

OREGON PUBLIC EMPLOYEES RETIREMENT BOARD

Friday February 6, 2009 9:30 A.M.		PERS 11410 SW 68 th Parkway Tigard, OR
	ITEM	PRESENTER
A. Administration – 9:30 A.M.		
1. 2.	November 21, 2008 Board Meeting Minutes Director's Report <ul style="list-style-type: none"> a. Forward-Looking Calendar and 2009 Meeting Schedule b. OIC Investment Report c. Budget Report d. Employer Reporting Update e. OSGP Trading Activity Report 	CLEARY
B. Consent Action and Information Items		
1. 2. 3. 4.	Action on Contested Cases Notice of Earnings Crediting Rules (Three Sets of Rules) Adoption of Domestic Partner Health Insurance Rules Adoption of HEART Act Section 105 Rules	RODEMAN
C. Action and Discussion Items		
1. 2. 3.	Adoption of ETOB Rules Preliminary 2008 Earnings Crediting and Reserving Legislative Update	RODEMAN/ORR RISWICK
D. Executive Session Pursuant to ORS 192.660(2)(f), (h), and/or ORS 40.225		
1.	Litigation Update	LEGAL COUNSEL

Audit Committee meeting immediately following the regular meeting.

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Note: If you have a disability that requires any special materials, services or assistance, call (503) 603-7575 at least 48 hours before the meeting.
Michael Pittman, Chair * James Dalton * Thomas Grimsley * Eva Kripalani * Brenda Rocklin, Vice-Chair Paul R. Cleary, Executive Director
Level 1 - Public

PUBLIC EMPLOYEES RETIREMENT BOARD

PERS Board Meeting
November 21, 2008
Tigard, Oregon

MINUTES

Board Members:

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

Staff:

Donna Allen	Brian Harrington	Steve Rodeman
Helen Bamford	Rick Howitt	Susan Sjordal
Gay Lynn Bath	Elaine King	Jason Stanley
Paul Cleary	Kyle Knoll	Dave Tyler
David Crosley	Jeff Marecic	Stephanie Vaughn
Joe DeLillo	Dale Orr	
Yvette Elledge	Susan Riswick	

Others:

Cathy Bloom	Bill Hallmark	P. Peg	Dallas Weyand
Linda Ely	Steve Haynes	Connie Sauer	Scott Winkels
Keith Kutler	E. Marie Laird	Ron Schmitz	Gary Woolworth
Greg Hartman	Steve Manton	Deborah Tremblay	
Matt Larrabee	Kevin Nordhill	Pat West	

Board Vice-Chair Brenda Rocklin called the meeting to order at 1:00 P.M.

ADMINISTRATION

A.1. BOARD MEETING MINUTES OF SEPTEMBER 19, 2008

Executive Director Paul Cleary noted minor edits to the September 19, 2008 minutes.

The Board unanimously approved the September 19, 2008 Board meeting minutes as corrected.

A.2. DIRECTOR'S REPORT

Executive Director Cleary presented the Board's forward looking calendar, and the proposed calendar for 2009 Board meetings. Cleary noted that the next Board meeting will be on February 6, 2009, immediately followed by an Audit Committee meeting. Cleary discussed a potential joint workshop with OIC to review respective roles, responsibilities and governance issues. Cleary said the March 2009 Board meeting will include Adoption of Earnings Crediting Rules and the Final 2008 Earnings Crediting and Reserving action. Cleary said that staff continue to work with employers to get suspended records corrected and resolve EDX system performance issues. Cleary reported a projected \$1.7 million positive budget variance for this biennium. Cleary said the next state revenue forecast will be released on November 19 and the Governor's recommended budget for next biennium will be released by December 1. Cleary shared results of the 2008 Customer Satisfaction Survey for both members and employers, noting continued upward trends for almost all service factors. The Board acknowledged the staff's customer service improvements and asked to be included in next year's survey design.

Ron Schmitz, Chief Investment Officer for Oregon State Treasury, presented the October 31, 2008 Oregon Investment Council (OIC) Report. Schmitz reported the fund net asset value is down significantly so far this year and, due to market declines, the equity exposure is below target. Schmitz said that the international portfolio has out performed its benchmarks year-to-date while the US portfolio has underperformed. Schmitz said the fixed income portion of the portfolio appears to be the safest bet during the present "bear" market trend. Schmitz said that Treasury bills remained the most stable performers during the current volatile market circumstances.

CONSENT ACTION AND INFORMATION ITEMS

B.1. NOTICE OF HEART ACT SECTION 105 RULES

Deputy Director Steve Rodeman presented notice of rulemaking on benefit administration related to death or disability of a member performing qualifying military service, treatment of payments made to the member by the employer during a period of qualifying military service, and distributions to OSGP participants performing qualifying military service. Rodeman said the rulemaking was needed to comply with the federal Hero's Earnings Assistance and Relief Tax (HEART) Act of 2008, and noted a public hearing would be held on November 25, 2008 and the rules will be presented for adoption at the February 6, 2009 Board meeting.

B.2. ADOPTION OF LEAVE OF ABSENCE WITHOUT PAY/CREDITABLE SERVICE RULES (LWOP)

Rodeman presented the proposed adoption of Leave of Absence Without Pay (LWOP) rules to clarify that creditable service will be granted for LWOP's before July 11, 1987 when a statutory change became effective.

It was moved by James Dalton and seconded by Tom Grimsley to adopt the modifications to OAR 459-010-0010 as presented. The motion passed unanimously.

B.3. ADOPTION OF PLAN QUALIFICATION UPDATES RULES

Rodeman presented the proposed adoption of Plan Qualification Updates rules that would reflect changes in federal law regarding plan qualification issues and update references to Treasury Regulations.

It was moved by James Dalton and seconded by Tom Grimsley to adopt updates to OAR 459-005-0525, 459-005-0535 and 459-005-0545 as presented. The motion passed unanimously.

B.4. ADOPTION OF EFFECTIVE DATE FOR ESTABLISHING SERVICE RETIREMENT BENEFITS RULE

Rodeman presented the proposed adoption of the Chapter 238 rule modification and the new OPSRP rule that would require a member to submit their retirement application before their effective retirement date. This will allow staff to process and issue initial benefit payments in a more timely manner.

Vice-Chair Rocklin requested that the effective date of the rule changes be revised to January, 2010 in order to allow sufficient time to inform pending retirees.

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It was moved by Tom Grimsley and seconded by Brenda Rocklin to adopt the rule modifications to OAR 459-007-0530 as presented, with the revised effective date of January 1, 2010. The motion passed unanimously.

B.5. ADOPTION OF OREGON SAVINGS GROWTH PLAN (OSGP) TRADING RESTRICTION RULES

Rodeman presented the proposed adoption of OAR 459-050-0037 which would remove the 90 day "round-trip" trading restriction on all OSGP investment options with the exception of the international equities option where the restriction would be reduced from 90 days to 30 days.

Kevin Nordhill, Oregon State Treasury Advisor said that after the previous trading restrictions were adopted, Treasury staff modified investment vehicles to minimize potential cost impacts due to excessive trading in the international stock option. This modification allowed for the overall portfolio trading restrictions to be revised, while still protecting participants from excessive trading impacts.

Vice-Chair Rocklin inquired if the agency had received complaints or questions regarding the proposed rule change. OSGP Program Manager Gay Lynn Bath reported that they had minimal contacts from OSGP members regarding the rule modifications, and no formal comments were submitted.

Chair Pittman requested that staff present a monitoring report of OSGP investment trades after implementation of the new trading restrictions. Director Cleary said the requested report would be presented at the February 6, 2009 Board meeting.

It was moved by Vice-Chair Rocklin and seconded by Eva Kripalani to adopt the staff's recommended rule modifications to OAR 459-050-0037 as presented. The motion passed unanimously.

B.6. UPDATE ON ETOB RULES

Rodeman provided a report on proposed guidelines and criteria for the actuarial analysis that would be included in the Equal to or Better Than (ETOB) rules. Rodeman said the proposed analysis would be based on the comparing the present value of benefits provided by the ETOB employer and the equivalent benefits provided by PERS for each employee class. Rodeman also described the ETOB analysis guiding principles of comparability, durability and cost effectiveness. The ETOB rules will be presented for adoption at the February 2009 meeting.

ACTION AND DISCUSSION ITEMS

C.1. PERS PROJECTED CASH FLOW ANALYSIS

Bill Hallmark and Matt Larrabee of Mercer, presented an analysis of PERS' projected member and employer contribution inflows versus PERS' projected benefit payments.

Hallmark said the study was intended to provide a better understanding of expected benefit payment requirements and the variability likely in those requirements over the next several years.

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Hallmark reported that there are currently about 38,000 active members that are eligible to retire, though the actuarial assumptions were based on the historical average of 4,000 to 6,000 new retirees per year.

Larrabee reviewed retirement statistics and the variances in expected benefit payments based on member retirement methods (e.g., Money Match, Formula Plus Annuity, and Full Formula).

Cleary noted that the Mercer analysis had been shared with State Treasury staff for consideration in future OIC investment allocations and asset-liability studies.

C.2. APPROVAL OF 2009 LEGISLATIVE CONCEPTS

Susan Riswick, Policy, Planning, and Legislative Analysis Division Interim Administrator, presented two proposed PERS legislative concepts for Board consideration for pre-session filing. The Board discussed various concerns about the proposed concepts, in particular whether they affected member benefits, and if so, was it more appropriate for them to be filed by stakeholder groups. Cleary noted that interested stakeholder groups could utilize the concepts as drafted, and that the Board could distinguish between the two concepts on the basis of potential effects on member benefits in deciding whether or not to sponsor a concept.

LC 332: Return to Work Retirees that would allow a retired member who elected to receive a total lump sum payment to be reemployed by a PERS employer under the same provisions as members receiving a monthly benefit.

It was moved by Tom Grimsley and seconded by Mike Pittman to approve the submission of LC 332 as presented at the 2009 Oregon legislative session. Brenda Rocklin voted no. The motion passed.

LC333: Eliminates the actuarial reduction for Tier Two members in disability retirement benefit calculations

It was moved by Tom Grimsley to approve the submission of LC 333 as presented at the 2009 Oregon legislative session. The motion failed.

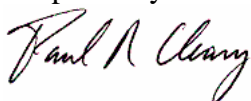
EXECUTIVE SESSION

Pursuant to ORS 192.660 (2) (f), (h) and ORS 40.255, the Board went into executive session at 1:45 P.M.

The Board reconvened to open session.

Vice-chair Rocklin adjourned the meeting at 1:53 P.M.

Respectfully submitted,



Paul R. Cleary
Executive Director

2009 PERS Board Meeting Forward-Looking Calendar

February 6, 2009

Notice of Earnings Crediting Rules
Adoption of HEART Act Section 105 Rules
Adoption of ETOB Rules
Adoption of Domestic Partner Health Insurance Rules
Preliminary 2008 Earnings Crediting and Reserving
Legislative Update
Audit Committee Meeting

March 31, 2009

Adoption of Earnings Crediting Rules
Final 2008 Earnings Crediting and Reserving
Legislative Update

May 29, 2009

Notice of Reemployment of OPSRP and IAP Retirees Rules
Notice of Recovery of Administrative Costs Rule
Notice of Vesting in IAP Employer Account Rule
Experience Study Methods and Economic Assumptions
Legislative Update
Audit Committee Meeting

July 24, 2009

Notice of Combined Service Rules
Adoption of Reemployment of OPSRP and IAP Retirees Rules
Adoption of Recovery of Administrative Costs Rule
Adoption of Vesting in IAP Employer Account Rule
Close of Biennium Budget Report
Project Status Reports (SEAS, Young Case, RCP)
Experience Study Demographic Assumptions
Legislative Update

September 25, 2009

Adoption of Combined Service Rules
2008 Valuation Report
Legislative Implementation Plan
Audit Committee Meeting

November 20, 2009

Notice of Administrative Rules in response to 2009 Legislative Session
Customer Satisfaction Survey
Audit Committee Meeting

Returns for periods ending 12/31/08

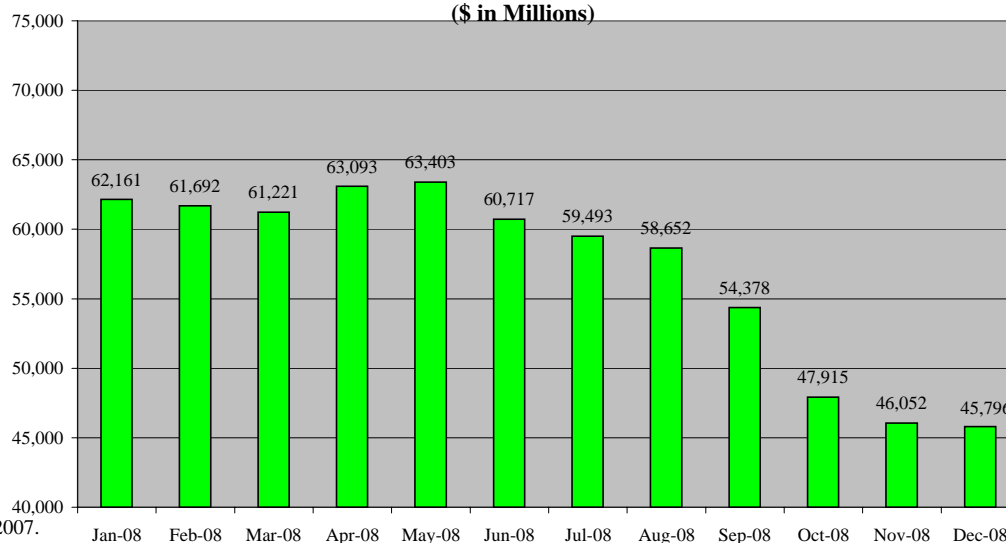
Oregon Public Employees Retirement Fund

OPERF	Regular Account				Historical Performance (Annual Percentage)					
	Policy ¹	Target ¹	\$ Thousands ²	Actual	Year-To-Date ³	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS
Public Equity	41-51%	46%	\$ 17,202,432	38.2%	(42.57)	(42.57)	(20.93)	(9.41)	(4.50)	(0.71)
Private Equity	12-20%	16%	9,844,696	21.9%	(8.75)	(8.75)	7.13	9.92	17.62	19.36
Total Equity	57-67%	62%	27,047,128	60.1%	(24.85)	(24.85)	(12.01)			
Opportunity Portfolio			733,820	1.6%	(24.85)	(24.85)	(12.01)			
Total Fixed	22-32%	27%	11,921,154	26.5%	(9.86)	(9.86)	(2.79)	0.01	0.91	1.94
Real Estate	8-14%	11%	5,275,279	11.7%	(13.59)	(13.59)	(2.42)	6.62	12.61	14.26
Cash	0-3%	0%	-	0.0%	2.06	2.06	3.52	3.96	3.74	3.25
TOTAL OPERF Regular Account		100%	\$ 44,977,381	100.0%	(26.96)	(26.96)	(10.51)	(2.62)	1.11	3.65
OPERF Policy Benchmark					(23.04)	(23.04)	(7.77)	(0.77)	1.78	3.89
Value Added					(3.92)	(3.92)	(2.74)	(1.85)	(0.67)	(0.24)
TOTAL OPERF Variable Account			\$ 818,462		(41.78)	(41.78)	(23.11)	(12.11)	(7.57)	

Asset Class Benchmarks:

Russell 3000 Index	(37.31)	(37.31)	(18.81)	(8.63)	(5.15)	(1.95)
MSCI ACWI Ex US IMI Net	(45.73)	(45.73)	(20.27)	(6.85)	(1.36)	2.81
Russell 3000 Index + 300 bps--Quarter Lagged	(18.09)	(18.09)	(1.00)	3.55	7.07	9.44
LB Universal--Custom FI Benchmark	2.94	2.94	4.63	4.68	4.26	4.41
NCREIF Property Index--Quarter Lagged	5.27	5.27	11.12	13.24	14.70	14.24
91 Day T-Bill	2.06	2.06	3.52	3.96	3.74	3.25

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



¹OIC Policy 4.01.18, as revised September 2007.

²Includes impact of cash overlay management.

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



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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February 6, 2009

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

MEETING DATE	2/6/09
AGENDA ITEM	A.2.c. Budget Rpt.

2007-09 BUDGET UPDATE

Operating expenditures for the months of November and December 2008 were \$2,474,329 and \$3,011,585 respectively.

- To-date, through the first eighteen months (75%) of the biennium, the Agency has expended a total of \$55,007,188, or about 68% of PERS' 2007-09 operating budget.
- The positive budget variance for the biennium is currently projected at \$2,221,043.
- The current budget variance reflects actual November expenditures being \$324,125 less than projected, and December expenditures being \$285,724 less than projected. This is in large part due to Young Case 2 administrative cost reimbursement payments PERS has received from DAS / Risk Management and recorded as reductions in expense.

2009-11 BUDGET UPDATE

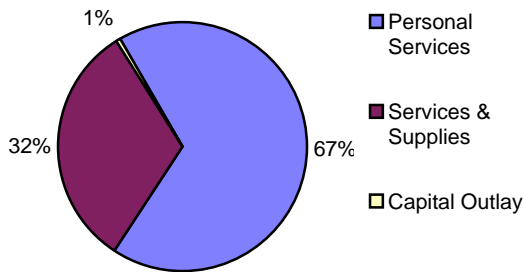
The 2009-11 Governor's Recommended Budget (GRB), released December 1, 2008, supports PERS' 2009-11 Agency Budget Request (ARB). The tentative dates for Director Paul Cleary to present PERS' 2009-11 Governor's Recommended Budget (GRB) to the Ways & Means General Government Subcommittee are February 18 and 19, 2009.

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

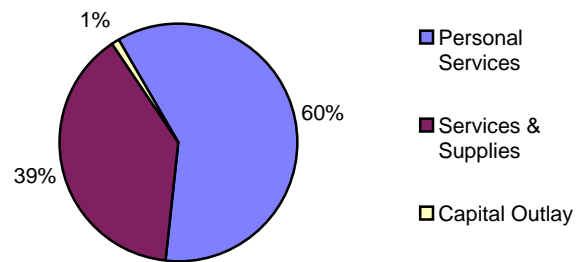
Biennial Summary

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2007-09 LAB	Variance
Personal Services	37,087,561	14,138,232	51,225,793	53,288,261	2,062,468
Services & Supplies	17,625,867	9,181,441	26,807,308	26,553,000	(254,308)
Capital Outlay	293,760	241,058	534,818	947,701	412,883
Special Payments					
Total	55,007,188	23,560,730	78,567,919	80,788,962	2,221,043

Actual Expenditures

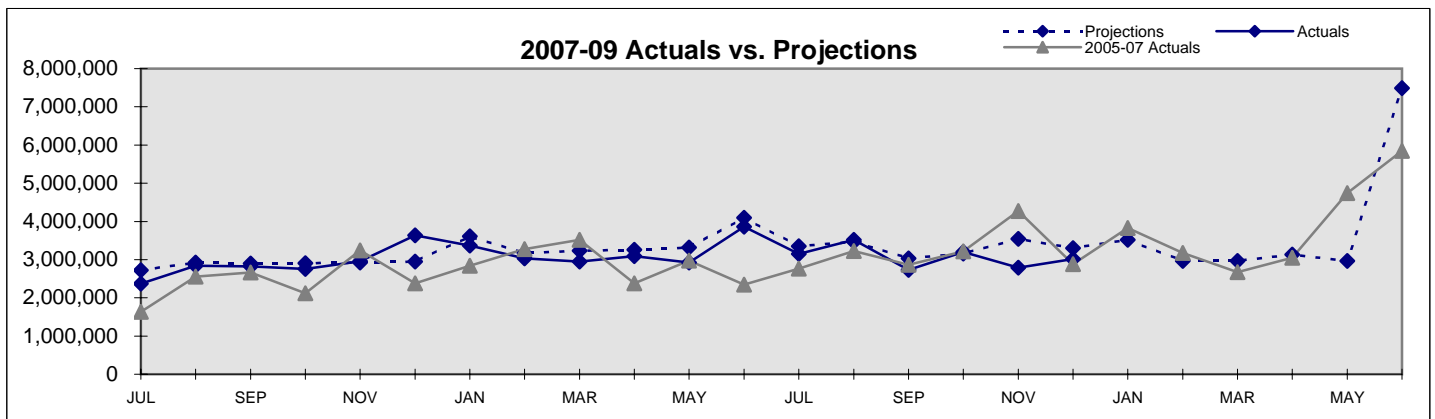


Projected Expenditures



Monthly Summary

Category	Actual Exp.	Projections	Variance	Avg. Monthly Actual Exp.	Avg. Projected Expenditures
Personal Services	1,953,725	2,332,641	378,916	2,060,420	2,356,372
Services & Supplies	1,056,738	951,668	(105,070)	979,215	1,530,240
Capital Outlay	1,122	13,000	11,878	16,320	40,176
Special Payments					
Total	3,011,585	3,297,309	285,724	3,055,955	3,926,788



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					
Total	74,446,561		74,446,561	75,015,428	568,867



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February 6, 2009

TO: Members of the PERS Board
FROM: Paul R. Cleary, Director
SUBJECT: Employer Reporting and Outreach Program

MEETING	2-6-09
DATE	
AGENDA	
ITEM	A.2.d. ER Update

PERS is working with 877 employer-reporting units to process outstanding 2006, 2007 and 2008 employer reports. In addition, PERS implemented an accounts receivable process and revised its Employer Outreach Program in late 2006.

EMPLOYER REPORTING

The table below shows the status as of January 15, 2009 of employer reports and member records for calendar years 2006, 2007, and 2008.

	Calendar Year 2006	Calendar Year 2007	Calendar Year 2008
Reports due:			
▪ Number expected	12,856	12,958	13,119
▪ Number received	12,847	12,935	12,956
▪ Percent received	99.93%	99.82%	98.76%
▪ Key Performance Measure	99.0%	99.0%	99.0%
Reports fully posted at 100%:			
▪ Number	12,666	12,680	11,761
▪ Percent fully posted at 100%	98.52%	97.85%	89.65%
▪ Key Performance Measure	95.0%	95.0%	95.0%
Records due (estimated)	3,232,089	3,545,598	3,501,158
Records not posted:			
▪ Number	546	1,592	50,326
▪ Percent not posted	≤ .1%	≤ .1%	1.44%
▪ Key Performance Measure	≤ .2%	≤ .2%	≤ .2%
Contributions posted	\$ 427,195,364	\$452,643,121	\$480,220,803
Contributions not posted	\$9,787	\$23,807	\$1,951,067

As of January 15, 2009, employers submitted 99.93 % of the reports due for 2006. Of the reports submitted, less than 0.1% of records remain suspended (representing less than 0.01% of total contributions anticipated for 2006). For 2007, employers have submitted

approximately 99.82% of the reports due. Of those reports submitted, approximately 97.85% are 100% posted. For 2008, employers have submitted approximately 98.76% of the reports due. Of those reports submitted, approximately 89.65% are 100% posted. We are pleased to announce that the year-over-year performance is slightly better than last year's, and that we are well on the way to meeting our 2008 targets.

EMPLOYER OUTREACH PROGRAM

The 2008 annual reconciliation process is currently in progress and has most of the Employer Service Center staff working with their employer accounts to make sure that all records that require contributions are posted by the end of February. This process will ensure that member accounts are as complete as possible in preparation for annual statements.

We are currently planning the Spring 2009 presentation which will cover new and modified features that will be introduced with EDX Release 5.0 (Stage 2a) in June 2009, including examples of employer forms moving from paper to online and new validations. The status of known EDX problems will also be reviewed as well as Social Security number validation, most common EDX errors and suggested fixes, and a review of reporting retirees returning to work.

We also continue to meet with the Employer Advisory Committee every month. Some of the most recent topics include: the PERS Social Security validation program and the tools available to employers (SSNVS and E-verify); the Break in Service project status, invoicing and responsibility for employer contributions to the employer reserve for lump sum pay/lump sum vacation pay made subject by movement from OPSRP to PERS; release 5.0 and adequate notice of changes requiring employer payroll program modifications; and the effect of 2008 negative earnings and how that would be displayed on member statements and invoiced for prior year earnings.

ACCOUNTS RECEIVABLE PLAN

Besides assisting employers with overdue reports and electronic payments, PERS' accounts receivable department proactively collects receivable balances that are more than 30 days overdue. As of January 15, 2009, we had 288 outstanding invoices (187 employers) with an aggregate balance of \$422,838. Our goal is to collect all outstanding invoices that exceed 30 days by following up with these employers by phone and letters each month.



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January 28, 2009

TO: Members of the PERS Board
FROM: Paul R. Cleary, Director
SUBJECT: Trading Activity in the Oregon Savings Growth Plan

MEETING	2-6-09
DATE	
AGENDA	
ITEM	A.2.e. OSGP Trading Activity

At its November 21, 2008 meeting, the PERS Board approved revisions to *OAR 459-050-0037, Trading Restrictions*, for the Oregon Savings Growth Plan (OSGP). The revised rule removed the 90-day holding requirement restriction on the funds, with the exception of the International Stock Option, wherein the 90 day restriction was decreased to 30 days. The \$100,000 trade limit and the restrictions on the Stable Value Option were not changed.

At that meeting, Chair Pittman asked that OSGP report back at the February meeting to advise whether participants' trading activity had changed once the new restrictions were implemented on December 5, 2008. Gay Lynn Bath, OSGP manager, reviewed daily trading from November 1 through January 27. During that time period, there was an increase in January that appears to be market driven. Trades in November averaged \$400,000 per day; in December, the average daily trades were lower at \$225,000, and in January, daily trades were up to \$525,000.

There were two days during this time period with large trading activity; November 21, when the market dropped 494 points, and trades exceeded \$1 million and again on January 20, when the market dropped over 300 points, and trades exceeded \$2.8 million. This one day of trading substantially increased the January average. Of that \$2.8 million, approximately \$1.6 million was transferred into the Stable Value Option and Short Term Fixed.

Overall, there hasn't been any evidence of excessive trading or market timing; participants appear to be moving to more conservative funds, which is not unusual given the current market volatility.



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February 6, 2009

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
SUBJECT: Action on Contested Case

MEETING DATE	2/6/09
AGENDA ITEM	B.1. Action on Contested Case

OVERVIEW

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

Adopt a motion to, "Remand this matter to the administrative law judge to reopen the record and conduct further hearing to receive into evidence the videos referred to in the proposed order and additional evidence related to the videos as may be offered by both Agency and Petitioner and to issue a proposed order as required by OAR 137-003-0655(2)."

BOARD OPTIONS

The Board may:

1. Adopt the staff recommendation as presented above.
2. Adopt one of the alternative directions specified in the memo related to the contested case.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- If the Board does not adopt: The specific outcome and alternatives vary but are more fully explained in the memo accompanying the case.



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February 6, 2009

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
SUBJECT: Notice of Rulemaking for Earnings Crediting Rules –
Audit Report Recommendations:
OAR 459-007-0005, *Annual Earnings Crediting*
OAR 459-007-0320, *Crediting Earnings for IAP Account Lump Sum Payments*
OAR 459-007-0330, *Crediting Earnings for IAP Account Installment Payments*
OAR 459-080-0200, *IAP Account Adjustments for Earnings and Losses*
OAR 459-080-0250, *IAP Account Installments*

MEETING DATE	02/06/09
AGENDA ITEM	B.2.a. Earnings Crediting

OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: The new rules and proposed rule modifications are in response to a recent internal audit finding regarding administrative rules for IAP and OPSRP earnings crediting.
- Subject: Earnings crediting for IAP and OPSRP.
- Policy Issues: None at this time.

BACKGROUND

The Internal Audit Report presented at the November 2008 Board Audit Committee meeting recommended PERS adopt or amend rules to better define the process of earnings crediting for the OPSRP Pension and IAP programs. These rule modifications incorporate those programs into the current annual earnings crediting process (OAR 459-007-0005). Also, new rules are proposed that describe the earnings crediting process on IAP and OPSRP Pension distributions. Lastly, the rules in Division 080 have been modified to include references to the new rules for IAP earnings crediting in Division 007 (Earnings and Interest Distribution).

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on February 24, 2009 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on March 4, 2009 at 5:00 p.m.

LEGAL REVIEW

The attached draft rules were 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, the proposed rule modifications are needed to provide direction on crediting earnings to the IAP and OPSRP Pension programs.

Impact: The proposed rule modifications clarify the earnings crediting for the IAP and OPSRP programs.

Cost: No cost.

RULEMAKING TIMELINE

January 15, 2009	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
February 1, 2009	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began.
February 6, 2009	PERS Board notified that staff began the rulemaking process.
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March 31, 2009	Staff will propose adopting the permanent rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

NEXT STEPS

A hearing will be held on February 24, 2009. The rules are scheduled to be brought before the PERS Board for adoption at the March 31, 2009 meeting.

