 2008	Public comment period ends at 5:00 p.m.
July 25, 2008	Staff will propose adopting the permanent rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

### BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt temporary modifications to OAR 459-005-0591, 459-005-0595, and 459-050-0090, as presented.”
2. Direct staff to make other changes to the rules or explore other options.

### STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: The IRS has recently indicated that it is mandatory, rather than optional, for plan sponsors to allow members to rollover eligible distributions to a Roth IRA. Accordingly, PERS is starting the process of amending three administrative rules to reflect this ability, retroactive to January 1, 2008.

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.

B.3. Attachment 1 – OAR 459-005-0591, *Definitions – Direct Rollovers*

B.3. Attachment 2 – OAR 459-005-0595, *Limitations – Direct Rollovers*

B.3. Attachment 3 – OAR 459-050-0090, *Direct Rollover*

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

1 **459-005-0591**

2 **Definitions -- Direct Rollovers**

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

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

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

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

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

14 (a) An individual retirement account or annuity described in Code Section 408(a) or

15 (b), *[but shall not include]* **including** a Roth IRA as described in Code Section 408A;

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

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

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

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

3 (f) For the purposes of ORS 237.650(3), the individual employee account maintained  
4 for a member under the Individual Account Program as set forth under ORS  
5 238A.350(2); and

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

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

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

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

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

17 (7) The provisions of this rule are effective on January 1, ~~2007~~2008.

18 Stat. Auth.: ORS 238.650 & 238A.450

19 Stats. Implemented: ORS Chapters 238 and 238A

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

1 **459-005-0595**

2 **Limitations -- Direct Rollovers**

3 (1) Notwithstanding any provision to the contrary in OAR 459-005-0590 to 459-  
4 005-0599, a distributee's right to elect a direct rollover is subject to the following  
5 limitations:

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

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

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

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

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

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

18 (b), [including a Roth IRA](#); or

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

1           (c) The amount transferred shall be treated as consisting first of the portion of the  
2 distribution that is includible in gross income, determined without regard to Code Section  
3 402(c)(1).

4           (3) The provisions of this rule are effective on January 1, ~~2007~~2008.

5           Stat. Auth.: ORS 238.650 & 238A.450

6           Stats. Implemented: ORS Chapters 238 and 238A

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 050 – DEFERRED COMPENSATION**

1    **459-050-0090**

2    **Direct Rollover**

3           The purpose of this rule is to establish the criteria and process for a direct rollover (a  
4 transfer made from trustee to trustee) by the Deferred Compensation Program to an  
5 eligible retirement plan and to establish the criteria and process for the Deferred  
6 Compensation Program to accept an eligible rollover distribution from another eligible  
7 retirement plan. This rule shall apply to any direct rollover distribution received by the  
8 Deferred Compensation Program on behalf of a participant and any request for  
9 distribution from a Deferred Compensation Program account processed on or after  
10 January 1, ~~2002~~2008.

11           (1) Definitions. The following definitions apply for the purpose of this rule:

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

13           (b) "Direct Rollover" means:

14           (A) The payment of an eligible rollover distribution by the Deferred Compensation  
15 Plan to an eligible retirement plan specified by the distributee; or

16           (B) The payment of an eligible rollover distribution by an eligible retirement plan to  
17 the Deferred Compensation Program.

18           (c) "Distributee" means:

19           (A) A Deferred Compensation Plan participant who has a severance of employment;

20           (B) A Deferred Compensation Plan participant who is approved for a de minimis  
21 distribution under OAR 459-050-0075(1);

22           (C) The surviving spouse of a deceased participant;

1 (D) The spouse or former spouse who is the alternate payee under a domestic  
2 relations order that satisfies the requirements of ORS 243.507 and OAR 459-050-0200 to  
3 459-050-0250; or

4 (E) The non-spouse beneficiary of a deceased participant who is a designated  
5 beneficiary under Code Section 402(c)(11).

6 (d) "Distributing Plan" means an eligible retirement plan that is designated to  
7 distribute a direct rollover to another eligible plan (recipient plan).

8 (e) "Eligible Retirement Plan" means any one of the following that accepts the  
9 distributee's eligible rollover distribution:

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

12 (B) An annuity plan described in Code Section 403(a);

13 (C) An annuity contract described in Code Section 403(b);

14 (D) A qualified trust described in Code Section 401(a);

15 (E) An eligible deferred compensation plan described in Code Section 457(b) that is  
16 maintained by a state, political subdivision of a state, or any agency or instrumentality of  
17 a state or political subdivision of a state; or

18 (F) A plan described in Code Section 401(k).

19 (f) "Eligible Rollover Distribution" means a distribution of all or a portion of a  
20 distributee's Deferred Compensation account. An eligible rollover distribution shall not  
21 include:

22 (A) A distribution that is one of a series of substantially equal periodic payments  
23 made no less frequently than annually for the life (or life expectancy) of the distributee or



1 the joint lives (or life expectancies) of the distributee and the distributee's designated  
2 beneficiary, or for a specified period of ten years or more;

3 (B) A distribution that is a required or minimum distribution under Code Section  
4 401(a)(9);

5 (C) An amount that is distributed due to an unforeseen emergency under OAR 459-  
6 050-0075(2).

7 (g) "Recipient Plan" means an eligible retirement plan that is designated by a  
8 distributee to receive a direct rollover.

9 (2) Direct rollover to an eligible retirement plan. The direct rollover of an eligible  
10 rollover distribution by the Deferred Compensation Program to an eligible retirement  
11 plan shall be interpreted and administered in accordance with Code Section 457(d)(1)(C)  
12 and all applicable regulations. A distributee may elect to have an eligible rollover  
13 distribution paid by the Deferred Compensation Program directly to an eligible retirement  
14 plan specified by the distributee.

15 (a) The Deferred Compensation Program staff shall provide each distributee with a  
16 written explanation of the direct rollover rules for an eligible distribution, as required by  
17 the Code.

18 (b) A distributee's right to elect a direct rollover is subject to the following  
19 limitations:

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

22 (B) A distributee may elect to have part of an eligible rollover distribution be paid  
23 directly to the distributee, and to have part of the distribution paid as a direct rollover

1    only if the distributee elects to have at least \$500 transferred to the eligible retirement  
2    plan.

3            (c) A direct rollover election shall be in writing and must be signed by the distributee  
4    or by his or her authorized representative pursuant to a valid power of attorney. The  
5    direct rollover election may be on forms furnished by the Deferred Compensation  
6    Program, or on forms submitted by recipient plan which must include:

7            (A) The distributee's full name;

8            (B) The distributee's social security number;

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

10          (D) The name and complete mailing address of recipient plan; and

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

13          (d) The distributee is responsible for determining that the recipient plan's  
14    administrator will accept the direct rollover for the benefit of the distributee. Any taxes or  
15    penalties that are the result of the distributee's failure to ascertain that the recipient plan  
16    will accept the direct rollover shall be the sole liability of the distributee.

17          (3) Direct rollover from an eligible retirement plan. On or after January 1, 2002, the  
18    Deferred Compensation Program shall only accept rollover contributions from  
19    participants and direct rollovers of distributions from an eligible retirement plan on behalf  
20    of a participant. Section (3) of this rule shall be interpreted and administered in  
21    accordance with Code Section 402(c) and all applicable regulations.

1 (a) The Deferred Compensation Program shall only accept pre-tax assets. After-tax  
2 employee contributions are not eligible for rollover into the Deferred Compensation  
3 Program.

4 (A) The Deferred Compensation Program may require that a direct rollover from an  
5 eligible deferred compensation plan described in Code Section 457(b) plan include or be  
6 accompanied by a statement by the participant's previous employer or the plan  
7 administrator that the distribution is eligible for rollover treatment.

8 (B) A direct rollover from an eligible retirement plan other than a Deferred  
9 Compensation Plan described in Code Section 457(b) must be an eligible rollover  
10 distribution. It is the participant's responsibility to determine that the assets qualify for  
11 rollover treatment. Any taxes or penalties that are the result of the participant's failure to  
12 ascertain that the distributing plan assets qualify for a direct rollover to a deferred  
13 compensation plan described in Code Section 457(b), shall be the sole liability of the  
14 distributee.

15 (b) Subject to the requirements of subsections (3)(b)(A) and (B) below, eligible  
16 rollover distribution(s) shall be credited to the participant's Deferred Compensation  
17 account established pursuant to the Plan and Agreement on file with the Deferred  
18 Compensation Program and shall be subject to all the terms and provisions of the Plan  
19 and Agreement. Account assets received from the distributing plan will be invested by  
20 the Deferred Compensation Plan record keeper in accordance with the terms and  
21 conditions of the Deferred Compensation Program according to the asset allocation the  
22 participant has established for monthly contributions unless instructed otherwise in  
23 writing on forms provided by the Deferred Compensation Program.

