

# OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM BOARD MEETING

Friday November 18, 2011 1:00 P.M.		PERS 11410 SW 68 <sup>th</sup> Parkway Tigard, OR	
ITEM		PRESENTER	
<b>A. Administration</b>			
1.	September 30, 2011 Board Meeting Minutes	CLEARY        KRIPALANI	
2.	Director's Report		
	a. Forward-Looking Calendar		
	b. OIC Investment Report		
	c. Operating Budget Report		
	d. Employer Reporting Update		
	e. Quarterly Report of Member Transactions		
	f. 2011 Customer Service Survey Results		
	g. Agency Mission Statement and Core Values		
	h. Executive Director Financial Transactions		
<b>B. Administrative Rulemaking</b>			
1.	Adoption of Disability Eligibility Rules	RODEMAN	
2.	Adoption of Continuous Service Rule (Repeal)		
3.	Adoption of Public Records Rule		
4.	Temporary Adoption of Uncollectible Debt Rule		
5.	Notice of Rules to Implement 2011 Legislation		
6.	Notice of Death and Survivor Benefits Rules		
7.	PERS and Social Security "Return to Work" Standards for Disability Retirements		
<b>C. Action and Discussion Items</b>			
1.	EWEB Petition for Declaratory Ruling	O'LEARY RODEMAN MERCER	
2.	SEAS Overpayment Recovery Project		
3.	GASB Proposed Changes to Employer Financial Reporting Standards		
<b>D. Executive Session Pursuant to ORS 192.660(2)(f), (h), and/or ORS 40.225</b>			
1.	Litigation Update	LEGAL COUNSEL	

Note: There will be an Audit Committee meeting immediately following the Board meeting.

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<http://www.oregon.gov/PERS/>

2012 Board Meeting Dates: January 27 - March 22 - May 18 - July 2 - September 28 - November 30

James Dalton, Board Chair    Eva Kripalani    Mike Pittman    Laurie Warner    Pat West    Paul R. Cleary, Executive Director



# OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM BOARD MEETING

September 30, 2011  
Tigard, Oregon

## Board Members:

James Dalton, Chair  
Michael Pittman  
Laurie Warner  
Pat West

## Staff:

Donna Allen  
Paul Cleary  
David Crosley  
Jon DuFrene  
Joe DeLillo  
Debra Hembree  
Jeff Marecic  
Joe O'Leary  
Brenda Pearson  
Steve Rodeman

Susan Sjordal  
Jason Stanley  
Stephanie Vaughn  
Carol Vogel

## Others:

Bruce Adams  
Pam Broadus  
Linda Ely  
Bruce Griswold  
Greg Hartman

Celia Heron  
Keith Kutler  
Matt Larrabee  
Mary Macpherson  
Elizabeth McCann

Victoria Nolan  
P. Peg  
Sue Perry  
Erik Pflaum  
Bill Robertson

Scott Preppernau  
Dennis Thompson  
Deborah Tremblay  
Lonnie Tucker  
Denise Yunker  
David Wimmer

Chair James Dalton called the meeting to order at 1:00 P.M. Eva Kripalani was excused.

## ADMINISTRATION

### A.1. BOARD MEETING MINUTES OF JULY 29, 2011

The Board unanimously approved the minutes from the July 29, 2011 Board meeting.

### A.2. DIRECTOR'S REPORT

Executive Director Paul Cleary presented the Board's forward-looking calendar noting the November 18 meeting is earlier in the month due to the Thanksgiving holiday and the November 25 furlough. Agenda items for November Board meeting include modifications to the public records rule. There will also be an Audit Committee meeting. Cleary asked Board members to review the 2012 tentative meeting dates and inform Donna Allen of any conflicts. Cleary reported a projected positive operating budget variance of approximately two percent for the first two months of the 2011-13 biennial operating budget.

Cleary presented the Quarterly Report of Member Transactions referencing the increase in four out of five transactions categories. Mike Pittman asked if the staff turnover noted in the report was worrisome. Cleary explained the increase in PERS staff retirements is reflective of the demographics of the agency workforce.

Ron Schmitz, Chief Investment Office for the OIC was not available to present the OIC report. Cleary discussed the July and August OIC reports included in the packet. He reported Schmitz has accepted a position with Virginia Retirement System and will be leaving at the end of October. Cleary described Schmitz' many successes in his nine year tenure, noting Oregon's top decile returns relative to other large pension funds over that period.

## RULE ADOPTION

### B.1. ADOPTION OF DISABILITY RULES

Deputy Director Steve Rodeman presented Disability Rules modifications for adoption pertaining to the disability periodic review process and the return-to-work standards. These modifications also addressed Board comments made at the September Board meeting

Rodeman noted that Rules 459-015-0005 and 459-076-0005 address eligibility standards for new applications, and will be presented for adoption at the November Board Meeting, allowing stakeholders' additional time for public comment.

Laurie Warner moved and Pittman seconded the motion to adopt the disability rules as presented with the exception of the modifications to 459-015-0005 and 459-076-0005 to be presented for adoption at the November Board meeting. The motion passed three to one with Pat West voting no.

Pittman suggested staff consider the comment in Nelson Hall's memo recommending PERS utilize the Social Security return-to-work policies and rules. Rodeman noted staff will analyze that approach as part of the disability eligibility process and report back to the Board.

### B.2. REPEAL OF RETENTION OF MEMBERSHIP BY SCHOOL EMPLOYEES

Rodeman presented the Retention of Membership by School Employee rules for repeal because the specific standards are already addressed in statute.

Warner moved and West seconded the motion to repeal the rules as presented. The motion passed unanimously.

## NOTICE OF RULEMAKING

### B.3. NOTICE TO REPEAL CONTINUOUS SERVICE RULE

Rodeman provided notice to repeal the Continuous Service rule that is now obsolete.

### B.4. NOTICE OF RULEMAKING FOR PUBLIC RECORDS RULE

Cleary provided background on the proposed Public Record Rule modifications resulting from two public records requests to release retiree name and benefit information. PERS initially denied the requests. After review and rulings from the Attorney General ordering the information release, PERS went to court to challenge the AG orders. Cleary noted the advantages secured under the settlement agreement in terms of narrowing the scope of the information to be released and limiting it to records available in PERS electronic data bases.

Dalton recognized the concerns of members who submitted letters, emails, etc. objecting to the release of information.

Rodeman provided notice of rulemaking for the Public Records rule which incorporates the details of the court judgments and how the settlement agreement will be implemented. A public hearing is scheduled for October 25, 2011 in Tigard.

Rodeman reported the first disclosure of information will be on November 21, 2011 noting what will be included. Rodeman described the second release of information scheduled for March 9, 2012.

Greg Hartman, PERS Coalition, stated the Coalition has received a “flood of concerns” over PERS releasing the names of individual retirees in association with specific benefit information. Hartman explained the Coalition has not decided on what action if any they will be taking.

Cleary noted what other states are doing about releasing retiree information, ranging from no release of information to website postings of names and benefit amounts.

#### ACTION AND DISCUSSION ITEMS

##### C.1. 2010 VALUATION RESULTS

Matt Larrabee and Scott Preppernau, Mercer, presented a summary of the December 31, 2010 actuarial valuation results. Larrabee explained this valuation is advisory in nature and provides employers and other interested parties a sense of direction for the 2013-15 employer rates that will be based on the December 31, 2011 valuation.

Larrabee reported the investment results for August and September are behind schedule and without big improvements in the final three months of this year, the final 2013-15 employer contributions rates calculated next year will be higher than the advisory rates discussed today.

Larrabee reviewed the valuation process and timeline. Larrabee noted that PERS will distribute specific advisory rate reports to employers in November showing where their 2013-15 rates would be based on 2010 investment results and the 8 percent return assumption for 2011.

Larrabee reviewed the investment return probabilities to year-end 2011, noting there was a high probability that those returns would be less than 8 percent. Preppernau demonstrated how the rates varied among the different rate pools and described various historical rate data. Larrabee explained the rate collaring mechanism and how it worked.

Pittman noted the importance for all to understand where rates are headed given the 2011-13 rate collaring and the recent market downturn in 2011.

Preppernau presented the assets and liabilities used to establish the advisory valuation rates for Tier One/Tier Two and OPSRP. Larrabee described the December 31, 2010 retiree health care valuation results.

Larrabee reported a full system-wide valuation report will be published prior to the November Board meeting. Mercer will prepare a listing of individual employer advisory rates and PERS staff will deliver the individual employer reports via email.

C.2. 2010 ACTUARIAL EQUIVALENCY FACTORS

Larrabee presented the final 2010 Actuarial Equivalency Factors for Board approval and described the potential impacts on near-term retirees.

Pittman moved and West seconded the motion to approve the 2010 Actuarial Equivalency Factors as presented. The motion passed unanimously

Dalton adjourned the meeting to Executive session at 3:26 PM.

Respectfully submitted,



Paul R. Cleary  
Executive Director

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

### **Friday, January 27, 2012**

Adoption of Uncollectible Debt Rule  
Adoption of Rules to Implement 2011 Legislation  
Adoption of Death and Survivor Benefits Rules  
Notice of Roth 457 Rules  
Notice of Payment of Account Balances Rule  
Notice of Earnings Crediting Rules  
Notice of Benefit Equalization Fund Rule  
Preliminary 2011 Earnings Crediting and Reserving

### **Thursday, March 22, 2012**

Adoption of Roth 457 Rules  
Adoption of Payment of Account Balances Rule  
Adoption of Earnings Crediting Rules  
Adoption of Benefit Equalization Fund Rule  
Final 2011 Earnings Crediting and Reserving  
Report on 2012 Legislative Session  
Audit Committee Meeting

### **Friday, May 18, 2012**

Employer Reporting

### **Friday, July 27, 2012**

Audit Committee Meeting

### **September 28, 2012**

### **November 30, 2012**

Employer Reporting  
Audit Committee Meeting



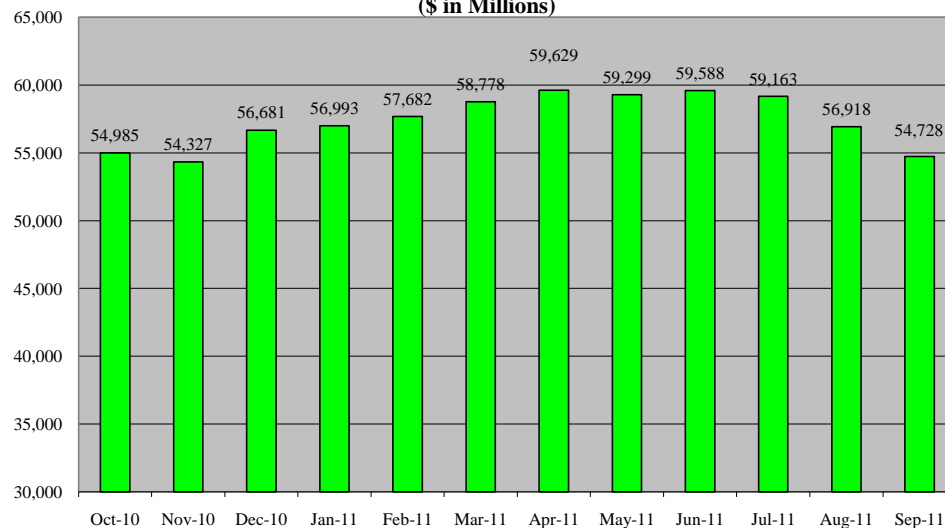


OPERF	Regular Account				Historical Performance (Annual Percentage)					
	Policy <sup>1</sup>	Target <sup>1</sup>	\$ Thousands <sup>2</sup>	Actual	Year-To-Date <sup>3</sup>	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS
Public Equity	38-48%	43%	\$ 18,597,161	34.5%	(14.39)	(6.01)	1.76	1.53	(6.61)	(1.67)
Private Equity	12-20%	16%	13,917,149	25.8%	17.24	23.46	22.37	6.25	5.02	8.86
<b>Total Equity</b>	<b>54-64%</b>	<b>59%</b>	<b>32,514,310</b>	<b>60.2%</b>						
Opportunity Portfolio			875,650	1.6%	4.55	11.84	13.41	6.94	4.17	4.57
<b>Total Fixed</b>	<b>20-30%</b>	<b>25%</b>	<b>14,204,880</b>	<b>26.3%</b>	<b>3.86</b>	<b>4.57</b>	<b>8.72</b>	<b>11.00</b>	<b>7.27</b>	<b>6.84</b>
Real Estate	8-14%	11%	6,133,138	11.4%	11.74	16.03	6.20	(4.43)	(4.05)	(0.06)
Alternative Investments	0-8%	5%	226,328	0.4%	N/A					
Cash	0-3%	0%	16,530	0.0%	(0.04)	0.11	0.52	1.74	1.43	2.23
<b>TOTAL OPERF Regular Account</b>		<b>100%</b>	<b>\$ 53,970,836</b>	<b>100.0%</b>	<b>0.32</b>	<b>6.07</b>	<b>8.87</b>	<b>4.72</b>	<b>(0.54)</b>	<b>2.70</b>
<b>OPERF Policy Benchmark</b>					<b>(1.21)</b>	<b>4.83</b>	<b>7.29</b>	<b>4.26</b>	<b>(0.55)</b>	<b>2.74</b>
Value Added					<b>1.53</b>	<b>1.24</b>	<b>1.58</b>	<b>0.46</b>	<b>0.01</b>	<b>(0.04)</b>
<b>TOTAL OPERF Variable Account</b>			<b>\$ 757,494</b>		<b>(13.81)</b>	<b>(5.76)</b>	<b>1.59</b>	<b>1.27</b>	<b>(7.11)</b>	<b>(3.38)</b>

Asset Class Benchmarks:

Russell 3000 Index	(9.90)	0.55	5.63	1.45	(4.86)	(0.92)
MSCI ACWI Ex US IMI Net	(17.05)	(10.64)	(1.55)	1.33	(7.75)	(1.04)
MSCI ACWI IMI Net	(14.07)	(6.04)	1.35	1.20	(6.71)	(1.26)
Russell 3000 Index + 300 bps--Quarter Lagged	21.29	36.25	27.29	8.28	3.58	7.22
Oregon Custom FI Benchmark	2.68	1.51	4.95	6.81	5.72	5.60
NCREIF Property Index--Quarter Lagged	12.39	16.73	7.24	(2.57)	0.25	3.44
91 Day T-Bill	0.10	0.14	0.13	0.22	0.88	1.74

**TOTAL OPERF NAV**  
(includes variable fund assets)  
One year ending September 2011  
(\$ in Millions)



<sup>1</sup>OIC Policy 4.01.18, as revised April 2011.

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

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





# Oregon

Theodore R. Kulongoski, Governor

Item A.2.c.

## Public Employees Retirement System

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November 18, 2011

TO: Members of the PERS Board  
FROM: Kyle J. Knoll, Budget Officer  
SUBJECT: November 2011 Budget Report

### 2011-13 BUDGET UPDATE

Operating expenditures for September 2011 were \$2,701,793, and preliminary expenditures for October 2011 are \$3,030,288. October 2011 expenditures close in the Statewide Financial Management System (SFMS) November 18, 2011, and an update will be included in the January 2012 budget report to the Board.

- To date, through the first four months (16.67%) of the 2011-13 biennium, the Agency has expended a total of \$12,093,447, or 15.50% of PERS' legislatively approved operating budget of \$78,010,820.
- The current projected positive variance is \$1,509,996, or approximately 1.9% of the operating budget.

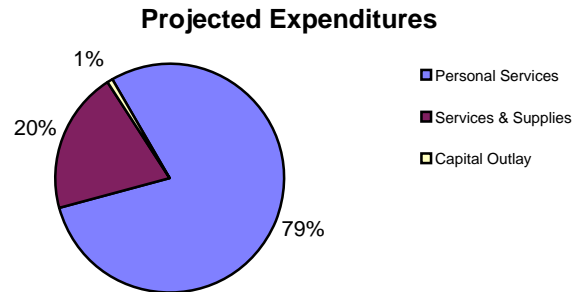
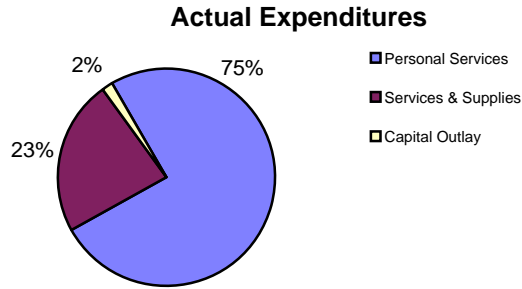
### 2009 - 11 BUDGET UPDATE

The projected positive variance is now \$5,395,312, or approximately 6.5% of the 2009-11 operating budget of \$83,261,952. Biennial expenditures close in SFMS December 31, 2011, and a final update will be included in the January 2012 budget report to the Board.

**2011-13 Agency-wide Operations - Budget Execution**  
**Summary Budget Analysis**  
For the Month of: October 2011

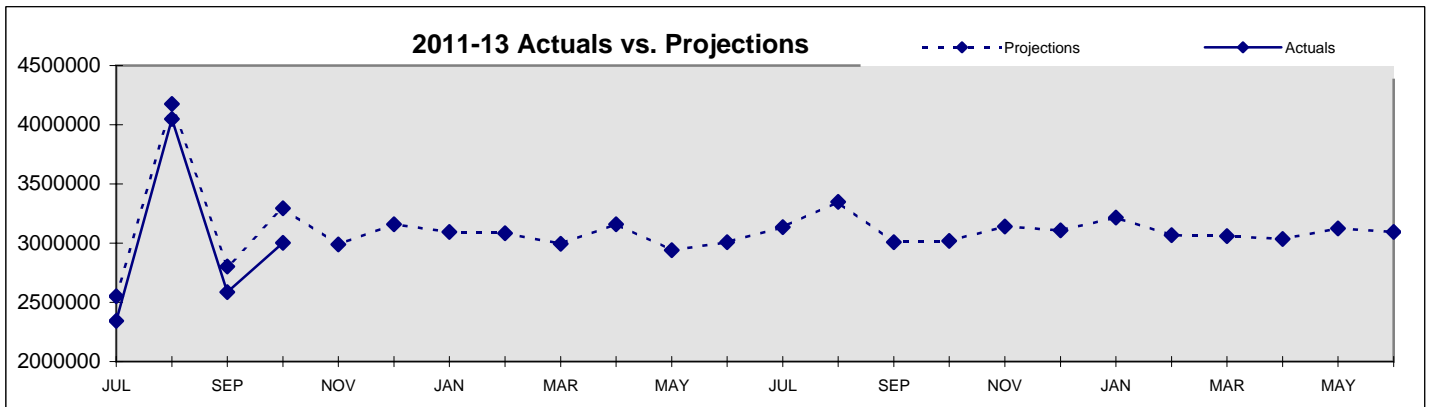
**Biennial Summary**

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2011-13 LAB	Variance
Personal Services	9,095,641	48,983,515	58,079,156	56,577,463	(1,501,693)
Services & Supplies	2,791,735	14,236,267	17,028,002	20,505,769	3,477,767
Capital Outlay	206,071	1,187,595	1,393,666	927,588	(466,078)
<b>Total</b>	<b>12,093,447</b>	<b>64,407,377</b>	<b>76,500,824</b>	<b>78,010,820</b>	<b>1,509,996</b>



**Monthly Summary**

Category	Actual Exp.	Projections	Variance	Avg. Monthly Actual Exp.	Avg. Monthly Projected Exp.
Personal Services	2,250,398	2,479,695	229,297	2,273,910	2,449,176
Services & Supplies	610,378	646,348	35,970	697,934	611,556
Capital Outlay	169,512	169,512	0	51,518	28,455
<b>Total</b>	<b>3,030,288</b>	<b>3,295,555</b>	<b>265,267</b>	<b>3,023,362</b>	<b>3,089,187</b>



**2009-11 Biennium Summary**

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2009-11 LAB	Variance
Personal Services	50,562,257		50,562,257	52,751,494	2,189,237
Services & Supplies	25,849,108	93,677	25,942,785	29,916,870	3,974,085
Capital Outlay	1,361,599		1,361,599	593,588	(768,011)
<b>Total</b>	<b>77,772,963</b>	<b>93,677</b>	<b>77,866,640</b>	<b>83,261,952</b>	<b>5,395,312</b>



# Oregon

## Public Employees Retirement System

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November 18, 2011

TO: Members of the PERS Board  
FROM: Yvette Elledge, Customer Services Division Administrator  
SUBJECT: Employer Reporting Update

PERS is currently working with 915 employer-reporting units to process all outstanding employer reports and suspended records. In addition, PERS continues to monitor all employer accounts receivables and conduct its Employer Outreach Program.