B.2.a. Attachment 1 – OAR 459-007-0005, *Annual Earnings Crediting*

B.2.a. Attachment 2 – OAR 459-007-0320, *Crediting Earnings for IAP Account Lump Sum Payments*

B.2.a. Attachment 3 – OAR 459-007-0330, *Crediting Earnings for IAP Account Installment Payments*

B.2.a. Attachment 4 – OAR 459-080-0200, *IAP Account Adjustments for Earnings and Losses*

B.2.a. Attachment 5 – OAR 459-080-0250, *IAP Account Installments*

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

1 **459-007-0005**

2 **Annual Earnings Crediting**

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

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

9 (3) Health insurance accounts. All earnings attributable to the Standard Retiree
10 Health Insurance Account (SRHIA), *[the Retiree Health Insurance Account (RHIA) or*
11 *the] Retiree[ment] Health Insurance Premium Account (RHIPA) or Retirement Health*
12 *Insurance Account (RHIA)* shall be credited to the account from which they were
13 derived, less administrative expenses incurred by each account, as provided in ORS
14 238.410, 238.415 and 238.420, respectively.

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

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

1 or losses attributable to the Variable Annuity Account shall be credited to the
2 participants of that account, as provided under ORS 238.260(6) and (7)(b).

3 (6) Individual Account Program accounts. Earnings on the Individual Account
4 Program accounts shall first be used to pay a pro rata share of administrative
5 expenses in accordance with ORS 238A.350(1). If the Individual Account Program
6 experiences a loss, the loss shall be increased to pay a pro rata share of
7 administrative expenses. All remaining earnings or losses attributable to the
8 Individual Account Program shall be credited to the participant accounts of that
9 program, as provided under ORS 238A.350.

10 ~~[(5)]~~(7) Administrative expenses.

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

15 ~~[(b)]~~ Earnings attributable to Tier One regular accounts, the Tier One Rate
16 Guarantee Reserve, Tier Two member regular accounts, Judge member regular
17 accounts, the OPSRP Pension Program reserve, employer contribution accounts, the
18 Contingency Reserve, the Benefits-in-Force Reserve and the Capital Preservation
19 Reserve shall first be used to pay the system’s remaining administrative expenses under
20 ORS 238.610.

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

1 ~~[(7)]~~**(8)** Contingency Reserve.

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

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

13 ~~[(8)]~~**(9)** Tier One Member Rate Guarantee Reserve. All remaining earnings
14 attributable to Tier One regular accounts, the Tier One Member Rate Guarantee
15 Reserve, Judge member regular accounts, the Benefits-in-Force Reserve, and the
16 Contingency Reserve may be credited to the Tier One Member Rate Guarantee
17 Reserve established under ORS 238.255(1).*[Tier One Member Deficit Reserve. All*
18 *remaining earnings attributable to Tier One regular accounts and the Tier One Rate*
19 *Guarantee Reserve shall be credited to the Tier One Member Deficit Reserve established*
20 *in ORS 238.255(1) until the deficit is eliminated.]*

21 ~~[(9)]~~**(10)** Capital Preservation Reserve. Remaining earnings attributable to the Tier
22 Two member regular accounts, Judge member regular accounts, OPSRP Pension
23 Program reserve, employer contribution accounts, the Benefits-in-Force Reserve, the

1 Contingency Reserve and the Capital Preservation Reserve may be credited from those
2 sources to one or more reserve accounts that may be established under ORS 238.670(3)
3 to offset gains and losses of invested capital.

4 ~~[(10)]~~(11) Tier One regular accounts. All remaining earnings attributable to Tier
5 One regular accounts and the Tier One Rate Guarantee Reserve shall be credited to Tier
6 One member regular accounts at the assumed rate in any year in which the conditions set
7 out in ORS 238.255 have not been met. Crediting under this subsection shall be funded
8 first by all remaining earnings attributable to Tier One regular accounts and the Tier One
9 Rate Guarantee Reserve, then moneys in the Tier One Rate Guarantee Reserve.

10 ~~[(11)]~~ (12) Judge member regular accounts. All remaining earnings attributable
11 to Judge member regular accounts shall be credited to all Judge member regular
12 accounts at the Judge member rate. Crediting under this subsection shall be funded
13 first by all remaining earnings attributable to the Judge member regular accounts
14 and the Tier One Rate Guarantee Reserve, then moneys in the Tier One Rate
15 Guarantee Reserve.~~[Tier One Member Rate Guarantee Reserve. In any year in which~~
16 ~~the Deficit Reserve has a zero balance, remaining earnings attributable to Tier One~~
17 ~~regular accounts, the Tier One Member Rate Guarantee Reserve, the Benefits-in-Force~~
18 ~~Reserve, and the Contingency Reserve may be credited to the Tier One Member Rate~~
19 ~~Guarantee Reserve established under ORS 238.255(1).]~~

20 ~~[(12)]~~ (13) Tier Two member regular accounts. All remaining earnings or losses
21 attributable to Tier Two member regular accounts shall be credited to all ~~[active and~~
22 ~~inactive]~~ Tier Two member regular accounts under ORS 238.250.

1 [\(14\) OPSRP Pension Program Reserve. Remaining earnings attributable to the](#)
 2 [OPSRP Pension Program Reserve, the Contingency Reserve, and the Capital](#)
 3 [Preservation Reserve may be used to credit the OPSRP Pension Program reserve.](#)

4 ~~[(13)]~~(15) Benefits-in-Force Reserve. Remaining earnings attributable to the
 5 Benefits-in-Force Reserve, the Contingency Reserve, the Capital Preservation Reserve
 6 and employer contribution accounts, in that order, shall be used, to the extent available, to
 7 credit the Benefits-in-Force Reserve with earnings up to the assumed rate for that
 8 calendar year in accordance with ORS 238.670(2).

9 ~~[(14)]~~(16) Employer contribution accounts. All remaining earnings attributable to
 10 employer contribution accounts shall be credited to employer contribution accounts.

11 ~~[(15)]~~(17) Remaining earnings. Any remaining earnings shall be credited to
 12 accounts and reserves in the Fund at the Board’s discretion.

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

14 Stat. Auth.: ORS 238.650, [238A.450](#)

15 Stats. Implemented: ORS 238, [238A.350](#)

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

1 459-007-0320

2 Crediting Earnings for IAP Account Lump Sum Payments

3 (1) When an IAP member retires and elects to receive a lump sum payment of
4 their account(s) under ORS 238A.400(1), earnings shall be credited in the manner
5 specified in this subsection.

6 (a) If the earnings for the calendar year prior to the date of distribution have not
7 yet been credited to the account(s), earnings for that year shall be credited to the
8 account(s) based on the latest IAP year-to-date calculation available for that year.

9 (b) Earnings credited for the calendar year of distribution shall be credited to the
10 account(s) based on the latest IAP year-to-date calculation as of the date of
11 distribution.

12 (2) When an IAP member elects to withdraw their account(s) under ORS
13 238A.375, earnings shall be credited in the manner specified in this subsection.

14 (a) If the earnings for the calendar year prior to the date of distribution have not
15 yet been credited to the account(s), earnings for that year shall be credited to the
16 account(s) based on the latest IAP year-to-date calculation available for that year.

17 (b) Earnings credited for the calendar year of distribution shall be credited to the
18 account(s) based on the latest IAP year-to-date calculation as of the date of
19 distribution.

20 Stat. Auth.: ORS 238A.450

21 Stats. Implemented: ORS 238A.350, 238A.375, 238A.400

22

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

1 459-007-0330

2 Crediting Earnings for IAP Account Installment Payments

3 (1) For the purposes of this rule, “monthly change rate ” means the monthly
4 earnings rate for IAP account(s) when a retiree elected installment payments.

5 (2) When an IAP member retires and elects to receive installment payments
6 under ORS 238A.400(2), earnings shall be credited in the manner specified in this
7 rule:

8 (a) For the initial installment payment:

9 (A) If the earnings for the calendar year prior to the distribution date have not
10 yet been credited to the account, earnings for that year shall be credited to the
11 account based on the latest IAP year-to-date calculation available for that year.

12 (B) Earnings credited for the calendar year of distribution shall be credited to
13 the account based on the latest IAP year-to-date calculation as of the initial date of
14 distribution.

15 (b) After the initial installment payment is made, earnings shall be credited to the
16 account monthly using the latest monthly change rate beginning with the first of the
17 month after the initial date of distribution.

18 Stat. Auth.: ORS 238A.450

19 Stats. Implemented: ORS 238A.350, 238A.400

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

1 **459-080-0200**

2 **IAP Account Adjustments for Earnings or Losses**

3 (1) Earnings and losses on employee, employer, and rollover contributions under the
4 OPSRP Individual Account Program ("IAP") *[will]* **shall** be *[posted]* **credited** *[at least]*
5 annually in accordance with *[ORS 238A.350(1)]* **OAR 459-007-0310**. In no event *[will]*
6 **shall** earnings or losses be *[posted]* **credited** to individual accounts until funds are actually
7 received by PERS and have been successfully reconciled with the corresponding wage and
8 contribution record. *[Accounts will be adjusted at least annually thereafter to reflect any*
9 *net earnings or losses and to pay reasonable administrative expenses.]*

10 (2) When a member *[requests]* **elects** *[a]* **to** withdraw*[al of the member's]* **their**
11 employee, rollover and employer accounts under ORS 238A.375, *[those accounts will be*
12 *adjusted to reflect any net earnings or losses and to pay reasonable administrative*
13 *expenses only through the end of the month in which the request for withdrawal is*
14 *received, regardless of when the payment is issued.]* **earnings or losses as of the date of**
15 **distribution shall be credited in accordance with OAR 459-007-0320(2).**

16 **(3) When a member retires and elects to receive a lump sum payment of their**
17 **employee, employer, and rollover accounts under ORS 238A.400(1), earnings or**
18 **losses as of the date of distribution shall be credited in accordance with OAR 459-**
19 **007-0320(1).**

20 **(4) When a member retires and elects to receive installment payments under**
21 **ORS 238A.400(2), earnings or losses as of the date of distribution shall be credited in**
22 **accordance with OAR 459-007-0330.**

1 ~~[(3)]~~ (5) The provisions of this rule are effective January 1, 2004.

2 Stat. Auth.: ORS 238A.450

3 Stats. Implemented: ORS 238A.350, ORS 238A.375, ORS 238A.400

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

1 **459-080-0250**

2 **IAP Account Installments**

3 (1) Definitions.

4 (a) "Estimated Life Expectancy" means the member's life expectancy as determined
5 by the applicable IRS mortality table.

6 (b) "Payout Period" means the span of years over which the member elects to receive
7 installment payments under section (2) of this rule.

8 **(c) The “date of distribution” has the same meaning as defined in OAR 459-007-**
9 **0001(7).**

10 **(d) The “anniversary date” is the first of the month after the date of distribution**
11 **of the first installment payment.**

12 (2) Upon retirement, a member of the individual account program who elects to
13 receive the amounts in the member's employee and employer accounts in installments
14 under ORS 238A.400(2) shall designate the number of years over which the installments
15 are to be paid, selecting a period of 5, 10, 15, or 20 years, or a period equal to the member's
16 estimated life expectancy. The member may also request that installments be made on a
17 monthly, quarterly, or annual basis.

18 **(3) At the date of distribution of the initial installment payment, earnings or**
19 **losses shall be credited in accordance with OAR 459-007-0330(1)(a) and (b).**

20 **[(3)] (a) Subsequent to the initial payment, [A]account balances [will] shall** be
21 adjusted each month *[to reflect investment gains and losses on the unpaid balance.]* **in**
22 **accordance with OAR 459-007-0330(1)(c).**

1 *[(a)]* (b) The amount of each 5-, 10-, 15-, or 20-year installment will be determined by
2 dividing the member's adjusted balance by the number of remaining installment payments.

3 *[(b)]* (c) The installment amount for the member's estimated life expectancy will be
4 determined once a year by dividing the member's adjusted balance on the anniversary *[of*
5 *their effective retirement]* date by the member's remaining estimated life expectancy,
6 which amount will then be paid monthly, quarterly, or annually.

7 (4) If a member requests installments under section (2) of this rule, but the amount of
8 the requested installment would be less than \$200 as determined at the time of the initial
9 request, the frequency and Payout Period of the installment payment will be modified so
10 that the amount of the installment is at least \$200. If the member's account balance is
11 \$1,000 or less at the time of the initial request, the member will not be eligible for
12 installments and the balance will be paid in a lump sum.

13 (5) Notwithstanding the Payout Period selected by the member under section (2) of
14 this rule, any distribution will be adjusted to comply with the required minimum
15 distribution requirements of 26 U.S.C. 401(a)(9) and regulations implementing that
16 section, as in effect August 29, 2003.

17 (6) Members who elect a five year Payout Period or a lump sum payment may elect to
18 directly roll over any portion of their IAP installment or lump sum payment to an eligible
19 retirement plan subject to the *[following]* limitations [in OAR 459-005-0595.](#)

20 *[(a) Members will not be permitted to directly roll over any IAP installment payments*
21 *if the total annual distribution from their IAP account is reasonably expected to total less*
22 *than \$200.*

1 *(b) If members elect to have a portion of their IAP installment or lump sum payment*
2 *paid directly to them and a portion directly rolled over, the portion to be rolled over*
3 *cannot be less than \$500 or that portion will be paid directly to the member.]*

4 (7) Members who elect a 10-, 15-, or 20-year, or an estimated life expectancy Payout
5 Period cannot elect to have any portion of their installment payments rolled over.

6 (8) Members who are subject to the required minimum distribution requirements
7 referenced in section (5) of this rule may only roll over that portion of their installment or
8 lump sum payments that exceeds required minimum distribution requirements.

9 Stat. Auth.: ORS 238A.450

10 Stats. Implemented: ORS 238A.400[, *OL 2007 Ch. 412*]



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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February 6, 2009

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
SUBJECT: Notice of Rulemaking for Earnings Crediting Rules:
Updates

MEETING DATE	02/06/09
AGENDA ITEM	B.2.b. Earnings Crediting

- OAR 459-007-0001, *Definitions*
- OAR 459-007-0015, *Interest Rate Applied to Underpayment of Estimated Benefits*
- OAR 459-007-0020, *Statutory Limitation on the Crediting of Earnings*
- OAR 459-007-0025, *Crediting Earnings to Member Lump Sum Payments Received*
- OAR 459-007-0050, *Crediting Earnings for a Deceased Tier One Active or Inactive Member*
- OAR 459-007-0060, *Crediting Earnings to the Tier One Employer Death Benefit*
- OAR 459-007-0080, *Crediting Earnings at Tier One Service Retirement, Single Payment*
- OAR 459-007-0110, *Crediting Earnings at Tier One Loss of Membership*
- OAR 459-007-0230, *Crediting Earnings for a Deceased Tier Two Active or Inactive Member*
- OAR 459-007-0240, *Crediting Earnings to the Tier Two Employer Death Benefit*
- OAR 459-007-0250, *Crediting Earnings at Tier Two Service or Disability Retirement*
- OAR 459-007-0300, *Crediting Earnings to Police Officer and Firefighter Unit Accounts in the Fund*
- OAR 459-007-0900, *Crediting Earnings to Integration Lump Sum Payments*
- OAR 459-017-0060, *Reemployment of Retired Members*

OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: A recent internal audit finding initiated a comprehensive review of all earnings crediting rules. The rules listed here required minor modifications to accommodate new earnings crediting rules, provide clarity, and make housekeeping changes that were noted during the review.
- Subject: These rules establish criteria for crediting earnings to Tier One and Tier Two accounts, including Police Officer and Firefighter Unit accounts; Integration Lump Sum Payments; IAP accounts; Judge Member accounts; and accounts of retired members who return to PERS covered employment.

- Policy Issues: None at this time.

BACKGROUND

The Internal Audit Report presented at the November 2008 Board Audit Committee meeting recommended PERS adopt or amend rules to better define the process of earnings crediting for the OPSRP Pension and IAP programs. The following rules were determined to need minor modifications, including references where applicable to new rules, clarifications, and general housekeeping edits.

OAR 459-007-0001, Definitions

Modified to include ORS 238A, add IAP accounts and Judge Member accounts to sections (1) and (11), delete section (10); clarify “earnings” definition to expressly include losses.

OAR 459-007-0015, Interest Rate Applied to Underpayment of Estimated Benefits

Modified to delete the reference to OL 2005, Ch. 302.

OAR 459-007-0020, Statutory Limitation on the Crediting of Earnings

Added ORS 238A.

OAR 459-007-0025, Crediting Earnings to Member Lump Sum Payments Received

Clarification of 90 day period to make lump sum payment; replaces the term “factor” with ‘year-to-date calculation’ for consistency purposes; corrects the math in the example.

OAR 459-007-0050, Crediting Earnings for a Deceased Tier One Active or Inactive Member

Clarified the definition of “Death benefit amount” in subsection (1)(a); deleted the term “losses” because of the change to the term “earnings” as explained above; minor edits in subsections (2)(d) and (e); added section (5) to address earnings crediting when a beneficiary elects to receive a monthly payment.

OAR 459-007-0060, Crediting Earnings to the Tier One Employer Death Benefit

Added the word “employer” in subsection (2) and updated the subsection reference; added section (3) to address earnings crediting when a beneficiary elects to receive a monthly payment.

OAR 459-007-0080, Crediting Earnings at Tier One Service Retirement, Single Payment

References lump sum options specifically in ORS 238.305 and adds reference to ORS 238.315 for small allowance lump sum payment; deleted the term “losses” as explained above.

OAR 459-007-0110, Crediting Earnings at Tier One Loss of Membership

Added reference to Tier One in several subsections; deleted the term “losses.”

OAR 459-007-0230, Crediting Earnings for a Deceased Tier Two Active or Inactive Member

Two words were missing from the opening paragraph; clarified the definition of “Death benefit amount” in subsection (1)(a); added section (10) to address earnings crediting when a beneficiary elects to receive a monthly payment; deleted the term “losses.”

OAR 459-007-0240, Crediting Earnings to the Tier Two Employer Death Benefit

Added the word “employer” in section (2); section (3) was added to address earnings crediting when a beneficiary elects to receive a monthly payment.

OAR 459-007-0250, Crediting Earnings at Tier Two Service or Disability Retirement

Added reference to Tier Two in several subsections; deleted the term “losses.”

OAR 459-007-0300, Crediting Earnings to Police Officer and Firefighter Unit Accounts in the Fund

Added reference to a refund in section (3); clarified earnings crediting in subsection (4)(b); deleted sections (8) through (10) as they were redundant; deleted the term “losses.”

OAR 459-007-0900, Crediting Earnings to Integration Lump Sum Payments

Clarify earnings crediting for integration lump sum payments in the year of receipt and subsequent years.

OAR 459-017-0060, Reemployment of Retired Members

Update the Social Security Act annual compensation limits for retired members; minor housekeeping edits.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on February 24, 2009 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on March 4, 2009 at 5:00 p.m.

LEGAL REVIEW

The attached draft rules were 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 rules, but staff and members will benefit from the clarifications.

Impact: The proposed rule modifications clarify the administration of earnings crediting to accounts in various PERS programs.

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

RULEMAKING TIMELINE

January 15, 2009	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
February 1, 2009	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began.
February 6, 2009	PERS Board notified that staff began the rulemaking process.
February 24, 2009	Rulemaking hearing to be held at PERS headquarters in Tigard.
March 4, 2009	Public comment period ends at 5:00 p.m.

March 31, 2009

Staff will propose adopting the permanent rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

NEXT STEPS

A hearing will be held on February 24, 2009. The rules are scheduled to be brought before the PERS Board for adoption at the March 31, 2009 meeting.

B.2.b. Attachment 1 – OAR 459-007-0001, Definitions

B.2.b. Attachment 2 – OAR 459-007-0015, Interest Rate Applied to Underpayment of Estimated Benefits

B.2.b. Attachment 3 – OAR 459-007-0020, Statutory Limitation on the Crediting of Earnings

B.2.b. Attachment 4 – OAR 459-007-0025, Crediting Earnings to Member Lump Sum Payments Received

B.2.b. Attachment 5 – OAR 459-007-0050, Crediting Earnings for a Deceased Tier One Active or Inactive Member

B.2.b. Attachment 6 – OAR 459-007-0060, Crediting Earnings to the Tier One Employer Death Benefit

B.2.b. Attachment 7 – OAR 459-007-0080, Crediting Earnings at Tier One Service Retirement, Single Payment

B.2.b. Attachment 8 – OAR 459-007-0110, Crediting Earnings at Tier One Loss of Membership

B.2.b. Attachment 9 – OAR 459-007-0230, Crediting Earnings for a Deceased Tier Two Active or Inactive Member

B.2.b. Attachment 10 – OAR 459-007-0240, Crediting Earnings to the Tier Two Employer Death Benefit

B.2.b. Attachment 11 – OAR 459-007-0250, Crediting Earnings at Tier Two Service or Disability Retirement

B.2.b. Attachment 12 – OAR 459-007-0300, Crediting Earnings to Police Officer and Firefighter Unit Accounts in the Fund

B.2.b. Attachment 13 – OAR 459-007-0900, Crediting Earnings to Integration Lump Sum Payments

B.2.b. Attachment 14 – OAR 459-017-0060, Reemployment of Retired Members

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

1 **459-007-0001**

2 **Definitions**

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

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

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

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

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

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

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

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

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

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

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

7 *[(11)]* (10) “Tier One Member Rate Guarantee Reserve” and “Rate Guarantee
8 Reserve” mean the reserve referenced in ORS 238.255(1) that enables the Board to credit
9 earnings at or above the assumed rate under the conditions specified in ORS 238.255.

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

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

18 Stat. Auth.: ORS 238.650

19 Stats. Implemented: ORS 238

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

1 **459-007-0015**

2 **Interest Rate Applied to Underpayment of Estimated Benefits**

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

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

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

11 Stat. Auth.: ORS 238.650

12 Stats. Implemented: ORS 238.455[, *OL 2005 Ch. 302*]

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

1 **459-007-0020**

2 **Statutory Limitation on the Crediting of Earnings**

3 No earnings shall be credited to any payment from the Fund unless specifically
4 provided for in ORS Chapters 238, [238A](#) and OAR Chapter 459, Divisions 007 and 009.

5 Stat. Auth.: ORS 238.650 & [238A](#)

6 Stats. Implemented: ORS 238 & [238A](#)

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

1 **459-007-0025**

2 **Crediting Earnings To A Member Lump Sum Payment~~[s Received]~~**

3 (1) Definition.

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

5 (A) Is not regularly scheduled;

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

7 (C) **Is paid voluntarily by the member or payer.**~~[The member or payor has~~
8 ~~control over whether to make the payment.]~~

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

10 (A) Retirement credit purchases.

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

12 (C) ~~[A member's a]~~**A**ccount balances ~~[that is]~~ transferred **to PERS** ~~[through]~~
13 **pursuant to** an integration under ORS 238.680.

14 (2) No earnings ~~[shall]~~ **may** be credited to **a** member lump sum payment~~[s]~~ that
15 ~~[are]~~:

16 **(a) Is paid within 90 days before of after the member's effective retirement**
17 **date; or**

18 **(b) May be paid only**~~[made]~~ within 90 days before or after the member's effective
19 retirement date.

20 (3) Earnings from the date of payment to December 31 of the calendar year of the
21 date of payment~~[,]~~ or the member's effective retirement date, whichever occurs first,

1 *[shall]* **must** be credited to the member's lump sum payment based on the rate derived
2 from the formula:

3 $(Y - X)(R/T) + (Z - Y)$, where:

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

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

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

9 Y = The *[factor]* **year-to-date calculation** as of the first of the month following the
10 date of payment; and

11 Z = The *[factor]* **year-to-date calculation** as of the **member's** effective retirement
12 date if such date occurs during the **calendar** year the payment is received, or, in all other
13 cases, the annual rate applicable to the member's regular account as of December 31 of
14 the year the payment is received.

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

17 *[[Example]***Example**: A member lump sum payment is received by PERS on May
18 12, 2002, from a Tier One member whose effective retirement date is August 1, 2003.
19 The Tier One *[factor]* **regular account year-to-date calculation** as of May 1, 2002, is
20 1.0263, the Tier One **year-to-date calculation** *[factor]* as of June 1, 2002, is 1.0330, and
21 the Tier One **regular account** annual rate for 2002 is 1.0800. Therefore, R = 20, T = 31,
22 X = 1.0263, Y = 1.0330, Z = 1.0800 and the earnings crediting rate is:

23 $(1.0330 - 1.0263)(20/31) + (1.0800 - **1.0330**) *[1.0263]*$

1 = (0.0067)(0.6452) + .0470 [(0.0537)]

2 = 0.0043 + .0470 [(0.0537)]

3 = 0.0513 [0580]

4 (4)[(5)] If the member's effective retirement date does not occur in the same
5 calendar year as the date of payment, the member lump sum payment [shall] must be
6 made a part of the member's regular account as of January 1 of the year following the
7 date of payment.

8 Stat. Auth: ORS 238.650

9 Stats. Implemented: ORS Chapter 238

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

1 **459-007-0050**

2 **Crediting Earnings for a Deceased Tier One Active or Inactive Member**

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

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

6 (a) "Death benefit amount" means the *[funds]* sum of the member's regular
7 account and variable account as of the first of the month of the member's death and
8 held by PERS for the beneficiary or beneficiaries of a deceased member until benefits are
9 distributed.

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

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

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

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

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

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

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

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

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

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

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

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

21 (e) If the effective date of request occurs within the same year as the date of death,
22 earnings from the first of the month of the member's death to the effective date of request
23 shall be credited based on the latest year-to-date calculation for Tier Two regular

1 accounts as of the effective date of request less the latest year-to-date calculation for Tier
2 Two regular accounts as of the first of the month of the member's death, and subsections
3 (f) through (h) of this section do not apply.

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

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

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

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

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

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

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

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

3 (a) Earnings shall be credited in accordance with the version(s) of OAR 459-007-
4 0050 in effect up to January 1, 2000.

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

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

10 **(5) If a beneficiary elects a monthly payment, earnings shall be credited to the**
11 **death benefit amount from the first of the month of the member's date of death to**
12 **the effective date of the monthly payment, which is the first of the month following**
13 **the member's date of death, as follows:**

14 **(a) Subtract the latest Tier Two regular account year-to-date calculation**
15 **available as of the first of the month of the member's death, from the latest Tier**
16 **Two regular account year-to-date calculation available as of the effective date of the**
17 **monthly payment.**

18 **(b) Multiply the beneficiary's death benefit amount as of the first of the month**
19 **of the member's death by the rate calculated in subsection (a).**

20 ~~[(5)]~~ (6) The provisions of this rule are effective on July 1, 2003.

21 Stat. Auth.: ORS 238.650

22 Stats. Implemented: ORS 238.390, 238.430 & 238.435

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

1 **459-007-0060**

2 **Crediting Earnings to the Tier One Employer Death Benefit**

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

7 (2) Earnings shall thereafter be credited to the employer death benefit amount in
8 accordance with OAR 459-007-0050 (2)(e) through ~~[(g)](i)~~.

9 **(3) If a beneficiary elects to receive a monthly benefit, earnings are credited in**
10 **accordance with OAR 459-007-0050(5).**

11 *[3) The provisions of this rule are effective on July 1, 2003.]*

12 Stat. Auth.: ORS 238.650

13 Stats. Implemented: ORS 238.390, ~~[238.430 & 238.435]~~ 238.395

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

1 **459-007-0080**

2 **Crediting Earnings at Tier One Service Retirement, Single Payment**

3 Notwithstanding OAR 459-007-0070, when a Tier One member retires and elects to
4 receive a single payment of benefits under ORS 238.305(2)(a) or (3), or receives a single
5 payment of benefits under ORS 238.315, earnings from the effective date of the last
6 annual rate to the date of distribution shall be credited in the manner specified in this rule.

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

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

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

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

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

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

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

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

7 Stat. Auth.: ORS 238.650

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

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

1 **459-007-0110**

2 **Crediting Earnings at Tier One Loss of Membership**

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

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

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

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

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

17 (a) If earnings *[or losses]* for the calendar year before the date of loss of membership
18 have not yet been credited, earnings *[or losses]* for that year shall be credited based on
19 the Tier One latest year-to-date calculation available for that year.

20 (b) Earnings *[or losses]* for the calendar year of loss of membership shall be credited
21 as of the end of the calendar month of loss of membership based on the Tier One latest

1 year-to-date calculation as of the first of the month following the date of loss of
2 membership

3 (3) Except as provided in OAR 459-007-0160, no earnings *[or losses]* shall be
4 credited for any period following the calendar month of loss of membership.