1            (A) Assets from an eligible deferred compensation plan account described in Code  
2 Section 457(b) will be aggregated with the participant's accumulated Deferred  
3 Compensation Plan account.

4            (B) Assets from an eligible retirement plan other than a Deferred Compensation Plan  
5 described in Code Section 457(b) will be segregated into a separate account established  
6 by the Deferred Compensation Program for tax purposes only, but not for investment  
7 purposes. For investment purposes, the participant's assets are treated as a single account.  
8 If a participant changes the allocation of existing assets among investment options within  
9 the plan, the transfer or reallocation shall apply to and will occur in all accounts  
10 automatically.

11            (c) Assets directly rolled over to the Deferred Compensation Program may be  
12 subject to the 10 percent penalty on early withdrawal to the extent that the funds directly  
13 rolled over are attributable to rollovers from a qualified plan, a 403(b) annuity, or an  
14 individual retirement account.

15            Stat. Auth.: ORS 243.470

16            Stats. Implemented: ORS 243.401 - 243.507



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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May 16, 2008

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator, PPLAD  
SUBJECT: Notice of Rulemaking for Public Records Requests Rules  
OAR 459-060-0000, *Purpose*  
OAR 459-060-0001, *Definitions*  
OAR 459-060-0010, *Requests and Fees for Public Records*

MEETING DATE	05/16/08
AGENDA ITEM	B.4. Pub Records Req

### OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: SB 554 (2007 Regular Session) changed the public records law, requiring state agencies to modify how they handle public records requests.
- Subject: Responding to public records requests
- Policy Issues: No policy issues have been identified at this time.

### BACKGROUND

The 2007 Oregon Legislature enacted SB 554, which amends ORS 192.440 to impose two new requirements on public bodies, one pertaining to the manner in which public bodies respond to public records requests and the other requiring public bodies to make available information regarding the public records request process. The proposed rule modifications set forth how to request public records, including content of the request and associated fees and costs, as well as the staff response to public records requests.

### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on May 27, 2008 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on July 1, 2008 at 5:00 p.m.

### 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.

### IMPACT

Mandatory: Yes. Statutory changes require PERS to provide a response acknowledging receipt of a public records request, and to provide the public with a written procedure for making public records requests.

Impact: Clarifies process for submitting public records requests.

Cost: May minimally increase time spent processing public records requests because of the two new requirements.

#### RULEMAKING TIMELINE

April 15, 2008	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
May 1, 2008	<i>Oregon Bulletin</i> published the Notice.
May 16, 2008	PERS Board notified that staff began the rulemaking process.
May 27, 2008	Rulemaking hearing to be held at 2:00 p.m. in Tigard.
June 27, 2008	First reading of the rules.
July 1, 2008	Public comment period ends at 5:00 p.m.
July 25, 2008	Staff proposes adopting the permanent rule modifications, including any amendments warranted by public comment or further research.

#### NEXT STEPS

A hearing will be held on May 27, 2008. The rules are scheduled to be brought before the PERS Board for adoption at the July 25, 2008 meeting.

B.4. Attachment 1 – OAR 459-060-0000, *Purpose*

B.4. Attachment 2 – OAR 459-060-0001, *Definitions*

B.4. Attachment 3 – OAR 459-060-0010, *Requests and Fees for Public Records*

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 060 – PUBLIC RECORDS ADMINISTRATION**

1 **[459-060-0000**

2 ***Purpose***

3 *This division of chapter 459, Oregon Administrative Rules, provides information*  
4 *concerning the disclosure of information from the records of individual members of the*  
5 *Public Employees Retirement System (PERS). The purpose of the rules of division 060 is:*

6 *(1) To protect the members of PERS from unreasonable invasion of their privacy;*

7 *(2) To give members of PERS access to their individual records, unless otherwise*  
8 *prohibited by statute; and*

9 *(3) To identify and clarify the circumstances where disclosure of information from a*  
10 *PERS member's records without the member's consent is permissible.*

11 *Stat. Auth.: ORS 192.502 & 238.650*

12 *Stats. Implemented: ORS 192.410 - 192.505, 237.410 - 237.520, 237.610, - 237.620,*  
13 *237.950 - 237.980 & 238]*

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 060 – PUBLIC RECORDS ADMINISTRATION**

1 **459-060-0001**

2 **Definitions**

3 The words and phrases used in this Division have the same meaning given them in  
4 ORS Chapters 192 and 238 and OAR 459-005-0001. Specific and additional terms used  
5 in this Division are defined as follows unless context requires otherwise[.]:

6 (1) “Medical records” means any reports, letters, or notes containing  
7 information regarding a member’s health condition (mental or physical), or ability  
8 to perform any work.

9 (2) *[For the purposes of division 060, the term] “[m]Member”* means an employee  
10 of a PERS participating employer, a PERS member as described in ORS 238.005(12), a  
11 former PERS member, the beneficiary of a PERS member, an alternate payee as defined  
12 in ORS 238.465, or the beneficiary of an alternate payee.

13 *[(2) “Medical records” means any reports, letters, or notes containing information*  
14 *regarding the member’s health condition (mental or physical), or ability to perform any*  
15 *work.]*

16 (3) “Public disclosure” means disclosure of information to any individual other than  
17 the member or an individual *[that]* who is legally authorized to act on behalf of the  
18 member as to PERS matters.

19 (4) “Requestor” means a person requesting inspection, copies, or other  
20 reproduction of a public record from PERS.

21 Stat. Auth.: ORS 192.430, 192.502 & ORS 238.650



- 1 Stats. Implemented: ORS 192.410 - 192,505[, 237.410-520, 237.610-620, 237.950-
- 2 980 & 238]

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 060 – PUBLIC RECORDS ADMINISTRATION**

1 **459-060-0010**

2 **Requests and Fees for Public Records**

3 (1) **Requesting public records.** Anyone may request to inspect or obtain copies of a  
4 public record *[(s), as defined in ORS 192.410(4), that is in the custody of]* held by the  
5 Public Employees Retirement System by submitting a written request in person, via  
6 mail, email, or fax. PERS will allow reasonable access to any public record which an  
7 individual has a right to inspect during regular business hours, as long as the record is not  
8 exempt from disclosure *[by law]* under ORS 192.410 to 192.505. PERS may determine  
9 the time and manner of inspection or copying to protect the records and to prevent  
10 interference with the regular activities of PERS and its employees. A request for public  
11 records *[must be made in writing, and]* must include:

12 (a) The name, address, and telephone number, if any, of the requestor;

13 (b) A sufficiently detailed description of the record(s) requested, including the  
14 identification, description, type, and format of the public record, if known to the  
15 requestor; *[and]*

16 (c) The number of copies requested of the public record, if copies are requested *[.];*

17 and

18 (d) The signature of the requestor, unless sent via email, and date of request.

19 (2) PERS response to public record requests. Upon receiving a public record  
20 request, PERS will provide a prompt response acknowledging receipt of the request,  
21 following the guidelines set forth in ORS 192.440(2). If the record requested is

1 exempt from public disclosure under Oregon law, PERS will provide a response  
2 explaining why the record may not be released.

3 *[(2)](3) **Time period for response.*** A reasonable period of time, as determined by  
4 PERS, *[will]***must** be allowed for staff to locate and assemble the requested record(s), and  
5 consult with the Attorney General's office, if needed.

6 *[(3)](4) **Fees for public records.*** In accordance with ORS 192.440, PERS may  
7 charge a reasonable fee **for public record requests**. Fees are calculated to reimburse  
8 PERS for the actual costs of **locating, producing, and** providing *[and conveying]* copies  
9 of public records. A fee schedule is available upon request.

10 (a) **A cost estimate will be provided to the requestor before the production of**  
11 **any records, other than those records that will be provided at no cost under section**  
12 **(5) below.** *[For each request, the requestor will be informed of the estimated cost,*  
13 *including the employee hourly rate of pay for staff time charges, before the service(s) is*  
14 *performed.]*

15 (b) All fees must be paid in advance of releasing the requested public records for  
16 inspection or before photocopies are provided, unless otherwise directed by the Director  
17 or **the records will be provided at no cost under section (5) below**. Payments must be  
18 made by check or money order and made payable to the Public Employees Retirement  
19 System.