### EMPLOYER REPORTING

The table below shows the status as of October 12, 2011 of employer reports and member records for calendar years 2009, 2010, and 2011.

	<u>CY 2009</u>	<u>CY 2010</u>	<u>CY 2011</u>
Reports due:			
▪ Number expected	13,289	13,416	10,191
▪ Number received	13,289	13,393	9,920
▪ Percent received	100.00%	99.83%	97.34%
▪ Goal	99.0%	99.0%	99.0%
Reports fully posted at 100%:			
▪ Number	12,862	12,599	7,676
▪ Percent fully posted at 100%	96.79%	93.91%	75.32%
▪ Goal	95.0%	95.0%	95.0%
Records due (estimated)	3,909,902	3,657,011	2,589,471
Records not posted:			
▪ Number	5,213	17,321	128,023
▪ Percent not posted	< .2%	0.47%	4.94%
▪ Goal	≤ .2%	≤ .2%	
Contributions posted:	\$504,889,415	\$512,230,800	\$379,745,802
Contributions not posted:	\$190,002	\$1,008,055	\$15,519,479

As of October 12, 2011, employers have submitted approximately 97% of the reports due for 2011. Of the total reports expected, approximately 75% are fully posted at 100%.

There are 271 missing reports distributed across 105 employers so far in 2011. For previous full calendar years, there are 23 missing reports across 10 employers in 2010 and no missing reports in 2009.

The data for calendar year 2011 has been substantially impacted by the final system deployment in June 2011. The installation of EDX Release 6.0 introduced functionality which created changes in the posting of wage and contribution records enabling employers to report employees into a “non-qualifying” position. This functionality provides employers the ability to more accurately report employment data going forward and is the main subject of our Employer Outreach series. However, because this functionality was enabled over seven years after employers first began reporting through the EDX system, we have to correct the 143,738 member accounts impacted since 2004. Of this total, 46% or, 65,921 distinct member accounts and 87,248 distinct employment segments have inaccurate data reported for 2011 and need to be corrected. The impact of this can be seen in the chart above outlining the numbers of suspended records and contributions not posted.

A further breakdown of the data by actuarial groups shows the numbers by actuarial group type:

<b>Actuarial Group type</b>	<b>2011 Employment Segment Totals</b>
1000's (State of Oregon )	7,326
2000's (Local Governments)	14,711
3000/4000 (Academics*)	65,215
<i>*Academics includes community colleges, charter schools, school districts, OUS and OHSU.</i>	<i>OUS, OHSU and CC's =16,705 or 26% of the academic group.</i>

To address this issue, we hired four temporary staff that worked on our data migration project and began a clean-up project on July 1, 2011. The objectives of the project were three fold: (1) correct 2011 records to allow employer reports to post and minimize the impact on contributions; (2) clean up the data to increase the accuracy for the implementation of the new Online Member Services site; and (3) maximize our ability to close calendar year 2011 through the Member Account and Contribution Reconciliation (MACR). Thus far, the project team has corrected 15,200 member accounts and has been training our Employer Service Center staff so we can continue this effort through the MACR, which kicked off on November 1, 2011.

Additionally, we are more rigorously utilizing the Employer Service Center escalation process to collect missing employer reports and working with employers on strategies which will allow member records to post. At the end of the MACR in March 2012, we will conduct a retrospectives or “lessons learned” approach to assess our successes and areas needing improvement. From this, we will set productivity, training, and employer education goals for 2012.

### EMPLOYER OUTREACH PROGRAM

The increasing number of questions concerning the use of Full-Time Equivalent (FTE) to determine eligibility for PERS membership of community college academic employees resulted in an outreach presentation on this subject hosted by PERS personnel on July 18, 2011. The presentation sought to translate past PERS guidance on FTE use into clear instructions on reporting qualifying intent and hours of service for those in academic positions, with as little change as possible in current community college procedures. The presentation resulted in posting on the PERS employer website an employer announcement and a Frequently Asked Questions (FAQ) on this subject. The presentation was offered concurrently in the PERS boardroom and through iLinc for those prevented by distance or financial limitations from in-person attendance, with 14 in-person attendees and 12 iLinc distance attendees.

The Fall 2011 Employer Outreach presentation series concluded on November 10, 2011. Following precedent established for the fall 2010 presentation series, this year's fall presentations were done exclusively through the internet. This medium was chosen to increase employer outreach participation in a period still characterized by decreasing budgets, increasing work loads, and a sustained need for employer education. The fall 2011 outreach series was well-received by the employer community with registration approaching 400 employer personnel. This outreach series concentrated mainly on changes introduced with the installation of EDX Release 6.0 and how those changes support PERS membership requirements and produce increased PERS data integrity.

EDX employer training continues concurrent use of iLinc, the PERS distance presentation platform, with in-person training done in the PERS computer lab. Use of iLinc for employer training was begun last year, and allows increased PERS educational opportunities for an employer community confronted by ongoing budget limitations and travel restrictions. To date, 37 employer personnel have attended EDX employer training at the PERS headquarters and 21 have attended those same training sessions concurrently through iLinc.

### 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 October 27, 2011, we had 299 outstanding invoices (44 total employers, 14 of which are charter schools) with an aggregate balance of \$ 947,893.50. Our goal is to collect all outstanding invoices that exceed 30 days by following up with these employers by phone and letters each month.

The current total of invoices that are over 90 days delinquent is \$651,846.48, which is down \$184,952.34 from our last report of \$836,798.82. The majority of these past due invoices is the balance of charter schools invoiced for \$420,090.11.

The improvements over the last few months since our last report include:

- Sisters Charter School #4419 is current
- Armadillo Tech Charter School #4352 is current
- Estacada Charter School #4412 is now out of the 90+ day category
- Baker Web Academy # 1 & 2 is down from \$94,489.55 to \$2,096.36
- Canby Fire District #62 has been working diligently with PERS on repayments of invoices and is out of the 90+ day category. They expect to be completely current by January 2012.





# Oregon

John A. Kitzhaber, M.D., Governor

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November 18, 2011

TO: Members of the PERS Board

FROM: Jim Jost, Metrics Engineer

SUBJECT: Quarterly Report of Member Transactions

Attached is the PERS Quarterly Report of Member Transactions with updated results for the four quarters through September 30, 2011.

This report reflects production volume and pending information for five key agency activities. This information is being provided to assist the Board in understanding the general workload demands and performance of PERS' operations. The report provides a breakout of activity on both a quarterly and a cumulative, calendar year-to-date basis. The report shows the activity from the last four quarters and the year-to-date charts shows cumulative totals for the first three quarters of calendar year 2010 compared to the 2011 cumulative first three quarter results.

In addition, the 'Retirements', 'Withdrawals', and 'Estimates' activities reflect the combined statistics of Tier One, Tier Two, and OPSRP Pension Program. Pending counts do not necessarily reflect a backlog of work, but rather the normal end-of-quarter carry-over of items in the processing pipeline.

Supplemental information to assist in understanding the report is as follows:

### 'ESTIMATES' BACKLOG

Tier One and Tier Two estimates continued to be in backlog status. A backlog occurs when the number of pending estimates exceeds twice the normal amount of work-in-process. Estimate requests increased rapidly in the last quarter of 2010 and the first quarter of 2011, then leveled off in the second quarter of 2011, and finally decreased in the third quarter. This was the same pattern seen last year. It is the normal pattern seen almost every year (i.e. the estimates data exhibits seasonality).

PERS continues to give priority to those members with a retirement already scheduled, or those members with a projected retirement date within 90 days. PERS is currently meeting the needs of this population. Any available resources are being allocated to the remaining estimates based on the estimate request receipt date.

## RETIREMENTS

Second Quarter IAP “retirements” were in backlog status and the other three retirement accounts (Tier One, Tier Two and, OPSRP) were almost in backlog status. Good gains were made during the third quarter and all retirement accounts are now solidly out of backlog status. The reduction of the backlog numbers was mainly due to the normal seasonality of the data; the pending retirements reach a peak in the second quarter and then trail off in the third quarter. The main factors that cause seasonality in the data are (1) The desire to retire right after the school year ends (so they can start drawing retirement funds), and (2) In order to draw COLA benefits in the year they retire, members must complete the retirement application and retire by July 1.

Even though spikes do occur, all retirements are paid in accordance with statute. Staff continue working hard and regularly pay out a portion of finalized applications in 30 to 45 days after retirement, and pay out all within 62 days of the date the first monthly benefit was due.

Also, these numbers are slightly skewed since members apply months in advance. This causes the applications to remain in pending status longer than normal because they cannot be paid prior to their effective retirement date

The next Quarterly Board Report, reflecting the results from the fourth calendar quarter of 2011, is scheduled to be presented at the Mar 22, 2012 Board meeting.

Attachment: Quarterly Report of Member Transactions (Through Third Quarter 2011)

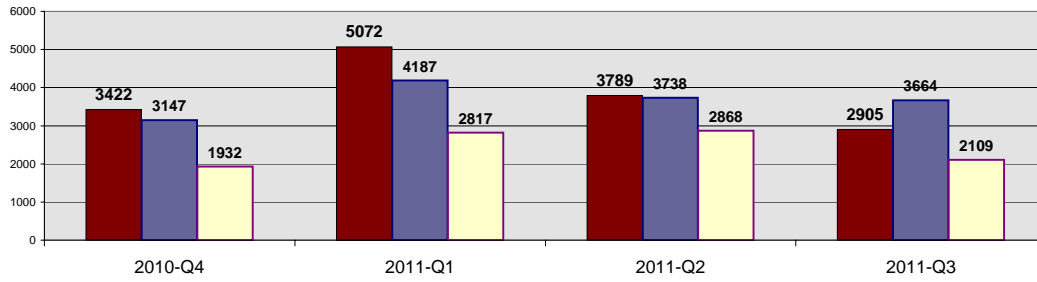
# Quarterly Report of Member Transactions

Thru Quarter Q3 2011

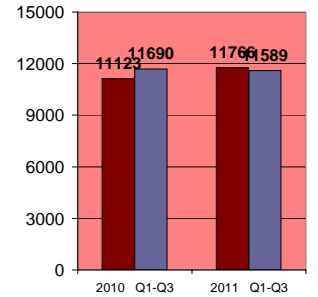
Run Date: 10/27/2011

A.2.e.

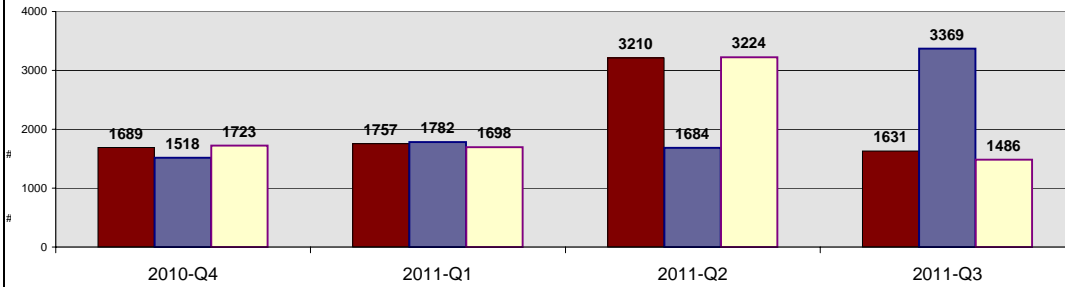
## Estimates



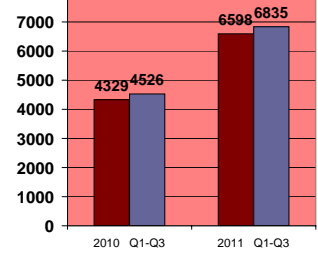
## YTD Comparison



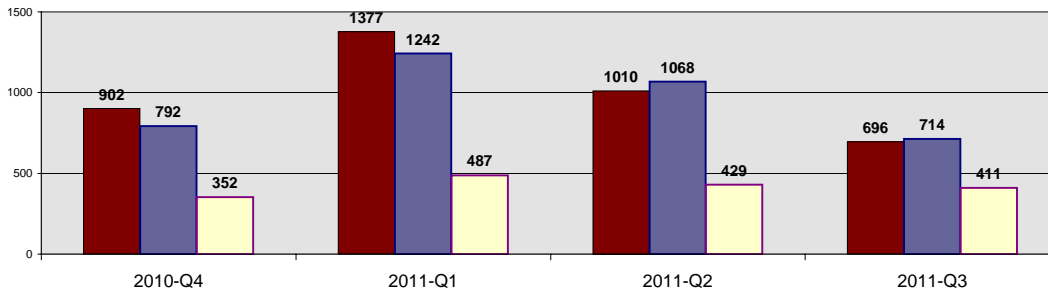
## Retirements



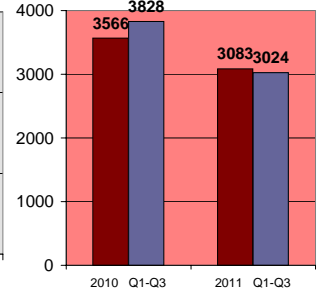
## YTD Comparison



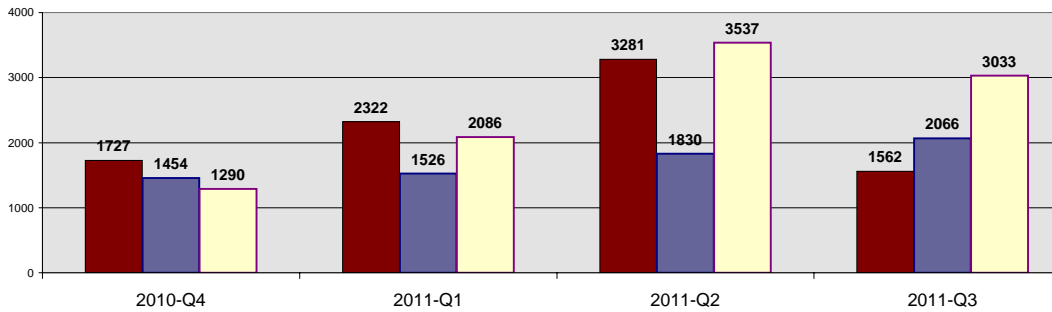
## Withdrawals



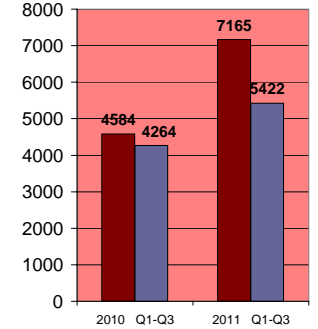
## YTD Comparison



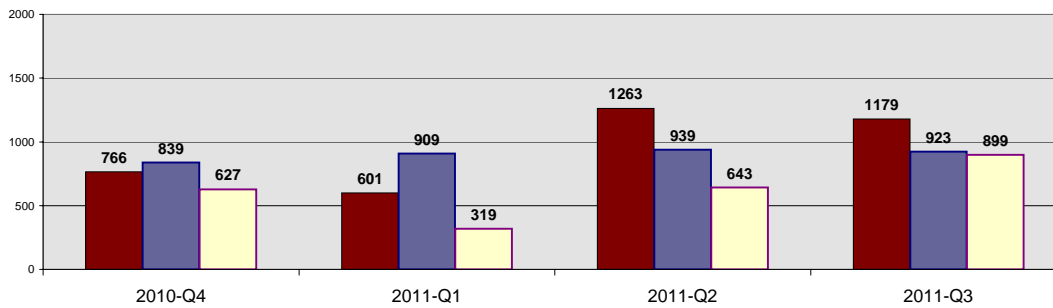
## IAP Retirements



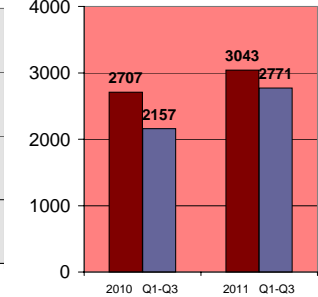
## YTD Comparison



## IAP Withdrawals



## YTD Comparison



■ Incoming     
 ■ Completed     
 ■ Pending





# Oregon

John A. Kitzhaber, MD, Governor

## Public Employees Retirement System

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November 18, 2011

TO: Members of the PERS Board  
FROM: David Crosley, Communications Officer  
SUBJECT: 2011 Customer Service Survey Results

PERS conducted customer satisfaction surveys for members (including retirees) and employers in August 2011. This was the sixth year of our survey program.

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

Our 2011 surveys continue to show good overall ratings from both members and employers. We will continue to conduct yearly surveys to measure and trend improvement in our customer service.

### **MEMBER CUSTOMER SATISFACTION SURVEY**

#### **BACKGROUND**

PERS posted a customer service survey on its website in the member and retiree sections during August 2011. We also placed a hard copy of the survey in the August 1 retiree newsletter, *Perspectives*, that retirees could complete and mail to PERS. Retirees also had the option of completing the survey online. The August 1 *Perspectives* newsletter for active members noted that the survey was available online. In total, we received 1,694 responses, a number of which included individual comments.