5 Stat. Auth.: ORS 238.650

6 Stats. Implemented: ORS 238.095 & 238.435

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

1 **459-007-0230**

2 **Crediting Earnings for a Deceased Tier Two Active or Inactive Member**

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

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

6 (a) "Death benefit amount" means the *[funds]* sum of the member's regular
7 account and variable account as of the first of the month of the member's death and
8 held by PERS for the beneficiary or beneficiaries of a deceased member until benefits are
9 distributed.

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

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

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

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

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

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

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

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

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

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

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

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

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

7 **(10) If a beneficiary elects a monthly payment, earnings shall be credited to the**
8 **death benefit amount from the first of the month of the member's date of death to**
9 **the effective date of the monthly payment, which is the first of the month following**
10 **the member's date of death, as follows:**

11 **(a) Subtract the latest Tier Two regular account year-to-date calculation**
12 **available as of the first of the month of the member's death from the latest Tier Two**
13 **regular account year-to-date calculation available as of the effective date of the**
14 **monthly payment.**

15 **(b) Multiply the beneficiary's death benefit amount by the Tier Two rate**
16 **calculated in subsection (a).**

17 **(11) The provisions of this rule apply to requests for distribution received on or**
18 **after March 15, 2005.**

19 Stat. Auth.: ORS 238.650

20 Stats. Implemented: ORS 238.390, 238.430 & 238.435

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

1 **459-007-0240**

2 **Crediting Earnings to the Tier Two Employer Death Benefit**

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

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

9 **(3) If a beneficiary elects to receive a monthly benefit, earnings are credited in**
10 **accordance with OAR 459-007-0230(10).**

11 Stat. Auth.: ORS 238.650

12 Stats. Implemented: ORS 238.390, 238.395, 238.430 & 238.435

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

1 **459-007-0250**

2 **Crediting Earnings at Tier Two Service or Disability Retirement**

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

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

7 (a) If earnings *[or losses]* for the prior calendar year have not yet been credited,
8 earnings *[or losses]* for that year shall be credited based on the Tier Two latest year-to-
9 date calculation for that year.

10 (b) Earnings *[or losses]* for the calendar year of the effective retirement date shall be
11 credited based on the Tier Two latest year-to-date calculation for that year.

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

15 (a) If earnings *[or losses]* for the calendar year prior to the effective retirement date
16 have not yet been credited, earnings *[or losses]* for that year shall be credited based on
17 the Tier Two latest year-to-date calculation for that year.

18 (b) Earnings *[or losses]* for the calendar year of the effective retirement date shall be
19 credited based on the Tier Two latest year-to-date calculation as of the effective
20 retirement date.

21 Stat. Auth.: ORS 238.650

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

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

1 **459-007-0300**

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

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

4 (a) “Effective date of unit benefits” means the date the member elects to begin
5 receiving unit benefits.

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

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

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

11 (c) “Unit” means a unit of additional benefits purchased under ORS 238.440.

12 (d) “Unit account” means the member’s account in the Fund that is used to purchase
13 unit benefits, which includes actuarially determined member additional contributions
14 (ORS 238.440(1)) and earnings *[or losses]*.

15 (e) “Unit benefits” means the increased benefits a police officer or firefighter may
16 purchase under ORS 238.440.

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

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

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

1 (3) Crediting earnings *[or losses]* to a withdrawal. If the unit account is withdrawn
2 under ORS 238.440(4) or refunded under 238.440(6), earnings *[or losses]* will be
3 credited to the unit account as follows:

4 (a) For a Tier One member, in the same manner as provided in OAR 459-007-
5 0040(1).

6 (b) For a Tier Two member, in the same manner as provided in OAR 459-007-
7 0220(1).

8 (4) Crediting earnings *[or losses]* on a lump sum purchase.

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

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

17 (A) Earnings from the date of payment to December 31 of the calendar year of
18 the date of payment, or the member's effective date of unit benefits, whichever
19 occurs first, shall be credited to the member's lump sum payment based on the rate
20 derived from the formula provided in 459-007-0025(3).

21 (B) Earnings for subsequent calendar years shall be credited as set forth in
22 section (5) of this rule.

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

5 (a) For a Tier One member, in the same manner as provided in the version of OAR
6 459-007-0070(1) in effect on the effective date of unit benefits.

7 (b) For a Tier Two member, in the same manner as provided in OAR 459-007-
8 0250(1).

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

14 (7) Crediting earnings to end date. If a member’s effective date of unit benefits does
15 not occur *[prior to] before* the end date, earnings from the last annual earnings crediting
16 to the end date shall be credited to the unit account as follows:

17 (a) If earnings for the calendar year *[prior to] before* the end date have not yet been
18 credited to the member’s unit account, earnings shall be credited for that year based on
19 the latest year-to-date calculation available for that year.

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

22 *[(8) Earnings from the date of payment to December 31 of the calendar year of the*
23 *date of payment, or the member’s effective date of unit benefits, whichever occurs first,*

1 *shall be credited to the member's lump sum payment based on the rate derived from the*
2 *formula: [Formula not included. See ED. NOTE.]*

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

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

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

9 Stat. Auth: ORS 238.650

10 Stats. Implemented: ORS 238.440

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

1 **459-007-0900**

2 **Crediting Earnings to Integration Lump Sum Payments**

3 (1) *[Definition.]* **For the purposes of this rule, “[I]integration lump sum payment”**
4 means any funds received from an employer as the transfer of any prior plan assets under
5 ORS 238.680, excluding any member account balances.

6 (2) *[For the purposes of this rule, i]***If the integrating employer’s members have no**
7 **prior plan assets to transfer, the integration contract will state what portion of the**
8 **integration lump sum payment is attributable to member regular accounts.**

9 **(3) Pursuant to ORS 238.229(4), the integration lump sum payment shall first**
10 **be applied to liabilities attributable to creditable service by employees of the**
11 **employer before the employer was grouped with other public employers. Earnings**
12 **on these amounts shall be credited based on the following:**

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

16 **(b) For the remainder of the year, the integration lump sum payment shall**
17 **receive earnings based on the difference between the December latest year-to-date**
18 **calculation for Tier Two annual earnings and the Tier Two year-to-date calculation**
19 **in effect as of the first of the month following the payment date.**

20 **(c) In subsequent calendar years, earnings shall be credited to the integration**
21 **lump sum payment in accordance with OAR 459-007-0530(2).**

22

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

3 *[(Y - X)(R/T) + (Z - Y), where:]*

4 *[R = The number of days from the date of payment through the last day of the month*
 5 *the payment is received;]*

6 *[T = The total number of days in the month the payment is received;]*

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

9 *[Y = The factor as of the first of the month following the date of payment; and]*

10 *[Z = The Tier Two annual rate for the year the payment is received.]*

11 *[[Example: An integration lump sum payment is received by PERS on May 12, 2002.*

12 *The Tier Two factor as of May 1, 2002, is 1.0077, the Tier Two factor as of June 1, 2002,*

13 *is 0.9995, and the Tier Two annual rate for 2002 is 0.0893. Therefore, X = 1.0077, Y =*

14 *0.9995, Z = 0.0893, R = 20, T = 31 and the earnings crediting rate is:]*

15 *[(0.9995 - 1.0077)(20/31) + (0.0893 - 0.9995)*

16 *= (-0.0082)(0.6452) + (-0.9102)*

17 *= -0.0053 - 0.9102*

18 *= -0.9155]]*

19 **Stat. Auth: ORS 238.650**

20 **Stats. Implemented: ORS 238**

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 17 – REEMPLOYMENT OF RETIRED MEMBERS**

1 **459-017-0060**

2 **Reemployment of Retired Members**

3 (1) Reemployment under ORS 238.082. A retired member of the system receiving a
4 service retirement allowance, who has elected an option other than the total lump sum
5 option under ORS 238.305(3), including those who have retired at a reduced benefit
6 under ORS 238.280(1), (2), or (3), *[as amended by section 1, chapter 404, Oregon Laws*
7 *2007,]* may be employed under ORS 238.082 by a participating employer without loss of
8 retirement benefits provided:

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

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

17 (A) For retired members who have not reached full retirement age under the Social
18 Security Act, the annual compensation limit is ~~[\$13,560]~~\$14,160; or

19 (B) For the calendar year in which the retired member reaches full retirement age
20 under the Social Security Act and only for compensation for the months before reaching
21 full retirement age, the annual compensation limit is ~~[\$36,120]~~\$37,680.

1 (2) The limitations on employment in section (1) of this rule do not apply if the
2 retired member has reached full retirement age under the Social Security Act.

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

4 (a) The retired member meets the requirements of ORS 238.082(3), (4), (5), *[or] (6),*
5 *or (7), [section 1, chapter 307, Oregon Laws 2007, or section 4, chapter 789, Oregon*
6 *Laws 2007,]* and did not retire at a reduced benefit under the provisions of ORS
7 238.280(1), (2), or (3)*[, as amended by section 1, chapter 404, Oregon Laws 2007];*

8 (b) The retired member retired at a reduced benefit under ORS 238.280(1) or (3),
9 is employed in a position that meets the requirements of ORS 238.082(3), *[as amended*
10 *by section 1, chapter 774, Oregon Laws 2007,]* the date of employment is more than six
11 months after the member's effective retirement date, and the member's retirement
12 otherwise meets the standard of a bona fide retirement;

13 (c) The retired member is employed by a school district or education service district
14 as a speech-language pathologist or speech-language pathologist assistant and:

15 (A) The retired member did not retire at a reduced benefit under the provisions of
16 ORS 238.280(1), (2), or (3)*[, as amended by section 1, chapter 404, Oregon Laws 2007];*
17 or

18 (B) If the retired member retired at a reduced benefit under the provisions of ORS
19 238.280(1)*[, (2),]* or (3), *[as amended by section 1, chapter 404, Oregon Laws 2007,]* the
20 retired member is not so employed until more than six months after the member's
21 effective retirement date and the member's retirement otherwise meets the standard of a
22 bona fide retirement;

1 (d) The retired member meets the requirements of section 2, chapter 499, Oregon
2 Laws 2007;

3 (e) The retired member is employed for service during a legislative session under
4 ORS 238.092(2)[, *as amended by section 4, chapter 776, Oregon Laws 2007*]; or

5 (f) The retired member is on active state duty in the organized militia and meets the
6 requirements under ORS 399.075(8).

7 (4) If a retired member is reemployed subject to the limitations of ORS 238.082 and
8 section (1) of this rule, the period or periods of employment subsequently exceed those
9 limitations, and employment continues into the month following the date the limitations
10 are exceeded:

11 (a) If the member has been retired for six or more calendar months:

12 (A) PERS will cancel the member's retirement. The last monthly service retirement
13 allowance payment the member is entitled to will be for the month in which the
14 limitations were exceeded. A member who receives benefits to which he or she is not
15 entitled must repay those benefits to PERS.

16 (B) The member will reestablish active membership as required by ORS 238.078 the
17 first of the calendar month following the date the limitations were exceeded.

18 (C) The member's account shall be rebuilt in accordance with the provisions of
19 section (9) of this rule.

20 (b) If the member has been retired for less than six calendar months:

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

1 (B) All retirement benefits received by the member must be repaid to PERS in a
2 single payment before the member can be reemployed.

3 (C) The member will reestablish active membership as required by ORS 238.078
4 effective the date the member is reemployed.

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

8 (5) Reemployment of retired member who elected the total lump sum option or who
9 received a lump sum payment in lieu of a small allowance (AS Refund). A retired
10 member who elected the total lump sum option under ORS 238.305(3) or who received a
11 lump sum payment in lieu of a small allowance under ORS 238.315 (AS Refund) may
12 return to work with a participating employer in the six month period following the
13 member's effective retirement date without having to repay the retirement benefits paid to
14 them provided:

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

17 (b) The period or periods of employment with one or more public employers
18 participating in the system do not exceed 599 hours.

19 (6) The return to work in a qualifying or other position after six months following
20 the retirement date of a member who elected the total lump sum option or who received
21 an AS Refund has no effect on the retirement status of that member and, upon such
22 reemployment, the member is not required to repay retirement benefits.

1 (7) If a retired member described in section (5) of this rule, is working subject to the
2 limitation of subsection (5)(b) of this rule and the member exceeds that limitation, the
3 member's retirement will be cancelled. The member will be required to repay to PERS in
4 a single payment the total amount of all retirement benefits received. The member will
5 reestablish active membership as required by ORS 238.078 effective the first of the
6 calendar month following the date the member exceeded that limitation. The member's
7 account shall be rebuilt in accordance with ORS 238.078(2) and subsection (10)(d) of this
8 rule. Upon subsequent retirement, the member may choose a different retirement
9 payment option.

10 (8) Limitations on hours of employment in sections (1) and (5) of this rule will be
11 based on the number of hours employed on and after the retired member's effective
12 retirement date.

13 (9) Reemployment under ORS 238.078(1). If a member has been retired for service
14 for more than six calendar months and is reemployed in a qualifying position by a
15 participating employer under the provisions of ORS 238.078(1), the following will occur:

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

18 (b) The member will reestablish active membership as required by ORS 238.078 on
19 the date the member is reemployed.

20 (c) If the member elected an option other than a lump sum option under ORS
21 238.305(2) or (3), the member need not repay any service retirement allowance payment
22 received that is attributable to the period the member was separated from service. The last
23 monthly service retirement allowance payment to which the member is entitled will be

1 for the month before the calendar month in which the member is reemployed. A member
2 who receives benefits to which he or she is not entitled must repay those benefits to
3 PERS. Upon subsequent retirement, the member may choose a different retirement
4 option.

5 (A) The member's account shall be rebuilt as required by ORS 238.078 effective the
6 date active membership is reestablished.

7 (B) Amounts *[distributed]* from the Benefits-In-Force Reserve (BIF) credited to the
8 member's account under the provisions of paragraph (A) of this subsection *[(A)]* shall
9 be credited with earnings at the BIF rate or the assumed rate, whichever is less, from the
10 date of retirement to the date of active membership.

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

22 (A) The member's account shall be rebuilt as required by ORS 238.078 effective the
23 date active membership is reestablished.

1 (B) Amounts *[distributed]* from the BIF credited to the member's account under
2 the provisions of paragraph (A) of this subsection *[(A)]*, excluding any amounts
3 attributable to any lump sum repayment(s) by the member, shall be credited with earnings
4 at the BIF rate or the assumed rate, whichever is less, from the date of retirement to the
5 date of active membership.

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

11 (A) If the member repays PERS as described in subsection (e) the member's account
12 shall be rebuilt as required by ORS 238.078 effective the date that PERS receives the
13 single payment.

14 (B) If any [A] amounts *[distributed]* from the BIF are credited to the member's
15 account under the provisions of paragraph (A) of this subsection *[(A)]* the amounts
16 shall not be credited with earnings for the period from the date of retirement to the date of
17 active membership.

18 (10) Reemployment under ORS 238.078(2). If a member has been retired for service
19 for less than six calendar months and is reemployed in a qualifying position by a
20 participating employer under the provisions of ORS 238.078(2), the following will occur:

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

1 (b) All retirement benefits received by the member must be repaid to PERS in a
2 single payment before the member can be reemployed.

3 (c) The member will reestablish active membership as required by ORS 238.078
4 effective the date the member is reemployed.

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

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

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

14 (12) The provisions of *[subsections]*paragraphs (9)(c)(B), (9)(d)(B), and (9)(e)(B)
15 of this rule are applicable to members who reestablish active membership under ORS
16 238.078 whose initial effective retirement date is on or after March 1, 2006. *[the*
17 *effective date of this rule.]*

18 (13) Reporting requirement. The employer shall notify PERS under which statute a
19 retiree is reemployed in a format acceptable to PERS.

20 (a) Upon request by PERS, a participating employer shall certify to PERS that a
21 retired member has not exceeded the number of hours allowed in ORS 238.082 and
22 sections (1) and (5) of this rule.

1 (b) Upon request by PERS a participating employer shall provide PERS with
2 business and employment records to substantiate the actual number of hours a retired
3 member was employed.

4 (c) Participating employers shall provide the information requested in this section
5 within 30 days of the date of the request.

6 (14) Sick leave. Accumulated unused sick leave reported by the employer to PERS
7 upon a member's retirement, as provided in ORS 238.350, shall not be made available to
8 a retired member returning to employment under sections (1) or (9) of this rule.

9 (15) Subsections (3)(c) and (3)(d) of this rule are repealed effective January 2, 2016.

10 *[(16) The effective date of this rule is January 1, 2008.]*

11 Stat. Auth.: ORS 238.650

12 Stats. Implemented: ORS 238.078, 238.082, 238.092, 399.075, *[404, 499, 774, 776*
13 *& 789, OL 2007 Ch. 499, 774 [307,]*



Oregon

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February 6, 2009

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
SUBJECT: Notice of Rulemaking for New Earnings Crediting Rules:
OAR 459-007-0340, *Crediting Earnings for an OPSRP Pension Program Cash Out of Small Benefits or Withdrawal*
OAR 459-007-0400, *Crediting Earnings Upon Withdrawal of a Judge Member Account*
OAR 459-007-0410, *Crediting Earnings Upon the Death of a Judge Member*
OAR 459-007-0420, *Crediting Earnings at Judge Member Service or Disability Retirement*

MEETING DATE	02/06/09
AGENDA ITEM	B.2.c. Earnings Crediting

OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: The proposed rules are needed to clarify crediting procedures.
- Subject: Crediting earnings to a cash out of a small benefits payment or withdrawal payment in the OPSRP Pension Program. Crediting earnings to a Judge Member account at withdrawal, death, or retirement of the Judge Member.
- Policy Issues: None at this time.

BACKGROUND

The Internal Audit Report presented at the November 2008 Board Audit Committee meeting recommended PERS adopt or amend rules to better define the process of earnings crediting for the OPSRP pension and IAP programs. That audit triggered a comprehensive review of earnings crediting rules, and gaps were identified where new rules were needed to clarify crediting guidelines for certain transactions. These four new rules outline the earnings crediting procedures for each.

OAR 459-007-0340: OPSRP

An OPSRP Pension Program member who withdraws from the program receives a lump sum payment equal to the actuarial equivalent of the pension the member would have received (ORS 238A.120). If the monthly pension benefit payable to an OPSRP Pension Program retired member or the monthly death benefit payable to the beneficiary of a deceased member is less than \$200 per month, the member or beneficiary will receive a lump sum payment equal to the actuarial equivalent of the pension or death benefit (ORS 238A.195). PERS lacks statutory authority to credit earnings or interest to these payments. The proposed rule clarifies that earnings will not be credited on these payments.

OARs 459-007-0400, -0410, -0420: Judges Members

These rules clarify crediting procedures for Judge Member accounts, which were not previously addressed. Judge Member regular accounts are distinct from other member accounts and are credited under a separate earnings rate. The Judge Member rules parallel the administration of earnings crediting for Tier One/Tier Two accounts but refer to the appropriate Judge Member earnings crediting rates as applicable. Procedures for crediting earnings to a Judge Member account in the event of the pre- or post retirement death of a Judge Member are outlined in the death earnings crediting rule. Although Judge Member and surviving spouse pension benefits are not based on the Judge Member account balance, the account balance at the date of a pre-retirement death or at retirement must be established for the purpose of determining if any amount will subsequently become payable to the Judge Member's beneficiary.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on February 24, 2009 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on March 4, 2009 at 5:00 p.m.

LEGAL REVIEW

The attached draft rules were 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 rules, but staff and members will benefit from more comprehensive guidance.

Impact: Administrative efficiency and accuracy will be enhanced by the rules' clarification of earnings crediting procedures.

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

RULEMAKING TIMELINE

January 15, 2009	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
February 1, 2009	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began.
February 6, 2009	PERS Board notified that staff began the rulemaking process.
February 24, 2009	Rulemaking hearing held at PERS headquarters in Tigard.
March 4, 2009	Public comment period ends at 5:00 p.m.
March 31, 2009	Staff will propose adopting the permanent rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

Notice – New Earnings Crediting Rules

2/6/09

Page 3 of 3

NEXT STEPS

A hearing will be held on February 24, 2009. The rules are scheduled to be brought before the PERS Board for adoption at the March 31, 2009 meeting.

B.2.c. Attachment 1 – OAR 459-007-0340, *Crediting Earnings for an OPSRPPension Program Cash Out of Small Benefits or Withdrawal*

B.2.c. Attachment 2 – OAR 459-007-0400, *Crediting Earnings Upon Withdrawal of a Judge Member Account*

B.2.c. Attachment 3 – OAR 459-007-0410, *Crediting Earnings Upon the Death of a Judge Member*

B.2.c. Attachment 4 – OAR 459-007-0420, *Crediting Earnings at Judge Member Service or Disability Retirement*

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

1 **1459-007-0340**

2 **Crediting Earnings for an OPSRP Pension Program Cash Out of Small Benefits or**
3 **Withdrawal**

4 **(1) No earnings or distribution interest from the effective date of retirement to**
5 **the date of distribution shall be credited to the amount of a cash out of small**
6 **benefits under ORS 238A.195.**

7 **(2) No earnings or distribution interest from the effective date of withdrawal to**
8 **the date of distribution shall be credited to the amount of a withdrawal under ORS**
9 **238A.120**

10 **Stat. Auth.: ORS 238A.450**

11 **Stats. Implemented: ORS 238A.120, 238A.195**

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

1 459-007-0400

2 Crediting Earnings Upon Withdrawal of a Judge Member Account

3 Upon withdrawal of a judge member account under ORS 238.545, earnings
4 from the last judge member annual rate to the date of distribution will be credited
5 as specified in this rule.

6 (1) Earnings will be credited to the judge member regular account as follows:

7 (a) If earnings for the calendar year before the calendar year of the withdrawal
8 have not yet been credited, earnings for that year will be credited based on the latest
9 judge member regular account year-to-date calculation available for that year.

10 (b) Earnings for the calendar year of the withdrawal will be credited from
11 January 1 to the effective date of withdrawal based on the latest judge member
12 regular account year-to-date calculation as of the effective date of withdrawal.

13 (2) If the judge member is participating in the Variable Annuity Account,
14 earnings will be credited to the variable account as follows:

15 (a) If earnings for the calendar year before the calendar year of the withdrawal
16 have not yet been credited, earnings for that year will be credited based on the latest
17 variable account year-to-date calculation available for that year.

18 (b) Earnings for the calendar year of the withdrawal will be credited from
19 January 1 to the effective date of withdrawal based on the latest variable account
20 year-to-date calculation as of the effective date of withdrawal.

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

4 (4) Earnings on the withdrawal amount from the effective date of withdrawal to
5 the date of distribution will be credited based on the average annualized rate,
6 prorated for that period.

7 Stat. Auth.: ORS 238.650

8 Stats. Implemented: ORS 238.250, 238.255, 238.260, 238.515, 238.545, OL 2003

9 Ch. 625

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

1 459-007-0410

2 Crediting Earnings Upon the Death of a Judge Member

3 Upon the death of a judge member, earnings will be credited to the judge
4 member account as specified in this rule.

5 (1) If a judge member dies before retirement, earnings from the last judge
6 member annual rate will be credited as follows:

7 (a) Judge member regular account.

8 (A) If earnings for the calendar year before the calendar year of the judge
9 member's death have not yet been credited, earnings for that year will be credited
10 based on the latest judge member regular account year-to-date calculation available
11 for that year.

12 (B) Earnings for the calendar year of the judge member's death will be credited
13 from January 1 to the first of the month of the judge member's death based on the
14 latest judge member regular account year-to-date calculation as of the first of the
15 month of the judge member's death.

16 (b) If the judge member was participating in the Variable Annuity Account:

17 (A) If earnings for the calendar year before the calendar year of the judge
18 member's death have not yet been credited, earnings for that year will be credited
19 based on the latest variable account year-to-date calculation available for that year.

20 (B) Earnings for the calendar year of the judge member's death will be credited
21 from January 1 to the first of the month of the judge member's death based on the

1 latest variable account year-to-date calculation as of the first of the month of the
2 judge member's death.

3 (c) After earnings have been credited in accordance with this section, the
4 balance of the variable account shall be added to the balance of the judge member
5 regular account and the sum shall constitute the judge member account balance as
6 of the judge member's date of death. No earnings or interest may be credited to the
7 judge member account after the judge member's date of death.

8 (2) If a judge member dies after the judge member's effective retirement date,
9 the judge member account balance at retirement must be determined under the
10 provisions of OAR 459-007-0420. No earnings or interest may be credited to the
11 judge member account after the judge member's effective retirement date.

12 Stat. Auth.: ORS 238.650

13 Stats. Implemented: ORS 238.250, 238.255, 238.260, 238.515, 238.565, OL 2003

14 Ch. 625

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

1 459-007-0420

2 Crediting Earnings at Judge Member Service or Disability Retirement

3 Upon retirement of a judge member for service or disability, earnings from the
4 effective date of the last judge member annual rate to the effective date of
5 retirement will be credited to the judge member account as specified in this rule.

6 (1) Judge member regular account.

7 (a) If earnings for the calendar year before the calendar year of the judge
8 member's retirement have not yet been credited, earnings for that year will be
9 credited based on the latest judge member regular account year-to-date calculation
10 available for that year.

11 (b) Earnings for the calendar year of the judge member's retirement will be
12 credited from January 1 to the judge member's effective retirement date based on
13 the latest judge member regular account year-to-date calculation as of the judge
14 member's effective retirement date.

15 (2) If the judge member is participating in the Variable Annuity Account:

16 (a) If earnings for the calendar year before the calendar year of the judge
17 member's retirement have not yet been credited, earnings for that year will be
18 credited based on the latest variable account year-to-date calculation available for
19 that year.

20 (b) Earnings for the calendar year of the judge member's retirement will be
21 credited from January 1 to the judge member's effective retirement date based on

1 the latest variable account year-to-date calculation as of the judge member's
2 effective retirement date.

3 (3) After earnings have been credited in accordance with sections (1) and (2) of
4 this rule, the balance of the variable account shall be added to the balance of the
5 judge member regular account and the sum shall constitute the judge member
6 account balance as of the judge member's effective retirement date.

7 Stat. Auth.: ORS 238.650

8 Stats. Implemented: ORS 238.250, 238.255, 238.260, 238.515, 238.565, OL 2003

9 Ch. 625



Oregon

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February 6, 2009

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
SUBJECT: Notice of Rulemaking and Adoption
Division 35, *Health Insurance for Registered Domestic Partners Rules*

MEETING DATE	02/06/09
AGENDA ITEM	B.3. Domestic Partner Health Insurance

OVERVIEW

- Action: Adopt modifications to the Division 35, Health Insurance for Registered Domestic Partners rules.
- Reason: The proposed rule modifications would extend health insurance coverage under the PERS Plan to registered domestic partners, in accordance with House Bill 2007, if such an action would be consistent with the plan's tax qualification requirements.
- Subject: Health insurance coverage for registered domestic partners under the PERS Plan.
- Policy Issue: Should PERS adopt rule modifications to extend health insurance coverage to registered domestic partners contingent upon the IRS opining that such coverage is consistent with the plan's tax qualification requirements?

BACKGROUND

The Oregon Family Fairness Act (OFFA), adopted as House Bill 2007 in the Oregon legislature's 2007 session, generally required state agencies to extend their benefits and services to registered domestic partners on the same basis as a spouse. That requirement was qualified for the PERS Plan in that PERS is not required to extend a benefit if the PERS Board reasonably concludes that doing so would conflict with a condition for the plan's tax qualification.

One area of potential conflict is eligibility to participate in the PERS health insurance programs. Our current administrative rules limit eligibility to a domestic partner who is a member's dependent. That limitation is based on our understanding of the tax qualification requirements of the plan through which PERS provides the health insurance programs.

A group representing Basic Rights Oregon, an advocacy group that worked on the adoption and subsequent implementation of the OFFA, has requested that PERS review its understanding of the domestic partner limitation. The group provided their analysis of the issue, under which the IRS could recognize providing such benefits as permissible. That analysis, a November 3, 2008 memo from Rep. Greg Macpherson to me, is attached to this memo. They have asked PERS to include their analysis in our current plan determination request to see whether the IRS would allow PERS to extend health insurance participation to registered domestic partners.

Their analysis analogizes to a *de minimis* exception that the IRS has acknowledged in another context that allows same sex domestic partners to participate in a tax qualified plan as spouses.

Our submission to the IRS would include this analysis and a representation that allowing registered domestic partners to participate in the PERS health insurance plan would only result in a similarly *de minimis* participation. If the IRS acknowledges that approach, PERS could extend eligibility for health insurance plan participation to registered domestic partners.

Policy Issue: Should PERS adopt rule modifications to extend health insurance coverage to registered domestic partners contingent upon the IRS opining that such coverage is consistent with the plan's tax qualification requirements?