20 *[(4)](5) **Records available at no cost.*** No fee will be charged to a *[member or an*  
21 *employer]* **requestor** for one copy of the following public records:

- 22 (a) Approved Board minutes or Board orders for the past 12 months;  
23 (b) Current PERS administrative rules;

- 1 (c) Current Oregon Revised Statutes pertaining to PERS;
- 2 (d) Current PERS publications;
- 3 (e) A PERS member's record to the extent permitted under OAR 459-060-0030 and
- 4 459-060-0020, excluding paragraph (3)(a)(D); and

5 (f) No fee will be charged for providing such records:

6 (A) In an alternative format when required under the Americans with Disabilities  
7 Act; or

8 (B) If the records can be provided at nominal expense where collection of the fee  
9 would be more than the cost to provide the records.

10 ~~[(5)]~~(6) Except as provided under section ~~[(4)]~~(5) of this rule, PERS may not reduce  
11 or waive fees for making public records available and must charge the actual costs for  
12 services provided.

13 Stat. Auth.: ORS 192.430, 192.440, ~~[ORS]~~ 238.650, 238A.450 & ~~[ORS]~~ 243.470

14 Stats. Implemented: ORS 192.410 - 192.505 ~~[237.410-520, 237.610-620, 237.950-~~  
15 ~~980, 238, 243.401-507 & 192.410-505]~~



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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May 16, 2008

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator, PPLAD  
SUBJECT: Notice of Rulemaking for OAR 459-070-0050,  
*Participation of Public Employers* and OAR 459-075-0010,  
*Eligibility and Membership*

MEETING DATE	<b>05/16/08</b>
AGENDA ITEM	<b>B.5. Employer Participation</b>

### OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: To provide newly participating employers clearer guidance on participation in the PERS Plan for employees who are already members of PERS programs at the time of hire.
- Subject: Participation of public employers in all programs in the PERS Plan.
- Policy Issue: Should participating employers be required to participate in all programs in the PERS Plan?

### BACKGROUND

When the 2003 PERS Reform legislation created the OPSRP Pension Program and the IAP, the interplay of those programs with the PERS Chapter 238 retirement program was complicated. Concepts such as “Break in Service” and shifting member contributions to the IAP made discerning membership eligibility for existing, returning, and retiring members difficult. Still, the programs each have independent eligibility and benefit structures.

Two provisions adopted by the 2007 Oregon Legislature clarified the administration of the interplay among these programs. First, HB 2281 required a member who withdraws from one program to withdraw from all. This bill was an outgrowth of our realizations in administering these programs’ independent eligibility and benefit structures. PERS members also have expected to be able to move from one PERS-covered employer to another and continue to participate based on their established eligibility: a Tier One member who goes to another PERS covered employer is still a Tier One member and does not need to re-establish membership.

This expectation was further supported by the elimination of “Break in Service” by the 2007 Legislature’s HB 2285. Members in the PERS Chapter 238 Program will now continue in that program if they interrupt their PERS-covered employment. Permitting newly participating employers to participate in less than all programs would further complicate the administration of the PERS Plan and disrupt the employee’s expected continuity of membership in the system.

### POLICY ISSUE

*Should participating employers be required to participate in all programs in the PERS Plan?*

The tension among these provisions substantially clouds the factors in a new employer's decision on whether to join the Public Employees Retirement System. If the new employer tried to offer only some of the programs within the PERS Plan, members would be at best confused if not contentious when their work for a PERS-covered employer does not yield the benefits they expect. Membership and contribution start dates would fluctuate among employers and members could conceivably start and stop several times. Employer rates would be similarly tangled in sorting out which category a particular member's salary should fall. Finally, there's no practical way that a benefit administration system can be designed to track the permutations of a member who could potentially fall into an unpredictable combination of circumstances simultaneously for several employers concurrently.

All PERS employers in the system as of August 29, 2003 were required to continue participating in all the plan's programs. Any new employer should know the consequences of their decision to start offering PERS benefits. Those consequences should not be clouded by confused employees' expectations, administrative frustrations, and counter-intuitive cost structures. An employer that chooses to join the PERS Plan, as a single plan, should join all the programs and members should participate based on their established eligibility.

The proposed modifications to OAR 459-070-0050 require that an employer applying to participate in the PERS Plan must apply to participate in all programs. The modifications to OAR 459-075-0010 eliminate provisions regarding concurrent membership in the OPSRP Pension Program and the PERS Chapter 238 Program. While open for rulemaking, that rule is also modified to clarify the waiting period of an educational employee in the OPSRP Program.

### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on May 27, 2008 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on July 1, 2008 at 5:00 p.m.

### 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.

### IMPACT

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

Impact: Adoption would resolve this participation issue and provide stability and predictability for employers, members, and system administration.

Cost: There are no discernible material costs attributable to this rule.

RULEMAKING TIMELINE

April 15, 2008	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
May 1, 2008	<i>Oregon Bulletin</i> published the Notice.
May 16, 2008	PERS Board notified that staff began the rulemaking process.
May 27, 2008	Rulemaking hearing to be held at 2:00 p.m. in Tigard.
June 27, 2008	First reading of the rules.
July 1, 2008	Public comment period ends at 5:00 p.m.
July 25, 2008	Staff proposes adopting the permanent rule modifications, including any amendments warranted by public comment or further research.

NEXT STEPS

A hearing will be held on May 27, 2008. The rules are scheduled to be brought before the PERS Board for adoption at the July 25, 2008 meeting.

B.5. Attachment 1 – OAR 459-070-0050, *Participation of Public Employers*

B.5. Attachment 2 – OAR 459-075-0010, *Eligibility and Membership*

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459**

**DIVISION 070 – OREGON PUBLIC SERVICE RETIREMENT PLAN, GENERALLY**

1 **459-070-0050**

2 **Participation of Public Employers**

3 (1) Any public employer that does not already provide benefits under the Oregon  
4 Public Service Retirement Plan (OPSRP) may apply to participate in *[the]* OPSRP  
5 *[Pension Program, the OPSRP IAP, or both, only]* for service by eligible employees  
6 performed on or after the date the employer's participation becomes effective. An  
7 employer that applies to participate in OPSRP must also apply to participate in the  
8 PERS Chapter 238 Program for members of that program that it employs on or  
9 after the employer's participation begins.

10 (2) The application to participate *[in either or both OPSRP programs]* must  
11 contain*[, at a minimum,]* the following *[information]*:

12 (a) A true copy of the resolution, motion or other official action by which the  
13 employer's governing board or equivalent decided to apply to participate;

14 (b) A designated person or position authorized to represent the employer on PERS  
15 matters;

16 (c) Whether the employer will participate for one or more designated classes  
17 *[groups]* of employees or for all employees. If the employer already provides coverage  
18 for some but not all employees, the application must designate which additional class(es)  
19 *[group(s)]* will be added *[to the program or programs]*;

20 (d) *[Whether]* A statement that the employer will *[offer]* participate in the OPSRP  
21 Pension Program*[,]* and the OPSRP IAP*[, or both]*;



1 (e) *[Whether]* A statement that the employer will *[offer]* participate in the PERS  
2 Chapter 238 Program *[plan to qualifying employees]* for members of that program  
3 that it currently employs or may hire in the future in the class(es) designated for  
4 coverage pursuant to subsection (c) of this section;

5 (f) *[If the employer elects to participate in the PERS Chapter 238 plan for qualifying*  
6 *employees, w]* Whether the employer will participate in the unused sick leave program  
7 pursuant to ORS 238.350 *[provide the unused sick leave benefit for those employees];*  
8 and

9 (g) The date on which the employer proposes to commence participation. *[coverage*  
10 *under the specified program or programs.]*

11 (3) If the employer *[elects to participate in the PERS Chapter 238 plan for qualifying*  
12 *employees, and the employer also]* elects to participate in the State and Local  
13 Government Rate Pool (SLGRP) for the PERS Chapter 238 Program *[those*  
14 *employees]*, the employer shall provide PERS with a resolution electing to participate in  
15 the SLGRP before the coverage agreement is signed by the parties.

16 (4) Upon receipt of the properly completed application, PERS will prepare a  
17 coverage agreement, which will be forwarded to the person designated by the employer  
18 under (2)(b) above. In no event will coverage commence before the agreement has been  
19 executed on behalf of the employer's governing body (or equivalent), the PERS  
20 Executive Director, and the PERS Board.

21 (5) The employer will provide any and all information requested by PERS to ensure  
22 that the employer is eligible to participate, including whatever information PERS deems

1 necessary to determine that the employer qualifies as a public employer. Factors to be  
2 addressed in that determination include but are not limited to:

3 (a) If the employer is a public corporation, whether a governmental entity retains  
4 essential control over the employer's activities, with delegated powers for administration  
5 or discharge of public duties;

6 (b) Whether a state or local governmental body controls management of the  
7 employer;

8 (c) If the employer is a public corporation, whether it generates profits for private  
9 investors or stockholders;

10 (d) Where the employer derives its funding for operations;

11 (e) Whether the employer performs a governmental function; and

12 (f) Any information deemed necessary to determine that the employer's coverage  
13 will not adversely affect PERS' status as a qualified governmental retirement plan under  
14 the Internal Revenue Code.