We identified two key issues and suggestions from the comments received as detailed below. We also describe our strategies to address those items and the methodologies used in the survey. The following graphs and charts display the survey results and provide a comparison of responses for all survey years.

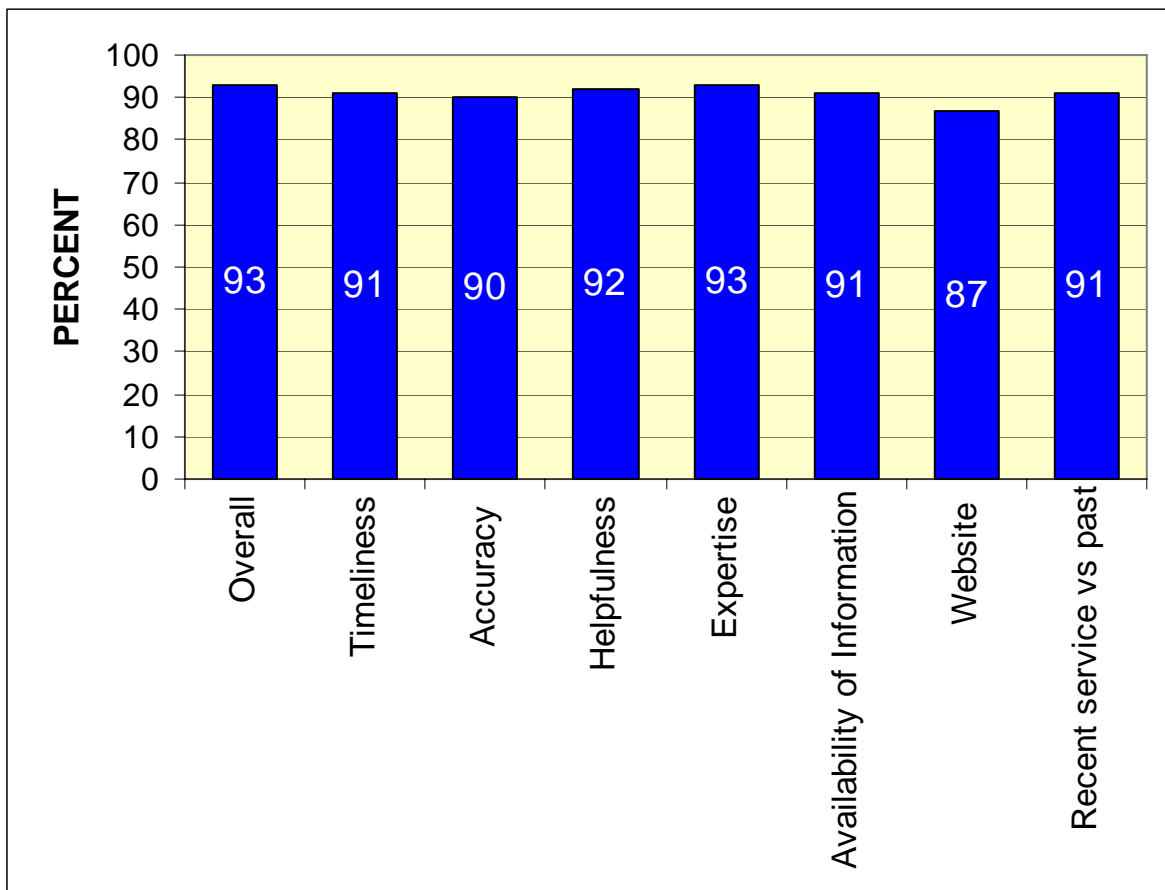
In addition to the core questions, we also asked for input regarding the PERS website:

- Was the PERS website easy to navigate?
- Did you find the information you wanted?
- Are there any changes you would make to the PERS website?

More than 87 percent of respondents said the website was easy to navigate and more than 84 percent found the information they were seeking. In many cases where information was not found, members were looking for account balances or other information that became available to retirees in August 2011 and to members in November 2011 as part of Online Member Services (OMS).

An additional question this year asked: "If you rated PERS 'Fair' or 'Poor' in any part of question 3, please tell us why you did not rate us 'Excellent' or 'Good.'" Many noted that the July 1 pension roll savings account versus checking account mix-up prompted a lower rating.

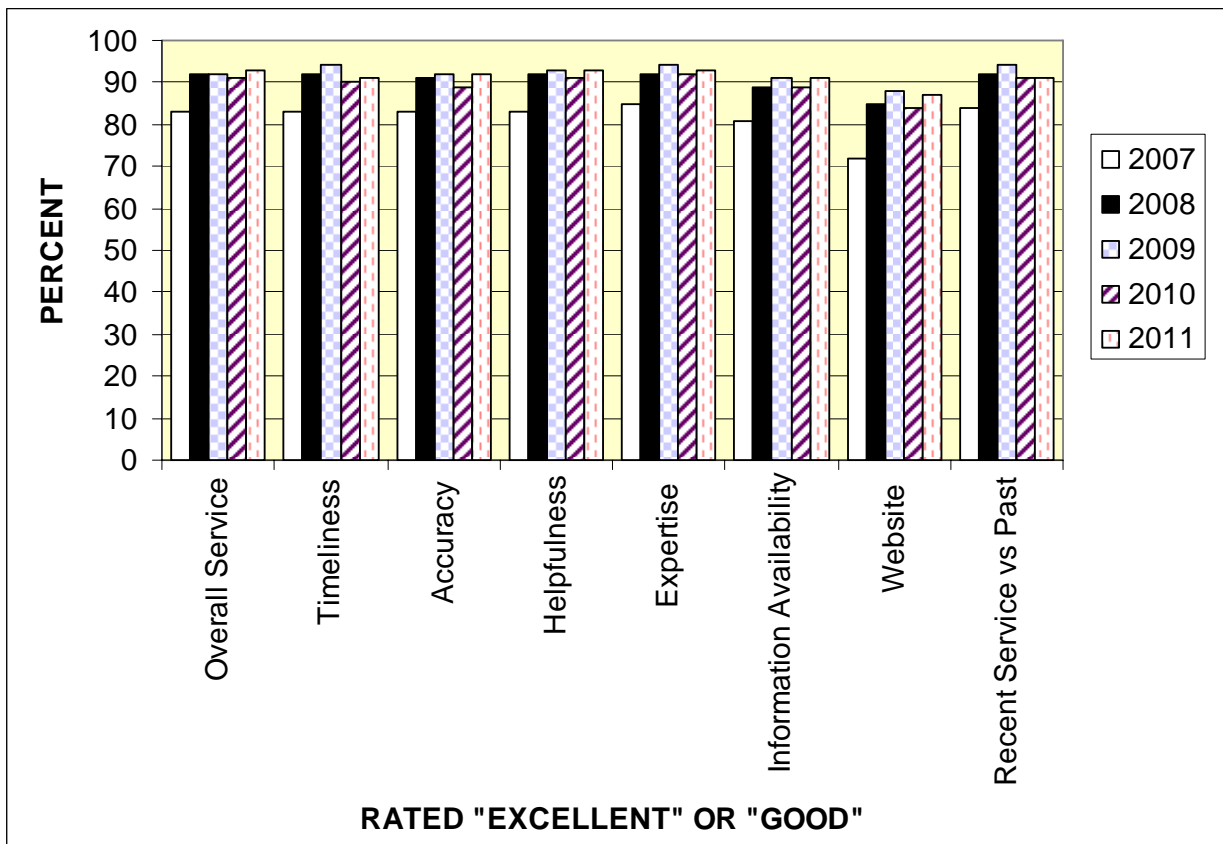
Percent of respondents rating “excellent” or “good” (the state’s Key Performance Measures do not include the “Don’t Know” responses; the numbers in the graph have been rebaselined to exclude those responses)



**Numerical results (numbers rounded)**

How do you rate...	Percent				
	Excellent	Good	Fair	Poor	Don't Know
The overall quality of service?	64	26	4	3	3
The timeliness of services PERS provides?	62	25	4	5	4
PERS' ability to provide services accurately the first time?	59	27	4	5	5
PERS' helpfulness?	64	24	4	3	5
The knowledge and expertise of PERS employees?	57	28	3	3	9
The availability of information at PERS?	59	26	5	4	6
The PERS website?	25	22	5	2	46
Our service in the past year compared to previous years?	49	24	3	4	20

**Comparison of 2007-2010 Member Results**



**KEY ISSUES AND SUGGESTIONS (in order of number of responses)**

**1. Members would like to receive benefit estimates in less time.**

Members feel that it can take too long to receive a written benefit estimate from PERS.

**Resolution:** Members can now use Online Member Services to generate a benefit estimate in a secure environment using current information stored in the PERS database. Projected costs for some purchases can also be generated online. This service is expected to reduce the number of requests for written benefit estimates, allowing PERS to process those requests faster.

**2. Members would like access to their PERS information online.**

Members would like to view their account balances and other personal information on the PERS website.

**Resolution**

Members can now use Online Member Services that allows on-line access to member-specific information and member self-service transactions.

After creating a personal account and logging in, active and inactive PERS members can create a retirement benefit estimate online, see their employment history, view their current Tier One or Tier Two account balance, and view information used in the member's annual statement. Inactive members can also submit a withdrawal application or change their address. Retirees can view benefit payment information, change their address, and review or request a 1099-R.

## **SURVEY METHODOLOGIES**

To maximize member response, PERS created this survey online and posted it in a prominent spot on our home page. We also published the location of the survey in our member and retiree newsletters, inviting members and retirees to participate. The online survey ran throughout August 2011.

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

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

The survey included a comments section. The most common comments are summarized and addressed in the respective Key Issues and Suggestions section of this report.

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

## **EMPLOYER CUSTOMER SATISFACTION SURVEY**

### **BACKGROUND**

PERS surveyed employers online for the sixth consecutive year. The 2011 results are discussed below.

The employer satisfaction survey was posted online throughout August 2011. Employers received an e-mail inviting them to take the survey; 140 responses were received, a number of which included individual comments.

We identified two key issues and suggestions from the comments received as detailed below. We also describe our strategies to address those items and the methodologies used in the survey.

The following graphs and charts display the survey results and provide a comparison of responses for all survey years.

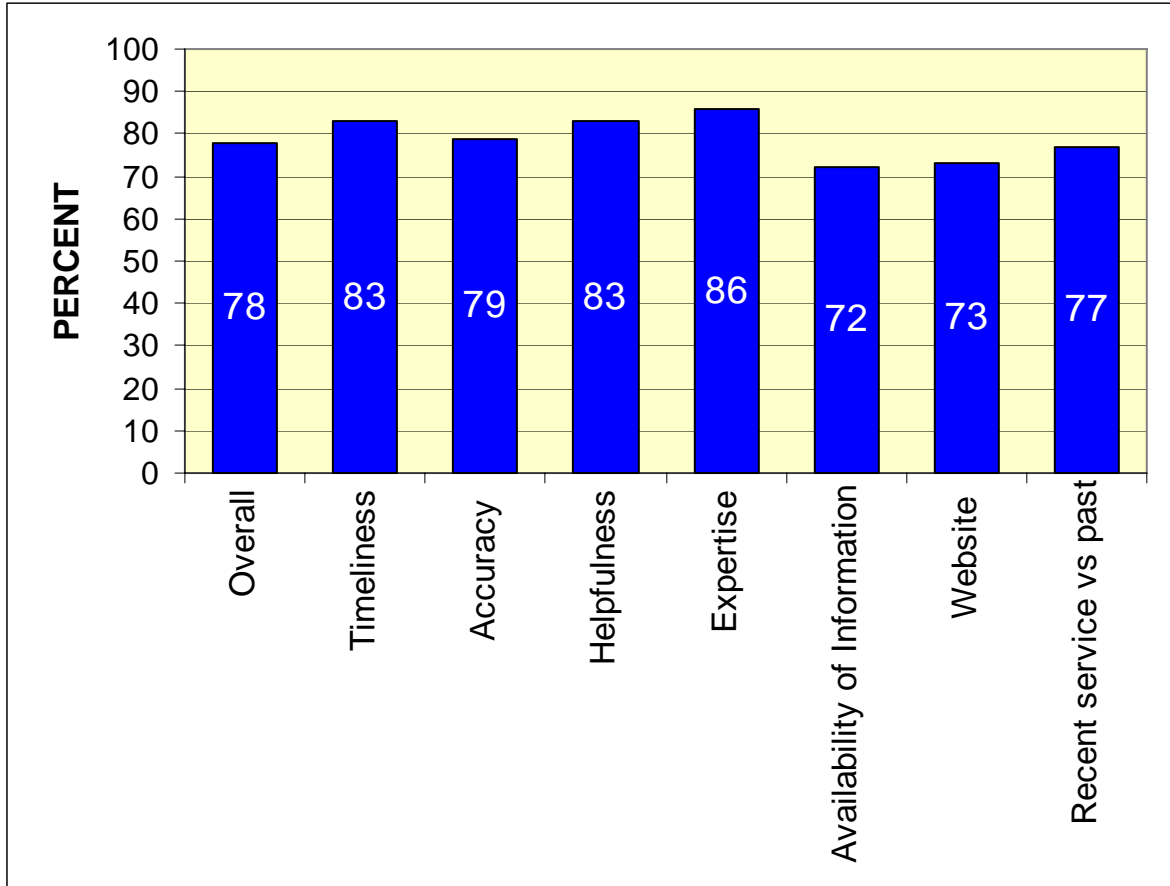
Again this year, we used three supplemental questions regarding the PERS employer website this year:

- Was the PERS employer website easy to navigate?
- Did you find the information you wanted?
- Are there any changes you would make to the PERS website?

Nearly 87 percent of employers responded that the employer website is easy or somewhat easy to navigate and 82 percent of employers responded that information they were seeking was easy or somewhat easy to find.



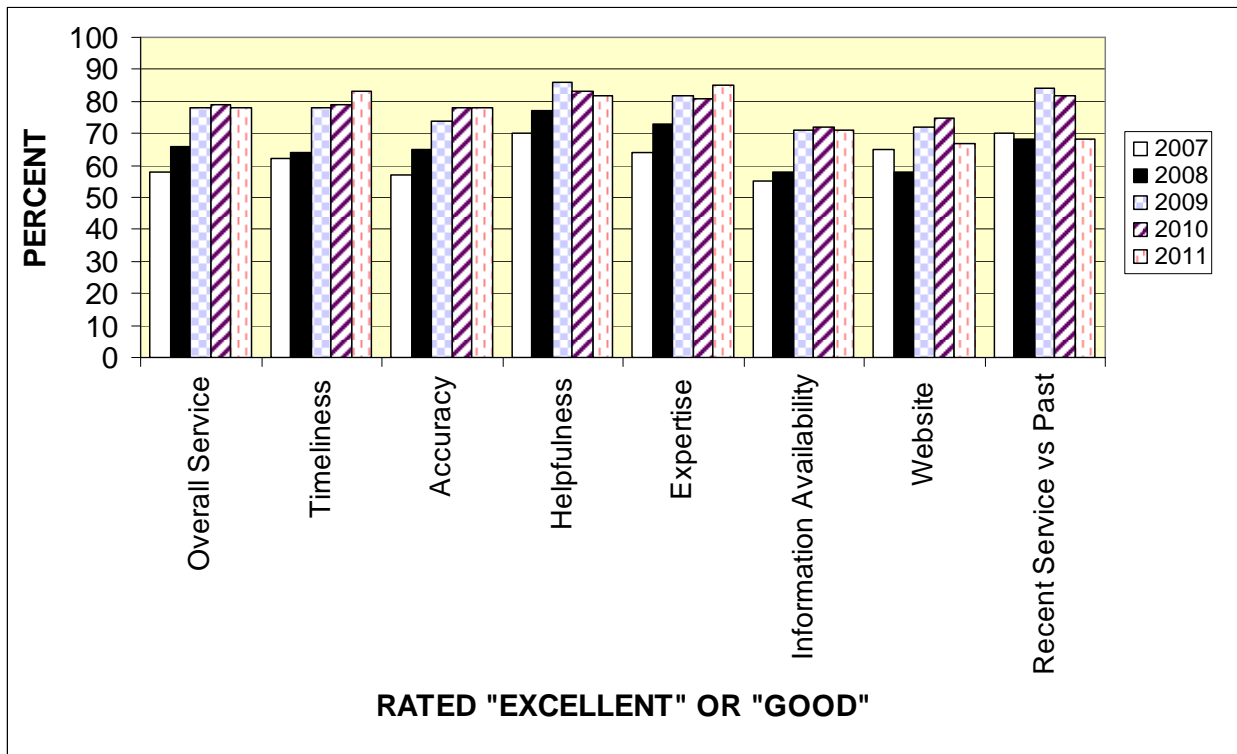
Percent of respondents rating “excellent” or “good” (the state’s Key Performance Measures do not include the “Don’t Know” responses; the numbers in the graph have been rebaselined to exclude those responses)



**Numerical results (numbers rounded)**

How do you rate...	Percent				
	Excellent	Good	Fair	Poor	Don't Know
The overall quality of service?	27	52	17	4	0
The timeliness of services PERS provides?	28	55	12	5	0
PERS' ability to provide services accurately the first time?	31	47	17	4	1
PERS' helpfulness?	39	43	13	4	1
The knowledge and expertise of PERS employees?	34	51	12	2	1
The availability of information at PERS?	26	45	20	8	1
The PERS employer website?	15	52	19	6	8
Our service in the past year compared to previous years?	27	41	19	1	12

**Comparison of 2007-2011 Employer Results**



**KEY ISSUES AND SUGGESTIONS (in order of number of responses)**

**1. Employers want telephone access to Employer Service Center representatives throughout the business day.**

Employers want to speak with an Employer Service Center representative during all business hours.

**Resolution**

The Employer Call Center is open from 8:30 a.m until noon weekdays. Employers can call their designated Employer Service Center representative at any time during the day

We will renew education efforts to let employers know that they have access to a representative throughout the work day.

**2. Employers requested that the PERS Employer website be more user friendly.**

Employers felt that information could be organized differently for ease of use.

**Resolution**

We have redesigned the Employer website with ease of use in mind and will continue to monitor this issue with our Employer Advisory Committee to identify further enhancements.

**SURVEY METHODOLOGIES**

To maximize employer response, we created this survey online and sent an email to all employers inviting them to participate. The survey ran throughout August 2011. We set the survey so more than one employee per employer could respond since we often interact with more than one employer contact.

## Survey Results

11/18/2011

Page 7 of 7

We used surveymonkey.com to create the survey, using the six key questions the state requires all state agencies to use for the Customer Satisfaction Performance Measure survey. Again this year we included two additional key questions:

1. “How do you rate the PERS website?”
2. “How do your rate our service in the past year compared to our service in previous years?”

The survey included a comments section. The most common comments are summarized and addressed in the respective Key Issues and Suggestions section of this report.





# Oregon

John A. Kitzhaber, M.D., Governor

Item A.2.g.