PERS already submitted its plan determination letter request in early November 2008. That request, however, will need to be supplemented with any plan amendments (new rules and statutes, if any) promulgated since that request was submitted. This issue could be incorporated into our current plan determination request if the PERS Board adopted rule modifications that would allow registered domestic partners to participate. The Board could direct staff not to file the rules unless the IRS determines that these modifications are permissible. That process would position the rule modifications so, hopefully, the IRS will consider them in their current plan review.

Other alternatives did not seem as assured of yielding consideration by the IRS. If the rule modifications remained only proposed, they would not constitute a plan amendment and the IRS may refuse to consider them. If the modifications were adopted and filed, those changes would then be effective unless and until the IRS opines, which could result in “unwinding the clock” if the IRS does not allow participation.

Staff Recommendation: By adopting the rule modifications but then also directing staff not to file them until they clear IRS scrutiny, staff hopes that the issue will be adequately presented for IRS review but not create an untenable situation of possibly having to reverse or unwind participation. Also, this approach avoids implementing a change until the IRS indicates that doing so would not jeopardize the plan's tax qualification.

As an aside, staff also noted in their review that these rules had not been updated since the Total Lump Sum Option became available in 2003. A minor rule modification has been made to one of the rules to account for retirees who elected a Total Lump Sum Option.

To ensure that these rules would be ready for submission when the IRS indicates it's ready to receive the supplemental information, the modifications are presented for adoption at this meeting as permanent rules. Interested parties were notified of these modifications with sufficient time to allow them to be adopted as permanent rules at this meeting, as reflected in the rulemaking time line below.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on January 20, 2009 at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended on January 21, 2009 at 5:00 p.m. No public comment was received.

LEGAL REVIEW

The attached draft 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: Unclear. If the IRS determines that participation is permissible, the proposed rule modifications are mandatory to comply with the OFFA.

Impact: Minimal, if allowed by the IRS. PERS staff are already providing benefits to registered domestic partners where tax qualification issues do not arise, and this expansion of potential participation is expected to only affect a *de minimis* number of individuals.

Cost: No incremental costs are associated with these rule modifications. PERS will need to supplement its determination letter request anyway and processes already exist to extend benefits to registered domestic partners.

RULEMAKING TIMELINE

December 15, 2008	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
January 1, 2009	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began.
January 20, 2009	Rulemaking hearing held at PERS headquarters in Tigard.
January 21, 2009	Public comment period ended at 5:00 p.m.
February 6, 2009	Notice to Board, and Board may adopt the proposed rule modifications.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to Division 35 Health Insurance for Registered Domestic Partners rules, as presented, directing staff to not file those modifications until receiving a favorable IRS determination that such modifications do not conflict with the plan’s tax qualification requirements.”
2. Direct staff to make other changes to the rule or explore other options.

STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

- Reason: Rule modifications are needed to extend health insurance coverage under the PERS Plan to registered domestic partners, in accordance with House Bill 2007.

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.

Notice and Adoption – Health Insurance for Registered Domestic Partners

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- B.3. Attachment 1 – Memo from Rep. Greg Macpherson
- B.3. Attachment 2 – OAR 459-035-0001, Definitions
- B.3. Attachment 3 – OAR 459-035-0020, Eligibility, General
- B.3. Attachment 4 – OAR 459-035-0030, Eligibility, Retirement Health Insurance Account
- B.3. Attachment 5 – OAR 459-035-0040, Eligibility, Retiree Health Insurance Premium Account
- B.3. Attachment 6 – OAR 459-035-0070, Enrollment
- B.3. Attachment 7 – OAR 459-035-0080, Effective Date of Coverage

MEMORANDUM

To: Steve Rodeman

From: Rep. Greg Macpherson

Date: November 3, 2008

Subject: PERS Medical Benefits for Nondependent Domestic Partners

The purpose of this memo is to describe how the Oregon Public Employee Retirement System (PERS) can determine whether retiree medical benefits can and should be provided to nondependent domestic partners.

Background:

The Oregon Family Fairness Act, passed as House Bill 2007 in last year's legislative session, permits same sex couples in Oregon to form domestic partnerships. Section 9(1) of the Act provides that any "privilege, immunity, right, or benefit" granted by law to a married individual is granted on equivalent terms to an individual who is a domestic partner. This broad grant of rights is limited by section 9(7), which states that the Act does not require or permit extension of any benefit under ORS chapter 238 or 238A (the statutory provisions for PERS) or other employee benefit plan if the plan administrator reasonably concludes that the extension of benefits would conflict with a condition for tax qualification under the federal Internal Revenue Code (IRC).

Many former public employees retired from state or local government in Oregon receive health coverage from PERS through an account established by ORS 238.410(7). The account is allowed by IRC section 401(h), under which a retirement plan that qualifies for favorable tax treatment can pay benefits for medical expenses of "retired employees, their spouses and their dependents" if certain conditions are satisfied.

Internal Revenue Service (IRS) regulations issued under section 401(h) define "dependent" by cross-reference to IRC section 152, which generally provides that a taxpayer can treat an individual as a dependent if they both have the same principal place of abode and the taxpayer provides over half of the individual's support. Some domestic partners of PERS retirees qualify as dependents under this provision. These dependent domestic partners clearly can receive benefits from PERS' 401(h) account without jeopardizing the system's tax qualification. Therefore, PERS can comply with the Oregon Family Fairness Act as to these dependent domestic partners by providing them the same health coverage as is provided for spouses of retirees.

Nondependent domestic partners are currently not allowed to receive benefits from PERS' 401(h) account. Any spouse of a PERS retiree can receive such benefits regardless of whether he or she qualifies as a dependent. Oregon domestic partners cannot be treated as spouses under the IRC because Section 3 of the federal Defense of Marriage Act (DOMA)

provides that “spouse” as used in any Act of Congress or any ruling or regulation refers only to a person of the opposite sex who is a husband or wife.

Under section 9(1) of the Oregon Family Fairness Act, benefits under PERS’ 401(h) account must be provided to nondependent domestic partners unless doing so would conflict with the restriction of 401(h) benefits to retired employees, their spouses and their dependents. If the conflict with that restriction jeopardizes the tax qualification of the PERS system, the exception of Section 9(7) of the Act applies.

Question Presented:

Can PERS provide benefits from its 401(h) account to a nondependent domestic partner of a PERS retiree without jeopardizing PERS’ status as a tax-qualified plan under IRC section 401(a)?

Discussion:

IRS regulations issued under IRC section 401(h) are silent on whether benefits can be provided to some individuals who are not retired employees or their spouses or dependents. However, that issue is addressed in a parallel situation under IRC section 501(c)(9), which provides an exemption from federal income taxation to a voluntary employee beneficiary association (VEBA).

A VEBA provides health and other benefits to the “members of such association or their dependents or designated beneficiaries.” The regulations issued under section 501(c)(9) define “dependent” as including a spouse and several other family relationships, or a dependent as described in IRC 152. The section 501(c)(9) regulations do not include any other beneficiary as a permissible recipient of sick and accident benefits. Because both a VEBA and a 401(h) account are generally limited to providing health benefits to current or retired employees, to their spouses, and to their dependents, providing benefits to nondependent domestic partners involves parallel considerations.

The regulations under IRC section 501(c)(9) state that an organization does not qualify as a VEBA if it “systematically and knowingly provides benefits (of more than a *de minimis* amount)” that are not permissible. The IRS has applied this *de minimis* standard to a VEBA that provides benefits to nondependent domestic partners in Private Letter Ruling (PLR) 9850011 and in PLR 200108010.

PLR 9850011, from 1998, involved the benefits provided by a “Family Health Plan” supported by a VEBA referred to as the “Fund”. The PLR applied a three percent cap for determining what is *de minimis*, concluding:

“Coverage of nondependent domestic partners under the Family Health Plan will not affect the exemption of the Fund from income tax as an organization described in section 501(c)(9) of the Code, so long as the benefits paid with respect to nondependent domestic partners do not exceed three percent of the total benefits paid by the Fund.”

PLR 200108010, from 2001, also involved a VEBA referred to as the “Fund”. The PLR cited the de minimis standard, without putting it in percentage terms, and then stated:

“Thus, a VEBA may provide nonqualifying benefits as long as such benefits do not constitute more than an insubstantial amount of the VEBA’s total benefits.”

PLR 200108010 went on to conclude:

“The Fund’s operations with respect to health coverage provided to nondependent, nonspousal domestic partners will be no more than de minimis within the meaning of section 1.501(c)(9)-3(a) of the regulations. The provision of coverage therefore will not adversely affect the Fund’s exempt status under section 501(c)(9) of the Code.”

In 2005 the IRS issued PLR 200537036 applying the de minimis standard to a VEBA providing benefits to the adult former dependents of members. The PLR concluded that providing otherwise unallowable health benefits to adult former dependents of members would not cause the VEBA to lose exempt status, based on the representation that such benefits would be a de minimis amount of the total benefits provided.

As a general principle of tax law, the IRS’ PLRs do not constitute binding authority. Therefore, PERS must obtain its own ruling to be assured that providing benefits from its 401(h) account will not jeopardize its qualification for favorable tax treatment. Because compliance with 401(h) is an issue of tax qualification, such a ruling must be obtained through a determination letter rather than a PLR.

As a governmental plan, PERS must apply for an updated determination letter from the IRS by January 31, 2009. The determination letter establishes that PERS continues to qualify for favorable tax treatment. An application for a determination letter can include a proposed amendment to the plan, requesting confirmation that the amendment does not spoil the plan’s qualified status. Because the IRS has concluded in the PLRs discussed above that providing benefits to nondependent domestic partners does not spoil a VEBA’s tax exempt status, it is likely to conclude that doing so does not spoil PERS’ tax qualified status.

Conclusion:

Rulings issued to VEBAs faced with a parallel issue hold that nondependent domestic partners can be provided with benefits that are “de minimis” (defined in one ruling as less than three percent of all benefits) without jeopardizing the VEBA’s favorable tax treatment. PERS should seek its own ruling from the IRS, confirming that this principle applies to the 401(h) account. PERS can do so by including an amendment to extend to nondependent domestic partners medical benefits from the 401(h) account in the determination letter application it must submit, as a governmental plan, by January 31, 2009.

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 035 – HEALTH INSURANCE PROGRAMS**

1 **459-035-0001**

2 **Definitions**

3 The words and phrases used in this Division have the same meaning given them in
4 ORS Chapter 238. Additional terms are defined as follows unless the context requires
5 otherwise.

6 (1) “Board” means the Public Employees Retirement Board as established in ORS
7 238.630.

8 (2) “Carrier” shall have the same meaning as provided in ORS 238.410(1)(a).

9 (3) “Competitive Negotiations” means the procurement method whereby proposals
10 are requested from a number of sources and the Request for Proposals is publicized.

11 (4) “Creditable Service” shall have the same meaning as provided in ORS
12 238.005(5).

13 (5) “Dependent” means a PERS member’s or retiree’s dependent child who has
14 never married. For the purpose of this rule a “child” is defined as follows:

15 (a) A natural child.

16 (b) A legally adopted child, or a child placed in the home pending adoption.

17 (c) A step-child who resides in the household of the stepparent who is an eligible
18 retired member.

19 (d) A grandchild, provided that at the time of birth, at least one of the grandchild’s
20 parents was covered under a PERS-sponsored health insurance plan as a dependent child
21 of the PERS member or retiree and resides in the household of the member or retiree.

1 (6) “Dependent Domestic Partner of a PERS Retiree” means a person who has a
2 relationship with a PERS retiree that has the characteristics described below. To qualify
3 as a “dependent domestic partner of a PERS retiree,” the person and the PERS retiree
4 must:

5 (a) Share a close personal relationship and be responsible for each other’s common
6 welfare, including but not limited to having joint financial responsibilities;

7 (b) Be each other’s sole domestic partner;

8 (c) Not be married to anyone, nor have had another domestic partner within the
9 previous 12 months;

10 (d) Not be related by blood so closely as to bar marriage in the State of Oregon;

11 (e) Have jointly shared the same regular and permanent residence for at least 12
12 months immediately preceding the effective date of coverage with the intent to continue
13 doing so indefinitely; and

14 (f) Have the PERS retiree providing over one-half of the financial support for the
15 person and qualify as a dependent of the PERS retiree as determined under section 105(b)
16 of the Internal Revenue Code, 26 USC 105(b), as amended by the Working Families Tax
17 Relief Act of 2004, P.L. 108-311.

18 (7) “Eligible Person” means a person who is eligible for coverage under a PERS-
19 sponsored health insurance plan. The conditions for such eligibility are set forth in OAR
20 459-035-0020.

21 (8) “Eligible Retired Member” means an eligible person who is eligible for payments
22 toward the cost of the Medicare Companion Plan from RHIA. The conditions for such
23 eligibility are set forth in OAR 459-035-0030.

1 (9) “Eligible Retired State Employee” means an eligible person who is eligible for
2 non-Medicare insurance premium payments from the RHIPA. Conditions for such
3 eligibility are set forth in OAR 459-035-0040.

4 (10) “Fund” shall have the same meaning as the Public Employees Retirement Fund
5 in ORS 238.660.

6 (11) “Health Insurance” means insurance for health care, as that term is defined in
7 ORS 238.410(1)(c).

8 (12) “Medicare” means the federal health care insurance plan established under Title
9 XVIII of the Social Security Act as amended.

10 (13) “Medicare Companion Plan” means a PERS-sponsored health insurance plan
11 for eligible persons who are eligible for and enrolled in Medicare.

12 (14) “Non-Competitive Negotiation” means procurement through solicitation of a
13 proposal from only one source.

14 (15) “PEBB” means the Public Employees’ Benefit Board established under ORS
15 243.061.

16 (16) “PERS” shall have the same meaning as the Public Employees Retirement
17 System in ORS 238.600.

18 (17) “PERS Member” shall have the same meaning as “member” provided in ORS
19 238.005(12).

20 (18) “Plan Year” means a 12-month period beginning January 1 and ending
21 December 31.

1 (19) “Qualifying Service” means creditable service, as defined in ORS 238.005(5),
2 plus any periods of employment with an employer participating in PERS that are required
3 of the employee before becoming a PERS member.

4 (20) “Registered Domestic Partner” means a person who has fulfilled the
5 requirements of Chapter 99, Oregon Laws 2007, to register as a domestic partner of
6 a PERS retiree and that registered domestic partnership has not been dissolved.

7 (21) “Retiree” means a PERS member who is receiving a service or disability
8 retirement allowance or benefit under PERS, who elected the Total Lump Sum option
9 under ORS 238.305(3), or who received an optional lump sum payment under ORS
10 238.315, or a person who is receiving retirement pay or pension calculated under ORS
11 1.314 to 1.380 (1989 Edition).

12 ~~[(21)]~~ (22) “RHIA” means the Retirement Health Insurance Account established
13 under ORS 238.420 to help defray the cost of the Medicare Companion Plan.

14 ~~[(22)]~~ (23) “RHIPA” means the Retiree Health Insurance Premium Account
15 established under ORS 238.415 to help defray the cost of PERS-sponsored health plans
16 other than the Medicare Companion Plan.

17 ~~[(23)]~~ (24) “Small Purchase Procedures” (informal bidding) means the relatively
18 simple and informal procurement methods whereby price and rate quotations are obtained
19 from at least three sources and selection is made on the basis of cost and other applicable
20 criteria.

21 ~~[(24)]~~ (25) “SRHIA” means the Standard Retiree Health Insurance account
22 established within the Public Employees Retirement Fund separate from the General

1 Funds to administer employee and the employer contributions to the PERS sponsored
2 health insurance program.

3 ~~[(25)]~~(26) “Staff” means the employees of the Public Employees Retirement
4 System.

5 ~~[(26)]~~(27) “Third Party Administrator” means the individual or organization that the
6 Board contracts with to provide administrative services as specified in the contract.

7 *[(27) The provisions of this rule are effective on January 1, 2005.]*

8 Stat. Auth.: ORS 238.410 & 238.650

9 Stats. Implemented: ORS 238.410, 238.415 & 238.420

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 035 – HEALTH INSURANCE PROGRAMS**

1 **459-035-0020**

2 **Eligibility, General**

3 This rule describes the eligibility requirements for a person to be eligible to
4 participate in a PERS-sponsored health insurance plan. An “eligible person” includes a
5 retiree, a spouse, a dependent, a dependent or registered domestic partner, and a
6 surviving spouse, registered domestic partner, or dependent. Each category of “eligible
7 person” is defined as follows:

8 (1) A retiree as defined in OAR 459-035-0001(20).

9 (2) A spouse means the spouse of an eligible retiree.

10 (3) A dependent means a dependent child as defined in OAR 459-035-0001(5), and
11 satisfies one of the requirements listed in subsections (a), (b), or (c) that follow:

12 (a) The child is less than 19 years of age.

13 (b) The child is less than 24 years of age, and is regularly enrolled and attending
14 school; e.g. an academic, trade or vocational school.

15 (c) The child is 19 years of age or more and has either been continuously dependent
16 upon the retiree since childhood due to disability or physical handicap, or has been
17 covered under a health care insurance plan as the retiree’s dependent for at least 24
18 consecutive months immediately prior to enrollment in a PERS sponsored health
19 insurance plan. In either case, the following additional requirements must also be
20 satisfied:

1 (A) The child is not able to achieve self-support through his or her work due to a
2 developmental disability, mental retardation or physical handicap as verified by a
3 physician and accepted by the carrier, and

4 (B) The incapacity is continuous and began prior to the date the child would
5 otherwise have ceased to be an eligible dependent.

6 (4) A dependent domestic partner as defined in OAR 459-035-0001(6).

7 **(5) A registered domestic partner as defined in OAR 459-035-0001(20).**

8 (5) A surviving spouse, *[or]* dependent, **or registered domestic partner** means:

9 (a) The surviving spouse, *[or]* dependent, **or registered domestic partner** of a
10 deceased retired PERS member; or

11 (b) The surviving spouse, *[or]* dependent, **or registered domestic partner** of a
12 deceased PERS member who was not retired but who was eligible to retire at the time of
13 death; or

14 (c) The surviving spouse, *[or]* dependent, **or registered domestic partner** of a
15 deceased retiree who was receiving a retirement payment or benefit, or a pension
16 calculated under ORS 1.314 to 1.380 (1989 Edition), provided that the surviving spouse,
17 *[or]* dependent, **or registered domestic partner** was covered under a PERS sponsored
18 health insurance plan at the time of the retiree's death.

19 (6) In no event shall an eligible person as defined in this rule be entitled to coverage
20 under more than one PERS-sponsored health insurance plan other than medical and a
21 dental plan.

1 (7) In no event shall an eligible person as defined in this rule be entitled to coverage
2 as both a retiree and a spouse, dependent, dependent domestic partner, or [*dependant*]
3 registered domestic partner.

4 Stat. Auth: ORS 238.410 & 238.650

5 Stats. Implemented: ORS 238.410, 238.415 & 238.420

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 035 – HEALTH INSURANCE PROGRAMS**

1 **459-035-0030**

2 **Eligibility, Retirement Health Insurance Account**

3 This rule describes the requirements for an “eligible retired member” participating in
4 a PERS-sponsored Medicare Companion Plan to be eligible for contributions from the
5 RHIA toward the cost of premiums for that plan. The amount of the contribution is
6 defined in OAR 459-035-0060. An “eligible retired member” shall include the following:

7 (1) A retiree who is enrolled in Parts A and B of Medicare and who:

8 (a) Is retired, is receiving a PERS service or disability retirement allowance, and had
9 eight or more years of qualifying service as defined in OAR 459-035-0001(19) at the
10 time of retirement; or

11 (b) Is receiving a PERS disability retirement allowance computed as if he or she had
12 eight years or more of creditable service as defined in ORS 238.005(5).

13 (2) A surviving spouse, *[or]* dependent, or registered domestic partner of a
14 deceased eligible retired member as described in section (1) of this rule, who is enrolled
15 in Parts A and B of Medicare, and who:

16 (a) Is receiving a retirement allowance or benefit from PERS; or

17 (b) Was covered under the retired member’s PERS-sponsored health insurance plan
18 and the deceased retired member retired before May 1, 1991.

19 (3) An eligible surviving spouse, *[or]* dependent, or registered domestic partner
20 receiving benefits under the 15-year certain optional form of benefit payment (ORS
21 238.305 Option 4) will be entitled to contributions from the RHIA only until the

1 remainder of the 180 monthly benefit payments are paid, unless he or she meets the
2 requirements in subsection (2)(b) this rule.

3 (4) If both an eligible surviving spouse or registered domestic partner and an
4 eligible surviving dependent are receiving benefits at the same time under the 15-year
5 certain optional form of benefit payment (ORS 238.305 Option 4), only the eligible
6 surviving spouse or registered domestic partner shall be entitled to contributions from
7 the RHIA unless the surviving spouse or registered domestic partner, in writing, waives
8 the contribution in favor of the eligible surviving dependent.

9 Stat. Auth: ORS 238.650

10 Stats. Implemented: ORS 238.420

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 035 – HEALTH INSURANCE PROGRAMS**

1 **459-035-0040**

2 **Eligibility, Retiree Health Insurance Premium Account**

3 This rule describes the eligibility requirements for an “eligible retired state
4 employee” participating in a PERS-sponsored health insurance plan, exclusive of dental
5 coverage, to be eligible for a contribution from the RHIPA toward the cost of premiums
6 for that health insurance plan. The amount of the contribution is established in OAR 459-
7 035-0050. An “eligible retired state employee” shall include the following:

8 (1) A retiree who was a state employee at the time of retirement and who is not
9 eligible for Medicare, and who:

10 (a) Is receiving a PERS service or disability retirement allowance or benefit, and had
11 8 or more years of qualifying service as defined in OAR 459-035-0001(19) at the time of
12 retirement; or

13 (b) Is receiving a PERS disability retirement allowance computed as if the member
14 had eight or more years of creditable service as defined in ORS 238.005(5), and has
15 attained the earliest service retirement age under ORS 238.280.

16 (2) A surviving spouse, *[or]* dependent, or registered domestic partner of a
17 deceased eligible retired state employee, as described in section (1) of this rule, who is
18 not eligible for Medicare, and who:

19 (a) Is receiving a retirement allowance or benefit from PERS; or

20 (b) Was covered under the eligible retired state employee’s PERS-sponsored health
21 insurance plan, and the eligible retired state employee retired on or after September 29,
22 1991.

1 (3) An eligible surviving spouse, *[or]* dependent, or registered domestic partner
2 receiving benefits under the 15-year certain optional form of benefit payment (ORS
3 238.305 Option 4) will be entitled to contributions the RHIPA only until the remainder of
4 the 180 monthly benefit payments are paid, unless he or she meets the requirement of
5 subsection (2)(b) of this rule.

6 (4) If both an eligible surviving spouse or registered domestic partner and an
7 eligible surviving dependent are receiving benefits at the same time under the 15-year
8 certain optional form of benefit payment (ORS 238.305 Option 4), only the eligible
9 surviving spouse or registered domestic partner shall be entitled to contributions from
10 the RHIPA unless the surviving spouse or registered domestic partner, in writing,
11 waives the contribution in favor of the eligible surviving dependent.

12 Stat. Auth: ORS 238.650

13 Stats. Implemented: ORS 238.415

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 035 – HEALTH INSURANCE PROGRAMS**

1 **459-035-0070**

2 **Enrollment**

3 (1) Enrollment requirements of PERS-Sponsored health insurance plans for eligible
4 persons are as follows:

5 (a) An eligible person must complete all applicable parts of PERS Medical & Dental
6 Insurance Application form, and file the form with the Third Party Administrator
7 including, in the case of a dependent domestic partner, an Affidavit of Dependent
8 Domestic Partnership. The form must indicate which plan is desired and it must list
9 individually *[all]* any dependent*[s]*, *[including the]* spouse, dependent domestic
10 partner, or registered domestic partner that *[are]* is to be enrolled. The form can be
11 obtained from the Third Party Administrator or PERS;

12 (b) An eligible person who is a retiree may enroll:

13 (A) Within 90 days of the retiree's effective date of retirement;

14 (B) At any time if covered under another group health insurance plan for 24
15 consecutive months immediately preceding enrollment, provided that the application for
16 enrollment is filed within 30 days of loss of coverage. Health care coverage under
17 workers' compensation, Medicare or any other governmental entitlement program for
18 health care do not qualify as other group health insurance coverage for purposes of this
19 paragraph;

20 (C) Within 90 days of initial Medicare eligibility, if the retiree is enrolled in Parts A
21 and B of Medicare; or

22 (D) During an open enrollment period designated by the Board.

1 (c) Except as provided in subsection (f) of this section, an eligible spouse, *[or]*
2 dependent, dependent domestic partner, or registered domestic partner must be
3 enrolled at the same time and in the same plan as the eligible retiree;

4 (d) An eligible surviving spouse, *[or]* dependent, or registered domestic partner
5 who is enrolled under the deceased retiree’s plan at the time of death may continue
6 coverage under that plan, and must complete a Medical & Dental Insurance Application
7 form as soon as possible following the retiree’s death;

8 (e) An eligible surviving spouse, *[or]* dependent, or registered domestic partner
9 who is not covered under the retiree’s plan at the time of the retiree’s death, may enroll:

10 (A) Within 90 days of the retiree’s death;

11 (B) At any time if covered under another group health insurance plan for 24
12 consecutive months immediately preceding enrollment, provided that the application for
13 enrollment is filed within 30 days of loss of coverage. Health care coverage under
14 workers’ compensation, Medicare or any other governmental entitlement program for
15 health care do not qualify as other group health insurance plan coverage for purposes of
16 this paragraph;

17 (C) Within 90 days of initial Medicare eligibility, if he or she is enrolled in Parts A
18 and B of Medicare; or

19 (D) During an open enrollment period designated by the Board.

20 (f) A new spouse, registered or dependent domestic partner, or dependent may be
21 enrolled:

22 (A) Within 30 days of becoming a spouse, a registered or dependent domestic
23 partner, or a dependent;

1 (B) If not enrolled in Medicare, only with the same carrier that the eligible retiree is
2 enrolled in;

3 (C) If enrolled in Parts A and B of Medicare, only in the Medicare Companion Plan
4 offered by the same carrier that covers the eligible retiree.

5 (g) An eligible retiree’s spouse may enroll within 90 days of initial Medicare
6 eligibility, if he/she is enrolled in Parts A & B of Medicare even though the retiree
7 remains enrolled in a non-PERS health plan.

8 (2) Special enrollment requirements for dental insurance plans:

9 (a) Only persons who are enrolled in a PERS-sponsored health insurance plan may
10 enroll in a PERS-sponsored dental insurance plan;

11 (b) Dental insurance coverage is not available to any eligible person unless all family
12 members (the retiree, spouse, dependent or registered domestic partner, and
13 dependent(s)) who are enrolled in a PERS-sponsored health insurance plan also enroll in
14 the same PERS-sponsored dental insurance plan;

15 (c) If the retiree, spouse, dependent or registered domestic partner, and
16 dependent(s) do not enroll in a PERS-sponsored dental insurance plan when eligible, or
17 later choose to discontinue dental coverage, they will not be allowed to re-enroll in a
18 PERS-sponsored dental insurance plan.

19 Stat. Auth.: ORS 238.410 & ORS 238.650

20 Stats. Implemented: ORS 238.410, ORS 238.415 & ORS 238.420

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 035 – HEALTH INSURANCE PROGRAMS**

1 **459-035-0080**

2 **Effective Date of Coverage**

3 (1) For an eligible person who enrolls in a PERS sponsored health insurance plan
4 under the provisions of OAR 459-035-0070, the effective date of coverage shall be the
5 first of the month following receipt of a completed PERS Medical & Dental Insurance
6 Application form but not before the date described as follows:

7 (a) For an eligible retiree, the latest of the following dates:

8 (A) The effective date of retirement if enrolled within 90 days of the effective date of
9 retirement;

10 (B) The termination date of other group health insurance coverage;

11 (C) For a Medicare Companion Plan, the effective date of enrollment in Parts A and
12 B of Medicare; or

13 (D) The date specified in an announcement of a plan change period or an open
14 enrollment period, if applicable.

15 (b) For an eligible spouse, *[or]* dependent, or registered domestic partner, the
16 latest of the following dates:

17 (A) The date the retiree’s coverage is effective;

18 (B) The first of the month following the termination date of other group health
19 insurance coverage;

20 (C) For a Medicare Companion Plan, the effective date of enrollment in Parts A and
21 B of Medicare; or

1 (D) The date specified in an announcement of a plan change period or an open
2 enrollment period, if applicable.

3 (c) For a new eligible spouse, dependent, or dependent or registered domestic
4 partner, the first day of the month following the date the completed enrollment form is
5 filed and, in the case of a dependent domestic partner, an Affidavit of Dependent
6 Domestic Partnership, except in the following situations:

7 (A) A newborn child is covered from the moment of birth.

8 (B) An adopted child is covered from the date he or she is placed in the custody of
9 the eligible retiree.