15 (6) Unless the coverage agreement specifically provides otherwise, no retirement or  
16 service credit will be provided under *[OPSRP or]* the PERS Chapter 238 Program  
17 *[plan]* for the service performed with that employer prior to the employer becoming a  
18 participating employer*[, including service towards the member's six-month waiting*  
19 *period]*.

20 *[(7) An employee who is employed in a qualifying position with a newly*  
21 *participating employer and who had previously established membership in the PERS*  
22 *system as of August 29, 2003, shall be an active member of the applicable OPSRP or*

1 *PERS Chapter 238 program(s) as of the coverage agreement effective date, to the extent*  
2 *eligible under OAR 459-075-0010 and 459-080-0010.]*

3 Stat. Auth: ORS 238A.450, 238.650

4 Stats. Implemented: ORS 238A.025, 238A.070

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

1 **459-075-0010**

2 **Eligibility and Membership**

3 (1) Eligibility. An employee who is employed in a qualifying position on or after  
4 August 29, 2003 by an employer participating in the OPSRP Pension Program is eligible  
5 to become a member of that program unless the employee:

6 (a) Has established membership in the PERS Chapter 238 Program before August  
7 29, 2003 under the terms of ORS 238A.025 and has not terminated membership in that  
8 program under ORS 238.095;

9 (b) Is a judge member as defined in ORS 238.500;

10 (c) Elects to participate in an optional or alternative retirement plan as provided in  
11 ORS Chapters 243, 341, or 353; or

12 (d) Is otherwise ineligible for membership.

13 *[(2) Notwithstanding section (1) of this rule, an employee who established*  
14 *membership in the PERS Chapter 238 Program before August 29, 2003 under the terms*  
15 *of ORS 238A.025 and has not terminated membership in that program under ORS*  
16 *238.095 may nevertheless be eligible to establish membership in the OPSRP Pension*  
17 *Program if employed by a public employer that is participating in the pension program*  
18 *and is not participating in the PERS Chapter 238 Program.]*

19 (2)[(3)] Membership:

20 (a) An employee who meets the requirements in section (1) *[or (2)]* of this rule  
21 becomes a member of the OPSRP Pension Program on the first day of the calendar month  
22 following the employee's completion of a waiting period of six full calendar months of

1 service in a qualifying position with the same participating public employer. The six full  
2 calendar months of service may not be interrupted by more than 30 consecutive working  
3 days. For the purposes of this rule, a working day is defined as a day that the employer is  
4 open for business.

5 (b) The waiting period begins:

6 (A) On the date the employee is hired, and includes the month of hire as a full  
7 calendar month, if the date of hire is the first business day of the month. For the purposes  
8 of this rule, a business day is defined as Monday through Friday when PERS is open for  
9 business;

10 (B) On the first day of the month following the date of hire; or

11 (C) On the first day of the month following the end date of an interruption of service  
12 of more than 30 consecutive working days.

13 (c) In the event an employee is on an official leave of absence as described in OAR  
14 459-010-0010, the period of absence shall not constitute an interruption of the waiting  
15 period under subsection (a) of this section. The waiting period shall be extended by the  
16 length of the leave of absence.

17 (d) Absence from service by an educational employee during periods that the  
18 employing educational institution is not in session shall not constitute an interruption of  
19 the waiting period under subsection (a) of this section. *[The waiting period shall be*  
20 *extended by the length of the period the educational institution is not in session.]*

21 Stat. Auth.: ORS 238A.450

22 Stats. Implemented: ORS 238A.025, 238A.100 & OL 2007 Ch. 769



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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May 16, 2008

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator, PPLAD  
SUBJECT: Notice of Rulemaking for OAR 459-005-0310, *Date of Participation and Transfer of Employee Funds to the Oregon University System - OUS*

MEETING DATE	<b>05/16/08</b>
AGENDA ITEM	<b>B.6. OUS ORP</b>

### OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: The current rule provision regarding effective date of an election needs to be modified to comply with statute. The issue of whether an election to transfer to the OUS Optional Retirement Plan (ORP) requires that all the member's funds be transferred should also be addressed.
- Subject: Effective date of election to participate in the ORP and transfer of employee funds.
- Policy Issue: Should the request of a PERS member to transfer their funds to the ORP be administered as a request to transfer all funds from PERS to the ORP?

### BACKGROUND

A PERS member who is employed by Oregon University System (OUS) may elect to participate in the OUS Optional Retirement Plan (ORP). Generally, if that member is not vested in PERS, their PERS membership terminates and their funds (regular account and variable account, if any) are transferred to the ORP. If that member is vested in PERS, they can choose whether to terminate their membership by transferring their funds to the ORP, or become an inactive member and keep their PERS benefits.

The 2007 Legislature passed HB 2281, requiring a member who withdraws from one PERS program to withdraw from all PERS programs. That legislation did not specifically address ORP transfers. Under current practice, a member is allowed to retain some of their accounts with PERS (e.g., keep their PERS Chapter 238 member account(s) to fund their vested benefit under those provisions, and transfer only their IAP). However, to be consistent with the HB2281 concept, these rule modifications would require that a transfer terminate that person's membership in all programs in the PERS Plan and all of their funds be transferred to the ORP.

Staff initiated rulemaking to apply the "withdraw from one, withdraw from all" concept to ORP transfers. We continue to work with OUS to develop draft rule modifications that address the issues in this situation from both perspectives. Incidentally, while the rule is open for rulemaking, modifications are proposed to comply with the statutory standard for the effective

date of an election to participate in the ORP. Staff will present the draft rule to the Board at a future date.

### POLICY ISSUE

- *Should the request of a PERS member to transfer their funds to the ORP be administered as a request to transfer all funds from PERS to the ORP??*

Once the member elects to participate in the ORP and transfer their funds from PERS, the effect of the transfer parallels the effect of a withdrawal in terminating PERS membership. Allowing an employee to transfer some of their PERS funds (e.g., member account(s) but not IAP) results in the same type of parallel and multiple memberships HB 2281 sought to eliminate.

Staff recommends that rule modifications be adopted that apply the “withdraw from one, withdraw from all” concept to ORP transfers.

### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on May 27, 2008 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on July 1, 2008 at 5:00 p.m.

### LEGAL REVIEW

The draft rule will be submitted to the Department of Justice for legal review and any comments or changes will be incorporated before the rule is presented for adoption.

### IMPACT

**Mandatory:** Yes, in part. The current rule provisions regarding effective date of an election are not in compliance with statute. The Board need not adopt modifications regarding the “withdraw from one, withdraw from all” policy issue, but allowing parallel and multiple memberships in PERS and the ORP presents significant administrative problems that can be alleviated by applying a consistent approach.

**Impact:** PERS and OUS will benefit from administrative simplification by avoiding parallel and multiple memberships. Members will be required to make a more clearly defined choice of retirement plans when opting to transfer funds to the ORP.

**Cost:** There are no discernible material costs to this rule.

### RULEMAKING TIMELINE

April 15, 2008	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
May 1, 2008	<i>Oregon Bulletin</i> published the Notice.
May 16, 2008	PERS Board notified that staff began the rulemaking process.
May 27, 2008	Rulemaking hearing to be held at 2:00 p.m. in Tigard.
To be determined	First reading of the rules.

Notice – Oregon University System Optional Retirement Plan Rule

05/16/2008

Page 3 of 3

July 1, 2008

Public comment period ends at 5:00 p.m.

To be determined

Staff proposes adopting the permanent rule modifications, including any amendments warranted by public comment or further research.

NEXT STEPS

A hearing will be held on May 27, 2008. The draft rule will be provided to interested parties as soon as available. The public comment period may be extended if necessary.





# Oregon

Theodore R. Kulongoski, Governor

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May 16, 2008

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator  
Policy, Planning, and Legislative Analysis Division  
SUBJECT: Delegation Options in Contested Cases

MEETING DATE	<b>05/16/2008</b>
AGENDA ITEM	<b>C.1. Contested Cases</b>

The 2007 Oregon Legislature adopted HB 2423, amending the Administrative Procedures Act, ORS Chapter 183. That Act governs the contested case process. A new provision was added (ORS 183.411) that now allows the PERS Board to delegate the authority to enter a final order. This delegation can be made for a proceeding or class of proceedings and to an officer or employee, or class of officers or employees. At its February 15, 2008 meeting, the PERS Board asked that staff return with some options for the parameters of that potential delegation. Staff returned with a memo exploring the class of proceedings and officers or employees that could frame such a delegation. A copy of that memo is included with these materials. We also solicited input from our Legislative Advisory Committee members on this matter and have not received any comments to date.