## Public Employees Retirement System

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November 18, 2011

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Deputy Director  
SUBJECT: Agency Mission Statement and Core Values

PERS staff are actively engaged in restating the agency's Mission Statement and Organizational Core Values as the first steps in our strategic planning and budget development processes.

Staff have developed a revised draft mission statement as follows:

“We serve the people of Oregon by administering public employee benefit trusts to pay the right person the right amount at the right time.”

Discussions on draft organization core values are also occurring throughout the agency. An update on these activities will be presented as a walk-in item at the November 18 Board meeting.





# Oregon

John A. Kitzhaber, M.D., Governor

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November 18, 2011

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Deputy Director  
SUBJECT: Agency Mission Statement and Core Values

The agency's current Mission Statement and Guiding Principles were developed in December 2003. We believed that it was time to revisit and refresh these as the first step in the agency's strategic planning process for the 2013-15 biennium. Governor Kitzhaber has asked agencies to develop outcome-based budgets and to align them with a Ten Year Outlook for state government. A refined mission statement and supporting principles are intended to aid in framing the difficult decisions that will come in evaluating this agency today and charting its future tomorrow.

Over the last few months, a work group developed a draft Mission Statement that was vetted through the agency's executives and management teams. The goal of that effort was to project the agency's mission more directly and memorably; in essence, boil it down so staff, stakeholders, and the public could have a concise expression of what the agency is here to do.

Then, teams were gathered from throughout the agency to develop Core Values that support the draft Mission Statement. Team members were selected through a self-nomination process where they had to apply for available slots based on their interest in participating in this process. Those teams, drawn from every division, then drafted the Core Values, again striving for a memorable, direct expression of how the agency hopes to achieve its mission.

The results of this process so far are included with this memo. The content is not a departure from the 2003 versions, or in fact of previous statements for this agency or other retirement systems. Instead, this is intended to be a refined restatement of the fundamental principles and aspirations that will hopefully relate better within the agency's current environment.

The next step will be to develop supporting statements for the agency's Core Operating Principles of Customer Service, Data Integrity, and Information Security. Then, the complete package will form a strong foundation not only for the agency's strategic planning but guideposts for all agency activities. The campaign to incorporate these Values and better align with our Mission will proceed over the next several months and be reflected in the agency strategic plans and budget proposals that you will review next year.







## Our Mission

We serve the people of Oregon  
by administering public employee benefit trusts  
to pay the right person the right benefit at the right time

## Our Core Values

### **Integrity**

Inspiring trust through transparency and accountability

### **Innovation**

Empowering change through collaborative teamwork

### **Simplicity**

Reducing barriers through clear communication and streamlined processes

## Our Core Operating Principles

Customer Service

Data Integrity

Information Security





# Oregon

Theodore R. Kulongoski, Governor

Item A.2.h.

## Public Employees Retirement System

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November 18, 2011

TO: Members of the PERS Board

FROM: Eva Kripalani, Chair, PERS Audit Committee

SUBJECT: Review the Annual Report of Financial Transactions of the Executive Director for the Fiscal Year Ended June 30, 2011

### REQUESTED ACTION

In accordance with PERS policy and procedure, the Chair of the Audit Committee has reviewed the summary of salary, benefits, personnel expenses, travel and other financial charges incurred by the PERS Executive Director for the fiscal year ended June 30, 2011 in the aggregate amount of \$218,804.75. The detailed financial records supporting this summary are maintained in the Fiscal Services Division.

### BACKGROUND

Oregon Accounting Manual policy number 10.90.00.PO requires that agency heads reporting to a board or commission shall delegate review and approval authority for financial transactions to the person holding the position of second-in-command to the agency head or the Chief Financial Officer, and that the delegation be in writing. This is supported by PERS policy number 1.01.02.00.001.POL, which requires the Board to establish a formal structure to ensure the proper review and approval of the Executive Director's financial transactions.

That structure is contained within PERS' procedure number 1.01.02.00.001.PRO. The procedure requires that the Deputy Director or the Chief Financial Office review and approve all financial transactions of the Executive Director, including monthly timesheets, travel claims (both in-state and out-of-state), SPOTS card purchases, etc. The procedure also requires that the Chair of the Audit Committee report to the Audit Committee and the PERS Board annually that they have reviewed the Executive Director's financial transactions, and that this review and approval be documented in the Board meeting minutes.

The Chief Financial Officer has reviewed the detailed transactions (payroll time reports, travel expense reimbursement claims and Small Purchase Order Transaction System (SPOTS) card purchases) of the Executive Director of PERS for the fiscal year ended June 30, 2011, and has determined that they were appropriately submitted and archived with supporting

documentation and contained the appropriate authorization and approval by either the Deputy Director or the Chief Financial Officer. Jason Stanley, Internal Audit Director, has also reviewed the detailed financial summaries and identified no exceptions or inappropriate financial transactions. During the 2011 fiscal year, the Executive Director had no exceptional performance leave or vacation payouts to report.

**Recommendation:**

Acknowledge receipt and acceptance of the report of the Executive Director's financial transactions for the fiscal year ended June 30, 2011 as submitted by the Chief Financial Officer, and document receipt and acceptance in the PERS Board minutes of November 18, 2011, in compliance with OAM 10.90.00 PO.



# Oregon

John A. Kitzhaber, M.D., Governor

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November 18, 2011

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Deputy Director  
SUBJECT: Adoption of Disability Eligibility Rules:  
459-015-0005, *Eligibility for Disability Retirement Allowances*  
459-076-0005, *Eligibility for Disability Benefits*

### OVERVIEW

- Action: Adopt modifications to the Disability Eligibility rules.
- Reason: Clarify the standards set forth in the administrative rules for eligibility for disability retirement at the recommendation of Internal Audit findings and make other improvements.
- Policy Issue:  
*Eligibility: For a member who is applying for a disability retirement allowance (Tier One/ Tier Two) or a disability benefit (OPSRP), what criteria should PERS apply to approve a new application?*

### BACKGROUND

Staff presented a set of rule modifications to the disability rules at the PERS Board's September 30, 2011 meeting. Greg Hartman, representing the PERS Coalition, requested additional time to provide public comment on the eligibility policy issue before the Board in that rulemaking. The public comment period for OAR 459-015-0005 and 459-076-0005 was therefore extended until October 31, 2011. The other disability rules modifications were adopted.

### POLICY ISSUE

*Eligibility: For a member who is applying for a disability retirement allowance (Tier One/ Tier Two) or a disability benefit (OPSRP), what criteria should PERS apply to approve a new application?*

To be eligible, a member must be mentally or physically incapacitated for an extended duration (90 days) and unable to perform any work for which the member is qualified. The current rules explain that criteria to mean that a member must be unable to perform any work for which qualified and to generate income that is similar in compensation (defined as 80% of the member's salary at the time of the disability).

The Administrative Law Judges who preside over the disability contested cases have applied this standard to conclude that, if the applicant is able to do any work for which qualified, it is irrelevant that the applicant is earning less than 80% of his or her former salary. The Court of Appeals commented in a footnote to the opinion in *Afzal v. PERS*, 239 Or App 284 (2010):

“We note that, under OAR 459-015-0005(1)(b), the board is also required to consider whether any such work for which the applicant is qualified would allow the applicant to generate income that is similar to his income as of the date of disability.” (Page 293)

This footnote seems to imply that one reading of the rules would be that, if the member is unable to earn income at least equal to 80% of the member’s salary at disability, the member has met PERS’ requirements for disability retirement, even though the member is able to do work for which the member is qualified.

So, on the one hand, the ALJs have held to the total, not partial, disability standard. The ability to generate income that is similar never comes into play. On the other hand, the court’s aside about the rule could imply a different interpretation. Staff proposed rule modifications to more clearly articulate the standard, holding that total disability means failing to be able to perform any work for which qualified. The “similar in compensation” standard would not be applied upon determining initial eligibility, but instead would only be considered upon review in determining whether the member has sufficiently recovered from their disability. This recommendation is based on staff’s understanding of the statutory standard which, to reiterate, is that the member is “unable to perform any work for which qualified.”

The proposed modifications to OARs 459-015-0005 and 459-076-0005 therefore provide that a member must be totally, not partially, disabled to meet the eligibility criteria for disability retirement or disability benefits. The additional criteria of “unable to generate income that is similar” was removed from eligibility and remains only with the return to work criteria in OAR 459-015-0045, which was adopted by the PERS Board in September 2011.

#### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on August 23, 2011, at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period originally ended on September 1, 2011 at 5:00 p.m. but, at the request of stakeholders, was extended for OARs 459-015-0005 and 459-076-0005 until October 31, 2011.

On October 28, 2011, PERS received public comment from Nelson Hall of Bennett, Hartman, Morris & Kaplan, LLP, on behalf of the PERS Coalition. A copy of his letter is included as Attachment 3 with this memo. PERS’ reply to his comments is set forth below.

Mr. Hall comments that there is no inherent conflict between the statutory requirement of “total” disability and the regulatory definition of disability in terms of inability to earn “similar in compensation.” Staff disagrees; while some reasonable interpretation of statute is certainly within the PERS Board’s discretion, the plain language requirement that the member not be able to perform any work for which qualified does not allow such latitude as using the 80% standard on its own. The more likely interpretation of “any” is “one, no matter what one.” If a member can do any work for which qualified, the member is not disabled. No changes were made as a result of this comment.

Mr. Hall also commented that having different standards for total disability for (a) initial application, and (b) return to work would not be helpful. Recognizing that the determination is slightly different in judging recovery rather than eligibility is, however, in staff’s view consistent

in harmonizing the statutes. ORS 238.320 and 238.340 use the same standard, “unable to perform any work for which qualified.” ORS 238.330(3), relating to returning to work from disability, allows for some earned income. Where the statutes establish different scenarios, staff recommends using standards appropriate to the scenario. Therefore, no changes were made as a result of this comment.

Mr. Hall’s comments in regard to “pre-existing condition” and when income is deemed “earned” were reviewed, but these addressed rule modifications that were already adopted by the Board at the September 2011 meeting.

### 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: No.

Impact: Members, their attorneys, administrative law judges, and staff will benefit from clear and consistent rules that address the complexities of the Tier One/Tier Two disability retirement allowance and OPSRP disability benefits program when it comes to administering disability retirements and disability benefits.

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

### RULEMAKING TIMELINE

June 15, 2011	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
July 1, 2011	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. The first public comment period began.
July 29, 2011	PERS Board notified that staff began the rulemaking process.
August 23, 2011	Rulemaking hearing held at 2:00 p.m. in Tigard.
September 1, 2011	First public comment period ended at 5:00 p.m.
September 30, 2011	Board requested that staff reopen the public comment period.
October 7, 2011	Staff informed stakeholders of public comment period extension.
October 31, 2011	Second public comment period ended at 5:00 p.m.
November 18, 2011	Board may adopt the permanent rule modifications.

### BOARD OPTIONS

The Board may:

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

### STAFF RECOMMENDATION

Staff recommends the Board choose Option #1

- Reason: Clarify the standards set forth in the administrative rules for eligibility for disability retirement at the recommendation of internal audit findings.

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.1. Attachment 1 – 459-015-0005, *Eligibility for Disability Retirement Allowances*

B.1. Attachment 2 – 459-076-0005, *Eligibility for Disability Benefits*

B.1. Attachment 3 – Nelson Hall Public Comment Letter



**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 015 – DISABILITY RETIREMENT ALLOWANCES**

1 **459-015-0005**

2 **Eligibility for Disability Retirement Allowances**

3 (1) *[Total, not partial disability, for an extended duration is required and eligibility*  
4 *for a disability retirement allowance requires that:*

5 (a) *A member be disabled to such an extent that the member is unable to perform*  
6 *any work for which qualified; and*

7 (b) *Is unable to generate any income that is similar in compensation as of date of*  
8 *disability.] **A member must be totally, not partially, disabled and unable to perform***  
9 ***any work for which qualified for an extended duration to be eligible for a disability***  
10 ***retirement allowance.***

11 (2) In determining a member’s eligibility for a disability retirement allowance, the  
12 burden of proof is upon the applicant. The Board is not required to prove whether the  
13 applicant is or is not eligible for a disability retirement allowance.

14 (3) Eligibility requirements for duty disabilities.

15 (a) *[Applicants with less than 10 years of PERS employment must establish that they*  
16 *are members of PERS and were disabled while in the actual performance of duty.] **To be***

17 ***eligible for a duty disability a member must prove:***

18 ***(A) The mental or physical incapacitation arose out of and in the course of***  
19 ***duty;***

20 ***(B) Was not intentionally self-inflicted; and***

21 ***(C) The on the job injury must be the material contributing cause of the***

22 ***disability even if the member has a pre-existing condition.***

1 *[(b) A member who has a pre-existing condition must prove that the material*  
2 *contributing cause of the disability was sustained while in actual performance of duty.]*

3 [(c)] **(b)** *[Work related stress will not be considered as the material contributing*  
4 *cause of a duty disability unless the applicant establishes all of the following:]* **For work**  
5 **related stress to be considered the material contributing cause of the disability all of**  
6 **the following criteria must be met:**

7 (A) The employment conditions producing the work-related stress exist in a real and  
8 objective sense;

9 (B) The employment conditions producing the work-related stress are conditions  
10 other than conditions generally inherent in every working situation or reasonable  
11 disciplinary, corrective or job performance evaluation actions by the employer, or  
12 cessation of employment or employment decisions attendant upon ordinary business or  
13 financial cycles;

14 (C) There is a diagnosis of a mental or emotional disorder which is generally  
15 recognized in the medical or psychological community; and

16 (D) There is evidence that the work-related stress arose out of and in the course of  
17 employment.

18 (4) Eligibility requirements for non-duty disabilities. [Eligible applicants] **A**  
19 **member applying for non-duty disability retirement** must have a minimum of 10  
20 years of employment **in a PERS qualifying position** as calculated pursuant to ORS  
21 238.320(6).

22 (5) A member’s disability retirement allowance shall be calculated based on:

23 (a) Creditable service; and

1 (b) Granted service if the member had not attained:

2 (A) Age 55 if the last qualifying position was as a police officer or a firefighter.

3 (B) Age 58 if the last qualifying position was as other than a police officer or  
4 firefighter.

5 (6) Granted service is:

6 (a) Not included in the calculation of increased benefits payable under ORS 238.380.

7 (b) Included in the calculation of increased benefits payable under ORS 238.385.

8 (7) Termination of membership. Disability retirement allowances are available only

9 to PERS members. *[PERS membership is terminated by either loss of membership or*  
10 *withdrawal of the member account balance as provided in ORS 238.095. Therefore,]*

11 *[f]Former PERS members who have terminated their membership [through loss of*  
12 *membership or withdrawal] pursuant to ORS 238.095 are not eligible to receive PERS*  
13 *disability retirement allowances.*

14 Stat. Auth.: ORS 238.650 *[& 238.095]*

15 Stats. Implemented: ORS 238.320 - 238.345



**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 76 – OPSRP DISABILITY BENEFIT**

1 **459-076-0005**

2 **Eligibility for Disability Benefits**

3 (1) *[Only disabilities arising while the member is an active member of the OPSRP*  
4 *Pension Program and are expected to last for an extended duration qualify for the*  
5 *disability benefit under ORS Chapter 238A. Members with disabilities arising after a*  
6 *member has terminated employment from a qualifying position(s) are not eligible for a*  
7 *disability benefit.] An active member must be totally, not partially, disabled and*  
8 *unable to perform any work for which qualified for an extended duration to be*  
9 *eligible for a disability benefit.*

10 (2) *[A member fails to meet the eligibility criteria for an OPSRP disability benefit:*  
11 *(a) If the member is able to perform any work for which qualified; and*  
12 *(b) Is able to generate other income that is similar in compensation, as defined in OAR*  
13 *459-076-0001(20), as of date of disability.] A member with disabilities arising after*  
14 *the member's date of termination from a qualifying position(s) is not eligible for a*  
15 *disability benefit.*

16 (3) In determining a member's eligibility for disability benefits, the burden of proof  
17 is upon the applicant. The Board is not required to prove whether the applicant is or is not  
18 eligible for disability benefits.

19 (4) Eligibility requirements for duty disabilities.

20 (a) *[Applicants with less than ten years of OPSRP retirement credit must establish*  
21 *that they are active members of OPSRP and were disabled while in the actual*

1 *performance of duty, as defined in OAR 459-076-0001(15)]. To be eligible for a duty*  
2 *disability a member must prove:*

3 *(A) The mental or physical incapacitation arose out of and in the course of*  
4 *duty;*

5 *(B) Was not intentionally self-inflicted; and*

6 *(C) The on the job injury must be the material contributing cause of the*  
7 *disability, even if the member has a pre-existing condition.*

8 *[(b) A member who has a pre-existing condition (as defined in OAR 459-076-*  
9 *0001(16)) must prove that the material contributing cause [(as defined in OAR 459-076-*  
10 *0001(8))] of the disability was sustained while in actual performance of duty.]*

11 *[(c)] (b) [Work related stress, as defined in OAR 459-076-0001(23), will not be*  
12 *considered as the material contributing cause, as defined in OAR 459-076-0001(8), of a*  
13 *duty disability unless the applicant establishes all of the following] For work related*  
14 *stress to be considered the material contributing cause of the disability all of the*  
15 *following criteria must be met:*

16 (A) The employment conditions producing the work related stress exist in a real and  
17 objective sense;

18 (B) The employment conditions producing the work related stress are conditions  
19 other than conditions generally inherent in every working situation or reasonable  
20 disciplinary, corrective or job performance evaluation actions by the employer, or  
21 cessation of employment or employment decisions attendant upon ordinary business or  
22 financial cycles;

1 (C) There is a diagnosis of a mental or emotional disorder which is generally  
2 recognized in the medical or psychological community; and

3 (D) There is evidence that the work related stress arose out of and in the course of  
4 employment.

5 (5) Eligibility requirements for non-duty disabilities. A member applying for non-  
6 duty disability benefit must meet the 10 or more years of service requirements  
7 pursuant to ORS 238A.235(2)(a) or (b).

8 *[(a) Members, other than members who are school employees as defined by ORS*  
9 *238A.140, must have a minimum of ten years of OPSRP retirement credit as calculated*  
10 *pursuant to ORS 238A.140, and the disability must arise while the applicant is an active*  
11 *member of the OPSRP Pension Program.*

12 *(b) Members, who are school employees as defined by ORS 238A.140, must have*  
13 *been active members in ten or more calendar years and the disability must arise while*  
14 *the applicant is an active member of the OPSRP Pension Program.]*

15 (6) Termination of OPSRP membership. Disability benefits are available only to  
16 active OPSRP Pension Program members. *[OPSRP membership is terminated by*  
17 *withdrawal under ORS 238A.120 or forfeiture of retirement credit under ORS 238A.145.*  
18 *Therefore, f] Former OPSRP Pension Program members who have *[withdrawn or*  
19 *forfeited] terminated membership pursuant to ORS 238A.110 are not eligible to*  
20 receive OPSRP disability benefit.*

21 (7) Return to work. If a member who is receiving a disability benefit becomes  
22 employed or receives earned income, the member's disability benefit will be terminated,  
23 effective the first of the month following employment or issuance of earned income.