10 (d) For an eligible surviving spouse, *[or]* dependent, or registered domestic
11 partner, the first of the month following the filing of an application for health insurance
12 coverage.

13 (2) Coverage shall cease for an eligible person on the earliest of the following dates:

14 (a) The end of the month in which a signed notification is received by PERS from
15 the covered person to terminate coverage.

16 (b) The end of the month for which the last premium is paid.

17 (c) The end of the month in which a person ceases to be an eligible person, subject to
18 any continuation of coverage rights under state or federal law.

19 Stat. Auth: ORS 238.410 & ORS 238.650

20 Stats. Implemented: ORS 238.410, ORS & ORS 238.420



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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February 6, 2009

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
SUBJECT: Adoption of HEART Act Rules:
OAR 459-005-0001, *Definitions, Generally*
OAR 459-011-0100, *Credit for Military Service under USERRA*
OAR 459-011-0110, *Credit for Military Service under ORS 238.156(3)*
OAR 459-015-0001, *Definitions*
OAR 459-050-0075, *In-Service Distribution*
OAR 459-070-0001, *Definitions*
OAR 459-076-0001, *Definitions*
OAR 459-080-0100, *Credit for Military Service under USERRA*

MEETING DATE	02/06/09
AGENDA ITEM	B.4. HEART Act

OVERVIEW

- Action: Adopt modifications to the HEART Act rules.
- Reason: The proposed rule modifications are needed to comply with the federal Heroes Earnings Assistance and Relief Tax (HEART) Act of 2008.
- Subject: Benefit administration related to death or disability of a member performing qualifying military service, treatment of payments made to the member by the employer during a period of qualifying military service, and distributions to OSGP participants performing qualifying military service.
- Policy Issues: No policy issues were identified.

BACKGROUND

On June 17, 2008, the Heroes Earnings Assistance and Relief Tax (HEART) Act of 2008 became law. The Act provides that “differential wage payments” (payments by the employer during qualifying military service that represent all or part of the wages the person would have received if the person had remained employed) must be treated as “compensation” under their retirement plan. PERS and the Oregon Savings Growth Plan (OSGP) must treat such differential wage payments to members and participants as “salary” for all purposes, including employee and employer contributions, final average salary, and monthly salary (for disability benefits). The HEART Act’s provisions regarding differential wage payments are effective January 1, 2009.

The HEART Act also provides that certain plans must treat participants who are performing qualifying military service for a period of more than 30 days as separated from employment for the purpose of receiving a distribution from the plan. This provision applies to OSGP, but not to the PERS Tier One/Tier Two, OPSRP Pension Program, or the Individual Account Program. Therefore, an OSGP participant who meets the criteria may elect to receive a distribution from

their OSGP account while performing qualifying military service. This provision is also effective January 1, 2009.

The proposed rule modifications reflect the Act's requirements regarding differential wage payments and separation from employment. These rules prescribe an effective date of January 1, 2009 so, if adopted, will apply retroactively to that date. As these rule modifications are mandated by federal law, any differential wage payments or distribution requests received in the interim would be administered in compliance with these requirements.

Housekeeping changes were made in OAR 459-015-0001(2)(b) and OAR 459-076-0001(2)(b) to update official certification titles and commissions.

SUMMARY OF MODIFICATIONS TO RULES SINCE NOTICE

459-005-0001 and 459-070-0001: Specified effective date of January 1, 2009; minor edits for clarification.

459-011-0100, 459-011-0110 and 459-080-0100: Minor edits to clarify crediting instructions.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on November 25, 2008 at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended on January 14, 2009 at 5:00 p.m. No public comment was received.

LEGAL REVIEW

The attached draft 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: Yes, the proposed rule modifications are needed to comply with the federal Heroes Earnings Assistance and Relief Tax (HEART) Act of 2008.

Impact: The proposed rule modifications clarify the administration of benefits under the HEART Act.

Cost: There will be administrative costs associated with the implementation of the HEART Act. There are no discrete costs attributable to these rules.

RULEMAKING TIMELINE

October 15, 2008	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
October 31, 2008	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began.
November 21, 2008	PERS Board notified that staff began the rulemaking process.
November 25, 2008	Rulemaking hearing held at PERS headquarters in Tigard.

January 14, 2009

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

February 6, 2009

Board may adopt the permanent rule modifications.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to the HEART Act rules, as presented.”
2. Direct staff to make other changes to the rules or explore other options.

STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

- Reason: The proposed rule modifications are needed to comply with the federal Heroes Earnings Assistance and Relief Tax (HEART) Act of 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.4. Attachment 1 – OAR 459-005-0001, *Definitions, Generally*

B.4. Attachment 2 – OAR 459-011-0100, *Credit for Military Service under USERRA*

B.4. Attachment 3 – OAR 459-011-0110, *Credit for Military Service under ORS 238.156(3)*

B.4. Attachment 4 – OAR 459-015-0001, *Definitions*

B.4. Attachment 5 – OAR 459-050-0075, *In-Service Distribution*

B.4. Attachment 6 – OAR 459-070-0001, *Definitions*

B.4. Attachment 7 – OAR 459-076-0001, *Definitions*

B.4. Attachment 8 – OAR 459-080-0100, *Credit for Military Service under USERRA*

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

1 **459-005-0001**

2 **Definitions, Generally**

3 The words and phrases used in chapter 459, Oregon Administrative Rules, have the
4 same meaning given them in ORS 238.005 to 238.750. Specific and additional terms used
5 in chapter 459 generally are defined as follows unless context of a particular division or
6 rule within this chapter requires otherwise:

7 (1) “Ad hoc” means one-time for a specific purpose, case, or situation without
8 consideration of a broader application.

9 (2) “After-tax” contributions means:

10 (a) Member contributions required or permitted by ORS 238.200 or 238.515 which a
11 participating employer has not elected to “pick up,” assume or pay in accordance with
12 ORS 238.205 and 238.515(b). “After-tax” contributions are included in the member’s
13 taxable income for purposes of state or federal income taxation at the time paid to PERS.
14 “After-tax” contributions are included in computing FAS and in computing the
15 employer’s contributions paid to PERS.

16 (b) Payments made by a member to PERS for the purchase of additional benefits.

17 (3) “Before-tax” contributions means member contributions required or permitted by
18 ORS 238.200 or 238.515 which a participating employer has elected to “pick up,” assume
19 or pay in accordance with ORS 238.205 and 238.515(b). “Before-tax” contributions are
20 not included in the member’s taxable income for purposes of state or federal income
21 taxation at the time paid to PERS. “Before-tax” contributions are included in:

22 (a) Computing final average salary; and

1 (b) Computing the employer’s contributions paid to PERS if the employer has
2 elected to “pick up” the member contributions.

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

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

8 (6) “Contributions” means any contributions required or permitted pursuant to ORS
9 238.200 or 238.515.

10 (7) “Differential wage payment” means a payment made on or after January 1,
11 2009:

12 (a) By an employer to a member with respect to any period during which the
13 member is performing service in the uniformed services, as defined in USERRA,
14 while on active duty for a period of more than 30 consecutive days; and

15 (b) That represents all or a portion of the wages the member would have
16 received from the employer if the member were performing service for the
17 employer.

18 ~~[(7)]~~(8) “Effective date of withdrawal” is the later of:

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

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

1 ~~[(8)]~~(9) “Effective retirement date” means:

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

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

4 ~~[(9)]~~(10) “Elected official” means an individual who is a public official holding an
5 elective office or an appointive office with a fixed term for the state or for a political
6 subdivision of the state who has elected to participate in PERS pursuant to ORS
7 238.015(5).

8 ~~[(10)]~~(11) “Emergency worker” means an individual engaged in case of emergency,
9 including fire, storm, earthquake, or flood.

10 ~~[(11)]~~(12) “Employee” has the same meaning as provided in ORS 238.005(7) and
11 shall be determined in accordance with OAR 459-010-0030.

12 (a) For the purposes of ORS 238.005 to 238.750 the term “employee” includes
13 public officers whether elected or appointed for a fixed term.

14 (b) The term “employee” does not include:

15 (A) A member of the governing board of a political subdivision unless the individual
16 qualifies for membership under ORS 238.015.

17 (B) An individual who performs services for a public employer as a contractor in an
18 independently established business or as an employee of that contractor in accordance
19 with OAR 459-010-0030.

20 (c) An individual providing volunteer service to a public employer without
21 compensation for hours of service as a volunteer, except for volunteer firefighters who
22 establish membership in accordance with ORS 238.015(6).

1 ~~[(12)]~~(13) “Employer contribution account” means a record of employer
 2 contributions to the Fund, as required by ORS 238.225(1), and investment earnings
 3 attributable to those contributions, that the Board has credited to the account after
 4 deducting amounts required or permitted by ORS Chapter 238.

5 ~~[(13)]~~(14) “Employment” is compensated service to a participating employer as an
 6 employee whose:

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

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

11 ~~[(14)]~~(15) “Estimate” means a projection of benefits prepared by staff of a service or
 12 disability retirement allowance, a death or a refund payment. An estimate is not a
 13 guarantee or promise of actual benefits that eventually may become due and payable, and
 14 PERS is not bound by any estimates it provides. (ORS 238.455(6))

15 ~~[(15)]~~(16) “FAS” and “final average salary” have the same meaning as provided in:

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

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

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

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

22 ~~[(16)]~~(17) “General service member” means membership in PERS as other than a
 23 judge member, a police officer, a firefighter, or a legislator.

1 ~~[(17)]~~(18) “Good cause” means a cause beyond the reasonable control of an
2 individual. “Good cause” exists when it is established by satisfactory evidence that
3 factors or circumstances are beyond the reasonable control of a rational and prudent
4 individual of normal sensitivity, exercising ordinary common sense.

5 ~~[(18)]~~(19) “Independent contractor” means an individual or business entity that is
6 not subject to the direction and control of the employing entity as determined in
7 accordance with OAR 459-010-0032.

8 ~~[(19)]~~(20) “Judge member” has the same meaning as provided in 238.500(3). For
9 purposes of this chapter, active, inactive, and retired membership of a judge member shall
10 have the same meaning as ORS 238.005(12)(b), (c), and (d), respectively.

11 ~~[(20)]~~(21) “Legislator” means an individual elected or appointed to the Oregon
12 Legislative Assembly who has elected to participate in PERS pursuant to ORS
13 238.015(5) as a member of the Oregon Legislative Assembly as provided in ORS
14 238.068.

15 ~~[(21)]~~(22) “Member cost” means after-tax member contributions and payments
16 made by or on behalf of a member to purchase additional benefits.

17 ~~[(22)]~~(23) “Participating employer” means a public employer who has one or more
18 employees who are active members of PERS.

19 ~~[(23)]~~(24) “PERS” and “system” have the same meaning as the Public Employees
20 Retirement System in ORS 238.600.

21 ~~[(24)]~~(25) “Qualifying position” has the same meaning as provided in ORS
22 238.005(19).

1 ~~[(25)]~~(26) “Regular account” means the account established under ORS 238.250 for
2 each active and inactive member who has made contributions to the Fund or the account
3 of an alternate payee of such a member.

4 ~~[(26)]~~(27) “Salary” has the same meaning as provided in ORS 238.005(21).

5 **(a) “Salary” includes a differential wage payment, as defined in this rule.**

6 ~~[(a)]~~(b) For a Tier One member, a lump sum payment for accrued vacation pay is
7 considered salary:

8 (A) In determining employee and employer contributions.

9 (B) In determining final average salary for the purpose of calculating PERS benefits.

10 ~~[(b)]~~(c) For a Tier Two member, a lump sum payment for accrued vacation pay:

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

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

14 ~~[(27)]~~(28) “Seasonal worker” means an individual whose engagement is
15 characterized as recurring for defined periods that are natural divisions of the employer’s
16 business cycle or services.

17 ~~[(28)]~~(29) “Staff” means the employees of the Public Employees Retirement System
18 as provided for in ORS 238.645.

19 ~~[(29)]~~(30) “Tier One member” means a member who established membership in the
20 system before January 1, 1996, as defined in ORS 238.430(2).

21 ~~[(30)]~~(31) “Tier Two member” means a member who established membership in the
22 system on or after January 1, 1996, in accordance with ORS 238.430.

1 [\(32\) “USERRA” means the federal Uniformed Services Employment and](#)
2 [Reemployment Rights Act of 1994, 38 U.S.C. 4301-4334, as in effect on the effective](#)
3 [date of this rule.](#)

4 ~~[(31)]~~(33) “Vacation pay” means a lump sum payment for accrued leave in a
5 Vacation Leave Program provided by a public employer which grants a period of
6 exemption from work for rest and relaxation with pay, and does not include:

7 (a) Sick leave programs;

8 (b) Programs allowing the accumulation of compensatory time, holiday pay or other
9 special leaves unless the public employer’s governing body indicates by resolution,
10 ordinance, or other legislative process, that such leave is intended to serve as additional
11 vacation leave; and

12 (c) Other programs, such as a Personal Time Off (PTO) plan, which are a
13 combination of vacation, sick, bereavement, personal and other leaves of pay as defined
14 and described by a public employer unless the employer has a written policy that clearly
15 indicates the percentage of the plan that represents vacation leave. If the employer’s PTO
16 has a cash option, the employer ~~[shall]~~ must report to PERS the amount of any lump sum
17 pay-off for the percentage that represents vacation leave.

18 ~~[(32)]~~(34) “Variable account” and “member variable account” mean the account in
19 the Variable Annuity Account established under ORS 238.260(2) for each active and
20 inactive member who has elected to have amounts paid or transferred into the Variable
21 Annuity Account.

22 ~~[(33)]~~(35) “Variable Annuity Account” means the account established in ORS
23 238.260(2).

1 ~~[(34)]~~**(36)**(a) “Volunteer” means an individual who performs a service for a public
2 employer, and who receives no compensation for the service performed.

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

6 ~~[(35)]~~**(37)** “Year” means any period of 12 consecutive calendar months.

7 ~~[(36)]~~**(38) The effective date of this rule is January 1, 2009.** *[The provisions of*
8 *this rule are effective January 1, 2003.]*

9 Stat. Auth.: ORS 238.650

10 Stats. Implemented: ORS **Chapter** 238

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

1 **459-011-0100**

2 **Credit for Military Service under USERRA**

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

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

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

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

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

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

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

17 (A) Active duty;

18 (B) Active duty for training;

19 (C) Initial active duty for training;

20 (D) Inactive duty training;

21 (E) Full-time National Guard duty;

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

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

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

13 (f) “Uniformed services” means the following:

14 (A) Armed Forces; (B) Army National Guard;

15 (C) Air National Guard;

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

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

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

21 (4) Retirement credit under USERRA.

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

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

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

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

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

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

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

13 (5) Employee contributions.

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

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

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

1 described in OAR 459-009-0200 as of the date the employee left employment to
2 perform military service, the employee may contribute part or all of the employee
3 contributions that would have been made if the employee had remained in the
4 employment of the employer during the period of military service, based on salary as
5 defined in section (3) of this rule. Contributions made under this paragraph must be
6 remitted to PERS by:

7 (i) Payroll deduction; or

8 (ii) Monthly payment of no less than one month of contributions; or

9 (iii) Lump-sum payment.

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

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

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

18 (e) Contributions made under this section *[shall]* may not include nor be *[entitled*
19 *to]* credited with earnings or losses that would have been credited during the period of
20 military service.

21 (f) Contributions made under this section may not exceed the amount of
22 employee contributions that would have been made if the employee had remained in

1 the employment of the employer during the period of military service, based on
2 salary as defined in section (3) of this rule.

3 (A) The maximum amount of employee contributions that may be submitted
4 under this section must be reduced by the amount of employee contributions
5 attributable to differential wage payments received by the employee for the period
6 of military service.

7 (B) Employee contributions attributable to differential wage payments received
8 by the employee for the period of military service must be considered employee
9 contributions under subsection (4)(b) of this rule if the employer reports to PERS
10 that the employee is eligible for benefits pursuant to subsection (4)(a) of this rule.

11 (C) Employee contributions attributable to differential wage payments paid to
12 the employee during the period of military service must be credited with earnings
13 and losses that would have been credited during the period of military service.

14 (6) Employer contributions. Any employer contributions associated with credit for
15 military service under this rule *[shall]* **must** be made as directed by PERS in accordance
16 with ORS 238.225.

17 (7) The effective date of this rule is January 1, 2009.

18 *[[Publications: Publications referenced are available from the agency.]]*

19 Stat. Auth.: ORS 238.650 & 238.156

20 Stats. Implemented: ORS 238.156

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

1 **459-011-0110**

2 **Credit for Military Service under ORS 238.156(3)**

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

4 (a) “Armed Forces” means the:

5 (A) Army;

6 (B) Navy;

7 (C) Air Force;

8 (D) Marine Corps; and

9 (E) Coast Guard.

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

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

16 (d) “Military service” means the period during which the employee is in active duty
17 service in the Armed Forces.

18 (e) “Salary” means the employee’s rate of pay, for contribution and benefit
19 calculation purposes, at the time the employee entered or reentered military service.

20 (2) Retirement credit under ORS 238.156(3).

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

22 (A) The employee leaves employment to perform military service;

1 (B) The employee returns to employment with the same employer after other than
2 dishonorable discharge from military service and within the time limits specified in ORS
3 238.156(3)(b); and

4 (C) The employee is either not entitled to or would receive a lower benefit under the
5 provisions of OAR 459-011-0100.

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

11 (3) Contributions for the period of military service. To receive credit for the period
12 of military service, contributions must be made to the Fund in accordance with the
13 following:

14 (a) Contributions must be made in a lump sum payment as specified in ORS
15 238.156(3)(c);

16 (b) Such lump sum payment must equal six percent of the salary that would have
17 been paid to the employee had the employee remained in employment with the employer
18 during the period of military service based on the employee's salary rate at the time the
19 employee entered or reentered military service;

20 (c) Any individual, agency, or organization may pay the amount specified in this
21 subsection on behalf of the employee; and

1 (d) Any contributions made under this section shall be added to the employee's
2 regular account and in all respects shall be considered as though made by payroll
3 deduction.

4 (e) Contributions made under this rule *[shall]* may not include nor be *[entitled*
5 *to]* credited with earnings or losses that would have been credited during the period of
6 military service.

7 (f) The amount of the lump sum payment required under subsection (b) of this
8 section must be reduced by the amount of employee contributions attributable to
9 differential wage payments received by the employee for the period of military
10 service.

11 (A) Employee contributions attributable to differential wage payments received
12 by the employee for the period of military service must be considered employee
13 contributions under subsection (2)(b) of this rule if the employee submits the lump
14 sum payment as reduced under this subsection.

15 (B) Employee contributions attributable to differential wage payments paid to
16 the employee during the period of military service must be credited with earnings
17 and losses that would have been credited during the period of military service.

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

21 (5) The effective date of this rule is January 1, 2009.

22 Stat. Auth.: ORS 238.650 & 238.156

23 Stats. Implemented: ORS 238.156

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 015 – DISABILITY RETIREMENT ALLOWANCES**

1 **459-015-0001**

2 **Definitions**

3 The words and phrases used in this division have the same meaning given them in
4 ORS Chapter 238 and OAR 459-005-0001. Additional terms are defined as follows
5 unless the context requires otherwise.

6 (1) Any work for which qualified: A job, not necessarily the last or usual job, which
7 the applicant for a disability retirement allowance:

8 (a) Is physically and psychologically capable of performing; and

9 (b) Has, or may obtain with reasonable training the knowledge, skills and abilities, to
10 perform the job.

11 (2) Certified vocational consultant: A person who satisfies the criteria set forth under
12 either of the following:

13 (a) A Master's Degree in vocational rehabilitation, and one year of experience in
14 performing vocation evaluations or developing individualized return-to-work plans; or a
15 Bachelor's Degree and two years of such experience. All degrees must have been earned
16 at an accredited institution; or

17 (b) Accredited as a [“]Certified Rehabilitation Counselor (CRC)[”] by the
18 Commission on Rehabilitation Counselor Certification; as a [“]Certified [*Insurance*
19 *Rehabilitation*] Disability Management Specialist [(*CIRS*)”](CDMS) by the [*Certified*
20 *Insurance Rehabilitation*]Certification of Disability Management Specialists
21 Commission; or a [“]Certified Vocational Evaluation Specialist (CVE)[”] or a

1 *[“]Certified Work Adjustment Specialist (CWA)[”]* by the Commission on Certification
2 of Work Adjustment and Vocational Evaluation *[s]*Specialists.

3 (3) Confidential information: Information of a personal nature such that disclosure
4 would constitute an unreasonable invasion of privacy as defined by state law.

5 (4) Date of disability: The later of:

6 (a) The day an active member ceased to work because of injury or disease;

7 (b) The date an inactive member separated from employment if the inactive member
8 applies for a disability retirement allowance within five years from date of separation and
9 the disability has been continuous from the date of separation; or

10 (c) The date an inactive member was disabled if such disability occurred within six
11 months from date of separation.

12 (5) Date of termination: The date a member terminates from employment such that
13 an employee/employer relationship no longer exists; the last day worked (physically on
14 the job), the last day of paid leave, or the last day of an official leave of absence,
15 whichever is the later.

16 (6) Extended duration: A period of not less than 90 consecutive calendar days, unless
17 the disability is expected to result in the death of the disabled member in less than 90
18 days.

19 (7) Independent medical exam: An exam or exams conducted by a physician chosen
20 by PERS for purposes other than treatment which results in the issuance of a report or
21 reports based on those exams, giving an opinion regarding the claimed injury or disease.

22 (8) Material contributing cause: The efficient, dominant, and proximate cause of the
23 disability, without which the member would not be disabled.

1 (9) Monthly salary: "Salary" as defined in ORS 238.005~~[(20)]~~(21)(a) that is earned
2 in the last full calendar month of employment, and includes employer payments under
3 ORS 238.205. This includes a differential wage payment as defined in OAR 459-005-
4 0001.

5 (a) Retroactive payments or payments made due to clerical errors, paid in accordance
6 with ORS 238.005~~[(20)]~~(21)(b)(C), are allocated to the period the salary was earned or
7 should have been earned.

8 (b) Payments of salary paid within 31 days of separation are allocated to the period
9 the salary was earned and should be considered as paid on the last date of employment.

10 (10) Monthly salary received~~[:]~~ is the greater of [T]the salary paid, as defined in
11 section (9) of this rule for the last full calendar month of:

12 (a) Employment [prior to]before the date of disability; or

13 (b) Differential wage payments made before the date of disability. This
14 subsection is effective January 1, 2009.

15 (11) Normal retirement age: The age at which a member can retire without a reduced
16 benefit as set forth under ORS 238.005 and 238.280.

17 (12) Other income: Includes, but is not limited to:

18 (a) Salary or wages received as an employee;

19 (b) Self-employment income from:

20 (A) Services industry;

21 (B) Sales;

22 (C) Assembly or manufacturing;

23 (D) Consulting;

1 (E) Property management;

2 (F) Hobby income; or

3 (G) Book advances.

4 (c) "Other income" does not include:

5 (A) Investment income;

6 (B) Rent; and

7 (C) Royalties.

8 (13) Physician: A medical doctor, a doctor of osteopathy, a doctor of oral surgery, a
9 chiropractic doctor, a naturopathic doctor, or a doctor of psychology practicing only
10 within the purview of their license issued by the designated authority of a state.

11 (14) Periodic review: A review of a member receiving a disability retirement
12 allowance to determine whether or not a continued allowance is warranted.

13 (15) Performance of duty: Mental or physical incapacitation arising out of and in the
14 course of duty and is not intentionally self-inflicted. The injury or disease must be
15 initially caused, aggravated or accelerated to cause incapacitation by the performance of
16 the member's duties in the employment of a participating public employer. The job must
17 be the material contributing cause of the injury or disease. Performance of duty includes
18 whatever an employee may be directed, required or reasonably expected to do in
19 connection with his or her employment, and not solely the duties peculiar to his or her
20 position.

21 (16) Pre-existing condition: A condition that was not sustained in actual performance
22 of duty with the current employer.

1 (17) Protected health information: Health information created or received by a health
2 care provider, health plan, or health care clearinghouse, where an individual has a
3 reasonable belief that the information can identify the individual, which relates to:

4 (a) The past, present, or future physical or mental health of an individual;

5 (b) The provision of health care to an individual; or

6 (c) The past, present, or future payment for the provision of health care to an
7 individual.

8 (18) Qualifying position: One or more concurrent positions with a participating
9 employer, in a participating class, which requires 600 or more hours in a calendar year.

10 (19) Separation from all service entitling the member to membership in the system:
11 means the last day worked (physically on the job), the last day of paid leave, or the last
12 day of an official leave of absence, whichever is the later.

13 (20) Similar in compensation: Salary or income, excluding overtime, equaling at
14 least 80% of the monthly salary, as defined in section (9) of this rule.

15 (21) Similar location: A position in the same general area of the applicant's residence
16 or last employment location.

17 (22) Training or vocational rehabilitation program: A comprehensive, coordinated
18 program, usually state or federally funded, to train and assist individuals with disabilities
19 in securing gainful employment commensurate with their abilities and capabilities.

20 (23) Vocational evaluation: An evaluation conducted by a certified vocational
21 consultant, to determine the ability of an applicant to perform any work for which they
22 are qualified.

23 (24) Work related stress: Conditions or disabilities resulting from, but not limited to:

- 1 (a) Change of employment duties;
- 2 (b) Conflicts with supervisors;
- 3 (c) Actual or perceived threat of loss of a job, demotion, or disciplinary action;
- 4 (d) Relationships with supervisors, coworkers, or the public;
- 5 (e) Specific or general job dissatisfaction;
- 6 (f) Work load pressures;
- 7 (g) Subjective perceptions of employment conditions or environment;
- 8 (h) Loss of job or demotion for whatever reason;
- 9 (i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;
- 10 (j) Objective or subjective stresses of employment; or
- 11 (k) Personnel decisions.

12 Stat. Auth.: ORS 238.650

13 Stats. Implemented: ORS 238.320 - 238.345 & 238.435(5)

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

1 **459-050-0075**

2 **In-Service Distribution**

3 The purpose of this rule is to describe the types of distributions available to a participant
4 who has not had a severance of employment. Distributions made while a participant is still
5 employed are “in-service” distributions.

6 (1) De minimis distribution. A de minimis distribution is an in-service distribution of
7 the entire balance of a small account *[prior to]* before the date a participant has a
8 severance of employment. A de minimis distribution may be made if all of the following
9 conditions are satisfied:

10 (a) No prior de minimis distribution was made to the participant;

11 (b) The total balance of the participant's account does not exceed the limitations in
12 the Internal Revenue Code Section (IRC) 457(e)(9)(A), which is \$5,000 *[for the year*
13 *2001]*;

14 (c) Participant has not made any contributions to the Deferred Compensation Plan in
15 the two-year period *[prior to]* before the date of distribution; and

16 (d) Participant has submitted an application for a de minimis distribution on forms
17 provided by, or other methods approved by the Deferred Compensation Program. No
18 distribution will be paid unless a complete application is filed with, and approved by, the
19 Deferred Compensation Program.

20 (2) Unforeseeable emergency withdrawal. An unforeseeable emergency withdrawal
21 is an in-service distribution made to a participant due to an unforeseeable emergency. This
22 withdrawal may be made *[prior to]* before the date a participant has a severance of

1 employment and as defined in OAR 459-050-0150. A participant must apply for an
2 unforeseeable emergency withdrawal using forms provided by, or other methods approved
3 by, the Deferred Compensation Program as provided for in OAR 459-050-0150(4).

4 **(3) Military distribution. A participant is treated as having been severed from**
5 **employment during any period the participant is performing service in the**
6 **uniformed services while on active duty for a period of more than 30 days for the**
7 **purposes of the limitation on in-service distributions. For purposes of this rule,**
8 **“uniformed services” has the same meaning as given in OAR 459-050-0072. This**
9 **section applies to distributions made on or after January 1, 2009.**

10 ~~[(3)]~~(4) Funds available for in-service distribution. Only funds contributed to a
11 deferred compensation plan, as defined in IRC 457, and earnings on those contributions
12 may be distributed in a de minimis distribution or unforeseeable emergency withdrawal.
13 Any funds directly transferred or rolled over to the Deferred Compensation Program from
14 any plan other than an IRC 457 deferred compensation plan shall not be distributed for a
15 de minimis distribution or an unforeseeable emergency withdrawal.

16 ~~[(4)]~~(5) Prohibitions on elective deferrals after an in-service distribution. A
17 participant who receives a de minimis distribution, ~~[or]~~ an unforeseeable emergency
18 withdrawal, or a military distribution ~~[shall be prohibited from]~~ may not make~~[ing]~~
19 elective deferrals and employee contributions to the Deferred Compensation Program for
20 a period of 6 consecutive months from the date of distribution.