### REVIEW OF RECENT CASES AND RESULTS

The attached matrix summarizes the contested cases disposed of over the last three years. Of those cases presented to the PERS Board, very few have resulted in a different result than that reached by the administrative law judge, and even fewer of those proposed orders sought to overturn the agency's position. The second part of the summary lists those cases where the PERS Board did issue a final order that changed the outcome, and briefly describes the issues addressed.

### STAFF RECOMMENDATION

If the PERS Board does choose to delegate final order authority, staff recommends that delegation be to the Executive Director and only if the final order upholds the ALJ's result (allowing for technical corrections). That recommendation is reflected in the suggested motion set forth under Option 1 below.

### BOARD OPTIONS

1. Adopt a motion to delegate to the Executive Director the authority to issue a final order, but only in those cases where the final order upholds the ALJ's Findings of Fact and Conclusions of Law, with technical corrections that do not affect the result.
2. Adopt a motion delegating final order authority in a specified class of cases to a PERS officer or employee under other specified circumstances.
3. Do nothing. Final order authority would be retained with the full PERS Board.



# Oregon

Theodore R. Kulongoski, Governor

C.1. Attachment 1

## Public Employees Retirement System

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March 28, 2008

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator  
Policy, Planning, and Legislative Analysis Division  
SUBJECT: Delegation Options in Contested Cases

The 2007 Oregon Legislature adopted HB 2423, amending the Administrative Procedures Act, ORS Chapter 183. That Act governs the contested case process. A new provision was added (ORS 183.411) that now allows the PERS Board to delegate the authority to enter a final order. This delegation can be made for a proceeding or class of proceedings and to an officer or employee, or class of officers or employees. At its February 15, 2008 meeting, the PERS Board asked that staff return with some options for the parameters of that potential delegation.

### CLASS OF PROCEEDINGS

Generally, PERS has classified its contested cases into two groups: disability and non-disability. The disability contested cases deal with whether a member has met the requisite standard for a disability retirement benefit. The other cases deal with any other type of issue (calculations, eligibility, etc.). Historically, each class has been roughly equal in number of cases, not counting the recent spike of non-disability contested cases requested by benefit recipients in the *Strunk/Eugene* adjustment project.

Disability contested cases involve a thorough review of sometimes voluminous medical records to reach a decision on a relatively clear legal standard: is the member unable to perform any work for which he or she is qualified? In these cases, the challenge is sorting, sifting, and weighing the medical evidence to decide whether the member has met the burden of proving that he or she meets the disability standard.

Non-disability contested cases do not usually involve a dispute of the facts but rather challenge one or more provisions of the PERS Plan as the agency staff has applied it. Usually, in this type of contested case, the question is whether the staff correctly applied an established law, rule, or policy, or challenges the established practice by advocating for a different policy or interpretation.

Should the PERS Board consider delegating its final order authority by class, the disability contested cases lend themselves best to such a delegation. The Administrative Law Judge is charged with reviewing the entire record and coming up with Findings of Fact. The resulting Conclusions of Law are generally made in accordance with a well defined standard. Absent an independent review of the record, the PERS Board has usually adopted the ALJ's findings, with some technical corrections for dates, names, exhibit numbers, etc. This class of proceedings therefore best lends itself to the PERS Board delegating final order authority to an officer or employee.

### DELEGATION TO OFFICER OR EMPLOYEE

In deciding whether to delegate final order authority to an officer or employee of the agency, two principle considerations are timing and scope.

- **Timing:** After the ALJ issues a proposed order, the parties have 45 days to file exceptions or comments, after which the ALJ considers whether to issue an amended proposed order. Incorporating that sequence into the schedule of a PERS Board full meeting can delay issuance of a final order for several weeks after the ALJ has completed his or her work. By delegating final order authority to an officer or employee, the contested case could reach resolution sooner.
- **Scope:** Historically, the PERS Board has adopted the ALJ's proposed order in the substantial majority of cases. Generally, that's because the ALJ's opinion was based on a settled area of law, rule, or policy. Sometimes, however, the contested case presents an issue that hasn't been so clearly defined or on which the PERS Board may decide to change its direction. In those limited cases, the full PERS Board may want to retain final order authority so the policy change or clarification is within its purview. If the PERS Board does delegate final order authority to an officer or employee, it may want to reclaim that authority in these particular cases.

As to whom the PERS Board may delegate final order authority, the new provision specifies that it be to an officer or employee of the agency, or a class of officers or employees. The PERS Board could delegate to one or more of its members. If authority is delegated to more than one board member, the delegation should clarify whether either of those members could issue a final order or if they must do it collectively. If the PERS Board chooses to delegate final order authority to an employee, the Executive Director is an obvious choice and could further delegate final order authority so a subordinate under OAR 459-001-0025 if necessary in a particular circumstance.

### STAFF RECOMMENDATION

Delegating final order authority makes the most sense in disability contested cases where the ALJ does the yeoman's work in analyzing the record to decide whether the member has met his or her burden of proof. Delegating this authority would resolve these cases more quickly, which is important since these cases always deal with entitlement to benefit payments and reaching that resolution timely is in all parties' best interests.

As to non-disability cases, delegation would allow those cases to be resolved more quickly but the PERS Board does lose some visibility to the issues presented. Unless the contested case presents an issue where application of the law, rule, or policy is unclear, the final order does little more than ratify the ALJ's opinion. If staff needs policy clarification or advocates for a different result than the ALJ's, the delegation could require that those cases be brought to the full Board for consideration.

Delegating authority to one or more board members does alleviate the delay in holding cases until a regular board meeting. If the PERS Board does decide to delegate authority to an employee, staff recommends that delegation be limited to the Executive Director and only if the final order upholds the ALJ's result (allowing for technical corrections).

BOARD OPTIONS

1. Adopt a motion to delegate final order authority in contested cases to one or more named PERS Board members, directing whether the named members may act individually or must decide together on issuing a final order.
2. Adopt a motion to delegate to the Executive Director the authority to issue a final order but only in those cases where the final order upholds the ALJ's Findings of Fact and Conclusions of Law, with technical corrections that do not affect the result.
3. Adopt a motion to delegate to the Executive Director the authority to issue a final order but only in cases addressing a member's eligibility for a disability benefit.
4. Adopt a motion delegating final order authority in a specified class of cases to a PERS officer or employee under other specified circumstances.
5. Do nothing. Final order authority would be retained with the full PERS Board.

### Summary of Non-Disability & Disability Contested Cases Received (2004 – 2007)

<b>Non-Disability</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
Total Non-Disability Appeals Submitted	70	63	61	39*
Total Non-Disability Requests for Contested Case	16	19	13	5*
Number of Non-Disability Contested Cases Heard by the Board	8	9	13	8
<ul style="list-style-type: none"> <li>Of those cases, the number of Final Orders Finding in Favor of the Petitioner</li> </ul>	0	0	1	1
<ul style="list-style-type: none"> <li>Of those cases, the number of Final Orders Modifying the ALJ's Opinion</li> </ul>	1	0	1	1
<b>Disability</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
Total Disability Requests for Contested Case**	35	29	35	17
Number of Disability Contested Cases Heard by the Board	8	5	5	4
<ul style="list-style-type: none"> <li>Of those cases, the number of Final Orders Finding in Favor of the Petitioner</li> </ul>	0	0	0	0
<ul style="list-style-type: none"> <li>Of those cases, the number of Final Orders Modifying the ALJ's Opinion</li> </ul>	0	0	1	0

\* Does not include 526 appeals and 15 contested case requests based on *Strunk & Eugene* recalculations.

\*\* Disability cases result from a denial or discontinuance of benefits from the PERS Disability Unit, and are received in PPLAD at the contested case level.

Please Note: The figures above do not include cases that were withdrawn, or claims that were approved prior to any administrative hearing or Board action and the hearing request cancelled. Also note, cases can be requested in one year but not heard by the Board until the following year due to the extended process.