1 PERS will invoice the member for, or recover under ORS 238.715, any overpayment of  
2 benefits.

3 (8) PERS may contact other public or private agencies, such as the Oregon  
4 Employment Department, the Oregon Department of Revenue, or the U.S. Internal  
5 Revenue Service to obtain employment information.

6 (9) Upon request by PERS, a member must provide PERS with a copy of the  
7 member's federal income tax returns, together with copies of IRS forms W-2.

8 Stat. Auth.: ORS *[238A.120 &]* 238A.450

9 Stats. Implemented: ORS *[238A.140 &]* 238A.235



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November 14, 2011

VIA FAX: 503-598-1218

E-MAIL: [daniel.rivas@state.or.us](mailto:daniel.rivas@state.or.us)

and Regular Mail

Steven P. Rodeman, Deputy Director  
Public Employees Retirement System  
P.O. Box 23700  
Tigard, OR 97281-3700

Dear Mr. Rodeman:

On behalf of the PERS Coalition, the following additional comments are submitted on the proposed amendments and changes to the administrative rules, specifically, the proposed changes to OAR 459-015-0001, 459-015-0005, 459-076-0001, 459-076-0005, and for modification of OAR 459-015-0001(1), (20) and (23), and 459-076-0001(18).

To begin, the stated policy reasons or justification for the proposed changes and staff recommendations, need to be addressed. To be assured, there is not an inherent conflict between the statutory requirement of "total" disability and an administrative rule that expressly or impliedly (interpreted) provides for consideration of "income similar in compensation." It is not inconsistent with the statute to define total disability in terms of an income generating capacity, just as total disability is defined in terms of vocational, educational, physical and mental capacity. The statute does not require total disability to be defined in terms of zero income, no earning capacity at all. Defining total disability to include "income similar in compensation" is statutorily allowed. Eliminating consideration of similar compensation is a radical change, not a housekeeping clarification.

If clarification is a goal, then it is respectfully submitted that having two different standards, two different definitions of total disability for initial applications versus return to work attempts does not help. Indeed, it would be more consistent, clearer, and instructive to have the same definition of total disability for both considerations. Adopting a rule change to expressly provide for consideration of similar income as one

Steven P. Rodeman, Deputy Director  
Public Employees Retirement System  
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November 14, 2011

of many factors considered in applying “qualified” to an initial application will give clear guidance to members, staff, and administrative law judges and will be consistent with “total disability” in the context of return to work and income offset provisions.

Furthermore, just as there are “practicalities of real situations” (p.4) justifying consideration of income capacity in return to work situations, there are very real life practicalities in situations of an initial application. The practicalities of life are just as real for an initial applicant as with a return to work applicant. The real life practical consequence of taking a zero income approach is to deny disability allowance to a person who physically, vocationally, cannot return to any work they have professionally performed for decades but who can hypothetically work less than half time at minimum wage in an entry level unskilled job.

Citation to *Afzal v. PERS*, 239 Or App 284 (2010) as justification for the proposed change is misplaced. It is respectfully submitted that the Court’s decision, specifically the referenced footnote, is being misinterpreted.<sup>1</sup> In the policy discussion, it is stated:

“That footnote seems to imply that, using the existing standards, if the member is unable to earn income at least equal to 80% of the member’s salary at disability, the member met PERS’ requirement for disability retirement, even though the member is able to do work for which the member is qualified.”

No. The false assumption or the false dichotomy is in finding an inconsistency between similar in compensation and “...even though the member is able to do work for which the member is qualified.” The quoted passage assumes “qualified” is to be defined only in terms of vocational, physical and mental capacity. It is not an either-or question. It is a package of qualifications, a package of capacities of which earning capacity is a critical, legitimate qualifying factor. In other words, Option 1-3 articulated by staff does

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<sup>1</sup> The Court of Appeals remanded Mr. Afzal’s case back to PERS. The Final Order on Remand was adopted on October 18, 2011. That Order has now been appealed again to the Oregon Court of Appeals. While the Court noted the factor of similar compensation, *Afzal* concerns the lack of any criteria (including vocational and physical or mental capacity, not just similar income) identified and thus properly considered for other work Mr. Afzal was allegedly qualified for.

Steven P. Rodeman, Deputy Director  
Public Employees Retirement System  
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not stray from the statute directive any more so than defining other criteria, other elements, such as vocational and physical capacity.

The Board is urged to adopt Option 1-3 and properly use “similar in compensation” (i.e., earning capacity) just as physical and vocational capacities are considered.

OAR 459-015-0001(20) 459-076-0001(18) change the definition of “pre-existing condition” but should be modified to clarify the “pre-existing” to in fact pre-exist the disabling event. Simply stated, to preexist it must exist before not after the disabling event.

Finally, while PERS staff has responded to prior comments submitted on behalf of the PERS Coalition, it is submitted that “earned income is deemed to be received ... on the date it is issued ...” in OAR 459-076-0001(9) does not have safe guards against disqualifying an applicant because income “earned” before disability is “received” after disability. The rule as proposed would disqualify an applicant if the member is paid in any given month no matter when the income was actually earned. This should be clarified.

Very truly yours,

Nelson R. Hall  
BENNETT, HARTMAN, MORRIS & KAPLAN, LLP  
On behalf of the PERS Coalition

NRH/db

cc: Carol Vogel (via fax: 503-598-1218)





# Oregon

John A. Kitzhaber, M.D., Governor

## Public Employees Retirement System

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November 18, 2011

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Deputy Director  
SUBJECT: Repeal of Continuous Service Rule:  
459-010-0005, *Continuous Service*

### OVERVIEW

- Action: Repeal Continuous Service Rule.
- Reason: The rule is obsolete.
- Policy Issue: No policy issues have been identified at this time.

### BACKGROUND

OAR 459-010-0005, Continuous Service, provides a standard for determining prior service credit for periods of employment before an employer began participating in PERS, service credit for a political subdivision which had withdrawn before July 1, 1956, and service credit with the state for a period before July 1, 1946. In addition, the rule clarifies continuity of service for employees returning to service of a participating employer or who returned from the Armed Forces as of January 1, 1945.

This rule is now obsolete. Any eligible employer who is not currently participating in PERS would not be allowed to integrate into the PERS Chapter 238 Program. Administrative rules already exist for crediting service for employees while serving in the uniformed services or Armed Forces under OAR Chapter 459, Division 11 - Retirement Credit.

### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on October 25, 2011 at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended on October 28, 2011 at 5:00 p.m. No public comment was received.

### LEGAL REVIEW

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

### IMPACT

Mandatory: No.

Impact: Members, employers, stakeholders, and staff will benefit from removing the obsolete rule.

Cost: There are no discrete costs attributable to repealing the rule.

RULEMAKING TIMELINE

August 15, 2011	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
September 1, 2011	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to legislators, employers and interested parties. Public comment period began.
September 30, 2011	PERS Board notified that staff began the rulemaking process.
October 25, 2011	Rulemaking hearing held at 2:00 p.m. in Tigard.
October 28, 2011	Public comment period ended at 5:00 p.m.
November 18, 2011	Board may adopt the permanent rule modifications.

BOARD OPTIONS

The Board may:

1. Pass a motion to “repeal the Continuous Service rule, as presented.”
2. Direct staff to make other changes to the rule or explore other options.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1

- Reason: The rule is obsolete.

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

B.2. Attachment 1 – 459-010-0005, *Continuous Service*

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

1 **[459-010-0005**

2 ***Continuous Service***

3 *(1) In computing continuous service, a year shall mean 12 consecutive months as*  
4 *registered on the calendar and, except as otherwise provided, such 12 consecutive*  
5 *months shall be those between the first day of July and the 30th day of June next*  
6 *following. ORS 237.003(3), (5) and 237.107.*

7 *(2) During each year for which a year of prior service credit was allowed, an*  
8 *employee must have been employed in a position normally requiring not less than 600*  
9 *hours of service per year and during the year must have worked not less than the major*  
10 *fraction of the year computed on a monthly, weekly, or daily basis. A major fraction of*  
11 *the year shall be more than 1/2 of the fiscal year regardless of the position held. ORS*  
12 *237.003(4).*

13 *(3) “Continuous Service” as defined in ORS 237.003(3), shall be considered as*  
14 *interrupted for one year if during a major fraction of such year the member is not or has*  
15 *not been employed by a public employer participating in the system, except as provided*  
16 *by ORS 237.091 and 237.093.*

17 *(4) Credit for prior service to a political subdivision other than a school district*  
18 *shall be given only to members who are employees of that political subdivision at the*  
19 *time they become members of the system. ORS 237.081(3).*

20 *(5) Credit for prior service to the state shall be given only to members who are*  
21 *employees of the state at the time they become members of the system. ORS 237.081(3).*

1        *(6) Adjustment of prior service credit by formula permitted to political subdivisions*  
2 *other than school districts shall be made only by adjustment of the number of years of*  
3 *prior service credit granted and not by adjustment of the amount of benefits allowed per*  
4 *year of prior service credit except as provided by ORS 237.081(2), (3) and (4).*

5        *Stat. Auth.: ORS 237*

6        *Stats. Implemented:]*





# Oregon

John A. Kitzhaber, M.D., Governor

## Public Employees Retirement System

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November 18, 2011

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Deputy Director  
SUBJECT: Adoption of Public Records Rule:  
459-060-0020, *Confidentiality of Member Records*

### OVERVIEW

- Action: Adopt modifications to the Public Records rule.
- Reason: Amend the agency's Public Records rules to incorporate the judgments in *PERS v. Oregonian Publishing Company LLC* and *PERS v. Multimedia Holdings Corporation, dba Statesman Journal and Statesman Journal Media*.
- Policy Issue: No policy issues have been identified at this time.

### BACKGROUND

This rulemaking will conform the agency's administrative rules to the circuit court judgments entered in *PERS v. Oregonian Publishing Company LLC* and *PERS v. Multimedia Holdings Corporation, dba Statesman Journal and Statesman Journal Media*. The judgments are a result of the settlement of the litigation between the agency and the newspapers that began last year, after the Oregon Attorney General issued Public Records Orders (PROs) directing PERS to disclose data about individually identified PERS benefit recipients.

As proposed, the amendments to OAR 459-060-0020 would incorporate the judgments into the administrative rule by specific reference. Thus, the resulting OAR would make clear that, notwithstanding any other confidentiality provision in rule or statute, the agency will disclose member information as set forth in the judgments.

The judgments direct the agency to disclose the name and service or disability retirement allowances of retired members by November 21, 2011. Then, by March 9, 2012, unless otherwise commanded by law, the agency will disclose additional information about benefit recipients to the extent such information is available in the agency's electronic databases. This second disclosure will include:

- a) The method used to calculate the member's retirement allowance (Money Match, Full Formula, Formula Plus Annuity);
- b) The member's "final salary";
- c) The plan under which the benefit is being paid (Tier One/Two, OPSRP, or disability);
- d) The member's retirement date; and
- e) The member's years of service.

Separately, the March disclosure will also include anonymous data that lists payments made to each alternate payee and survivor beneficiary of a retired member. The judgments direct PERS to disclose the benefit payment dollar amount, but not the names, of those benefit recipients.

The March disclosure is timed so as to allow PERS to develop the systems infrastructure that will compile the database needed, and to provide the Oregon Legislature the opportunity to provide a different policy direction in the February 2012 Session if it deems such action appropriate.

This outcome resolves many important issues for this agency:

- (1) The public components of a member's retirement record are specified so staff knows what records to disclose;
- (2) Disclosure is limited to information that can be retrieved from agency electronic databases, with additional information provided at a predetermined cost; and
- (3) The timing of the disclosures allows for the rulemaking and legislative processes to be engaged, which allow for public participation in the policy direction.

#### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on October 25, 2011, at 2:00 p.m. at PERS headquarters in Tigard after notice was published on October 1 in the *Oregon Bulletin* and sent to the PERS rulemaking contacts mailing list. No members of the public attended the hearing. The public comment period ended on October 28, 2011 at 5:00 p.m.

Many PERS retirees have contacted PERS expressing opposition to the judgments. The written submissions were included as public comments to this rulemaking and are Attachment 3 to this memo. Attachment 4 is a summary of the feedback we received through the agency call center. On October 24, 2011, PERS received public comment referencing the administrative rule from Cecile Everson, a PERS retiree. A copy of her letter is included as Attachment 5.

Ms. Everson's letter is representative of the majority of responses received from other retirees. She addressed concerns with the possibility of identity theft and risks to personal safety from release of the information, with a specific mention that the information released could be used to obtain a retiree's address, thus potentially endangering the retiree's safety. She specifically wrote the judgments "should not go forward into the Oregon Administrative Rules."

These comments reflect that individual members have different expectations about the privacy of their retirement benefit information. The Attorney General's Public Records Orders, however, concluded that, as a matter of law, members had no reasonable expectation of privacy as to that information. Unless and until that application of the law to the records in question is changed, PERS is compelled to comply with the judgments issued in this case.

On November 4, 2011, PERS was served with a lawsuit filed by Greg Hartman on behalf of individual members challenging the application of the public records law to these records. Mr. Hartman seeks an injunction prohibiting the release of the records to be disclosed on November 21, 2011. Staff is consulting with counsel on the lawsuit and will recommend the appropriate action regarding this rule making depending on the suit's posture as of the meeting date.

### LEGAL REVIEW

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

### IMPACT

**Mandatory:** Yes, without rule amendments facilitating the execution of the judgments, the agency's current public records rules regarding confidentiality of member records would be incomplete and misleading.

**Impact:** The administrative rule regarding confidentiality of member records will be updated to reflect the court judgments.

**Cost:** There are no discrete costs attributable to the rule modifications.

### RULEMAKING TIMELINE

September 15, 2011	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State. Notice was sent to legislators.
September 30, 2011	PERS Board notified that staff began the rulemaking process.
October 1, 2011	<i>Oregon Bulletin</i> publishes the Notice. Notice was sent to employers and interested parties. Public comment period began.
October 25, 2011	Rulemaking hearing held at 2:00 p.m. in Tigard.
October 28, 2011	Public comment period ended at 5:00 p.m.
November 18, 2011	Board may adopt the permanent rule modifications.

### BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to the Public Records rule, as presented.”
2. Direct staff to make other changes to the rule or explore other options.

### STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: Amend the agency's Public Records rules to incorporate the judgments in *PERS v. Oregonian Publishing Company LLC* and *PERS v. Multimedia Holdings Corporation, dba Statesman Journal and Statesman Journal Media*.

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.

Adoption – Confidentiality of Member Records Rule

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B.3. Attachment 1 – 459-060-0020, *Confidentiality of Member Records*

B.3. Attachment 2 – 459-060-0030, *Disclosure of Records Without Consent* (for information only)

B.3. Attachment 3 – Comments received regarding the public records judgments

B.3. Attachment 4 – Agency call center memo summarizing comments received

B.3. Attachment 5 – Public comment letter dated October 17, 2011 from PERS retiree Cecile Everson

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

1 **459-060-0020**

2 **Confidentiality of Member[’s] Records**

3 (1) ORS 192.502(12) unconditionally exempts from public disclosure a member’s  
4 nonfinancial membership records and an active or inactive member’s financial records  
5 maintained by PERS. PERS *[shall]* **may** not release such records to anyone other than the  
6 member, an authorized representative of the member, or the member’s estate except:

7 (a) Upon the written authorization of the member, or an individual that is legally  
8 authorized to act on behalf of the member or the member’s estate as to PERS matters; or

9 (b) As otherwise provided in OAR 459-060-0030.

10 (2) ORS 192.502(2) conditionally exempts from public disclosure a retired member’s  
11 financial information maintained by PERS. PERS *[shall]* **may** not release such records to  
12 anyone other than the member, an authorized representative of the member, or the member’s  
13 estate unless:

14 (a) To do so would not constitute an unreasonable invasion of privacy and there is clear  
15 and convincing evidence that disclosure is in the public’s interest;

16 (b) PERS receives written authorization from the member, or an individual that is legally  
17 authorized to act on behalf of the member or the member’s estate as to PERS matters; or

18 (c) Release is provided for under OAR 459-060-0030 **or as required under the**  
19 **judgments in PERS v. Oregonian Publishing Company LLC and PERS v. Multimedia**  
20 **Holdings Corporation, dba Statesman Journal and Statesman Journal Media.**

21 **(3) Information distributed pursuant to the judgments referenced in section (2)(c) of**  
22 **this rule will be updated not less than annually.**

1 ~~[(3)]~~(4)(a) Subject to subsection (b) of this section, PERS may provide a member's  
2 current or former employer with information from the member's records that is otherwise  
3 exempt from public disclosure to the extent necessary to enable the employer:

4 (A) To determine whether a non-PERS retirement plan maintained by the employer  
5 complies with any benefit or contribution limitations or nondiscrimination requirement  
6 imposed by applicable federal or state law;

7 (B) To apply any coordination of benefits requirement contained in any non-PERS  
8 benefit plan maintained by the employer;

9 (C) To perform any necessary account reconciliation following an integration of the  
10 employer's retirement plan into PERS; or

11 (D) To reconcile an actuarial valuation by providing the employer with the following  
12 member information:

13 (i) Salary information;

14 (ii) Employment history; or

15 (iii) Contribution history.

16 (b) PERS will not provide the information described in subsection (a) of this section  
17 unless the employer demonstrates to the satisfaction of PERS that the information is necessary  
18 to accomplish one of the purposes described in paragraphs (A), (B), (C) and (D) of subsection  
19 (a) and the employer certifies in writing that it will not disclose the information to any third  
20 party except to the extent permitted under this division and ORS 192.502(10).

21 ~~[(4)]~~(5) To enable an employer to comply with OAR 459-070-0100, PERS may disclose  
22 to the employer an employee's status as an active, inactive, or retired member, or a non-  
23 member.

1        ~~[(5)]~~(6) PERS will not provide a mailing list of its members or their dependents to any  
2 individual or enterprise.

3        Stat. Auth.: ORS 192.502 & 238.650

4        Stats. Implemented: ORS 192.410-192.505~~], 237.410-520, 237.610-620, 237.950-980 &~~  
5 ~~238]~~





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

1    **459-060-0030**

2    **Disclosure of Records Without Consent**

3           (1) Records otherwise exempt from disclosure will be released in compliance with a  
4    judicial order, or pursuant to a valid subpoena or administrative order, or as necessary to  
5    comply with applicable federal and state tax reporting requirements.