21 [Publications: Publications referenced are available from the agency.]

22 Stat. Auth: ORS 243.470

23 Stats. Implemented: ORS 243.401 - ORS 243.507

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

DIVISION 070 – OREGON PUBLIC SERVICE RETIREMENT PLAN, GENERALLY

1 **459-070-0001**

2 **Definitions**

3 The words and phrases used in *[this]* divisions 070, 075, 076, and 080 have the
4 same meaning given them in ORS 238A.005 unless otherwise indicated. Specific and
5 additional terms for purposes of divisions 070, 075, 076 and 080 are defined as follows
6 unless context requires otherwise:

7 (1) “Academic employee of a community college” means an instructor who teaches
8 classes offered for college-approved credit or on a non-credit basis.

9 (a) Librarians, counselors, and aides in non-teaching positions, tutors, or other non-
10 teaching faculty, and classified, professional or nonprofessional support staff are not
11 academic employees for the purposes of section 20 of OL 2005 Ch. 332, but are subject
12 to the membership requirements under ORS 238A.100 and OAR 459-075-0010.

13 (b) The governing body of a community college *[shall]* **must** determine who is an
14 academic employee in its employ under this rule. In making that determination, a
15 community college *[shall]* **must** consider all disciplines (academic activity) collectively
16 when an employee’s assignment includes multiple disciplines.

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

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

21 (4) “Employee” has the same meaning as “eligible employee” in ORS 238A.005(4).

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

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

7 (7) “Final Average Salary” (FAS) has the same meaning given the term in:

8 (a) ORS 238A.130(1) for OPSRP Pension Program members who are not employed
9 by a local government as defined in ORS 174.116; or

10 (b) ORS 238A.130(3) for OPSRP Pension Program members who are employed by a
11 local government as defined in ORS 174.116.

12 (8) “Member” has the same meaning given the term in ORS 238A.005(10).

13 (9) “Member account” means the account of a member of the individual account
14 program.

15 (10) “Member of PERS” has the same meaning as “member” in ORS
16 238.005(12)(a), but does not include retired members.

17 (11) “OPSRP” means the Oregon Public Service Retirement Plan.

18 (12) “Overtime” means the salary or hours, as applicable, that an employer has
19 designated as overtime.

20 (13) “Partial year of separation” means a period in the calendar year the employee
21 separates from employment that begins on January 1 of the year and ends before the last
22 working day of the year.

1 (14) “Qualifying position” means a position designated by the employer as
2 qualifying, except:

3 (a) A position or concurrent positions in which an employee performs at least 600
4 hours of service in a calendar year is qualifying regardless of employer designation.

5 (b) A position in a partial year of separation is qualifying regardless of employer
6 designation if the position is continued from an immediately preceding calendar year in
7 which the employee performed at least 600 hours of service in the position or concurrent
8 positions.

9 (c) A position with one employer in which the employee is employed for the entire
10 calendar year and fails perform at least 600 hours of service in that position or concurrent
11 positions in the calendar year is non-qualifying regardless of employer designation.

12 (15) “Salary” has the same meaning given the term in ORS 238A.005(16) and
13 includes a differential wage payment, as defined in OAR 459-005-0001.

14 (16) “School employee” has the meaning given the term in ORS 238A.140(7).

15 (17) “Service” means a period in which an employee:

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

17 (b) Receives a payment of “salary,” as defined in ORS 238A.005(16) or similar
18 payment from workers’ compensation or disability.

19 (18) The effective date of this rule is January 1, 2009. *[The provisions of this rule*
20 *are effective on January 1, 2004.]*

21 Stat. Auth.: 238A.450

22 Stats. Implemented: ORS Chapter 238A *[238A.005, 238A.025, 238A.140,*
23 *238A.330 & 238A.335, OL 2007 Ch. 769]*

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 076 – DISABILITY BENEFIT**

1 **459-076-0001**

2 **Definitions**

3 The words and phrases used in this division have the same meaning given them in
4 ORS Chapter 238A and OAR 459-070-0001. Additional terms are defined as follows
5 unless the context requires otherwise.

6 (1) Any work for which qualified: A job, not necessarily the last or usual job, which
7 the applicant for disability benefits:

8 (a) Is physically and psychologically capable of performing; and

9 (b) Has, or may obtain with reasonable training, the knowledge, skills and abilities,
10 to perform the job.

11 (2) Certified vocational consultant: A person who satisfies the criteria set forth under
12 either of the following:

13 (a) A Master's Degree in vocational rehabilitation, and one year of experience in
14 performing vocation evaluations or developing individualized return-to-work plans; or a
15 Bachelor's Degree and two years of such experience. All degrees must have been earned
16 at an accredited institution; or

17 (b) Accredited as a Certified Rehabilitation Counselor (CRC) by the Commission on
18 Rehabilitation Counselor Certification; as a Certified *[Insurance Rehabilitation]*
19 Disability Management Specialist *[(CIRS)](CDMS)* by the *[Certified Insurance*
20 *Rehabilitation]* Certification of Disability Management Specialists Commission; or a
21 Certified Vocational Evaluation Specialist (CVE) or a Certified Work Adjustment

1 Specialist (CWA) by the Commission on Certification of Work Adjustment and
2 Vocational Evaluation [s]Specialists.

3 (3) Confidential information: Information of a personal nature such that disclosure
4 would constitute an unreasonable invasion of privacy as defined by state law.

5 (4) Date of disability: The day an active member ceased to work because of injury or
6 disease.

7 (5) Effective date of disability benefit: The first of the month following the later of:

8 (a) The last day the member worked for a participating employer;

9 (b) The last day the member was on paid leave; or

10 (c) The last day the member received any salary or paid leave benefits from a
11 participating employer, exclusive of the cash pay-off for accrued vacation or
12 compensatory time, as long as that payment is made within the 31 days after the member
13 separates from PERS covered employment.

14 (6) Extended duration: A period of not less than 90 consecutive calendar days unless
15 the disability is expected to result in the death of the disabled member in less than 90
16 days.

17 (7) Independent medical exam: An exam or exams conducted by a physician chosen
18 by PERS for purposes other than for treatment which results in the issuance of a report or
19 reports based on those exams, giving an opinion regarding the claimed injury or disease.

20 (8) Material contributing cause: The efficient, dominant, and proximate cause of the
21 disability, without which the member would not be disabled.

1 (9) Monthly salary: Salary as defined in ORS 238A.005(16) that is earned in the last
2 full calendar month of employment and includes a differential wage payment, as
3 defined in OAR 459-005-0001:

4 (a) Retroactive payments or payments made due to clerical errors, paid in accordance
5 with ORS 238A.005(16)(b)(E), are allocated to the period the salary was earned or
6 should have been earned.;

7 (b) Payments of salary paid within 31 days of separation are allocated to the period
8 the salary was earned and should be considered as paid on the last date of employment.

9 (10) Monthly salary received[:] is the greater of [T] the salary paid, as defined in
10 section (9) of this rule for the last full calendar month of:

11 (a) [e] Employment [prior to] before the date of disability; or

12 (b) Differential wage payments made before the date of disability. This
13 subsection is effective January 1, 2009.

14 (11) Normal retirement age: The age at which a member can retire without a reduced
15 benefit as set forth under ORS 238A.160.

16 (12) Other income: Includes, but is not limited to:

17 (a) Salary or wages received as an employee;

18 (b) Self-employment income from:

19 (A) Services industry;

20 (B) Sales;

21 (C) Assembly or manufacturing;

22 (D) Consulting;

23 (E) Property management;

1 (F) Hobby income; or

2 (G) Book advances.

3 (c) "Other income" does not include:

4 (A) Investment income;

5 (B) Rent; and

6 (C) Royalties.

7 (13) Physician: A medical doctor, a doctor of osteopathy, a doctor of oral surgery, a
8 chiropractic doctor, a naturopathic doctor, or a doctor of psychology practicing only
9 within the purview of their license issued by the designated authority of a state.

10 (14) Periodic review: A review of a member receiving a disability benefit to
11 determine whether or not a continued benefit is warranted.

12 (15) Performance of duty: Mental or physical incapacitation arising out of and in the
13 course of duty and is not intentionally self-inflicted. The injury or disease must be
14 initially caused, aggravated or accelerated to cause incapacitation by the performance of
15 the member's duties in the employment of a participating public employer. The job must
16 be the material contributing cause of the injury or disease. Performance of duty includes
17 whatever an employee may be directed, required or reasonably expected to do in
18 connection with his or her employment, and not solely the duties peculiar to his or her
19 position.

20 (16) Pre-existing condition: A condition that was not sustained in actual performance
21 of duty with the current employer.

1 (17) Protected health information: Health information created or received by a health
2 care provider, health plan, or health care clearinghouse, where an individual has a
3 reasonable belief that the information can identify the individual, which relates to:

4 (a) The past, present, or future physical or mental health of an individual;

5 (b) The provision of health care to an individual; or

6 (c) The past, present, or future payment for the provision of health care to an
7 individual.

8 (18) Qualifying position: One or more positions with a participating employer, in a
9 participating class, which requires performance of 600 or more hours in a calendar year.

10 (19) Separation from all service: The date a member terminates from employment
11 such that an employee/employer relationship no longer exists; the last day worked
12 (physically on the job), the last day of paid leave, or the last day of an official leave of
13 absence, whichever is the later.

14 (20) Similar in compensation: Salary or income, excluding overtime, equaling at
15 least 80 percent of the monthly salary, as defined in section (9) of this rule.

16 (21) Similar location: A position in the same general area of the applicant's residence
17 or last employment location.

18 (22) Vocational evaluation: An evaluation conducted by a certified vocational
19 consultant, to determine the ability of an applicant to perform any work for which they
20 are qualified.

21 (23) Work related stress: Conditions or disabilities resulting from, but not limited to:

22 (a) Change of employment duties;

23 (b) Conflicts with supervisors;

- 1 (c) Actual or perceived threat of loss of a job, demotion, or disciplinary action;
- 2 (d) Relationships with supervisors, coworkers, or the public;
- 3 (e) Specific or general job dissatisfaction;
- 4 (f) Work load pressures;
- 5 (g) Subjective perceptions of employment conditions or environment;
- 6 (h) Loss of job or demotion for whatever reason;
- 7 (i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;
- 8 (j) Objective or subjective stresses of employment; or
- 9 (k) Personnel decisions.

10 Stat. Auth.: ORS 238A.450

11 Stats. Implemented: ORS 238A.235

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

1 **459-080-0100**

2 **Credit for Military Service under USERRA**

3 (1) Purpose. The purpose of this rule is to implement ORS 238A.415.

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

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

8 (a) “Employee” means:

9 (A) An eligible employee, as defined in ORS 238A.005;

10 (B) An active member of PERS, as defined in ORS 238.005, on or after January 1,
11 2004; or

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

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

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

19 (A) Active duty;

20 (B) Active duty for training;

21 (C) Initial active duty for training;

22 (D) Inactive duty training;

1 (E) Full-time National Guard duty;

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

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

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

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

15 (A) Armed Forces;

16 (B) Army National Guard;

17 (C) Air National Guard;

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

19 (E) Any other category of persons designated by the President in time of war or
20 national emergency.

21 *[(f) “USERRA” means the 1994 federal Uniformed Services Employment and*
22 *Reemployment Rights Act as of the effective date of this rule.]*

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

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

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

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

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

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

9 (5) Service credit for military service under USERRA. An employee who meets the
10 eligibility requirements of section (4) of this rule shall receive the amount of credit toward
11 the period of employment required under ORS 238A.300 and the vesting requirements
12 described under ORS 238A.320, the employee would have accrued if he or she had
13 remained in employment with the employer during the period of military service.

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

16 (7) Employee contributions.

17 (a) Employee contributions *[shall]* **must** be made upon reemployment for eligible
18 military service in accordance with the following:

19 (A) Employee contributions to be made by the employer. If the employee’s employer
20 had agreed to pay employee contributions under ORS 238A.335(2)(b) as of the date the
21 employee left employment to perform military service, the employer *[shall]* **must** pay, in a
22 lump sum payment, the amount of contributions that would have been made if the
23 employee had remained in the employment of the employer during the period of military
24 service, based on salary as defined in section (3) of this rule.

1 (B) Employee contributions to be made by the employee. If the employee’s employer
2 had not agreed to pay employee contributions, or had agreed to pay employee
3 contributions under ORS 238A.335(2)(a) as of the date the employee left employment to
4 perform military service, the employee may pay all or part of the contributions that would
5 have been made if the employee had remained in the employment of the employer during
6 the period of military service, based on salary as defined in section (3) of this rule.

7 Contributions made under this paragraph may be remitted to PERS by:

- 8 (i) Payroll deduction; or
- 9 (ii) Monthly payment of no less than one month of contributions; or
- 10 (iii) Lump-sum payment.

11 (b) Any individual, agency or organization may pay the employee contributions
12 specified in paragraph (7)(a)(B) on behalf of the employee under the payment provisions
13 set forth in subparagraph (5)(a)(B)(ii) or (iii).

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

17 (d) Employee contributions shall be credited to the employee account established in
18 ORS 238A.350(2).

19 (e) Employee contributions *[shall]* **may** not include nor be *[entitled to]* **credited with**
20 earnings or losses that would have been credited during the period of military service.

21 **(f) Contributions made under this section may not exceed the amount of**
22 **employee contributions that would have been made if the employee had remained in**
23 **the employment of the employer during the period of military service, based on**
24 **salary as defined in section (3) of this rule.**

1 (A) The maximum amount of contributions that may be submitted under this
2 section must be reduced by the amount of employee contributions attributable to
3 differential wage payments received by the employee for the period of military
4 service.

5 (B) Employee contributions attributable to differential wage payments paid to
6 the employee during the period of military service must be credited with earnings and
7 losses that would have been credited during the period of military service.

8 (8) Employer contributions.

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

14 (b) Any contributions made under this section shall be added to the employee's
15 employer account established in ORS 238A.350(3).

16 (c) Contributions made under this section *[shall]* **may** not include nor be *[entitled to]*
17 **credited with** earnings or losses that would have been credited during the period of
18 military service.

19 (d) Contributions made under this section may not exceed the amount of
20 employer contributions that would have been made if the employee had remained in
21 the employment of the employer during the period of military service, based on
22 salary as defined in section (3) of this rule.

1 (e)The amount of contributions that must be submitted under this section must
2 be reduced by the amount of employer contributions attributable to differential wage
3 payments received by the employee for the period of military service.

4 (f) Employer contributions attributable to differential wage payments paid to
5 the employee during the period of military service must be credited with earnings or
6 losses that would have been credited during the period of military service.

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

10 (a) Retirement credit and contributions for military service *[prior to]* before January
11 1, 2004, shall be determined in accordance with OAR 459-011-0100.

12 (b) Retirement credit and contributions for military service on or after January 1,
13 2004, shall be determined in accordance with this rule and OAR 459-011-0100.

14 (10) The effective date of this rule is January 1, 2009.

15 *[[Publications: Publications referenced are available from the agency.]]*

16 Stat. Auth.: ORS 238A.450 & 238A.415

17 Stats. Implemented: ORS 238A.415



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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February 6, 2009

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
SUBJECT: Adoption of "Equal To or Better Than" Rules
OAR 459-030-0011, *Equal To or Better Than Exemption*
OAR 459-030-0025, *Standards for Review of Police Officers and Firefighters Retirement Plans*
OAR 459-030-0030, *Board Action on Petition and Review of Order*

MEETING DATE	02/06/2009
AGENDA ITEM	C.1. ETOB

OVERVIEW

- Action: Adopt modifications to the "Equal To or Better Than" Rules.
- Reason: Update rules to reflect 2007 legislative changes.
- Subject: Board comparison of non-PERS employer retirement plans for police officers and firefighters.
- Policy Issues:
 1. What circumstances should trigger a review of a previously granted exemption from PERS participation for an employer's police and fire members?
 2. What general actuarial methods and assumptions should be used in ETOB studies?

BACKGROUND

HB 2280 (2007 Session) eliminated the requirement that the PERS Board conduct an ETOB study every two years. This bill also set the comparative benchmark for the ETOB study to the PERS benefits that were provided to the class of employees at the time the police officer or firefighter was hired. As amended by HB 2280, ORS 237.620 now requires all public employers to provide PERS retirement benefits to their police officer or firefighter employees that are equal to or better than (ETOB) those PERS benefits. The modifications necessary to reflect these legislative changes have been under consideration by a working group of affected stakeholders.

POLICY ISSUES

1. What circumstances should trigger a review of a previously granted exemption from PERS participation for an employer's police and fire members?

One of the primary purposes of HB 2280 was to eliminate the two-year ETOB testing requirement as the consensus of PERS stakeholders was that requirement was costly and administratively burdensome while providing little extra protection to those non-PERS employees. HB 2280 changed the statute to leave the trigger for an ETOB review to be determined by the PERS Board.

Staff Recommendation: Staff recommends that the PERS Board, or its delegate, make a determination of whether an ETOB exemption should continue whenever a change to the ETOB plan or PERS Plan is implemented after the previous exemption was granted, but in any case not less frequently than at least every 12 years. Since the level of scrutiny required to make the determination will vary with the nature of the change, staff also recommends that the determination be delegated to the PERS Executive Director.

2. What general actuarial methods and assumptions should be used in ETOB studies?

Staff, in collaboration with the PERS actuary, identified the categories of methods and assumptions needed to conduct an ETOB study that complies with actuarial standards and allows a reasonable comparison based on the statutory standard. The attached ETOB decision matrix spreadsheet shows the criteria used for determining the selected methods and assumptions. The various method and assumption options were evaluated based on those attributes that provide: (1) the nearest similar basis of comparison between the PERS and ETOB employer's plans; (2) a comparison that will be durable, even though economic and demographic factors will change in the future; and (3) the simplest and most cost effective comparison.

Based on this evaluation, PERS staff and its actuary believe that the following methods and assumptions most clearly met the criteria and they have been incorporated in the rule as presented for adoption:

1. Only those benefits funded by the employer will be compared, and only in the areas of retirement and disability benefits, including post-retirement health care.
2. Each benefit component will be tested separately.
3. A risk-free earnings rate will be used to value prior and future service benefits that depend on earnings and to convert lump sum amounts to comparable annuities (unless the plan provides a guaranteed rate, which would be used instead). Using a risk-free rate not only allows a more direct and durable comparison, but also equalizes the risk premium across plans, eliminating variances in benefit value associated with assigning that risk to one party or the other.
4. The PERS benefit will be compared using all three calculation methods: Full Formula, Money Match, and Formula Plus Annuity.
5. Using a hypothetical PERS data set, which will provide a consistent demographic basis for the comparison.

SUMMARY OF MODIFICATIONS TO RULES

Several versions of 459-030-0011 and 459-030-0025 have been considered as PERS staff and stakeholders have proceeded through the collaborative process. For simplicity and clarity, this summary will describe the proposed rule modifications presented for adoption in relation to the requirements triggered by the passage of HB 2280.

OAR 459-030-0011:

Section (1) was changed to more succinctly state the statutory standard for the exemption of ETOB plans.

Section (2) was edited to eliminate the mandatory two-year review and establish that an ETOB exemption continues until the Board determines the ETOB plan no longer qualifies.

Sections (3)-(5) outline the triggering events that prompt the Board's review: a change in the ETOB plan, a change in the PERS Plan, or the passage of 12 years without a review.

Section (6) provides that the Board may delegate to the PERS Executive Director the determination of whether an ETOB plan qualifies for exemption.

OAR 459-030-0025:

Throughout the rule, references to the Oregon Public Service Retirement Plan (OPSRP) have been deleted and replaced with references to the PERS Plan or PERS, as appropriate. Because of the comparison standards established by HB 2280, the PERS Plan is now the collective standard, but also broken down to the classes within the PERS Plan depending on an employee's hire date (e.g., Tier One, Tier Two or OPSRP).

Section (2) was edited to delete the previous standard for comparison of benefits and to describe the three standards established by HB 2280. Subsections (a)-(c) outline those standards. Subsections (d) and (e) establish that the ETOB comparison is to be based on benefits provided to equivalent classes of employees in the ETOB plan and the PERS Plan and not upon individual employee comparisons. Changes to section (2)(f) clarify that the public employer's retirement plan or plans must provide at least eighty percent (80%) of the actuarial present value of projected retirement benefits in each of the major categories of retirement benefits available under PERS, with both a service retirement benefit and a disability retirement benefit that include post employment health care.

Section (3) was added to describe the specific methods and assumptions to be used in conducting an ETOB test, and to provide guidance on the factors considered in adopting them.

Section (4) was edited to clarify the types of data to be used in the actuarial comparison and to establish that failure of an ETOB employer to timely provide sufficient data is a basis for the employer's plan to lose its ETOB exemption.

Section (5) was edited to eliminate adequacy of funding of the employer's plan as a factor.

Section (7) was added to exclude tax remedy benefits as a factor and to require an employer to identify such payments.

Section (8) was edited to clarify the Board's prerogative to consider additional actuarial assumptions in the evaluation of the ETOB plan.

OAR 459-030-0030: This rule is being modified to remove the consequence that the employees of an employer whose plan fails the ETOB will join OPSRP, since HB 2280 specifies a different result of any such failure.

PUBLIC COMMENT AND HEARING TESTIMONY

PERS Staff, legal counsel, and the actuary joined with interested ETOB stakeholders on January 9, 2009 to review the matrix and rule changes. Staff then extended the public comment period to the conclusion of the February 6, 2009 Board meeting to allow interested stakeholders to address these changes at the Board meeting. No other comments have been received to date.

LEGAL REVIEW

The attached draft 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:

OAR 459-030-0011: Yes, as the PERS Board must establish a standard for reviewing the ETOB exemption by rule.

OAR 459-030-0025: Yes, this rule must be modified to conform to the requirements of HB 2280. Specific comparative measures for the ETOB study need to be added to the rule.

OAR 459-030-0030: Yes, this rule must be modified to conform to the requirements of HB 2280. This legislation eliminated the requirement that all employers failing the ETOB study provide PERS retirement benefits to its police officers and firefighters.

Impact: The frequency of review and the comprehensiveness required under the new standards is difficult to predict. The costs for initial testing under these new standards may be higher as the actuary sets a benchmark, but longer term savings should be realized since the requirement to test these plans every two years has been eliminated.

Cost: After the initial review of ETOB plans, and assuming infrequent and insignificant substantive changes to the ETOB plans and the PERS Plan, the revised rules will result in cost savings for non-PERS employers by eliminating the current two-year requirement for ETOB exemption review. Changing the comparison standard may limit potential costs savings for employers, but that effect is not discrete to this rule.

RULEMAKING TIMELINE

August 15, 2007	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
September 1, 2007	<i>Oregon Bulletin</i> published the Notice.
September 21, 2007	PERS Board notified that staff began the rulemaking process.
October 18, 2007	Rulemaking hearing held at 10 a.m. at the State Archives in Salem.
October 19, 2007	First reading of the rules.
October 23, 2007	Rulemaking hearing held at 2 p.m. in Tigard.
October 26, 2007	Public comment period ended at 5 p.m.
November 16, 2007	Staff postponed adopting the rule.
December 15, 2007	Rules re-noticed to the Secretary of State
January 1, 2008	<i>Oregon Bulletin</i> published the Notice.
February 15, 2008	Second reading of the ETOB rules.
February 26, 2008	Rulemaking hearing held at 2 p.m. in Tigard.
March 7, 2008	Second public comment period ended at 5 p.m.

July 15, 2008	Staff reopened the public comment period and scheduled a public hearing by filing Notice of Rulemaking with the Secretary of State.
August 1, 2008	<i>Oregon Bulletin</i> published the updated Notice. Notice mailed to employers, legislators, and interested parties. Public comment period began.
August 26, 2008	Second rulemaking hearing held at 2:00 p.m. in Tigard
September 5, 2008	Third public comment period ended at 5:00 p.m.
December 15, 2008	Staff extended public comment period by notifying stakeholders via email.
February 6, 2009	Extended public comment period ends at Board meeting. Board may adopt the permanent rule modifications.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt rule modifications to OAR 459-030-0011, 459-030-0025 and 459-030-0030, as presented.”
2. Direct staff to make other changes to the rules or explore other options.

STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

- Reason: Update rules to reflect legislative changes.

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.

C.1. Attachment 1 – ETOB Methods and Assumptions Decision Matrix

C.1. Attachment 2 – OAR 459-030-0011, Equal To or Better Than Exemption

C.1. Attachment 3 – OAR 459-030-0025, Standards for Review of P & F Retirement Plans

C.1. Attachment 4 – OAR 459-030-0030, Board Action on Petition & Review of Order

**Oregon Public Employees Retirement System
ETOB Methods and Assumptions Pros and Cons**

Methods and Assumptions	Comparability	Durable	Cost Effective	Comments
Benefits to be Included/Excluded-Generally				
Employer funded only	Yes	Yes	Yes	Established with prior test and generally accepted
Employer and employee funded	No	No	No	May include additional voluntary plans.
Benefits to be Included/Excluded Specifically				
Include retiree healthcare, retirement, disability, death and withdrawal benefits	Yes	Yes	No	Requires determination and potential valuation of many different employer benefit plans including LTD, STD, sick leave, severance, life insurance, etc.
Include only retiree healthcare, retirement, and disability	Yes	Yes	Yes	Statute requires a comparison of "retirement benefits." Eliminating withdrawal and death benefits reduces the required collection of plan provisions and data. These benefits do not represent a significant portion of program cost.
Include only retirement and disability benefits	Yes	Yes	Yes	Statute requires a comparison of "retirement benefits." If RHIA benefits are not included, then retiree healthcare should not be included.
Benefit Comparison Method				
Test benefits components (e.g., retirement, disability, etc.) separately?	Yes	Yes	No	Appears in current rule, but not in statute. Ensures adequate benefits in each category
Test benefits components (e.g., retirement, disability, etc.) in aggregate?	No	Yes	Yes	Simplifies test, but not a significant change
Prior Service Benefits that Depend on Earnings				
Actual earnings credited to member account?	No	No	No	Benefit of hindsight could affect test results. Includes difference between PERS investment management and management through employer plan
Actual PERS earnings credited to member accounts?	No	No	No	Benefit of hindsight could affect test results. Eliminates difference between PERS investment management and management through employer plan
Hypothetical earnings based on historical index returns?	No	No	No	Benefit of hindsight could affect test results. Eliminates difference between PERS investment management and management through employer plan
Hypothetical earnings based on expected index returns and current asset allocation?	No	Yes	No	No benefit of hindsight, but investment returns may vary depending on asset allocation
PERS' assumed earnings rate?	No	No	Yes	No benefit of hindsight and no variance of investment returns, but may not reflect investments available through employer plans
Risk-free earnings rate?	Yes	Yes	Yes	No benefit of hindsight and no variance of investment returns. Risk/reward of actual investments is not valued as part of employee benefit. Tests benefit structure, including value of guaranteed returns (such as PERS' assumed earnings rate for PERS benefits), as opposed to historical experience.
Future Service Benefits that Depend on Earnings				
Hypothetical earnings based on expected index returns and current asset allocation?	No	Yes	No	Investment returns may vary depending on asset allocation
PERS' assumed earnings rate?	No	No	Yes	No variance of investment returns, but may not reflect investments available through employer plans
Risk-free earnings rate?	Yes	Yes	Yes	No variance of investment returns. Risk/reward of actual investments is not valued as part of employee benefit but guaranteed returns will be included
Lump Sum / Annuity Conversion				
Insurance company annuity rates?	No	No	Yes	Reflects annuity conversion rates available to employees
PERS' assumed earnings rate?	No	No	Yes	Includes expected value of risk/reward in PERS investments as part of value of benefit provided to employee whether or not those investments are available
Risk-free earnings rate?	Yes	Yes	Yes	Risk/reward of actual investments is not valued as part of employee benefit
PERS Benefit Formulas Valued				
Full Formula only?	No	Yes	Yes	69% of P&F members currently eligible to retire fall under Full Formula. In the future, even larger percentage will fall under Full Formula.
Full Formula, Money Match and Pension Plus Annuity?	Yes	Yes	No	More comprehensive test, but with added complications, cost and risk of durability. If fixed interest rate is selected for historical returns, cost and durability implications are mostly mitigated.
Data Standards				
Actual ER staff comparison	Yes	No	No	Accommodates contributions and benefit structures that depend on items not in PERS data (e.g., title, police vs. fire). Reflects value of benefits to actual demographic makeup. May need career earnings
Hypothetical PERS staff comparison	No	Yes	Yes	Reflects value of benefits to standard demographic group. May need input regarding employee designations.