**Summary of Non-Disability & Disability Contested Cases with  
Final Orders Modified by the Board (2004 – 2007)**

<b>Name</b>	<b>Type</b>	<b>Issue</b>	<b>Board Action</b>	<b>Date of Board Action</b>	<b>Current Status</b>
Stephens	Non-Disability	Death Benefit Award	Board reversed ALJ's proposed order which denied the deceased member's death benefit to the current wife	9/30/2004	Approved for Petitioner – Case Closed
McIntosh	Disability	Eligibility for Duty Disability	On petition for reconsideration, the Board reversed the ALJ's proposed order denying the member duty disability	7/24/2006	Approved for Petitioner – Case Closed
Lenon	Non-Disability	Use of Sick Leave in Retirement Calculation	Board reversed ALJ's proposed order which granted additional sick leave above statutory requirement	10/23/2006	Court of Appeals
English / Pinkerton	Non-Disability	Pop Up Retirement Options for Domestic Partners	Board reversed ALJ's proposed order which granted the pop-up option	5/18/2007	Court of Appeals



# Oregon

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May 16, 2008

TO: Members of the PERS Board  
FROM: Kyle J. Knoll, Business Operations Manager  
SUBJECT: 2009 – 11 Agency Budget Development and Strategic Outlook

MEETING DATE	<b>5/16/08</b>
AGENDA ITEM	<b>C.2. Budget Strategic Outlook</b>

### REPORT OVERVIEW

This report describes the 2009-11 Agency Requested Budget (ARB) development process, summarizes the related Policy Option Packages (POPs), and includes the updated agency strategic plan, all for Board consideration prior to final review and approval during the June 27, 2008 Board Meeting. Noteworthy budget development accomplishments to date include:

- The 2009-11 budget development process began in late August and early September of 2007 with a review and update of the Six-Year Strategic Outlook (ref. attachment) and 2009-11 Division Business Plans. This work progressed through early December. Policy Option Packages (POPs) requesting funding above the projected 2009-11 Essential Budget Level (EBL) were drafted by cross-divisional committees, each with a Division Administrator sponsor, from mid-December through the end of April, 2008.
- The process has included ongoing reconciliation with PERS' Six-Year Strategic Outlook and Division Business Plans, as well as significant Executive, Division Administrator and section management participation to ensure that the 2009-11 budget supports the Agency's strategic goals, core business operations and line staff needs.
- The process has produced significant positive outcomes including: strategic planning and consensus building opportunities with an agency-wide view; a focus on stabilizing program operations with permanent positions and managing increasing workload with a decreasing workforce (ref. attached graph); and using a detailed business case protocol (ref. attached business case outline) for developing and evaluating POPs.
- The process resulted in the original POP position requests being downsized from 109 positions to 68 positions. These position requests, when combined with the automatic elimination of limited duration positions in the EBL, would result in an 8 percent reduction in overall agency staffing, dropping from 396 current biennium positions to 364 positions in the next biennium.

## 2009-11 AGENCY REQUESTED BUDGET DEVELOPMENT PROCESS

To ensure that the 2009-11 ARB supports the agency's strategic goals, the budget development process began with a review of PERS' Six-Year Strategic Outlook and Division Business Plans. This review resulted in the identification and adoption of two key budget guidelines by PERS Administrators. Those guidelines are a focus on stabilizing PERS' programs and core business operations with permanent positions, and managing increasing workloads with a decreasing workforce via continuous process improvements, staff training and development, and technology investments.

Based on those guidelines, POPs and related business cases were drafted by cross-divisional management committees with direction from Division Administrator sponsors. A summary of the 2009-11 proposed POPs is included below. Also please note:

- The POPs request 64 permanent positions / FTE and 4 limited duration positions / FTE, or a total of 68 FTE.
- This is a reduction of 52 positions / FTE, or 48%, from the 109 positions requested in the initial Policy Option Packages (POPs) drafts. The reduction was achieved by the POPs sponsors and management committees focusing on process improvements and detailed assessment of the related business cases.
- With these 68 requested FTEs, PERS 2009-11 position count will total 364, which is a decrease of 32 positions or 8% from the 2007-09 position count of 396.

## SUMMARY OF PROPOSED 2009-11 POLICY OPTION PACKAGES (POPs)

### **Business Process Owners**

**6 Positions / 6.00 FTE**

This POP requests 6 permanent FTE to comprise a cross-divisional team of senior operations analysts to evaluate, develop and implement new business processes and process improvements. The six limited duration positions currently supporting this model linking business processes and technology have proven to be an extremely effective component of the RIMS Conversion Project. Converting these positions to six permanent positions will support the agency's goals of streamlining processes, minimizing risks, maximizing productivity, enhancing customer service, reducing operational bottlenecks and backlogs, and increasing efficiencies.

-Steven Patrick Rodeman – PPLAD Administrator & Jeff Marecic - CIO, POP Co-Sponsors

### **Maintenance & Enhancement of Current Service Levels**

**45 Positions / 45.00 FTE**

This POP requests 45 permanent FTE to largely replace existing limited duration positions and maintain current workload volume with enhanced service levels as the agency transitions to a new information management platform and pension payment system of record, jClarety.

- Maintenance of current workload volume includes providing services to employers, members and retirees in multiple programs (Tier One / Tier Two, Judge Program, OPSRP, and IAP), with data bridging as required between jClarety as the new pension payment system of record, and the legacy RIMS platform.



- Enhancement of current service levels includes progressing from paying 10% of final service retirement benefits in 45 days to paying 60% of final service retirement benefits in 45 days over the biennium. The current process of certifying data for payment, in a just-in-time model when applications are received, will also move to a two year prior to earliest retirement age certification of data to support more timely application processing.

-Patrick Teague – BPD Administrator / POP Sponsor

### **Data Transition & Standard Tool Development**

**10 Positions / 10.00 FTE**

This POP requests ten permanent FTE to retrieve legacy account information and create standard processes for the approximately 20% of agency work that will not be automated in, but must be reconciled with the new pension payment system of record, jClarety. These FTE will also develop productivity enhancement tools and reports to ensure data accuracy and continued service levels are maintained.

-Patrick Teague – BPD Administrator / POP Sponsor

### **Standards, Training & Certification**

**0 Positions / 0.00 FTE**

This POP requests funding of \$994,882 for actuarial services and financial modeling, peer review of Internal Audits, and staff training to meet and maintain required technical standards and certifications in areas such as accounting, auditing, and information technology and security. This, in turn, will ensure that actuarial service needs, audit standards, and information security requirements are met. This funding will also help PERS secure the in-house expertise to maintain, enhance and audit the new pension payment system of record, jClarety. No positions / FTE are included in this request.

-Patrick Teague – BPD Administrator / POP Sponsor

### **Enterprise Applications**

**4 Positions / 4.00 FTE**

This POP requests three permanent and one limited duration FTE to improve and expedite data migration and cleansing, and strategically support the RIMS Conversion Project and subsequent enterprise operations by focusing on automated enterprise regression testing tools, and system development and environmental support. Additional funds requested are:

- The unexpended portion of the current legislatively approved \$27.5 million RCP budget, or \$3,534,244, in order to complete the project in 2009-11.
- \$720,000 to support completion of the data migration from RIMS to jClarety.
- \$1.7 million to address data integrity at the data element level, and develop procedures to identify and cleanse all historical data.
- \$248,000 to increase the overall stability of the network and reduce the complexity in the computing environment to allow for more efficient management of information technology (IT) resources.

-Yvette Elledge – CSD Administrator / POP Sponsors

**Infrastructure Maintenance & Enhancement**

**3 Positions / 3.00 FTE**

This POP requests three limited duration FTE to support the migration of microfilmed images from deteriorating film stock to digital images in the agency's electronic content management repository, and ongoing mail pick-up and delivery services between PERS' headquarters and the 72<sup>nd</sup> Avenue facility. Funding of \$50,000 is requested to provide consultant services in the development of a Request for Proposal (RFP) for the Oregon Savings Growth Plan (OSGP) to engage the services of a deferred compensation Third Party Administrator (TPA) and evaluate "best practice" opportunities. Funding of \$775,000 is requested to maintain the lease for the 72<sup>nd</sup> Avenue facility through June of 2011.

-David Tyler – CFO / POP Sponsor

**Legal Services**

**0 Positions / 0.00 FTE**

This POP requests the continuation of \$1 million in budget limitation for legal counsel to advise PERS staff and the PERS Board on issues related to fiduciary responsibility, litigation resulting from the implementation of the 2003 PERS reform legislation and the Strunk & Eugene decisions, federal tax issues including plan qualification, and administrative rules and contested cases that arise due to new legislation. No positions / FTE are included in this request.

- Steven Patrick Rodeman – PPLAD Administrator / POP Sponsor

**POSITION REVIEW AND BUDGET DEVELOPMENT SCHEDULE**

As reflected in the proposed 2009-11 POPs, the agency's focus is on stabilizing programs and core business operations with permanent positions, and managing an increasing workload with a decreasing workforce via process improvements, staff training and development, and technology investments. The agency also continues to review current position descriptions to ensure that those descriptions accurately describe staff assignments and skill sets necessary to achieve stated outcomes. If necessary the agency will develop administrative packages to reconfigure and reclassify staff positions. Each of those administrative packages must be self-funded and will not incur obligations above the Legislatively Approved Budget.