6           (2) In the case of a medical emergency, medical records otherwise exempt from  
7    disclosure will be released only to the extent necessary where there is a clear and immediate  
8    danger to the well-being of a member, or a former member, or their surviving dependent(s). A  
9    medical emergency exists if a person is injured or, because of some other physical or mental  
10   condition, the person is unconscious, delirious or otherwise unable to convey consent.

11          (3) Notwithstanding OAR 459-060-0020, records will be disclosed to the extent required  
12   by ORS 192.410 to 192.505.

13          Stat. Auth.: ORS 192.502 & ORS 238 .650

14          Stats. Implemented: ORS 192.410 - ORS 192.505, ORS 237 .410 - ORS 237 .520, ORS  
15   237 .610 - ORS 237 .620, ORS 237 .950 - ORS 237 .980, & ORS 238



**Letters and Emails to PERS regarding release of retiree information**

I want to tell you why I'm canceling my Oregonian subscription. I am outraged and disappointed that the newspaper is planning to publish the names and pension benefits of public employees. You are inflaming the already extreme critics of all PERS beneficiaries. We contributed large sums to our pensions over many years of working with no paid vacations and very little increase in annual pay. This feels like another attack on unions. Will there be a list of social security recipients names and work records next? Will those of us listed be targeted in our homes, our workplaces, once we are on this public list? Surely it is not legal to invade the privacy of retired people in the name of state budget planning. It's a little like putting out a list of welfare recipients as though the individuals involved had no right to privacy let alone dignity as citizens. Cancel my subscription.

Sandra Burgett

Well, now that PERS has agreed to release our names and personal retirement info to the press, what's next? Would you like me to send you my social security statement and my medical records also for release? Obviously you guys didn't provide the AG much ammunition. Public employees stopped being public property when we retired. Do retirees who have pension programs funded by publicly traded companies have to release their retirement incomes? I've never seen a board who is supposed to looking out for its members, sell members out without a fight as quick as you guys. One thing about it, by the time Congress gets done destroying social security, you guys won't be alone in the screwing over retirees business.

Disgustingly,

Michael McCullough

You do not have my permission to release any information concerning me or my retirement including my working years, working salary (including final average) retirement benefit (in 2001 or from then to now), medical benefits/lack thereof or any other financial/personal information, including my name, et al. I don't work for any public agency in Oregon, have never lived in Oregon (but paid my adjusted gross OR Income Taxes) and my personal financial information is no one's business. I am a private citizen and this is encroachment on my rights as a PRIVATE citizen.

Sincerely,

Keith L. Miller

There must be some way that retiree's names can be in initials or something else when our PERS retirement income is released. I worked in the D.A.'s office as a victim advocate on many homicides and vehicular homicides for years and do not want people to have access to my information or that of my husband. It creeps me out that this has been allowed for criminals to have this information at their hands. Something has to be done prior to the release of this information, esp. for the retirees (and their spouses) that were involved in the criminal law area.

Thank you

Kathleen Hall

I am receiving a pension benefit from Oregon PERS. DO NOT, I repeat DO NOT release my personal information to any one!

You do not have my permission to release any information concerning me, or my retirement benefit, including my working years, working salary (including final average salary) retirement benefit, medical benefits/lack thereof, or any other financial/personal information, including my name, et al. I do not work for any public agency in Oregon, do not live in Oregon, and my personal financial information is no one's business. I am a private citizen and any release of personal information is an encroachment on my rights as a PRIVATE citizen.

The courtesy of a response is requested.  
David Grilley

I don't want, nor give my permission for my financial information to be disclosed to anyone outside of PERS.

Some time ago, the Linn County Sheriff's Office sent a letter informing all persons with concealed handgun permits that they were being forced to divulge the names of all parties UNLESS they recieved written notice that individuals refused to give their permission for such disclosure.

Why wouldn't that process work in this instance?

Thank you for your attention,  
Claire Renard

IN WHOM IT MY CONCERN:

ALL YOU HAVE TO DO IS CHARGE THE NEWSPAPERS \$10000 FOR EACH MEMBERS BENEFIT AND TELL THEM THERE WILL LAW SUITS FOR ANY IDENTITY THEFT THAT RESULTS FROM THEM PUBLISHING THE INFO.

MICHIEL HENDRIX

Mr. Crosley -

Got the official letter today about PERS and The O and the S-J SETTLEMENT!

I'm sure you're the author of the letter that repeats "Judgment" about a hundred times. Implying that it's a Marion Court decision, when in fact it was an agreement PERS signed off on, based on PERS caving in to the newspapers.

Crosley, you're a worse flack than the newspaper flakes who think that since it's reasonable that the taxpayers have a right to know that their tax dollars are spent according to law and therefore, that gives the newspapers the right to look up the financial skirts of everyone who has ever worked for state or local government - and to thus further resentment against public employees. Whether deemed "legal" or not - that is simply wrong - Dickens: "If the law supposes that," said Mr. Bumble, "the law is a ass-a idiot."

Public employees are no less entitled to personal financial privacy than any other citizen. They are no different from any "private" employee - especially those who, for example, work for utilities which have a monopoly in certain geographical areas. Can you choose your electrical power company? No. Why then, shouldn't you have the right to see the salary/pension information for all their employees to ensure that your power dollars are properly spent? What's the difference?

PERS sucks, the Newspapers suck, the AG sucks, and you're a jerk-off. But I've known that from past communications. Attempting to "cover-up" the PERS complicity in this fiasco by telling all the member that it was a "judgment" - while technically correct, is just blatant cowardice by you and by PERS.

David James

Both my husband and I are retired PERS employees. The Court Judgment regarding disclosure of Retirement Benefit Amounts for all retired PERS employees alarms me greatly. I can't believe that PERS isn't appealing this ruling, and instituting court injunctions against such an action, with consideration of appeals clear to the United States Supreme Court, if necessary.

My concerns:

- 1.) Our identities, both personal, public, and financial, will be in extreme jeopardy with the revelation of such information.
- 2.) Years ago, federal employees won an agreement that they would be treated like state employees. If Oregon must do this, let's have all public employees' information out there!
- 3.) What are other states doing to their PERS employees? The same thing? If not, why should Oregon's PERS employees be subjected to ID theft, harassment, both private and public, and general shame?

Don't put your heads in your hands, for heaven's sake! We've got all the Lars Larsons, Tea Partiers, Republicans, fraud criminals, etc., salivating!

Nancy Thornton

Dear Paul Cleary,

Thank you for your letter regarding Court Judgments-Disclosure of Retirement Benefit Amounts last week. I worked my entire career with the Portland Water Bureau. Since we were paid from the proceeds of customers water usage I think all Water Bureau retirees should be excluded from the nefarious attacks by the media into our privacy. Not one penny of taxes went towards our retirement accounts. I read the Oregonian blogs online almost every day from my home in Texas. The hate and vitriol against anything PERS scares the heck out of me and I'm sure many other retirees. I appreciate all that you have tried to do protect us from the crazies out there. Please look into protecting Water Bureau retirees if you can.

Thank you very much,

Sincerely,

Gary Crystal

This is to make you aware of a letter that I have mailed (see attachment) to Attorney General John Kroger in response to the letter we received from PERS with regard to the distribution of information regarding retirees benefits.

Thank you for informing us of what has occurred with regard to the request by the media to obtain our personal information. My hope is that others will feel as strongly as I do about this issue.

Sincerely, Mrs. C. Bigelow  
(letter is below)

September 26, 2011

Attn: John Kroger  
Oregon Department of Justice  
1162 Court Street NE  
Salem, OR 97301-4096

Dear Mr. Kroger,

My husband recently received a letter from the Public Employees Retirement System with regard to disclosing the names of PERS recipients and their benefit amounts, as well as the amounts that beneficiaries will receive. I am writing to express my extreme dissatisfaction with your decision to allow that to happen.

I do not see how disclosure of names associated with benefit amounts is any part of the public's business.

Why don't you require every human being in the state to disclose their name and the amount that they receive in income or benefits so that we all can have knowledge of what is their personal business?

Does the media know that public employees waived their pay raises, etcetera, in an effort to have a retirement?

I am just so outraged by this idea that the media is entitled to have information to use at their every whim and their slanted way of distributing the information that they refer to as news. I am surprised that the people of our country have not chosen to riot as so many other countries are experiencing these days.

We "DO NOT, by law, have the right to an expectation of privacy." Are you kidding? Isn't this a part of the reason that we have so much identity theft, among other things?

I believe that you should reconsider the directive to allow two newspapers to have access to the information that we have recently been notified WILL be released by March 9, 2012.

Thank you for your time and consideration.

Mrs. Charles Bigelow

c.c. Paul R. Cleary, PERS Executive Director

Why isn't the AG appealing the circuit courts judgement, to release information about retired employee's individual income, to a higher court? I'm in favor of release of public records but have had dealings with the press most of my life (law enforcement in California and management for the State of Oregon). I have seen misuse of information by the Oregonian and other papers in order to sensationalize and sell newspapers. I have also seen them ignore the truth and never correct misinformation printed. My concern is about: 1) The exact nature and format of information released. 2) The use of the information by the media (which I know the State can not control).

David Phillips

We received a letter describing a court action by 2 Oregon newspapers in which we were advised that PERS has to make known all retirees, Tier Level, and amount received. Is the intent of the suit to cut the retirement of former state employees? Thank you.

William H. Moore

Regarding the dumb court ruling from Salem. PES is going to do something more about it isn't it????!! Your site has probably been swamped since that letter went out so I will keep it brief.  
James R. Engel

In regard to the letter I recently received dated September 20, 2011, concerning "Court Judgments--Disclosure of Retirement Benefit Amounts". I would strongly object to giving out this kind of personal private information...even when court ordered!

Is PERS still fighting this? Whatever happened to an individual's privacy????!!!!

Sincerely,  
Helen-Marie Marshall

No, I say no to this change and order by the court. Once the documents are in our hands, are they not no longer public domain?????????

Just venting.  
Thank you PERS  
Sharon K

Dear PERS Board,

I recently received notification that personal information regarding my PERS benefits is soon to be publicly disclosed. While I don't have a particular problem with disclosure any portion of my benefits derived from public funds, I do have a problem with the inclusion those portions that

came directly out of my own pocket, or portions that were not funded in any part by taxpayer dollars.

It is highly probable that these figures will be misrepresented by the media. Much of the general public will instantly and incorrectly assume that these benefits are/were funded entirely by taxpayer dollars.

You know full well that releasing my name and the amount of my PERS benefit instantly puts me in danger due to current levels of animosity and anger directed toward public employees by some factions of our society

PERS does NOT have permission to release my name in such irresponsible fashion. I would consider that an invasion of my personal privacy and would have considerable concern for my physical and financial wellbeing thereafter.

Sincerely,  
Thomas W. Drechsler

I read with dismay your letter dated Sept 20, 2011 telling us about the Marion County judgements. Are you planning an appeal? If not, why not? I strongly object to what is happening and strongly urge you to appeal this decision to a higher court. I do not want my personal information available to anyone who desires to have it. I have a right to privacy contrary to what this lower court says and expect you to appeal this decision. If time is short, ask for an injunction until an appeal can be done. Please respond to me soon.  
Stephen Mathews

I have read the letter sent to me regarding disclosure of my name and benefit amounts to the Oregonian and Statesman Journal. I take this as an invasion of privacy as described in OAR 459-060-0020. I want to go on record as strongly objecting to any PERS information about me being released without my permission, which is clearly being done for purely political purposes. I do not give you permission to do so.  
Donald D. Fehr

I am very upset with the announcement that there will be a disclosure of my PERS retirement information on 11/21.

I no longer work for a public agency and feel my personal information should not be released.

This is a huge privacy and identity issue. No one has the right to my information.

Why is the attorney general not helping it's citizens and putting a stop to this?

What can be done? Is there a class action law suit to help retirees?

Thank you.  
<No name>



The settlement agreement uses several terms including retirement benefits and benefit in describing the information that PERS will release under the settlement. My monthly benefit comes in three forms, with two separate tax codes. My benefits three parts are:

1. Pension: based on the number of years service, salary at time of retirement and multiplier.
2. My annuity, which was entirely my money that I chose to put in the annuity fund. If I had taken the money out (roll over) and placed it in a privately managed fund I would not be subject to the public review to which you have agreed.
3. My Police and Fire units were paid for with my own money.

I take the following positions:

1. I believe the public has a right to know what the pension portion of the retirement benefit is. This is based on salary, years of service and multiplier.
2. I find that you did not adequately define the types of benefits that you agreed to in the settlement. In your failure to make proper definitions of the types of funding sources it appears as though you have agreed to release my private financial information. I find to legal reason for you to agree to disclose my personal financial records to the newspapers.

Action Requested:

I am directing you and PERS not to disclose private financial records pertaining to my personal funds that are in my Annuity Account or the Police and Fire units.

Lee C. Erickson

To The PERS board of directors. This is an official and personal Notice made by me William David Morris. Current Oregon State employee number ORO126609. I am claiming all of my rights under Article IV, V, VI, and VII of the Constitution of the United States. I made a personal contract with the State Of Oregon in which I traded time and highly specialised service skills for certine personal finacial arrangements with SEIU, pers, pebb, and the State treasury. These arrangements and there terms are confidential and private. YOU MAY NOT reveal or release any information regarding my contract of employment or retirement with the State without all of the duly authorised Warrents and charges against Me personally, as outlined in the Constitution of the United States.

**I AM ABSOLUTLY SERRIOUS!!!!**

**HELL YES I WILL PUT IT IN WRITING AND SWEAR TO IT.**

**HELL YES I WILL FOLLOW IT UP IN COURT**

**SINCERLY, WILLIAM DAVID MORRIS**

Comments: Just to voice my objection to the decision of the OR ATT Gen:

It is not right to have such detailed knowledge of our person business of retirement open to the newspapers. I get that we were public employees, but, enough is enough. Our retirement was calculated by the legal laws at that time and should not be under continued scrutiny after all these years.

We paid our dues by teaching school at a salary that no one in the business community would have accepted. Let them teach for 35 years and see where they stand on this issue.

Schools are the future of America! Wish the public would support them.

I know this does no good, but if you can forward it to anywhere that matters, please do so.

Thank you,  
Marilyn Nicksic

Comments: I am worried about the disclosure issues of March 9, 2012. I don't expect my social security amounts to be published, why should my PERS be made public?  
Suzanne Auvil

Hello,

Yesterday I got the letter from Paul Cleary in regard to the above subject.

I think I had heard or read about it but figured it was such a ridiculous request that it would not get any traction. I am appalled that a couple of newspapers can be granted such an all inclusive request by courts in only one county in such detail as the letter indicates. I think this information should be confidential. The request should be denied. Surely it will be used only to continue to bad-mouth and try to cut into retirees benefits that largely are losing purchasing power.

From an outraged 30 year retiree.

David Rieben

Hello - I am a retired member, # . I recently received a communication Re: Court Judgments - Disclosure of Retirement Benefit Amounts. I would like to express my extreme concerns regarding my resultant loss of privacy if this rule change is allowed to proceed. Please inform me of appeal procedures.

Thank You

Respectfully, Cecile Everson

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I received the letter today about my retirement information being released to the Oregonian and the Statesman. This is an invasion of my privacy. What can I do about it?

I am not happy that my information is being released to news agencies. I understand the judge said it was not an infringement on my personal life but I feel it is. I have some rights too. I understand there is a group out there who have a problem with PERS. I am sorry they do. I can't do anything about it. There must be something that can be done to stop this release of personal information. Is there a group who is trying to do something? It disappoints me greatly that PERS caved in on this. Maybe there is more to it than I understand. If so, please set me straight.

Thank you, Susan Buzzard

Comments: DO NOT, I repeat DO NOT release my personal information to any one!

I'm sorry but I just don't get this deal with the disclosure agreement between PERB and the Oregonian. As far as I know, I am a private citizen now, no longer a Public Employee. Probably the same with the other private citizens who are the real injured parties with this disclosure "agreement". I am hoping that many of the others will seek injunctive relief on this travesty. It is truly outrageous. I don't believe this case against the PERS Retirees' privacy rights was won. I believe it was simply relinquished. They just gave it up! I think a real challenge against this

invasion of our privacy has credible grounds. I also believe the releasing of private information is going to open PERS (the State of Oregon) up to many lawsuits. Also the Newspapers for publishing this information. There is no reason in the world to release names, the amounts of retirements are already known. The only thing releasing names will do is cause more Public Employee bashing. I don't care if they give out all this information about pensions. But connecting individual's name to this information is a criminal invasion of privacy rights, my opinion, and I have heard a Lawyer say the same thing.

No one, PERS or anyone else has my permission to release any information concerning me or my retirement including my working years, working salary (including final average) retirement benefit , medical benefits/lack thereof or any other financial/personal information, if my name and/or the place I retired from is listed, et al. I say again, I am a private citizen and this is encroachment on my rights as a PRIVATE citizen.

Putting out a list of names and information on retirees is an invitation to all the conmen and scam artists out there. It seems older folk are targets as it is and making a list of them for conmen to work from is in my opinion just plain stupid. I'm sure the newspapers say they won't release a big list of everybody, but we all know these lists seem to find a way out into the wrong hands once they are made public, then they hit the inter-net.

What have we become, members of a slave state with no rights for public workers just because we made our careers working for a Public Agency?

James Smith

24 Sept 2011

Mr. Paul R. Cleary  
PERS Executive Director  
11410 SW 68th Parkway  
PO Box 23700  
Tigard, OR 97281-3700

Dear Mr. Cleary,

I received your letter of 20 Sept 2011 WRT the court judgments on disclosure of retirement benefit amounts.

As this is now public information that will be provided to newspapers, I would also like to request that I be sent the same information that they are provided with.

Please "c.c." and send me a copy of the transmittal letter and all attachments when you adhere to the court order to disclose the requested information. My address is shown above.

Thank you very much.

Sincerely,

Kathleen Ross

26 Sept 2011


Mr. Paul R. Cleary  
PERS Executive Director  
11410 S. W. Parkway  
Tigard, OR. 97281-3700

By receipt of this letter you are to cease and desist in your efforts to make my personal PERS info a "public disclosure." My expectation as I was going thru the retirement process was that it would be treated as confidential information. The PERS representative that guided me thru the process was considered my counsel and financial advisor in my mind. I never expected to have my rights as a private citizen usurped by organizations with a specific political agenda.

The attorney general is a fool. He apparently considers the activities of newspapers more prominent than the rights of individuals. He reviewed a "standard" and modified the law. I believe the basic law of freedom of privacy should be the standard. That was my expectation as I was providing personal information to implement my retirement.

The retirement process is a private interaction between a private citizen and a PERS representative who is to respect all rights of privacy. At the time of my retirement there was no disclosure that my personal information may become public information at any time. This is an assault to individual rights of privacy.

I have spoken with several individuals that I know that are in the PERS system. Not one ever expected his/her personal information about their personal decisions to become "public information." All efforts must be made to prevent news institutions from changing our protections at their whim.