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 030 – LOCAL PUBLIC EMPLOYER RETIREMENT PLANS FOR
POLICE OFFICERS AND FIRE FIGHTERS**

1 **459-030-0011**

2 **“Equal To or Better Than” Exemption**

3 (1) *[If]* A public employer **that** provides retirement benefits to its police officers and
4 firefighters **pursuant to ORS 237.620(2) is exempt from participation in PERS for**
5 **such employees.** *[that are equal to or better than the benefits that would be provided to*
6 *them under the Oregon Public Service Retirement Plan, the public employer may petition*
7 *the Board for exemption from participation of such employees. Such petition will be*
8 *reviewed under the requirements and timelines of this division.]*

9 *[(2) The Board will review any exemption granted under this division every two*
10 *years to determine whether the exempt public employer is complying with the*
11 *requirements of this division.]*

12 **(2) An exemption under this division will continue until the Board, upon review**
13 **of the public employer’s retirement plan, determines that the plan no longer meets**
14 **the required standard.**

15 **(3) Whenever a change in benefits in the public employer’s retirement plan is**
16 **adopted, the public employer must petition the Board for review of the employer’s**
17 **plan within 60 days.**

18 **(4) Whenever a change in benefits in the PERS Plan is adopted, the Board will**
19 **determine if the change increases benefits such that the public employer’s**
20 **retirement plan must be reviewed.**

21 **(5) In any event, at least once every 12 years the Board will determine, pursuant**
22 **to section (2) of this rule, whether an employer’s exemption should continue.**

1 **(6) The Board may delegate the determination of whether such an employer’s**
2 **plan qualifies for an exemption to the PERS Executive Director.**

3 Stat. Auth.: ORS 238.650

4 Stat. Implemented: ORS 237.620, **237.635 & 237.637**

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 030 – LOCAL PUBLIC EMPLOYER RETIREMENT PLANS FOR
POLICE OFFICERS AND FIRE FIGHTERS**

1 **459-030-0025**

2 **Standards for Review of Police Officers and Firefighters Retirement Plans**

3 (1) A determination whether a public employer provides retirement benefits to its
4 police officers and firefighters that are equal to or better than the benefits that would be
5 provided to them *[under the Oregon Public Service Retirement Plan (OPSRP)]* by PERS
6 will be made as of the valuation date. The “valuation date” is the date set by the Board as
7 of which the retirement benefits under the public employer’s retirement plan and the
8 retirement benefits under the *[OPSRP retirement]* PERS [p]Plan shall be compared.

9 (2) The Board will consider the aggregate total actuarial present value of all
10 retirement benefits accrued *[since July 1, 1973]* up to the valuation date and projected
11 to be accrued thereafter *[the valuation date]* by the group of police officers and
12 firefighters employed on the valuation date by the public employer. *[The projected*
13 *benefits will compare the total value of benefits that would be accrued if the police*
14 *officers and firefighters became members of OPSRP or remained in the plan being*
15 *evaluated.]*

16 *[(a) The Board will not require that every retirement benefit for each individual*
17 *employee be equal to or better than the particular benefit he or she would receive under*
18 *OPSRP.]* The Board will compare the retirement benefits provided under the public
19 employer’s retirement plan for each of the following classes of employees to the
20 retirement benefits provided to the equivalent class of employees participating in
21 the PERS Plan:

1 (a) Police officers or firefighters who would have established membership in the
2 system before January 1, 1996, as described in ORS 238.430(2), and would have
3 been entitled to receive benefits under the PERS Plan;

4 (b) Police officers or firefighters who would have established membership in the
5 system on or after January 1, 1996, as described in ORS 238.430, and before
6 August 29, 2003, as described in ORS 238A.025, and would have been entitled to
7 receive benefits under the PERS Plan; and

8 (c) Police officers or firefighters who would have established membership in the
9 system on or after August 29, 2003, and would have been entitled to benefits under
10 the PERS Plan.

11 (d) For each class of employees, the aggregate total retirement benefits provided
12 by the public employer must be equal to or better than those provided by PERS to
13 the equivalent class of employees.

14 (e) The retirement benefit for each individual employee need not be equal to or
15 better than the particular benefit that employee would have received as a member
16 of that employee’s equivalent class in PERS.

17 *[(b)](f) [The Board will require that]* The public employer’s retirement plan or
18 plans must provide at least eighty percent (80%) of the actuarial present value of
19 projected retirement benefits in each of the major categories of retirement benefits
20 available under *[OPSRP]*PERS, namely: a service retirement^[;] benefit, including post
21 retirement health care and a disability retirement benefit, also including post
22 retirement health care^[; a death benefit; and vesting].

23 (3) In adopting the following methods and assumptions, to be used in conducting
24 an actuarial review of a public employer’s retirement plan, preference has been

1 given to the simplest, least expensive methodology consistent with ORS 237.610 to
2 237.620 and applicable actuarial standards:

3 (a) Only employer funded benefits shall be used as the basis for the test
4 comparison.

5 (b) The Full Formula, Money Match, Formula Plus Annuity, and OPSRP
6 Pension benefit formulas shall be used as the basis for valuing PERS benefits.

7 (c) Prior service benefits that depend on earnings shall be valued using a risk-
8 free earnings rate, taking into consideration guaranteed plan returns.

9 (d) Future service benefits that depend on earnings shall be valued using a risk-
10 free earnings rate, taking into consideration guaranteed plan returns.

11 (e) Lump sum / annuity conversions shall be valued using a risk-free earnings
12 rate.

13 (f) Benefit comparisons shall use a hypothetical PERS member data standard for
14 each demographic group.

15 *[(3)](4) In conducting an actuarial review of [a] the public employer’s retirement*
16 *plan [for its police officers and firefighters], the actuary retained by the Board will use its*
17 *current actuarial assumptions for police officers and firefighters of public*
18 *employers participating in PERS for those employees. [demographic data supplied by*
19 *the employer to determine whether the retirement benefits provided under the plan are*
20 *equal to or better than the benefits which would be provided under OPSRP.*

21 *If the employer does not provide sufficient data in a timely manner, the actuary will use a*
22 *hypothetical data set representing a demographic cross-section of police officers and*
23 *firefighters who are subject to this division.]*

1 *[(4) The Board will conduct its review based on its current actuarial assumptions for*
2 *police officers and firefighters of public employers in OPSRP.]*

3 (5) The Board will consider the cost of the benefits to be provided and the proportion
4 of the cost being paid by the public employer and the participating police officers and
5 firefighters. *[The Board will consider whether the benefits to be provided by the employer*
6 *are funded, and the adequacy of funding.]* Whether the benefits are provided by contract,
7 trust, *[or]* insurance, or a combination thereof shall have no effect on the *[decision to*
8 *grant or deny the petition]* **Board’s determination.**

9 (6) In considering a public employer’s retirement plan provisions, the Board *[will]*
10 **may** not value portability of pension credits, tax advantages, Social Security benefits or
11 participation, *[and]* any worker’s compensation component of a public employer’s
12 **retirement** plan as determined by the employer **or any portion of a benefit funded by**
13 **the member.**

14 **[(7) The Board may not consider benefits provided by the PERS Plan under**
15 **ORS 238.375 – 238.387 or benefits provided by the employer’s retirement plan**
16 **under ORS 237.635 – 237.637. The employer must identify benefits paid to comply**
17 **with ORS 237.635 – 237.637.**

18 *[(7)]* **(8)** Additional actuarial assumptions *[as shall be]* needed to evaluate **the** public
19 employer’s **retirement** plan *[provisions shall]* **may** be considered by the Board’s actuary
20 to be consistent with assumptions specified in these rules. Any disputes as to the
21 appropriateness of additional actuarial assumptions *[shall]* **may** be resolved by the Board
22 in its sole discretion.

23 Stat. Auth: ORS 238.650

24 Stats. Implemented: ORS 237.620

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 030 – LOCAL PUBLIC EMPLOYER RETIREMENT PLANS FOR
POLICE OFFICERS AND FIRE FIGHTERS**

1 **459-030-0030**

2 **Board Action on Petition and Review of Order**

3 (1) The actuary will issue a written report that concludes whether a public
4 employer's plan meets the standards for receiving an exemption under OAR 459-030-
5 0025. After receipt of the written actuarial review report and recommendations of staff,
6 the Board will issue an order granting or denying the petition for exemption. No order
7 denying a petition for exemption will be issued until at least 90 days after the actuary had
8 delivered its report to the Board. During that period, the public employer may amend its
9 plan to comply retroactive to the valuation date or file a written request for an extension.
10 Upon filing of that request, the Board will not enter an order denying a petition for
11 exemption for an additional 60 days after receiving the request. If a public employer
12 submits an amended plan before the Board adopts an order denying the exemption, the
13 actuary will submit a supplemental report on whether the amended plan meets the
14 required standards under OAR 459-030-0025. The Board may adopt an order at any time
15 after receiving the supplemental report.

16 (2) Within 60 days of the effective date of any order issued under this rule, the
17 public employer, the affected public employees, or their labor representative may file a
18 petition for rehearing or reconsideration pursuant to OAR 459-001-0010 and 459-001-
19 0040.

20 *[(3) A public employer who has received an order denying its petition for exemption*
21 *and who has exhausted its remedies under this division will join the Oregon Public*

1 *Service Retirement Plan as of the following January 1, or such other date as the Board*
2 *directs in its order.]*

3 Stat. Auth: ORS 238.650

4 Stats. Implemented: ORS 237.620, 237.635 & 237.637



Oregon

Theodore R. Kulongoski, Governor

February 6, 2009

Public Employees Retirement System

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TO: Members of the PERS Board
FROM: Dale S. Orr, Actuarial Services Manager
SUBJECT: 2008 Preliminary Earnings Crediting and Reserving

MEETING DATE	2/06/09
AGENDA ITEM	C.2. Preliminary 2008 Earnings Crediting

OVERVIEW

- Action: Adopt preliminary earnings crediting and reserving decisions for 2008 PERS Fund returns.
- Reason: ORS 238.670(5) requires PERS to submit a preliminary proposal to the appropriate legislative committee 30 days prior to making a final decision on annual earnings crediting.
- Subject: Crediting earnings and losses for calendar year 2008 to the PERS Fund's accounts and reserves.
- Policy Issues:
 - How should the losses attributable to the funds held in the Benefits-in-Force Reserve be allocated?

BACKGROUND

The several components of the Board's crediting and reserving decisions are governed by statute or rule. When the PERS Fund experiences a net loss, such as 2008, those decisions parameters are briefly summarized below:

1. Contingency Reserve (Current Balance: \$653.2 million). According to ORS 238.670(1), earnings can only be allocated to the Contingency Reserve in years that earnings exceed the assumed rate, so no allocation can be made from 2008's earnings. Moreover, note that the Contingency Reserve is not credited with its own earnings or losses but, instead, funds are added to or transferred from the reserve only as directed by the Board. The PERS Board could chose to deploy some or all of the Contingency Reserve, such as to the Capital Preservation Reserve (described later), but that deployment is not necessarily related to crediting 2008 earnings.
2. Tier One Rate Guarantee Reserve (Current Balance: \$1,889.2 million). This reserve, established under ORS 238.255(1), is to be used to credit the assumed rate to Tier One member regular accounts. For 2008, this reserve will be used to absorb the losses attributed to Tier One member regular accounts plus cover the mandatory crediting of the assumed earnings rate.
3. Capital Preservation Reserve (Current Balance: \$0.0). This reserve, authorized under ORS 238.670(3), can be used to offset gains or losses of invested capital. This reserve is to be funded from interest and other income of the Fund or from transfers out of the Contingency Reserve. The Capital Preservation Reserve can be used to "hold" investment losses that

would otherwise be allocated to other reserves. Any deficit in this reserve would then be offset by future PERS Fund investment earnings or transfers from the Contingency Reserve.

4. In years in which there are insufficient earnings on the PERS Regular Account to pay for administrative expenses, such as 2008, ORS 238.610(1) requires administrative expenses to be funded through employer contributions.
5. OAR 459-007-0005 sets forth the following assumptions and preliminary steps:
 - a. The health insurance accounts in the PERS Fund are credited with actual earnings or losses, less administrative expenses incurred.
 - b. Employer lump sum payment accounts are credited with actual earnings or losses less administrative expenses, as authorized by ORS 238.225(10).
 - c. Variable Annuity and Individual Account Program (IAP) accounts are credited with actual earnings or losses, less a proportional charge for administrative expenses. Variable losses for 2008 are currently estimated to be -43.42%, and IAP account losses are estimated to be -26.92% for 2008.

POLICY ISSUE

- *How should the losses attributable to the funds held in the Benefits-in-Force Reserve be allocated?*

Benefits-in-Force Reserve/Capital Preservation Reserve

ORS 238.670(2) provides for establishing the Benefits-in-Force Reserve (BIF). The BIF is used to pay benefits to retired members. The statute directs that the BIF be credited each year, "to the extent that such income is available," with a "sufficient amount," but does not address what is to occur when there are losses.

Staff has identified two policy options on allocating losses that are attributable to the funds held in the BIF:

Option 1: Allocate 2008 losses proportionally to the BIF in the same manner as losses are allocated to the Employer and Tier Two member regular accounts.

Option 2: Allocate the BIF's proportional share of 2008 losses to the Capital Preservation Reserve and do not reduce the BIF.

Staff recommends Option 2. Adequately funding the BIF is a top priority as the principle responsibility of the PERS Fund is to pay benefits. The statute does not provide authority to reduce the BIF because of investment losses. Instead, allocating the BIF's proportional share of 2008 losses to the Capital Preservation Reserve retains the BIF's funding level and leaves the resolution of those unallocated losses to the PERS Board's future determination. The Capital Preservation Reserve provides greater flexibility over Option 1 as losses can be covered either through future period PERS Fund earnings or by transfers from the Contingency Reserve (although staff is not recommending a transfer from the Contingency Reserve at this time, given the multiple possible functions of the Contingency Reserve).

RECOMMENDED 2008 PRELIMINARY EARNINGS CREDITING DECISIONS

Staff recommends the following allocations be adopted preliminarily by the PERS Board:

1. Judge Member Accounts

From the Tier One Rate Guarantee Reserve, credit Judge Member regular accounts with the assumed earnings rate (8%) and allocate 2008 losses attributed to the Judge Member regular accounts to the Tier One Rate Guarantee Reserve.

2. Tier One Member Regular Accounts

From the Tier One Rate Guarantee Reserve, credit Tier One member regular accounts with the assumed earnings rate (8%) and allocate 2008 losses attributed to Tier One member regular accounts to the Tier One Rate Guarantee Reserve.

3. Benefits-in-Force/Capital Preservation Reserve

Allocate 2008 losses attributed to the Benefits-In-Force Reserve to a Capital Preservation Reserve established under ORS 238.670(3), resulting in crediting no earnings or losses to the Benefits-in-Force Reserve (BIF).

4. Tier Two Member Regular Accounts, OPSRP Pension, and Employer Reserves

Allocate a proportional share of the remaining 2008 losses to Tier Two member Regular Accounts, OPSRP Pension, and Employer Reserves, except that the portion of the losses representing administrative expenses be paid solely from the OPSRP Pension and Employer Reserves.

BOARD OPTIONS

The Board may:

1. **Adopt Staff's Recommendation:** Pass a motion to "adopt the staff's recommended preliminary crediting of earnings and allocation of losses for calendar year 2008, subject to final adoption at the March 31, 2009 PERS Board meeting."
2. **Adopt the Optional Policy Position:** Pass a motion to "adopt the staff's recommended preliminary crediting of earnings and allocation of losses for calendar year 2008, subject to final adoption at the March 31, 2009 PERS Board meeting, but amending that recommendation as follows:
 - Allocating 2008 losses attributed to the Benefits-In-Force Reserve to the Benefits-In-Force Reserve."
3. **Develop alternative strategies:** Adopt an alternative earnings crediting allocation to apportion the 2008 losses. That alternative should be adopted to allow for adequate reporting to the legislature as required by ORS 238.670(5) and adopt final earnings crediting decisions at the PERS Board's March 31, 2009 meeting.

NEXT STEPS

The PERS Board, at its February 6, 2009 meeting, is scheduled to make its preliminary crediting and reserving decisions for 2008 to comply with the reporting requirements in ORS 238.670(5). This statute requires PERS to submit a preliminary proposal to the appropriate legislative committee 30 days prior to making a final decision on the crediting of any interest or other income.

Once the Board makes its preliminary decisions, staff will prepare and present the required report to the Oregon Legislature's Ways and Means Committee (Committee). Any comments received from the Committee will be presented to the Board prior to its final crediting decisions on March 31, 2009. A Committee hearing is scheduled for February 26, 2009, to receive the Board's report.

This preliminary action and the resulting report to the Legislature do not prohibit the PERS Board from changing its final crediting and reserving decisions, such as if new information becomes available. If the Board makes a significant change from its preliminary decisions, staff will report the Board's actions to the Legislature.

Attachments:

Option 1: Allocate 2008 Benefits-in-Force Reserve Losses to Benefits-in-Force Reserve

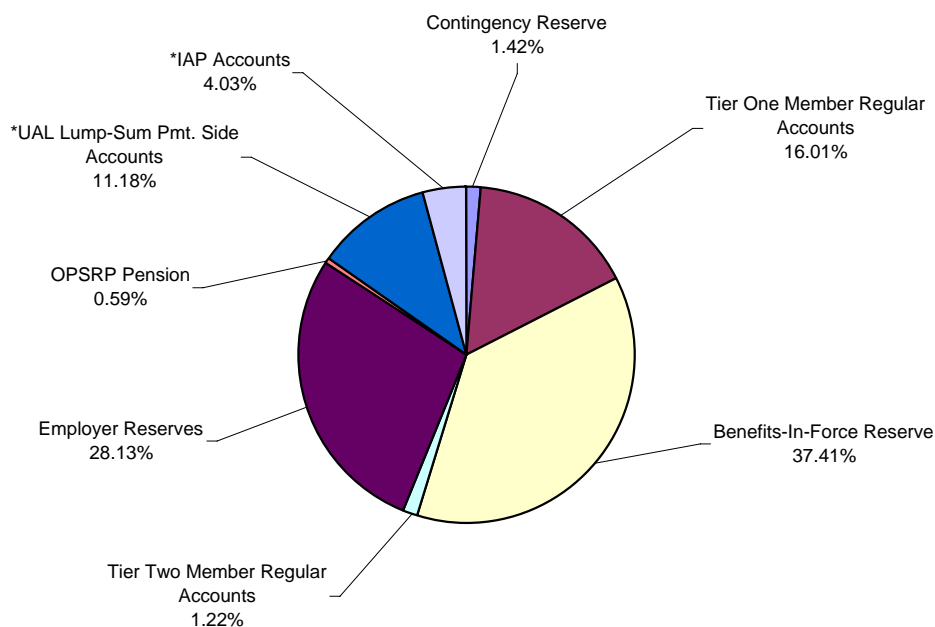
Option 2: Allocate 2008 Benefits-in-Force Reserve Losses to Capital Preservation Reserve

Option 1

2008 Preliminary Earnings Crediting and Loss Allocation
Allocate 2008 Benefits-In-Force Reserve Losses to Benefits-In-Force Reserve
 (All dollar amounts in millions)

Regular Account Reserve	Reserves Before Allocation	2008 Preliminary Allocation	Reserves After Allocation	2008 Preliminary Rates
Contingency Reserve	\$653.2	\$0.0	\$653.2	N/A
Tier One Member Regular Accounts	6,805.8	544.5	7,350.3	8.00%
Tier One Rate Guarantee Reserve	1,889.2	-2,909.7	-1,020.5	N/A
Benefits-In-Force Reserve	23,584.7	-6,415.6	17,169.1	-27.20%
BIF Capital Preservation Reserve	0.0	0.0	0.0	N/A
Tier Two Member Regular Accounts	768.3	-209.0	559.3	-27.20%
Employer Reserves	17,762.8	-4,852.0	12,910.8	-27.32%
OPSRP Pension	376.3	-107.0	269.3	-28.43%
*UAL Lump-Sum Pmt. Side Accounts	7,109.0	-1,975.8	5,133.2	Various
*IAP Accounts	2,532.9	-681.7	1,851.2	-26.92%
Total	\$61,482.2	-\$16,606.3	\$44,875.9	

2008 Regular Account Reserve Balances
After 2008 Preliminary Crediting and Loss Allocation



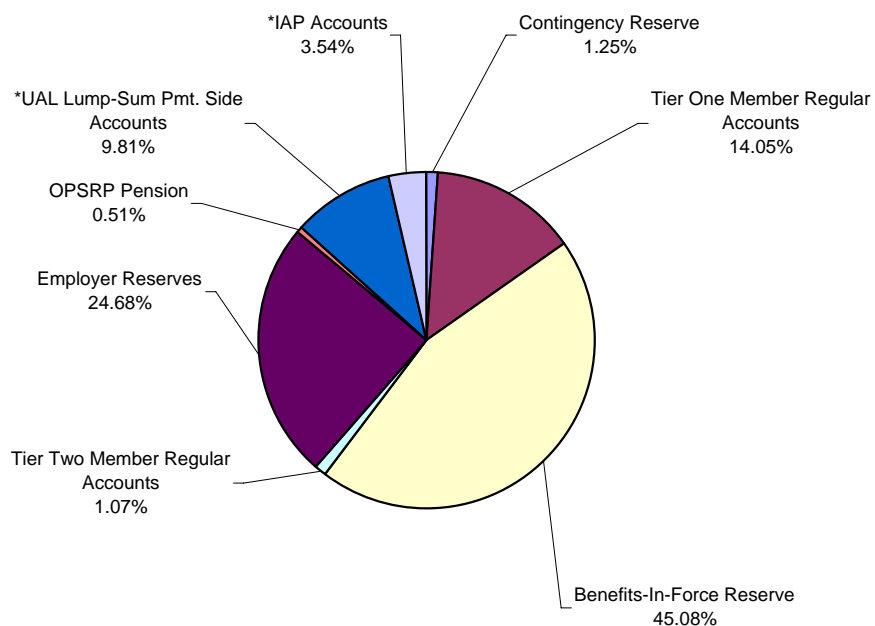
*Informational only. Not affected by Board reserving or crediting decisions.

Option 2

2008 Preliminary Earnings Crediting and Loss Allocation
Allocate 2008 Benefits-In-Force Reserve Losses to Capital Preservation Reserve
 (All dollar amounts in millions)

Regular Account Reserve	Reserves Before Crediting	2008 Preliminary Crediting	Reserves After Crediting	2008 Preliminary Rates
Contingency Reserve	\$653.2	\$0.0	\$653.2	N/A
Tier One Member Regular Accounts	6,805.8	544.5	7,350.3	8.00%
Tier One Rate Guarantee Reserve	1,889.2	-2,909.7	-1,020.5	N/A
Benefits-In-Force Reserve	23,584.7	0.0	23,584.7	0.00%
BIF Capital Preservation Reserve	0.0	-6,415.6	-6,415.6	N/A
Tier Two Member Regular Accounts	768.3	-209.0	559.3	-27.20%
Employer Reserves	17,762.8	-4,852.0	12,910.8	-27.32%
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Total	\$61,482.2	-\$16,606.3	\$44,875.9	

2008 Regular Account Reserve Balances
After 2008 Preliminary Crediting and Loss Allocation



*Informational only. Not affected by Board reserving or crediting decisions.



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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February 6, 2009

TO: Members of the PERS Board
FROM: Susan Riswick, Interim Administrator
Policy, Planning, and Legislative Analysis Division
SUBJECT: Legislative Update

MEETING DATE	02/06/09
AGENDA ITEM	C.3. Legislative Update

The 2009 regular session of the Oregon Legislature convened on January 12, 2009. Both the House and Senate have introduced several hundred bills since that day. The last day for new legislation to be introduced is March 2, 2009.

PERS BILLS TO DATE

So far, the following bills related to PERS have been introduced:

SB 112: This is the concept approved for submission by the PERS Board that would address the return-to-work restrictions applicable to retired members choosing a total lump sum option. The bill has been assigned to the Senate Commerce & Workforce Development Committee.

SB 343: Introduced at the request of the Oregon School Employees Association, this bill would remove the 1039-hour limit for school districts, education service districts, or community colleges to hire a PERS retired member as other than a teacher, faculty member, or management employee. This bill would also establish the first exception to the OPSRP Pension requirement that benefits stop if a retired member returns to a qualified position, allowing such a member to continue to receive their OPSRP Pension benefit while working unlimited hours.

HB 2157: The Department of Revenue regularly introduces a bill to reconnect portions of Oregon statutes with updates to the federal Internal Revenue Code. This session, the department agreed to include provisions in ORS Chapter 238A that needed to be amended, saving PERS from having to develop and advance its own concept.

HB 2420: Members who are not vested lose their membership if they do not work in a qualifying position for five years. This bill would require PERS to provide members advance notice that they will be entering Loss of Membership status at least three but no more than six months before they would reach that five year point.

Overall, a few dozen bills have been introduced that PERS staff is tracking as their passage would have some effect on the agency's operations.

LEGISLATIVE PROCESS

As bills are introduced, PERS staff has been applying the decision matrix that the PERS Board has previously reviewed. This matrix guides staff in determining whether the Board and agency will take a position on legislation. However, the matrix does not spell-out what that position may be and also may need to be revised to reflect Board experience with prior legislative sessions and desire to be more proactively engaged in the legislative process.

BILL TOPIC	BOARD POSITION
Administration of Plan - All aspects	The Board will take a position as appropriate with regard to proposed administrative changes; consideration will include the possible workload impact upon PERS staff.
Benefits - Adequacy, amount, size	The Board does not take a position with regard to appropriate benefit levels, which is a legislative prerogative. The Board will provide factual information regarding the impact of proposed bills on member benefits, employer rates, and system funding as part of its fiscal impact analysis.
Benefits - Plan Structure (i.e. vesting, benefit factor, FAS, payment options)	The Board will take a position as appropriate with regard to proposals to change plan structure. Specifically, while plan structure is a legislative prerogative, the Board will look to legislative intent and will determine if a proposal accomplishes the intent, and will take a position accordingly.
Membership - PERS eligibility - Coverage status - Classification (i.e. P&F)	As membership issues affect benefits, the Board does not take a position with regard to membership issues, which is a legislative prerogative. The Board will provide factual information regarding the impact of proposed bills on membership rights, impact on member benefits, employer contribution rates and system funding as part of its fiscal impact analysis.
PERS Board - Authority - Functions	The PERS Board as trustee of the Public Employees Retirement System has fiduciary duties and will take a position as appropriate with regard to bill proposals impacting the PERS Board and its ability to fulfill those responsibilities.
PERS Board - Membership (i.e. number, groups represented)	The PERS Board does not take a position with regard to membership on the PERS Board, which is a legislative prerogative.
PERS Fund - All aspects	The PERS Board as a trustee of the Public Employees Retirement Fund has fiduciary duties and will take a position as appropriate with regard to bill proposals impacting the PERS Fund.
Tax Qualification of Plan - All aspects	<p>The PERS Board is required by Oregon Revised Statute (ORS 238.630(3)(g)) to maintain the tax qualification of the plan, and will take a position as appropriate with regard to bill proposals impacting the plan's tax qualification status.</p> <p>It is possible that a bill initially falling within the policy scope of a prior topical area above (such as <i>Benefits</i>) may actually require a PERS Board position because of impact on the tax qualification status of the PERS plan.</p>

DEVELOPING A BOARD AND AGENCY POSITION

Several categories within the decision matrix indicate that the PERS Board will take a position on that type of legislation. Several aspects of the legislative process must be considered in developing the manner in which the PERS Board will establish that position:

- If a party is going to take a position to oppose or amend a bill, the earlier in the legislative process that such a position can be established works to everyone's benefit. Legislators need to know of those actions or concerns, stakeholders have more time to address issues cooperatively and deliberately, and issues can be more fully evaluated, which would improve the ultimate outcome.
- Bills can move very quickly and suddenly, especially as amendments are considered in committees and even more so as the session gets closer to closing.
- Substantial lead time is required to engage in crucial aspects of the legislative process, like working with Legislative Counsel to develop amendments, scheduling appointments with committee members to discuss concerns, and conducting complete analyses, such as consulting with the actuary or federal tax counsel on particular proposals.

Given these considerations, reaching a position on these matters during the course of a regular board meeting is not a complete solution. Undoubtedly, exigencies will arise where some direction is needed outside of a regular board meeting schedule. Establishing positions on legislation is, however, a board decision and therefore must be reached in conformance with public meeting guidelines.

Staff puts forth the following process for discussion purposes and would appreciate further direction and refinement based on the PERS Board's consideration:

1. Establish a PERS Board subcommittee of at least two members who are delegated the authority to determine positions on legislative proposals on behalf of the full board.
2. This Legislative Subcommittee meets on either a regular or as-needed basis to consider proposals and evaluate those where the PERS Board decides to take a position. These meetings will be public, noticed to interested parties, and probably be conducted by conference call unless the subcommittee directs otherwise.
3. During the legislative session, the subcommittee will report back to the Board at regularly scheduled meetings on bills where a position has been determined. At those meetings, the Board could modify those positions if a majority chose to do so.