The remaining activities for budget development include:

**May:**

Complete input into the Oregon Budget Information and Tracking System (ORBITS) and the Position Inventory Control System (PICS) for base budget adjustments and essential packages, thus producing the Essential Budget Level (EBL) Budget, formerly referred to as the Current Service Level (CSL) Budget. Complete necessary ORBITS and PICS audits with DAS. Notify the PERS Board of any updated fiscal impact information for the Policy Packages and overall budget request. Continue drafting and refining the Policy Option Packages and related business cases.

**June:**

Complete input into ORBITS and PICS for all requested positions and operational needs for the 2009-11 Agency Requested Budget (ARB). Complete necessary ORBITS and PICS audits with DAS. Request PERS Board approval to forward the proposed POPs and requested budget to the Governor.

**July:**

Complete supporting narrative and prepare the 2009-11 Agency Requested Budget (ARB) binders for submission to the Governor.

**August:**

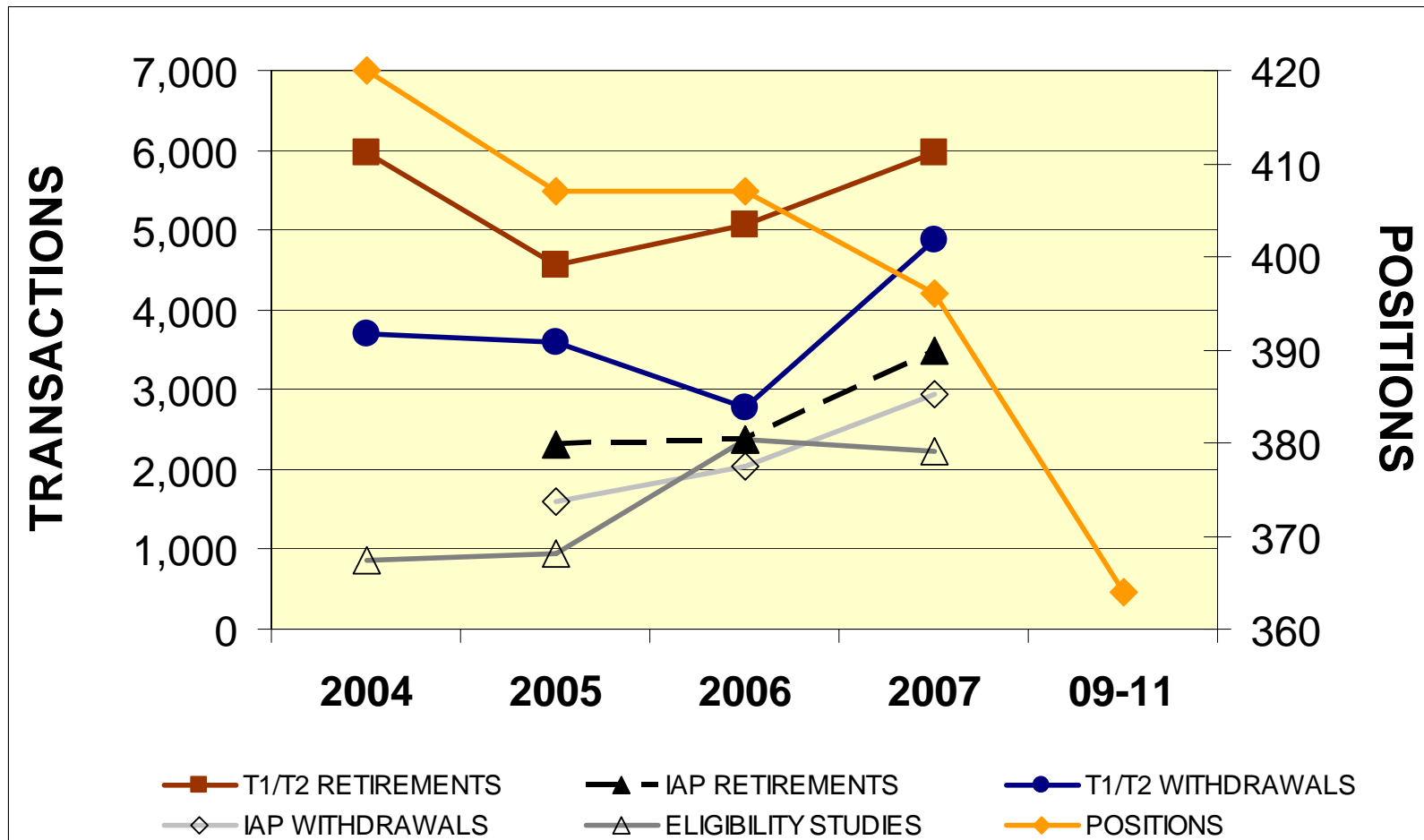
PERS is scheduled as an 'early submittal' agency with a deadline of August 1st for submission of the Agency Requested Budget (ARB).

C.2. Attachment 1 – Workload Transactions vs. Staffing

C.2. Attachment 2 – Business Case Outline

C.2. Attachment 3 – Six-Year Strategic Outlook

## Key Workload Transactions per Year vs. Biennial Position Totals



## PERS Policy Options Packages (POPS) Business Case Outline

### 1 Executive Summary

An overview concisely stating what the proposal is, what problem it solves, the costs and resources needed, what the business solution or technology accomplishes, how the business value will be measured, and the risks or consequences of not approving the proposal.

### 2 Introduction and Background

A description of the current state of and history relating to the business problem or opportunity, including the stakeholders, and relevant data and statistical information.

### 3 Problem Definition and Desired Business Goals/Objectives

A description of the way things are now (as is), the way they should be (to be), and what is needed to fill the gap between the two (gap analysis). This includes an explanation of the business process change and change management aspects of the problem, identification of the stakeholders, and links to the PERS Mission, Agency Goals, and/or Key Performance Measures where applicable.

### 4 Proposal

A description of the proposed solution, approach or strategy, and high-level milestones and dates.

#### 4.1 Assumptions

The list of assumptions used to develop value, risk and resources, and the ability of the alternative to solve the business problem or optimize the opportunity. This includes a description of how the assumptions were determined and validated.

#### 4.2 Benefits

The list of benefits achieved by the proposed solution, recipients of the benefits, how the benefits will be measured, and an estimate of when the benefits will occur.

#### 4.3 Resource Estimates

The costs / positions, including timespan (limited or permanent) and resource requirements.

#### 4.4 Risk Assessment & Mitigation Strategy

An assessment of the consequences of not enacting the proposed solution, and specific risk mitigation strategies.

#### 4.5 Alternatives Considered

A list of alternative solutions / proposals considered, and an explanation why the alternative solutions weren't chosen.

### 5 Appendices

Supporting data such as financial models, Gantt charts, Organization charts, etc.



# **Six-Year Strategic Outlook**

For  
**Fiscal Bienniums**

2007—2009

2009—2011

2011—2013

Updated May 2008

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# Introduction

This document describes the high-level strategic goals and objectives of the Oregon Public Employees Retirement System (PERS) over the six-year strategic planning period of FY 2007-2013.

The strategic outlook outlines what needs to be accomplished in both short-term and long-term planning and execution to achieve the desired strategic outcomes. This outlook reflects the four essential strategic planning components by addressing:

- Where are we today? [SWOT—see divisional reports]
- Where do we want to be tomorrow ? [desired outcomes]
- How are we going to get there? [strategies]
- How will we know that we made it? [key indicators]

## **Mission and Guiding Principles**

The strategic outlook is focused on outcomes that align with the Agency's Mission and Guiding Principles adopted by the PERS Board in 2004.





## **Mission Statement**

**We are a well-respected organization that serves our members by enabling informed retirement and health benefit decisions and delivering retirement and health benefits effectively and efficiently.**



# Guiding Principles

1. **Trustworthy**—We build trust internally and with all stakeholders.
2. **Transparent**—Our work is transparent, direct and open.
3. **Member Focused**— We care about our members. We assure that members receive their legitimate benefits. We seek to understand and meet member needs.
4. **Inclusive**—We uphold our stakeholders’ right to provide input into decisions that effect them.
5. **Objective**—We administer the law objectively, not subject to political pressure or improper influence.
6. **Straightforward**—We strive for simplicity. We aim to make our benefits and services easy to understand, straightforward to administer, and efficient to implement.
7. **Accountable**—We do what we’ll say we’ll do. We make and keep commitments.
8. **Data-quality/integrity**—We maintain and improve the integrity of data through our processes, business rules, decision-making, and data fixes.
9. **Aligned**—We’re focused on our objectives. We keep strategy and resources aligned, and deliver results, even as priorities change.
10. **Clear**—Our communications are clear, consistent, and concise, and meet stakeholder needs.
11. **Courageous**—We’re willing to make hard decisions in order to implement our strategy and to deliver according to the character of the organization.
12. **Competitive**—We understand the financial implications of all our decisions and aim to operate competitively.
13. **Careful**—We anticipate and manage risks to support financial stability for members, employers and taxpayers.