Sincerely, 

G. Don Boone



GAIL HELEN SZEREMETA

October 25, 2011

Paul R. Cleary  
PERS Executive Director  
Public Employees Retirement System  
P. O. Box 23700  
Tigard, Oregon 97281-3700

Re: Court Judgments - Disclosure of Retirement Benefit Amounts

Dear Mr. Cleary:

I am thoroughly disgusted with the Attorney General for issuing public orders on the above subject in favor of two Newspapers. What in the world are they trying to do? What will the Newspapers do with this information? Why are they undermining PERS protection for their benefit recipients?

The Attorney General won't allow his salary to be published; why does he demand PERS recipients to have their retirement salaries published?

What will happen now?? PERS recipients will have 200 times more solicitations on the phone, more and more ID and bank account thefts on the Internet or however they can get the money. All kinds of evil, greedy and law-breaking individuals stealing that money from the recipients by whatever means they can. All I've got to live off of is Social Security and a little PERS benefit. What would happen to me if my benefits were stolen through Internet theft or someone taking me to my bank at gun point and robbing me??? (That actually happened to my mother.)

When the thefts start to happen, I hope all the PERS recipients obtain a class-action law-suit against the Attorney General as well as The Oregonian and Statesman Journal Newspapers for putting all of us in such a dangerous situation.

Sincerely,

Gail H. Szeremeta  
PERS Recipient

October 31, 2011

Paul Cleary  
Executive Director  
PERS  
P.O. Box 23700  
Tigard, OR 97281-3700

Dear Mr. Cleary,

Based on the exemption of personal information disclosure in the Oregon Revised Statutes, federal law, and SB 583, which all have laws regarding the disclosure/exemption of public records, I request that any information involving my identity or linking my identity to my PERS accounts, including my personal information, financial information, employee and retirement account information is not disclosed to anyone. Thank you.

Sincerely,

Gary A. Knowles

October 31, 2011

Mr. Paul Cleary, Executive Director  
Public Employees Retirement System  
P. O. Box 23700  
Tigard, OR 97281-3700

Re: Court Judgments – Disclosure of Retirement Benefit Amounts

I am writing to register my objection to the release of my retirement information as outlined in your September 20, 2011 communication, same subject. I understand the court judgments were based on the Oregon Attorney General's reversal of prior legal rulings that protected the release of such information.

I question how the Attorney General concluded that "...PERS benefit recipients do not, by law, have an expectation of privacy as to that information..." How did the Attorney General determine the "expectations" of benefit recipients regarding privacy? Were benefit recipients consulted regarding such "expectations"? When working as a public employee, I full well understood public scrutiny and that information about us is releasable; however, as a retiree who is no longer a public employee, my personal information is mine and should remain private unless I choose to make it known to the world. It has never been and never will be my "expectation" as a benefit recipient that I give up my privacy rights as an individual, into perpetuity, because I once worked as a public employee in the State of Oregon many years ago.

While I agree some basic information such as who are PERS benefit recipients and date of retirement may be legitimate, releasing many of the details is a clear invasion of my privacy. Why can't PERS release the information based on an unidentifiable number (but not assigned PERS number) for each benefit recipient? In this way, the requested information can be made public for accountability and transparency purposes, but without identifying data by individual name—thus protecting our privacy. Senior citizens are vulnerable enough to unscrupulous people and the more personal information that is made public, the more opportunity for potential harm. There can be no good from this for retirees and does not respect the "...individuals' reasonable expectations of privacy."

I hope you will reconsider.

Helen Small

cc: Kathleen Beaufait, OPRI



# Oregon

John A. Kitzhaber, M.D., Governor

**B.3. Attach 4**

## Public Employees Ret

Headquarters:  
11410 S.W. 68th Parkway, Tigard, OR  
Mailing Address:  
P.O. Box 23700  
Tigard, OR 97281-3700  
(503) 598-7377  
TTY (503) 603-7766  
<http://oregon.gov/PERS/>

## Memo

Date: 10/20/2011  
To: Daniel Rivas, PPLAD  
From: Josh Binkley, Call Center Manager  
RE: Public Records Release Phone calls

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The PERS member call center has seen an increase in call volume over the past few weeks. The largest driver for the increase is the ruling of the Public Records Release. Members are frantic that their information will become public.

The call center has fielded upwards of 1200 calls from members that are very upset with the ruling and looking for ways to be excluded. The members are raising concerns such as "I am worried about the safety of my family" or "I have kept my income from my children for years" and "who can we contact to express our displeasure or to stop this from happening?" Every member that calls about this issue understands that while they were working that the public would be able to gain a "ballpark" determination of what they earned, however they are now private citizens that are drawing a pension that they worked the majority of their life to earn and that should not be discoverable.

Members were initially calling and being extremely disrespectful and angry with my staff because they believed that PERS offered this information to the public. After the numerous phone calls, newspaper articles and website updates, they are looking for contact information for the Attorney General, The Oregonian, The Statesman Journal and for the most part, anyone that may be able to make a difference.

We have heard from several members that they are looking into starting a Class-Action suit. Though we know that members often times make statements in the heat of the moment, we have had a large number make this claim.

Call volume continues to be affected by these members and we are doing the best that we can to put them at ease. Please let me know if any additional information is needed.

JB

Attachments:

Records\_request.doc



October 17, 2011

Co-Speaker Bruce Hanna  
900 Court St. NE, 269  
Salem, OR 97301

Dear Co-Speaker Hanna,

I am a Medford School District Retiree. As an active public school district employee, my position was as both Child Development Specialist and Alternative Education Teacher. In each position I encountered many troubled children and parents. Most recently I worked as Shelter Teacher in Juvenile Detention Services. In this capacity I worked with court adjudicated youth awaiting further placement. Some of these adolescents had violent tendencies. Many faced placement beyond age 18.

I am disturbed by the recent letter dated September 20, 2011 which I received from PERS regarding two Marion County Circuit Court judgments requiring PERS to disclose my name and benefit amounts along with all other retired teachers, public safety personnel, and firefighters. It is very distressing to consider that my personal information will be out in the general purview readily accessible to identity theft. As if this is not enough to contemplate, my own personal safety and that of my family could be at risk. Although the judgment does not appear to include disclosure of my address, once a name is provided, an address is easily obtainable and with my financial information graphically exposed for all to witness, a temptation is presented to anyone perhaps bearing a grudge.

I understand that I was functioning as a public employee and as such, am accountable to the public as I am receiving promised public monies. I further recognize that the public has a right to know where their money is going. What I cannot comprehend is why any person needs to know my personal identity. This is a blatant breach of confidentiality and should not go forward into the Oregon Administrative Rules.

Please register my disapproval of this 'proposal.'



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

Headquarters:  
11410 S.W. 68<sup>th</sup> Parkway, Tigard, OR  
Mailing Address:  
P.O. Box 23700  
Tigard, OR 97281-3700  
(503) 598-7377  
TTY (503) 603-7766  
[www.oregon.gov/pers](http://www.oregon.gov/pers)

November 18, 2011

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Deputy Director  
SUBJECT: Temporary Adoption and Notice of Permanent Rulemaking for Uncollectible Debt Rule:  
459-005-0620, *Uncollectible Debt Owed to PERS*

### OVERVIEW

- Action: Adopt temporary new rule on uncollectible debt owed to PERS as mandated by HB 2252 (2011) and begin notice of permanent rulemaking for the new rule to implement portions of that bill.
- Reason for Temporary Rules: HB 2252 (2011) requires that an agency must adopt a set of criteria for determining when money is uncollectible. The new rule creates a standard list of criteria for determining when a debt owed to PERS is uncollectible. These criteria follow DOJ's model language and places PERS in compliance with the new law.
- Policy Issue: No policy issues have been identified.

### BACKGROUND

House Bill 2252, which became effective on June 2, 2011, provides a state agency direct authority to write off uncollectible debts on its accounts under its own criteria (previously, the Secretary of State and Attorney General had to approve the criteria). The proposed new rule establishes the criteria which are mandated by HB 2252 for PERS. As the agency's criteria must still be approved by the Attorney General, the new rule adopts the model criteria that they provided.

### JUSTIFICATION FOR TEMPORARY RULEMAKING

HB 2252 was effective upon passage, so adopting the temporary rule is necessary for PERS to complete the write-off process for any uncollectible debt. Failure to adopt the temporary rule will suspend the agency's ability to complete the write-off process until the permanent rulemaking is completed, which would stretch beyond the calendar year.

### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on November 22, 2011 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on December 1, 2011 at 5:00 p.m.

### LEGAL REVIEW

The attached rule adopts the uncollectible debt criteria and the right to offset as drafted by the Department of Justice; therefore, no further legal review is required.

### EFFECTIVE DATE

This rule will become effective upon filing. The maximum period the temporary rule can remain in effect is 180 days, so staff has initiated permanent rulemaking to replace this temporary rule.

### IMPACT

Mandatory: Yes, to comply with statutory changes.

Impact: The new OAR 459-005-0620 will implement the requirements of HB 2252 so PERS may complete the write-off process on uncollectable debts.

Cost: There are no significant costs attributable to the rule.

### RULEMAKING TIMELINE

October 14, 2011	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
November 1, 2011	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers and interested parties. Public comment period began.
November 18, 2011	PERS Board notified that staff began the permanent rulemaking process. Board may adopt the temporary rule.
November 22, 2011	Rulemaking hearing to be held at 2:00 p.m. in Tigard.
December 1, 2011	Public comment period ends at 5:00 p.m.
January 27, 2012	Staff will propose adopting the permanent rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

### BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt temporary rule OAR 459-005-0620.”
2. Direct staff to make other changes to the rule or explore other options.

### STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: The rule is needed to comply with the provisions of HB 2252, effective June 2, 2011.

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

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

1 459-005-0620

2 Uncollectible Debt Owed to PERS

3 Any debt, including interest, penalties, or any portion of the debt, may be  
4 considered to be uncollectible when the debtor has no money or other thing of value  
5 owing or held by PERS that has not been credited to the debt, and it is reasonable to  
6 conclude, after all reasonable efforts to collect the debt have been made, that one or  
7 more of the following is true:

8 (1) The debtor does not and will not for the foreseeable future own or have the  
9 right to own assets from which PERS could collect the debt.

10 (2) It is reasonably estimated that the cost of collecting the debt would equal or  
11 exceed the amount of the debt.

12 (3) The debtor is deceased, and there are no assets in the debtor's estate from  
13 which PERS could collect the debt.

14 (4) The debtor is a corporation or a limited liability company that is not and for  
15 the foreseeable future will not be engaged in any income-producing activity, and  
16 there are no assets from which PERS could collect the debt.

17 (5) The debt has previously been discharged in bankruptcy.

18 (6) The debtor's estate is subject to a pending bankruptcy proceeding in which  
19 it is reasonable to conclude that the debt will be discharged and that PERS will  
20 receive none or an insubstantial share of the assets of the bankruptcy estate.

1        (7) PERS is and will be for the foreseeable future unable to collect from the  
2 debtor or from anyone owing the debtor money or holding assets of or from the  
3 debtor.

4        (8) PERS is unable to locate the debtor despite having made reasonable efforts  
5 to do so.

6        (9) The debt has been liquidated by reduction to a court judgment,  
7 administrative order or distraint warrant, which has subsequently expired.

8        Stat. Auth.: ORS 238.650, 293.240 & 238A.450

9        Stats. Implemented: ORS 293.240(2)



# Oregon

John A. Kitzhaber, M.D., Governor

## Public Employees Retirement System

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November 18, 2011

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Deputy Director  
SUBJECT: Notice of Rulemaking for Rules to Implement 2011 Legislation

**HB 2113:**

459-005-0001, *Definitions, Generally*

459-075-0060, *Vesting in the OPSRP Pension Program*

459-080-0010, *Membership*

**HB 2456:**

459-013-0310, *Payment of Increased Benefits under ORS 238.375 to 238.385*

459-013-0320, *Payment of Increased Benefits to an Alternate Payee*

**SB 301:**

459-005-0525, *Ceiling on Compensation for Purposes of Contributions and Benefits*

459-005-0545, *Annual Addition Limitation*

459-080-0500, *Limitation on Contributions*

### OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Implement 2011 legislation impacting PERS.
- Policy Issue: No policy issues have been identified at this time.

### BACKGROUND

The 2011 Oregon Legislative Assembly passed three bills which require rulemaking to implement. The first, House Bill 2113 (chapter 722, Oregon Laws 2011), became effective on August 5, 2011. The bill was introduced at PERS' request by the Governor and contains the following technical corrections: modifications to the retirement plan options available to legislators; clean-up of trustee to trustee transfer retirement credit purchases; and clarification of vesting standards for OPSRP Pension Program and IAP members. The bill was amended to also include the provisions of HB 2114, another PERS-sponsored concept, which addressed the dual membership problem presented by members who withdraw from the IAP but are not eligible to withdraw from the OPSRP Pension Program. Lastly, the bill was amended to include the SB 950 provisions authorizing the Oregon Savings Growth Plan (OSGP) to offer a Roth 457 account to conform to a change in federal law.

House Bill 2456 (chapter 653, Oregon Laws 2011), became effective on August 2, 2011. The bill prohibits PERS from paying an increased benefit under the tax remedy provisions of HB 3349 (Chapter 569, Oregon Laws 1995) if a person is not subject to Oregon personal income tax under ORS 316.127(9). The prohibition against payment of the HB 3349 tax remedy does not apply to members who retired before January 1, 2012 and persons who received payments attributable to retirement of a member who retired before January 1, 2012. This bill does not affect the payment of the tax remedy enacted by SB 656 (1991 Session), codified at ORS 238.385.

Senate Bill 301 (Chapter 7, Oregon Laws 2011), became effective on September 29, 2011. The bill updates the connection date to the federal Internal Revenue Code and other provisions of federal tax law.

Staff has reviewed the bills and determined that certain existing rules need modification to conform to these statutory provisions, and that two new rules are needed to implement the tax remedy provisions of HB 2456. Note that rules to implement the Roth 457 provisions in HB 2113 will be noticed at the January 2012 Board meeting. More staff time was needed to develop the new program's parameters that would need to be included in the rule.

The proposed rule modifications are summarized below.

#### SUMMARY OF PROPOSED RULE MODIFICATIONS

##### HB 2113:

OAR 459-005-0001, *Definitions, Generally*: The definition of “Legislator” was edited to eliminate unnecessary and inconsistent statutory references.

OAR 459-075-0060, *Vesting in the OPSRP Pension Program*: Section (5) of the current rule describes is being deleted as obsolete, as this option was eliminated under HB 2113.

OAR 459-080-0010, *Membership*: Section (4) was added to accommodate the amendment of ORS 238A.300 by HB 2113. An inactive member of the OPSRP Pension Program who is a terminated member of the IAP by reason of withdrawal who returns to qualifying employment returns to active membership in the OPSRP Pension Program and the IAP on the same day. Other minor edits were made for consistency and clarity.

##### HB 2456:

OAR 459-013-0310, *Payment of Increased Benefits under ORS 238.375 to 238.385*: This new rule is needed to address the residency requirement added by HB 2456 for certain persons who will be receiving a tax remedy increase. Initial eligibility will be determined when the person's application for payments is processed by PERS. The initial eligibility for an increased benefit and the continuation of the increased benefit may be affected by a person's residency.

OAR 459-013-0320, *Payment of Increased Benefits to an Alternate Payee*: This new rule is added to address the application of HB 2456 to alternate payees who would receive a tax remedy increase. The initial eligibility for an increased benefit and the continuation of the increased benefit would be affected by the alternate payee's residency without regard to an associated member's residency.

SB 301:

OAR 459-005-0525, 459-005-0545 and 459-080-0500: The federal limits on the amount of contributions paid to a qualified plan have been adjusted. The proposed rule modifications incorporate these adjustments. Minor edits were also made to update ORS and Internal Revenue Code citations.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on November 22, 2011, at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on December 1, 2011 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 bills do not compel rulemaking, but the current rules should be modified to accommodate the provisions of HB 2113, HB 2456, and SB 301.

Impact: Stakeholders will benefit from the rules' clarification and implementation of the statutory provisions.

Cost: There are no discrete costs attributable to the rules. Any programming costs are attributable to the bills.

RULEMAKING TIMELINE

October 14, 2011	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
November 1, 2011	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers and interested parties. Public comment period began.
November 18, 2011	PERS Board notified that staff began the rulemaking process.
November 22, 2011	Rulemaking hearing to be held at 2:00 p.m. in Tigard.
December 1, 2011	Public comment period ends at 5:00 p.m.
January 27, 2012	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 November 22, 2011 at PERS Headquarters in Tigard. The public comment period ends on December 1, 2011. The rules are scheduled to be brought before the PERS Board for adoption at the January 27, 2012 Board meeting.



Notice – Rules to Implement 2011 Legislation

11/18/11

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B.5. Attachment 1 – 459-005-0001, *Definitions, Generally*

B.5. Attachment 2 – 459-075-0060, *Vesting in the OPSRP Pension Program*

B.5. Attachment 3 – 459-080-0010, *Membership*

B.5. Attachment 4 – 459-013-0310, *Payment of Increased Benefits under ORS 238.375 to 238.385*

B.5. Attachment 5 – 459-013-0320, *Payment of Increased Benefits to an Alternate Payee*

B.5. Attachment 6 – 459-005-0525, *Ceiling on Compensation for Purposes of Contributions and Benefits*

B.5. Attachment 7 – 459-005-0545, *Annual Addition Limitation*

B.5. Attachment 8 – 459-080-0500, *Limitation on Contributions*

**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  
11 a 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,”  
19 assume or pay in accordance with ORS 238.205 and 238.515(b). “Before-tax”  
20 contributions are not included in the member’s taxable income for purposes of state or  
21 federal income taxation at the time paid to PERS. “Before-tax” contributions are included  
22 in:

1            (a) Computing final average salary; and

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

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

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

9            (6) “Contributions” means any contributions required or permitted pursuant to ORS  
10 238.200 or 238.515.

11           (7) “Differential wage payment” means a payment made on or after January 1, 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, while  
14 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 received  
16 from the employer if the member were performing service for the employer.

17           (8) “Effective date of withdrawal” means the later of:

18           (a) The first day of the calendar month in which PERS receives the last completed  
19 document required from a member who requested a withdrawal; or

20           (b) The first day of the second calendar month following the calendar month in  
21 which the member terminated employment with all participating employers and all  
22 employers in a controlled group with a participating employer.

23           (9) “Effective retirement date” means:

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

2            (b) For disability retirements, the date described in OAR ~~[459-015-0015]~~ 459-015-

3 0001.

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

10           (12) “Employee” has the same meaning as provided in ORS 238.005~~[(7)]~~(8) 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 (13) “Employer contribution account” means a record of employer contributions to  
2 the Fund, as required by ORS 238.225(1), and investment earnings attributable to those  
3 contributions, that the Board has credited to the account after deducting amounts required  
4 or permitted by ORS Chapter 238.