BOARD OPTIONS

The Board may:

1. Pass a motion to "Establish a Legislation Subcommittee of the PERS Board consisting of [insert at least two members' names], which subcommittee is delegated the authority to determine positions on legislative proposals during the 2009 Regular Session of the Oregon Legislature."

2. Consider positions on legislative proposals by the PERS Board at special meetings to be convened as needed or otherwise directed.
3. Consider positions on legislative proposals by the PERS Board at its regularly scheduled meetings that occur during session.

STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

- Reason: Given the timing and other demands of the legislative process, determining positions only during regularly scheduled meetings would not be effective or efficient. Delegating this function limits the impact of the process to only those members on the subcommittee.

**ADDITIONAL ITEMS FOR PERS BOARD
February 6, 2009**

1. Agenda Item C.1. Adoption of ETOB Rules

February 2, 2009 Greg Hartman Letter:
ETOB Rules

February 6, 2009 Mercer Presentation
Actuarial Considerations in ETOB Testing

2. Agenda Item C.2. Preliminary 2008 Earnings Crediting and Reserving

ORS 238.670 Reserve accounts in fund

3. Agenda Item C.3. Legislative Update

February 6, 2009 Susan Riswick Memo

238.660 Fund generally; board review of legislative proposals. (9) The board may review legislative proposals for changes in the benefits provided under this chapter and ORS chapter 238A and may make recommendations to committees of the Legislative Assembly on those proposed changes. In making recommendations under this subsection, the board acts as a policy advisor to the Legislative Assembly and not as a fiduciary. In making recommendations under this subsection on the Oregon Public Service Retirement Plan established by ORS chapter 238A, the board shall seek to maintain the balance between benefits and costs, and the relative risk borne by employers and employees with respect to investment performance, reflected in ORS chapter 238A as in effect on January 1, 2004.

(10) The board shall appoint a committee to advise the board on legislative proposals for changes in the benefits provided under this chapter and ORS chapter 238A. The committee must have an equal number of members representing labor and management. No costs of reviewing legislative proposals and making recommendations under this subsection may be charged to the fund. Any member of the committee who is an active member of the system shall be released by the participating public employer who employs the member for the purpose of conducting the official business of the committee, and the wages or salary of the member may not be reduced by the employer during periods that the member is released from duty for the purpose of conducting the official business of the committee. [Formerly 237.271; 1997 c.121 §1; 1999 c.317 §8; 1999 c.407 §6; 2001 c.945 §3; 2003 c.17 §2; 2003 c.625 §29; 2003 c.733 §60]

PERS Board Meeting
Walk-in Item #1

BENNETT, HARTMAN, MORRIS & KAPLAN, W

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February 2, 2009

BY EMAIL AND FIRST CLASS MAIL

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

Re: ETOB Rules
Our File No.: 5415-237

Dear Steve:

The purpose of this letter is to comment on the proposed ETOB rules on behalf of the PERS Coalition. First let me thank you and the PERS staff members for the hard work you have done on this issue, including making certain that all stakeholders have had a chance to fully participate in the rulemaking process. While we were not able to reach an agreed-upon set of rules to recommend to the board, nonetheless we were able to distill our differences so they can be efficiently presented to the board for resolution.

Before delving into the specific issues I'd like to spend a moment discussing the history of ETOB as a way of identifying the policy issues which I think should be paramount in the consideration of these new rules. The original ETOB statute was passed by the 1971 legislature, two years before the passage of the Public Employee Bargaining Act, which allowed collective bargaining in the public sector. The original version of the bill placed all police and fire fighters into PERS but was amended at the last minute to accommodate a concern by Portland and Fire District #10 fire fighters that their plans in fact were better than PERS. Ironically Fire District #10 has long since joined PERS and the City of Portland is in the process of integrating through placing new hires into the OPSRP system.

After almost 40 years that the ETOB standard has been in place, Portland and a handful of small employers are the only jurisdictions which have not joined PERS. My sense is that there is an unanswered question for some board members as they examine the proposed ETOB rules of whether the ETOB statute is still necessary now that we have had many years of collective bargaining for public sector employees. Clearly the legislature has answered this question by re-enacting the ETOB statute, making it clear that they believe that the statute continues to play a meaningful role in protecting ETOB police and fire fighters.

However, I think it is important to understand why ETOB remains important. While police and fire fighters are permitted to bargain, they are strike-prohibited employees and therefore must go to interest arbitration if they cannot resolve contract issues with their employers. A straightforward proposal by an employee group requiring the employer to join PERS is considered a permissive item; thus the employer can simply refuse to bargain on that issue and the Union cannot bring that proposal to interest arbitration. Clever advocates can avoid this problem by making a proposal for a pension plan which includes all the benefits of PERS which is a mandatory subject and which can be taken to interest arbitration. However, in order to be successful in such an arbitration a full and complete review of the comparability of the existing pension plan and PERS must be presented to the interest arbitrator. This takes a sophisticated (expensive) advocate and a sophisticated expert actuary (expensive). This task is made even more daunting in the face of a PERS ETOB determination which may characterize the exempt pension plan as being substantially better than PERS. Making this type of presentation in an interest arbitration is beyond the means of any small jurisdiction of police and fire fighters. To the best of my knowledge since the inception of public sector bargaining in only a single instance was a group of firefighters successful in having an interest arbitrator rule that in effect that the employer must place that group in PERS. With the exception of Portland all the remaining ETOB jurisdictions are small jurisdictions and their only hope of attaining an equal-to-or-better-than pension plan is through the PERS testing process.

Prior to addressing the particulars of the proposed ETOB rule, discussion of some general issues is appropriate.

Actual experience versus hypothetical experience

One of the issues which must be addressed in constructing a new ETOB test is the question of whether to use actual experience or hypothetical experience. In several instances the actuary has proposed the use of hypothetical experience as that would be easier to administer and therefore save money for employers. While the ETOB test should be efficient and cost-effective as possible, the mandate from the legislature is to protect employee benefits, not to balance that protection against potential cost to employers. Employers who chose not to integrate into PERS over these years knew that they would be faced with an ETOB test from time to time with the attendant costs. Saving employer dollars is not an appropriate justification for adopting a test which is not as accurate as possible.

Defined contribution versus defined benefit

PERS is a defined benefit plan and even those members who retire on money match will retire on a benefit defined at retirement and guaranteed payable for the remainder of their lives. In a defined benefit plan the risks and rewards of investment fall solely on the employer. In contrast a defined contribution plan guarantees nothing at retirement other than the right to receive the funds which have accumulated in the defined contribution plan. The

risks and rewards of investment performance are borne solely by the participants, not only during their active careers but during their retirement years. The actuary has proposed that in evaluating these very different plans the concept of a risk-free earnings rate should be utilized to evaluate the defined contribution ETOB plans. We agree that in evaluating future investment performance of these plans, the risk-free earnings rate is entirely appropriate. However, there is no justification for using that rate for evaluating benefits which have already accrued. The precise value of an individual account can be ascertained on the ETOB determination date. Use of a hypothetical rate to evaluate this asset would be unfair to the employee if the value of the benefit is overestimated and unfair to the employer if the value of the benefit is underestimated. Actual experience to the date of evaluation should be utilized in the ETOB process.

Durability

One of the most contentious issues in the discussions among stakeholders has been the topic of how often an ETOB test should be administered. After considering our most recent discussions on durability, the ability of an ETOB test to stand the test of time, it seems that the approach of a one-rule-fits-all-plans may not be appropriate. As an example, once we move beyond the Tier One money match years it would appear that no additional testing of the Portland plan would be necessary to ensure that it is equal to or better than PERS. The plan itself mimics the full formula benefit but with higher and more favorable purchase rates for employees. If money match is no longer an issue then the structure of the Portland plan alone would assure an equal to or better than result without any additional testing. In contrast an ETOB plan which is solely a defined contribution plan could arguably be tested on a yearly basis and still not fully assure that it is equal to or better than PERS in all instances. This can be best illustrated by pointing out the difference in the results of any ETOB test which was performed effective January 1, 2008 with one performed effective January 1, 2009. Adverse investment experience for 2008 will undoubtedly have a substantial impact on any exempt defined contribution plan. Rather than adopting a one-rule-fits-all approach it may be better to adopt a set of rules which will govern this initial evaluation and then consider how to deal with subsequent tests based on the actual experience of evaluating the currently exempt plans.

With that background, following are the positions of the PERS Coalition on the method and assumptions data sheet which we've used to discuss these policy issues.

Benefits to be included/excluded, generally

The PERS Coalition agrees that only employer-funded benefits should be considered.

Benefits to be included/excluded, specifically

The PERS Coalition believes that all benefits, including retiree health care, retirement disability, death and withdrawal should be included. The only justification which has been offered for excluding any of these benefits is savings in employer cost, and for the reasons mentioned above, the Coalition does not believe that is an adequate reason to change the current test.

Prior service benefits that depend on earnings

It is the PERS Coalition's position that the actual earnings credited to a member's account should be the method used. As discussed above any departure from the actual experience of individual fire fighters and police officers runs a substantial risk that the test will not accurately reflect their benefits and therefore it will not carry out the essential purpose of making certain that they enjoy benefits equal to or greater than the benefits of PERS.

Future service benefits that depend on earnings

The Coalition agrees that the use of a risk-free earnings rate is appropriate in projecting future earnings for defined contribution plans which place earnings risks upon the employees.

Lump sum/annuity conversions

It is the Coalition's position that the insurance company annuity rate is the most appropriate rate to use in converting lump sum amounts paid by defined contribution plans to a monthly pension stream. While this rate may be very similar to a risk-free earnings rate nonetheless the task here is to make certain that the ultimate retirement benefit is equal to or better than the benefit provided by PERS. An exempt plan that provides only a defined contribution can only convert the amount that is due and payable to the member through the purchase of an annuity policy. The actual rates for making those purchases would most accurately reflect that conversion.

PERS benefit formulas valued

The Coalition agrees that full formula, money match, and pension plus annuity, which are the alternative PERS formulas, should be utilized in the testing.

Data standards

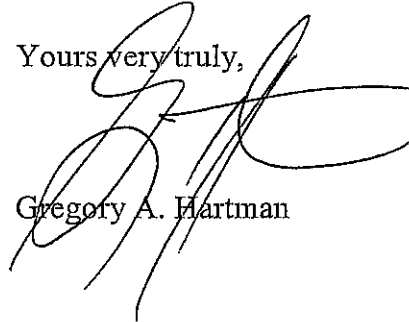
It is the Coalition's position that actual demographic data should be used from each of the exempt employers. For all the reasons discussed above, use of hypothetical data

Steve Rodeman
February 2, 2009
Page 5

PERS Board Meeting
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particularly in this instance when we're dealing with employers with a small number of employees can substantially depart from the actual experience of the ETOB employees.

Yours very truly,

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

Gregory A. Hartman

GAH:kaj

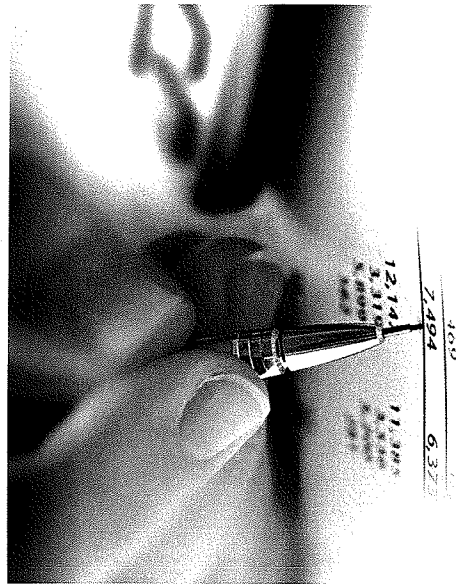
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cc: PERS Coalition

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February 6, 2009

Actuarial Considerations in ETOB Testing Oregon PERS

Bill Hallmark

www.mercer.com



Actuarial Considerations in ETOB Testing Agenda

- **Background**
- **Principles Established by PERS**
- **Benefits Included**
- **The Employees' Perspective**
- **Comparing Defined Benefit and Defined Contribution Plans**
- **Census Data for Test**
- **Conclusions**

Background

- Statute requires police and fire employers not covered by Oregon PERS to provide retirement benefits that are “equal to or better” than the retirement benefits provided by Oregon PERS
- The PERS Board is required to determine whether or not the employers comply with the statute, and the individual employers pay for the cost of the test
- The last test was performed in 2005, and all employers passed (most by significant margins). However, the test was prospective only, comparing whether or not the police and fire employees would be better served for the remainder of their careers in:
 - Their current plan, or
 - OPSRP
- The last ETOB test before 2005 was performed in 1992, before Money Match benefits were even covered in the actuarial valuation

Background 2005 Test Results

	Forest Grove	Mid-Columbia	Morrow	Portland	Seaside	Springfield	Dalles	Tillamook	Union	Wheeler
Retirement	232%	184%	215%	288%	200%	192%	137%	222%	121%	164%
Disability	152%	120%	160%	188%	141%	191%	98%	113%	89%	110%
Death	238%	439%	186%	318%	225%	653%	328%	129%	293%	377%
Vesting	281%	492%	178%	360%	245%	472%	401%	187%	294%	442%
Total	220%	183%	205%	274%	193%	198%	142%	205%	121%	163%

- This comparison created a number of issues. For example, since OPSRP didn't recognize service prior to joining OPSRP, employees would have to work at least 5 more years to be entitled to any benefits. Due to these issues, it is not surprising that all of the employer plans satisfied the test.
- On average, service and disability retirement benefits accounted for 94% of the value of benefits provided by an employer.
- There were 5 defined benefit plans, 4 defined contribution plans and one cash balance plan tested in 2005.

Background

- The Legislature amended the ETOB test to require the comparison be made separately for three classes of employees:
 - Tier 1 benefits for employees hired prior to 1/1/1996
 - Tier 2 benefits for employees hired between 1/1/1996 and 8/29/2003
 - OPSRP benefits for employees hired after 8/29/2003
- While the concept is fairly straightforward, the new test is much more complex
 - Requires three separate tests for each employer
 - Requires testing historical benefits in addition to expected future benefits

Principles Established by PERS Staff

- **Comparability**
 - The test should make an “apples to apples” comparison of benefits
- **Durability**
 - Test results should be consistent over different time periods unless the plan provisions have changed
- **Cost Effectiveness**
 - The least costly testing method is preferred assuming it doesn't materially change the results

Principles Established by PERS Staff Key Conclusions From Principles

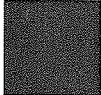
- The test should be focused on valuing the plan provisions, not the specific outcomes from those provisions for a specific group of employees over a specific time period. That is, identical plans sponsored by different employers should have identical test results and those test results should not vary depending on when the test is conducted.
 - Comparability, Durability
- The value of benefits is assessed from the employee's perspective, not the expected cost to the employer
 - Comparability, Durability
- The test should include the value of guarantees to employees of risk borne by employers
 - Comparability
- Test should be limited to what is required by statute and reasonable assumptions can substitute for costly data collection
 - Cost Effectiveness

Benefits Included

- Statute requires a comparison of “retirement benefits”
- Prior ETOB tests have covered retirement benefits, disability benefits, death benefits, and vesting benefits with a requirement that each separate category meet at least 80% of the ETOB standard.
- We recommend that the ETOB test only cover service and disability retirement benefits, including any retiree healthcare benefits payable upon disability or service retirement.
 - More consistent with our understanding of statute
 - Covers most valuable benefits
 - Simplifies testing by eliminating need to review and value other employer plans such as life insurance and severance
- Continue practice of only including employer paid benefits that are not otherwise required by statute

The Employees' Perspective

- Traditional actuarial valuations are designed to calculate the **expected cost to the employer**.
 - Doesn't attempt to calculate actual cost to the employer which can differ significantly from the expected cost
 - Doesn't attempt to calculate the value to the employees
 - The expected employer cost valuation model is an internationally accepted actuarial approach
 - The expected employer cost valuation model was the basis for prior ETOB comparisons
- Given the interpretation of the statute as requiring a comparison, not of expected cost to the employer, but of value to the member, a slightly different approach is required.



The Employees' Perspective

- To estimate a value to the employees, finance theory and emerging actuarial practice suggests the projected benefit payments should be discounted using an interest rate that reflects the certainty of the payments to the employees.
- Given the extremely low likelihood of default, this approach would indicate that the projected benefit payments should be discounted using a “risk-free” discount rate.

The Employees' Perspective An Example

- Suppose PERS owes a member \$100,000 to be paid in 20 years. What is that promise worth to the member today?
 - A. \$21,450 – Since PERS expects to earn 8% per year, it estimates it needs \$21,450 today in order to make the \$100,000 payment.
 - B. \$28,380 – The member isn't as good an investor as PERS, but thinks she could achieve a 6.5% return over 20 years.
 - C. \$37,690 – There is a zero-coupon Treasury available in the market that pays \$100,000 in 20 years. The cost of the Treasury today is \$37,690.

- The answer is C.
 - Note that the member could sell the 20-year zero coupon Treasury short and receive \$37,690 today. When PERS paid her the \$100,000 in 20 years, she could use that \$100,000 to exactly settle her short position.
 - The value today is the amount of the payment discounted at a risk-free discount rate. PERS' or the member's expected rate of return (or even the actual rate of return) is not relevant to the value of the promise to the member today.

Comparing Defined Benefit and Defined Contribution Plans

- A fundamental difficulty with an ETOB test is to establish a fair basis for comparing a plan that provides a guaranteed lifetime income (a defined benefit plan) to a plan that provides a series of contributions to a member account over a member's career (a defined contribution plan).
- One plan defines the benefits the member receives, but not the contributions required of the employer. The other defines the contributions required of the employer, but not the benefits the member will receive.
- The key distinction is that in a defined benefit plan, the employer bears risks for investment return, longevity, inflation and salary increases. In a defined contribution plan, the employee bears these risks.
- Additional complications are added to the comparison for plans that are a hybrid between a defined benefit and defined contribution plan or provide the better of two or more approaches.

Comparing Defined Benefit and Defined Contribution Plans

- Earlier we showed that a promised benefit payment should be discounted at a “risk-free” discount rate to calculate the theoretical value to an employee. This approach seems appropriate for a defined benefit plan, but how should we handle a defined contribution plan?
- In a traditional defined contribution plan, the employer’s promise ends with the contribution.
 - Either the employee or a fiduciary directs the investment of the employee’s assets and the resulting benefit is paid at retirement. It is important to recognize that even if the employee is not directing the investments, those decisions are made by a fiduciary, not the employer.
- Consequently, for a defined contribution plan, instead of discounting the accumulated account balance to today, we should discount the future promised contributions to today using a “risk-free” discount rate.

Comparing Defined Benefit and Defined Contribution Plans

- If we use a “risk-free” return to value future contributions to a defined contribution plan, what should we use to value past returns?
 - The accumulated account balance?
 - An accumulated expected return?
 - An accumulated “risk-free” return?
- There are three key policy issues for the Board to consider:
 - Should two identical employer plans with different actual historical investment returns have the same or different ETOB results?
 - Should two identical employer plans with different historical investment policies have the same or different ETOB results?
 - Should an employer plan that satisfies the ETOB requirements as of a specific date possibly fail the test at a subsequent date strictly due to the effect of market investment returns?

Comparing Defined Benefit and Defined Contribution Plans

- If the intent of the statute is to compare the actual benefit outcomes provided by the plans sponsored by ETOB employers, the Board may prefer to use actual historical returns
 - Actual returns reflect the actual benefits paid by the plan to members
 - Using actual or expected historical returns includes an evaluation of the effectiveness of fiduciary decisions in the ETOB comparison
 - The results of the comparison could change on a daily basis. The defined contribution plan would appear more valuable after a period of good investment returns and the defined benefit plan would appear more valuable after a period of poor investment returns.
 - An ETOB comparison on this basis invites a certain moral hazard. That is, a plan could invest aggressively and if it paid off, the employees would get the benefit. If it didn't pay off, the plan would fail the ETOB test and the employer would be required to restore benefits lost due to the failed investments in order to satisfy the ETOB test.

Comparing Defined Benefit and Defined Contribution Plans

- If the intent of the statute is to compare the plan structures provided by the ETOB employers, the Board should use a “risk-free” rate to simulate historical experience
 - Excludes an evaluation of the effectiveness of fiduciary decisions in the ETOB comparison
 - Identical plan provisions will produce identical ETOB test results
 - ETOB test results will not vary with changes in investment market returns
- Based on our understanding of the intent and principles, we recommend using a “risk-free” rate to accumulate historical contributions to the valuation date.
 - Where an employer provides a guaranteed return in excess of the “risk-free” rate, we would accumulate past and future contributions using the guaranteed rate of return.

Census Data for Test

- The ETOB test can either be performed on actual data collected from each ETOB employer or on hypothetical data constructed based on PERS data for police and fire members
- Advantages to Using Hypothetical Data
 - Test results for identical plans sponsored by different employers will be identical (assuming “risk-free” return is also used).
 - Test results will not vary over time due to demographic changes at a given employer.
 - Cost and time required to conduct an ETOB test are reduced because detailed census data from each employer is not required.
- Advantages to Using Actual Data
 - Can test based on actual historical experience (investments, salaries, etc.) assuming all data is available
 - Persistent differences in demographics for a specific employer are reflected in the test
- Based on our understanding of the intent and principles, we recommend using hypothetical data

Conclusions

- Given the complexities and judgments involved in conducting the test, one or more stakeholder groups may disagree with any reasonable methodology adopted by the Board
- We believe the methods identified are defensible given our understanding of the intent of the statute and the principles developed by PERS staff. If the intent of the statute differs from our understanding, alternate methods and assumptions for conducting the ETOB test may be appropriate
- Decisions deferred until an ETOB test is conducted
 - Development of an appropriate assumed “risk-free” rate of return for the test
 - Specific methods or assumptions required by individual employer plans

MERCER



MARSH MERCER KROLL
GUY CARPENTER OLIVER WYMAN



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February 6, 2009

TO: Members of the PERS Board
FROM: Susan Riswick, Interim Administrator
Policy, Planning, and Legislative Analysis Division
SUBJECT: Supplemental Materials for Legislative Update

MEETING DATE	02/06/09
AGENDA ITEM	C.3. Legislative Update

For the Board's review and consideration, attached are additional materials for Agenda Item C.3, Legislative Update.

- ORS 238.660 (9) and (10): This statute directs the Board to review legislative proposals and to make recommendations to the Legislature as policy advisors for proposed legislation. Subsection 10 establishes the Legislative Advisory Committee (LAC). This information will be helpful as we discuss the Board's role as policy advisor to the Legislature and the role of the LAC.
- 2009 PERS-Related Bill Activity Report: This document lists PERS-related bills introduced to date with general information and their current status. Using the Decision Matrix, this list identifies the bills that the Board would take a position according to the matrix. This information will be helpful as we discuss the legislative process for this session.
- The current roster for the Legislative Advisory Committee.

**PERS Board Meeting
Walk-in Item #2**

238.670 Reserve accounts in fund. (1) At the close of each calendar year in which the earnings on the Public Employees Retirement Fund equal or exceed the assumed interest rate established by the Public Employees Retirement Board under ORS 238.255, the board shall set aside, out of interest and other income received through investment of the Public Employees Retirement Fund during that calendar year, such part of the income as the board may deem advisable, not exceeding seven and one-half percent of the combined total of such income, which moneys so segregated shall remain in the fund and constitute therein a reserve account. The board shall continue to credit the reserve account in the manner required by this subsection until the board determines that the reserve account is adequately funded for the purposes specified in this subsection. Such reserve account shall be maintained and used by the board to prevent any deficit of moneys available for the payment of retirement allowances, due to interest fluctuations, changes in mortality rate or, except as provided in subsection (3) or (4) of this section, other contingency. In addition, the reserve account may be used by the board for the following purposes:

(a) To prevent any deficit in the fund by reason of the insolvency of a participating public employer. Reserves under this paragraph may be funded only from the earnings on employer contributions made under ORS 238.225.

(b) To pay any legal expenses or judgments that do not arise in the ordinary course of adjudicating an individual member's benefits or an individual employer's liabilities.

(c) To provide for any other contingency that the board may determine to be appropriate.

(2) At the close of each calendar year, the board shall set aside, out of interest and other income received during the calendar year, after deducting the amounts provided by law and to the extent that such income is available, a sufficient amount to credit to the reserves for pension accounts and annuities varying percentage amounts adopted by the board as a result of periodic actuarial investigations. If total income available for distribution exceeds those percentages of the total accumulated contributions of employees and employers, the reserves for pensions and annuities shall participate in such excess.

(3) The board may set aside, out of interest and other income received through investment of the fund, such part of the income as the board considers necessary, which moneys so segregated shall remain in the fund and constitute one or more reserve accounts. Such reserve accounts shall be maintained and used by the board to offset gains and losses of invested capital. The board, from time to time, may cause to be transferred from the reserve account provided for in subsection (1) of this section to a reserve account provided for in this subsection such amount as the board determines to be unnecessary for the purposes set forth in subsection (1) of this section and to be necessary for the purposes set forth in this subsection.

(4) The board may provide for amortizing gains and losses of invested capital in such instances as the board determines that amortization is preferable to a reserve account provided for in subsection (3) of this section.

(5) At least 30 days before crediting any interest and other income received through investment of the Public Employees Retirement Fund to any reserve account in the fund, the board shall submit a preliminary proposal for crediting to the appropriate legislative review agency, as defined in ORS 291.371 (1), for its review and comment. [Formerly 237.281; 2001 c.945 §5]

2009 PERS-Related BILLS

The following bills have been introduced so far in the 2009 session that directly impact PERS or the Oregon Savings Growth Plan. For the Board’s consideration, following is a matrix that outlines each of these bills and lists the corresponding action from the Decision Matrix:

Bill Numbers	Basic Concept	Last Action	Hearings Scheduled	Sponsored By	Current Decision Matrix Direction
HB 2157A	Federal Reconnect Bill Updates connection date to federal Internal Revenue Code and other provisions of federal tax law.	February 4 Passed out of the House. Referred to the Senate Finance and Revenue Committee.	February 6 - Public Hearing and Work Session	Department of Revenue	N/A Bill includes PERS-related provisions at the agency’s request.
HB 2411	Notice of Loss of Membership in PERS Provides that PERS members go into LOM only if the PERS Board provides prior notification.	January 27 Referred to the House Business and Labor Committee.	None	Representative Gelser (at the request of Susan Aronson)	Administration of Plan: Board will take a position regarding administrative changes, with consideration of possible workload impact on PERS staff.
SB 112	TLS - Return To Work Allows members of PERS, who elected the total lump sum option at retirement, to return to work under the same provisions as those who elect a monthly benefit.	January 20 Referred to the Senate Commerce and Workforce Development Committee	None	PERS	N/A Introduced at the agency’s request.

2009 PERS-Related BILLS

Bill Numbers	Basic Concept	Last Action	Hearings Scheduled	Sponsored By	Current Decision Matrix Direction
SB 343	<p>Reemployed Retirees Allows all classified school district, ESD and community college employees, except teachers or management service, to return to work unlimited hours after retirement, including OPSRP.</p>	<p>January 26 Referred to the Senate Commerce and Workforce Development Committee</p>	None	Senator Rosenbaum (at the request of the Oregon School Employees Association)	<p>Administration of Plan: Board will take a position regarding administrative changes, with consideration of possible workload impact on PERS staff.</p>
SB 399	<p>OSGP Funds Allows certain members of PERS who participate in OSGP to purchase waiting time or restoring forfeited creditable service with an OSGP transfer.</p>	<p>February 3 Referred to the Senate Commerce and Workforce Development Committee</p>	None	Senate Workforce & Development Committee	<p>Administration of Plan: Board will take a position regarding administrative changes, with consideration of possible workload impact on PERS staff.</p>

2009 Legislative Advisory Committee of the PERS Board
Contact List

	Name	Organization
1	Baker, Greg	Special Districts Association of Oregon
2	Botkin, Mary	Oregon AFSCME Council 75
3	Capps, Lindsey	Oregon Education Association
4	Charbonnier, Francis	Oregon School Boards Association
5	Colley, Lance	Roseburg Public Schools
6	DeLashmutt, Brian	Oregon Nurses Association
7	Kenny, Jack	Oregon Department of Administrative Services
8	Manton, Steve	City of Portland
9	Smith, Tricia	Oregon School Employees Association
10	Towers, Art	SEIU Local 503
11	Wagner, Rob	AFT-Oregon
12	West, Pat	Oregon State Firefighters Council
13	Wilson, Brenda	PERS Alliance
14	Winkels, Scott	League of Oregon Cities