# **Key Performance Measures**

**Changes from 2005-07**

Working with the Oregon Progress Board, PERS contributes to the Annual Performance Progress Reports (APPR) provided to the Oregon Legislature, using key performance measure data to describe the agency's progress toward its mission and goals.

As part of the 2007-09 budget development process, PERS reviewed and refined its key performance measures to enhance clarity, improve data accuracy, and eliminate redundancy. Eight measures were legislatively approved for use in fiscal years 2008 and 2009.

# Legislatively adopted 2007-09 KEY PERFORMANCE MEASURES

2007-09 KPM #	Legislatively for 2007-09	Changes to 2005-07	Target 2008	Target 2009
<b>1</b>	TIMELY RETIREMENT PAYMENTS: Percent of initial service retirements paid within 45 days from retirement date	New wording	80%	80%
<b>2</b>	TOTAL BENEFIT ADMINISTRATION COSTS: Total benefit administration costs per member	New Wording, New Data	\$120	\$120
<b>3</b>	STAFF TO MEMBER RATIO: Ratio of FTE staff to members	New Wording, New Data	1:825	1:825
<b>4</b>	AVERAGE DOLLARS DEFERRED: Average monthly deferral per state employee deferred compensation participant	New Wording, New Data	\$409	\$430
<b>5</b>	LEVEL OF PARTICIPATION: Percent of state employees participating in the deferred compensation program	New Data	38%	39%
<b>6</b>	CUSTOMER SERVICE: Percent of members and employers rating their satisfaction with the agency's customer service as "good" or "excellent". Overall customer service, timeliness, accuracy, helpfulness, expertise and availability of information	No Change	80%	80%
<b>7</b>	TIMELY BENEFIT ESTIMATES: Percent of benefit estimates processed within 30 days	New Measure	95%	95%
<b>8</b>	BOARD OF DIRECTORS BEST PRACTICES: Percent of total best practices criteria met by the PERS Board	New Measure	100%	100%

# STRATEGIC OUTCOMES

- 1. Produce timely and accurate payment of all PERS benefits**
- 2. Deliver high quality customer service**
- 3. Agency organized to optimize effectiveness and efficiency**
- 4. Business processes are efficient and cost effective**
- 5. Agency staff has the skill set to support strategic outcomes**
- 6. Provide a secured information environment**
- 7. Agency communications are clear, concise, and accurate**

1

## Produce timely and accurate payment of all PERS benefits

### Strategies

- Complete *Strunk/Eugene* implementation project
- Coordinate benefit payments for all PERS programs
- Automate 20% of functionality not currently contained in payment system of record
- Centralize data cleansing activities
- Pay estimated benefits, as needed, to minimize cash flow disruptions for newly retired members
- Improve working relationship with employers to facilitate quality and timeliness of data reporting
- Strengthen benefit payment review, quality control, and verification processes
- Work with employers to improve separation from employment process
- Implement data quality life cycle process to expose, verify and clean data
- Maintain employer responsibility for tracking and reporting accurate data

### Key Indicators

- 80% of calculations are system generated
- Final benefit paid within 45 days of effective retirement date
- No more than 1% of retiring members challenge Notice of Entitlement data
- Audits confirm 99% of final benefit calculations are accurate

Division Facilitator: Benefit Payments

## 2

## Deliver high quality customer service

### Strategies

- Use agency-wide approach to deliver customer service
- Fully utilize the call center capabilities and technologies and integrate with RIMS Conversion Project
- Provide member self service via internet website based services
- Enhance the retirement/withdrawal application intake process to include tracking and quality review of applications
- Enhance the retirement education program to include Health Insurance and Oregon Savings Growth Plan and develop multi-modal delivery plan
- Use customer service satisfaction surveys to better understand service expectations and establish service standards
- Strengthen communication and partnerships with employers and member stakeholder groups to enhance customer service

### Key Indicators

- Accurate benefit estimates produced within seven days of request
- Members can create benefit estimates on the PERS website
- Telephone calls, emails, and correspondence answered within defined performance standards
- Customer satisfaction surveys show 80% or more of members and employers rate their satisfaction with agency services as “good” or “excellent”
- PERS staff can determine current status of any member inquiry

Division Facilitator: Customer Service

**3**

**Agency organized to optimize effectiveness and efficiency**

**Strategies**

- For clarity of mission and clear ownership of processes, better organize and focus on three core business operational functions-
  - DATA [collect data from employers]
  - ELIGIBILITY [determine if members are eligible for requested benefit, maintain legacy data]
  - BENEFITS [pays benefits to members]
- Develop business-driven workflows with business process owners for all major functions
- Utilize project management staff and quality assurance staff as agency-wide resources
- Establish agency-wide quality assurance process
- Develop call center into agency-wide information and communication resource with access to all member information

**Key Indicators**

- Three core business operational functions providing clear ownership of data, eligibility, and benefit calculations
- Valid, accurate, and complete data is available in timely manner
- Workflows are supporting major functions and continuous process improvement
- Quality assurance standards established for major business processes
- All major business projects assisted by project management office

**Division Facilitator: Deputy Director**



# 4

**Business processes are efficient and cost effective**

## **Strategies**

- RIMS Conversion Project is a priority throughout agency
- Implement intake based document imaging
- Reorganize and simplify business processes for efficiencies as part of RIMS Conversion Project and workflow implementation
- Utilize one-touch approach to completion of work
- Effectively use internal audits to audit, test, and improve agency processes

## **Key Indicators**

- jClarety is fully functional without bridging to RIMS
- Prior year adjustments required beyond annuals closing period are declining
- Workload backlog metrics dramatically reduced from 2005 status
- More transactions being processed per FTE
- 99% of final benefit calculations are accurate and final benefit is paid within 45 days of retirement
- Audits confirm improving agency efficiency and cost effectiveness

**Division Facilitator: Fiscal Services**

**5**

**Agency staff has the skill set to support strategic outcomes**

### **Strategies**

- Develop organizational bench strength through staff development and succession planning
- Assess organizational needs and capabilities—hire and train to fill capability gaps
- Use performance management system to create developmental plans and career paths for employees
- Implement a unified staff training and development strategy that addresses agency-wide as well as division-specific needs
- Agency workforce is equipped to serve a diverse membership

### **Key Indicators**

- Agency does not suffer from “key person” syndrome
- Staff can obtain core training through agency resources
- Outside training opportunities are identified and used when cost effective
- No more than 5% of new hires removed from trial service annually
- Agency workforce is equipped to serve a diverse membership

**Division Facilitator: Human Resources**

# 6

## Provide a secured information environment

### Strategies

- Implement enterprise risk management program
- Strengthen and maintain information security initiatives
- Ensure all staff are aware of and follow data security processes and procedures (training, new hire orientation, staff surveys)
- Utilize data classification policy
- Maintain robust internal audit function
- Regularly monitor for compliance with related security laws and regulations, and effectiveness of internal controls

### Key Indicators

- Annual risk assessments are completed
- Data classification policies and procedures are used effectively
- Annual assessments of PERS compliance with related legal requirements and effectiveness of internal controls are performed
- No significant information security related findings on annual Secretary of State audit
- Internal/external audits reveal no significant information security breaches

**7**

**Agency communications are clear, concise, and accurate**

### **Strategies**

- Fully develop agency website to improve accessibility and usability
- Use focus groups to ensure key forms and communications are easy to read and understand
- Have all communication materials reviewed internally for consistency and design—remove jargon and improve understandability
- Continual training for staff to provide consistent answers to member and employer inquiries
- Communicate to staff and stakeholders prior to trigger events and mass communications
- Involve stakeholder groups in delivery of information to members and employers

### **Key Indicators**

- Member calls for clarification of information already provided decrease
- PERS websites are easy to navigate and information easy to read and understand
- Members receive the same answer from all agency sources
- Staff provided with consistent, accurate, complete, and current information to respond to member and employer inquiries

**Division Facilitator: Policy & Planning**



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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May 16, 2008

MEETING	
DATE	<b>05/16/08</b>
AGENDA	<b>C.3.</b>
ITEM	<b>Fin Modeling</b>

TO: Members of the PERS Board  
FROM: Dale S. Orr, Manager, Actuarial Analysis Section  
SUBJECT: Employer Side Account Financial Modeling

Bill Hallmark and David Kelly of Mercer will present the results of their analysis of the financial dynamics of side accounts as they relate to the PERS plan and employer rates. This presentation will be informational only.

An electronic version of Mercer's presentation will be sent to the Board members prior to the meeting, if available.