5 (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 (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 (16) “FAS” and “final average salary” have the same meaning as provided in:

16 (a) ORS 238.005~~[(8)]~~(9) 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 (17) “General service member” means membership in PERS as other than a judge  
23 member, a police officer, a firefighter, or a legislator.

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

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

8 (20) “Judge member” has the same meaning as provided in ORS 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~~(15)~~*[(12)(b), (c), and (d), respectively]*.

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

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

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

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

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

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

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

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

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

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

19 (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 (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 (33) “Vacation pay” means a lump sum payment for accrued leave in a Vacation  
5 Leave Program provided by a public employer which grants a period of exemption from  
6 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 must report to PERS the amount of any lump sum pay-  
17 off for the percentage that represents vacation leave.

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

22 (35) “Variable Annuity Account” means the account established in ORS 238.260(2).



1        (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        (37) “Year” means any period of 12 consecutive calendar months.

7        Stat. Auth.: ORS 238.650

8        Stats. Implemented: ORS [Chapter](#) 238

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

1 **459-075-0060**

2 **Vesting in the OPSRP Pension Program**

3 For the purpose of determining vesting under ORS 238A.115(1)(a):

4 (1) Hours of service performed for all participating public employers during a  
5 calendar year are included.

6 (2) Hours of service performed during the six-month period required to establish  
7 membership under ORS 238A.100 are included.

8 (3) For calendar years beginning on or after January 1, 2004, hours of service will be  
9 determined based on hours reported to PERS by the member’s employer(s) pursuant to  
10 OAR 459-070-0100.

11 (4) An eligible employee first employed by a participating public employer on or  
12 after August 29, 2003 and before January 1, 2004 is presumed to have performed less  
13 than 600 hours of service in calendar year 2003 unless records provided to PERS  
14 establish that the eligible employee performed at least 600 hours of service in the  
15 calendar year.

16 *[(5) If a member of the PERS Chapter 238 Program is elected or appointed to the*  
17 *Legislative Assembly and elects under ORS 237.650 to participate in the Oregon Public*  
18 *Service Retirement Plan for the member’s legislative service, for calendar years*  
19 *beginning before January 1, 2004, the member is presumed to have performed 600 hours*  
20 *of service in any calendar year in which the member was an active member of the system*  
21 *unless records provided to PERS establish that the eligible employee did not perform at*  
22 *least 600 hours of service in the calendar year.]*

1        ~~[(6)]~~ (5) Hours of service attributable to periods of active membership before  
2        termination of membership under ORS 238.095 and hours of service excluded under  
3        ORS 238A.120 and 238A.145 may not be included.

4        Stat. Auth.: ORS 238A.450

5        Stats. Implemented: ORS 238A.010, 238A.115

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

1 **459-080-0010**

2 **Membership**

3 (1) An employee who is eligible for membership in the pension program under OAR  
4 459-075-0010 *[shall]* becomes a member of the individual account program on the same  
5 *[day membership is established in]* date the employee becomes a member of the  
6 pension program.

7 (2) An employee who was an active or inactive member of PERS on August 28,  
8 2003, and retains membership in PERS through January 1, 2004, *[shall]* becomes a  
9 member of the individual account program on January 1, 2004.

10 (3) An employee who performed a period of service before August 29, 2003, that  
11 was credited to the six-month period required under ORS 238.015 for membership in  
12 PERS *[shall]* becomes a member of the individual account program on the date the  
13 employee becomes a member of PERS, or January 1, 2004, whichever is later.

14 (4) An employee may become a member of the individual account program as  
15 provided in ORS 238A.300(2).

16 Stat. Auth.: *[OL 2003 Ch. 733]* ORS 238A.450

17 Stats. Implemented: *[OL 2003 Ch. 733]* ORS 238A.300, 238A.305 & OL 2011 Ch.

18 722



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

1 459-013-0310

2 Payment of Increased Benefits under ORS 238.375 to 238.385

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

4 (a) “Person” includes but is not limited to trusts and charitable organizations  
5 that are beneficiaries.

6 (b) “Resident” has the same meaning as defined in ORS 316.027.

7 (2)(a) The percentage of the increased benefit payable to a person under ORS  
8 238.380(1) to (3) and chapter 653, Oregon Laws 2011 will be determined when the  
9 person’s application for payments is processed by PERS.

10 (b) Once determined by PERS, the increased benefit percentage payable to the  
11 person may not change, but payment of the increased benefit to the person may stop  
12 or restart as a result of changes in the person’s residency.

13 (3) Effect of Residency on Determination and Payment of Increased Benefit.

14 For the purposes of the determination under section (2)(a) of this rule:

15 (a) A person who is a resident of the state of Oregon and who otherwise meets  
16 the requirements under ORS 238.380 may receive an increased benefit under ORS  
17 238.380.

18 (b) A person who meets the requirements under ORS 238.385 may receive an  
19 increased benefit under ORS 238.385 regardless of residency.

20 (c) A person who is not a resident of the state of Oregon who otherwise meets  
21 the requirements of ORS 238.380 and 238.385 may receive only the increased  
22 benefit under ORS 238.385.

1        (d) A person who is not a resident of the state of Oregon who otherwise meets  
2 the requirements of ORS 238.380 but does not meet the requirements of ORS  
3 238.385 may not receive the increased benefit under ORS 238.380. If the person  
4 described in this subsection becomes a resident of the state of Oregon after  
5 payments begin, the person may receive an increased benefit under ORS 238.380 as  
6 provided in chapter 653, Oregon Laws 2011.

7        Stat. Auth.: ORS 238.650

8        Stats. Implemented: ORS 238.375, 238.380, 238.385, OL 2011, Ch. 653

9        (Enrolled House Bill 2456)

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

1 459-013-0320

2 Payment of Increased Benefits to an Alternate Payee

3 (1) The provisions of this rule apply to an alternate payee who receives  
4 retirement benefit payments:

5 (a) Derived from an “alternate payee account” or a separate benefit option as  
6 provided under OAR 459-045-0010(2) or (3)(b); and

7 (b) With the first payment issued on or after January 1, 2012.

8 (2) The percentage of the increased benefit payable to the member, as  
9 determined under ORS 238.380; chapter 653, Oregon Laws 2011; and OAR 459-  
10 013-0310 is the increased benefit percentage payable to an alternate payee.

11 (3) If the member is a person described in OAR 459-013-0310(3)(d), then the  
12 payment of the increased benefit to the alternate payee is governed by the residency  
13 of the alternate payee.

14 (a) An alternate payee who is a resident of the state of Oregon may receive the  
15 increased benefit under ORS 238.380 regardless of the residency of the member.

16 (b) An alternate payee who is not a resident of the state of Oregon may not  
17 receive the increased benefit under ORS 238.380 regardless of the residency of the  
18 member. If the alternate payee becomes a resident of the state of Oregon after  
19 payments begin, the alternate payee may receive an increased benefit under ORS  
20 238.380 as provided in chapter 653, Oregon Laws 2011.

21 (4) An alternate payee described in section (1) of this rule whose retirement  
22 benefit payments began before January 1, 2012 may receive an increased benefit



1 under ORS 238.380 or 238.385 regardless of the member's or alternate payee's  
2 residency.

3 Stat. Auth.: ORS 238.650

4 Stats. Implemented: ORS 238.375, 238.380, 238.385, 238.465, OL 2011, Ch. 653

5 (Enrolled House Bill 2456)

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

1 **459-005-0525**

2 **Ceiling on Compensation for Purposes of Contributions and Benefits**

3 (1) The purpose of this rule is to assure compliance of the Public Employees Retirement  
4 System (PERS) with Internal Revenue Code (IRC) Section 401(a)(17) relating to the  
5 limitation on annual compensation allowable for determining contribution and benefits under  
6 ORS Chapters 238 and 238A.

7 (2) Definitions:

8 (a) “Annual compensation” means “salary,” as defined in ORS 238.005, *[and]* 238.205  
9 *[with respect to Chapter 238]* and *[in]* 238A.005 *[with respect to Chapter 238A]* paid to the  
10 member during a calendar year or other 12-month period, as specified in this rule.

11 (b) “Eligible participant” means a person who first becomes a member of PERS before  
12 January 1, 1996.

13 (c) “Employer” means a “public employer” as defined in ORS 238.005 *[(17), for the*  
14 *purposes of this rule as it applies to Chapter 238. For the purposes of this rule as it applies to*  
15 *Chapter 238A, an “employer” means a]* and “participating public employer” as defined in  
16 238A.005 *[(11)]*.

17 (d) “Noneligible participant” means a person who first becomes a member of PERS after  
18 December 31, 1995.

19 (e) “Participant” means an active or inactive member of PERS.

20 (3) For eligible participants, the limit set forth in IRC Section 401(a)(17) shall not apply  
21 for purposes of determining the amount of employee or employer contributions that may be  
22 paid into PERS, and for purposes of determining benefits due under ORS Chapters 238 and

1 238A. The limit on annual compensation for eligible participants shall be no less than the  
2 amount which was allowed to be taken into account for purposes of determining contributions  
3 or benefits under former 237.001 to 237.315 as in effect on July 1, 1993.

4 (4) For noneligible participants, the annual compensation taken into account for purposes  
5 of determining contributions or benefits under ORS Chapters 238 and 238A shall be measured  
6 on a calendar year basis, and shall not exceed ~~[230,000]~~ \$245,000 per calendar year  
7 beginning in ~~[2008]~~ 2011.

8 (a) The limitation on annual compensation will be indexed by cost-of-living adjustments  
9 in subsequent years as provided in IRC Section 401(a)(17)(B).

10 (b) A noneligible participant employed by two or more agencies or instrumentalities of a  
11 PERS participating employer in a calendar year, whether concurrently or consecutively, shall  
12 have all compensation paid by the employer combined for determining the allowable annual  
13 compensation under this rule.

14 (c) PERS participating employers shall monitor annual compensation and contributions  
15 to assure that reports and remitting are within the limits established by this rule and IRC  
16 Section 401(a)(17).

17 (5) For a noneligible participant, Final Average Salary under ORS 238.005~~[(8) with~~  
18 ~~respect to Chapter 238]~~ and ~~[under]~~ 238A.130 ~~[with respect to Chapter 238A]~~ shall be  
19 calculated based on the amount of compensation that is allowed to be taken into account  
20 under this rule.

21 (6) Notwithstanding section (4) and (5) of this rule, if the Final Average Salary as  
22 defined in ORS 238.005~~[(8) with respect to Chapter 238]~~ and ~~[as defined in]~~ 238A.130 ~~[with~~  
23 ~~respect to Chapter 238A]~~ is used in computing a noneligible participant's retirement benefits,  
24 the annual compensation shall be based on compensation paid in a 12-month period beginning

1 with the earliest calendar month used in determining the 36 months of salary paid. For each  
2 12-month period, annual compensation shall not exceed the amount of compensation that is  
3 allowable under this rule for the calendar year in which the 12-month period begins.

4 (7) *[With respect to ORS Chapter 238, c]*Creditable service, as defined in 238.005*[(5)]*,  
5 shall be given for each month that an active member is paid salary or wages and allowable  
6 contributions have been remitted to PERS, or would be remitted but for the annual  
7 compensation limit in IRC Section 410(a)(17). *[With respect to Chapter 238A, r]*Retirement  
8 credit as determined in 238A.140*[,]* shall be given for each month that an active member is  
9 paid salary or wages and allowable contributions have been remitted to PERS, or would be  
10 remitted but for the annual compensation limit in IRC Section 401(a)(17).

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

12 Stat. Auth.: ORS *[238.630,]* 238.650 & 238A.450*[005(16)(c)(I)]*

13 Stats. Implemented: ORS chapter 238, 238A & IRC Section 401(a)(17)



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

1 **459-005-0545**

2 **Annual Addition Limitation**

3 (1) Applicable Law. This administrative rule shall be construed consistently with the  
4 requirements of the Internal Revenue Code (IRC) Section 415(c) and the Treasury regulations  
5 and Internal Revenue Service rulings and other interpretations issued thereunder.

6 (2) Annual Addition Limitation. Except as otherwise provided in this rule, a member's  
7 annual additions to PERS for any calendar year after ~~[2007]~~ 2011 may not exceed *[the lesser*  
8 *of the following amounts:*

9 *(a) \$46,000] \$49,000 (as adjusted under IRC Section 415(d)).~~]; or~~*

10 *(b) One hundred percent of the member's compensation for the calendar year (as defined*  
11 *in IRC Section 415(c)(3)).]*

12 (3) Annual Additions. For purposes of this rule, the term “annual additions” has the same  
13 meaning as under IRC Section 415(c)(2).

14 (4) Permissive Service Credit. The following special rules shall apply with respect to  
15 purchases of permissive service credit, as defined in OAR 459-005-0540, Permissive Service  
16 Credit:

17 (a) If a member's after-tax contributions to purchase permissive service credit are  
18 included in the member's annual additions under section (3) of this rule, the member *[shall]*  
19 may not be treated as exceeding the *[100 percent of compensation]* limitation under  
20 *[sub]section (2)[(b)]* of this rule solely because of the inclusion of such contributions.

21 (b) With respect to any eligible participant, the annual addition limitation in section (2) of  
22 this rule *[shall]* may not be applied to reduce the amount of permissive service credit to an

1 amount less than the amount that could be purchased under the terms of the plan as in effect  
2 on August 5, 1997. As used in this subsection, the term "eligible participant" includes any  
3 individual who became an active member before January 1, 2000.

4 (5) Purchase of Service in the Armed Forces Under ORS 238.156 or 238A.150. If a  
5 member makes a payment to PERS to purchase retirement credit for service in the Armed  
6 Forces pursuant to 238.156~~[(3)(c)]~~ or 238A.150 and the service is covered under Internal  
7 Revenue Code Section 414(u), the following special rules shall apply for purposes of applying  
8 the annual addition limitation in section (2) of this rule:

9 (a) The payment shall be treated as an annual addition for the calendar year to which it  
10 relates;

11 (b) The payment ~~[shall]~~ may not be treated as an annual addition for the calendar year in  
12 which it is made; and

13 (c) The member shall be treated as having received the following amount of  
14 compensation for the period of service in the Armed Forces to which the payment relates:

15 (A) The amount of compensation the member would have received from a participating  
16 employer had the member not been in the Armed Forces; or

17 (B) If the amount in paragraph (A) of this subsection is not reasonably certain, the  
18 member's average compensation from the participating employer during the 12-month period  
19 immediately preceding the period of service in the Armed Forces ~~[(or, if shorter, the period~~  
20 of employment immediately preceding the period of service in the Armed Forces~~)]~~.

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

22 Stat. Auth.: ORS ~~[238.630,]~~ 238.650 & 238A.~~450~~[370]

23 Stats. Implemented: ORS ~~[238.005 - 238.715]~~238.156, 238A.150 & 238A.370

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

1 **459-080-0500**

2 **Limitation on Contributions**

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

4 (a) “Annual addition” has the same meaning given the term in 26 U.S.C. 415(c)(2)

5 as in effect on *[August 29, 2003]* **December 31, 2010.**

6 (b) “Compensation” has the same meaning given the term in 26 U.S.C. 415(c)(3) as

7 in effect on *[August 29, 2003]* **December 31, 2010.**

8 (2) Annual addition limitation. Except as otherwise provided in this rule, the annual

9 addition to a member account for any calendar year *[shall]* **may** not exceed **\$49,000.***[the*

10 *lesser of:]*

11 *[(a) \$41,000; or*

12 *(b) 100 percent of the member's compensation for the calendar year.]*

13 (3) *[Purchase]* **Payment [of] for** military service. If a **payment of employee**

14 **contributions for a period of military service is made** *[member makes a payment to*

15 *purchase retirement credit for military service]* under OAR 459-080-0100:

16 (a) The payment shall be treated as an annual addition for the calendar year**(s)** of

17 *[the]* military service to which it relates;

18 (b) The payment shall not be treated as an annual addition for the calendar year in

19 which it is made; and

20 (c) **For the purpose of allocating payments under this section,** *[T]*the member’s

21 compensation shall be the amount described in OAR 459-080-0100(3)*[(c)]***(d).**

22 Stat. Auth.: *[OL 2003 Ch. 733]* **ORS 238A.450**



1 Stats. Implemented: *[OL 2003 Ch. 733]* [ORS 238A.370](#)



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November 18, 2011

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Deputy Director  
SUBJECT: Notice of Rulemaking for Death and Survivor Benefits Rules:  
459-014-0030, *Pre-retirement Designation of Beneficiary*  
459-014-0040, *Valid Request for Distribution of Pre-retirement Death Benefits*  
459-014-0050, *Designation of Beneficiary at Retirement and Survivor Benefits*

### OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: The administration of death and survivor benefits is not clarified in rule. Rulemaking is also needed to address audit findings.
- Policy Issue: No policy issues have been identified at this time.

### BACKGROUND

Recent audit findings raised concerns about the state of the administrative rules regarding the administration of death benefits for the OPSRP Pension Program (OPSRP), Individual Account Program (IAP), and the Tier One or Tier Two member's death benefit. Modifications to the existing rule and two new rules reflect current administration of pre-retirement death benefits and post-retirement payments to survivors and beneficiaries for Chapters 238 and 238A, excluding judge members, whose death benefits are addressed in the judge member OARs.

### SUMMARY OF MODIFICATIONS TO RULES

#### Division 014 Title

The division title has been changed from "Death Benefits" to "Death and Survivor Benefits" because the rules clarify pre-retirement death benefits and post-retirement survivor and beneficiary benefits.

#### 459-014-0030 Pre-Retirement Designation of Beneficiary

The title was modified to clarify that this rule pertains to designation of beneficiaries for pre-retirement death benefits. Sections (1) through (5) set out the parameters for designation of beneficiary for a Tier One or Tier Two member account and the IAP account for members and alternate payees. The pre-retirement death benefit under both programs is the account balance pursuant to ORS 238.390 and 238A.410. Section (6) provides more detail if a trustee of a trust is designated as beneficiary. Section (7) addresses Tier One and Tier Two police officer or firefighter members who may purchase unit benefits under ORS 238.440. Section (8) provides by reference that, unlike Tier One/Tier Two and the IAP, the OPSRP Pension Program pre-

retirement death benefit beneficiary is set out in statute. This section is just clarifying why there is no pre-retirement designation of beneficiary for OPSRP Pension Program. Section (9) was edited to delete the reference to a member account and replace it with “death benefit payment,” which is consistent with death benefits for Tier One/Two, OPSRP Pension Program, and the IAP.

#### 459-014-0040 Valid Request for Distribution of Pre-Retirement Death Benefits

The Tier One/Tier Two pre-retirement death benefit is the member account balance as of the first of the month of the member’s death. Pursuant to earnings crediting rules OAR 459-007-0050 and 459-007-0230, the death benefit then increases or decreases based on the latest year-to-date actual Tier Two earnings until the beneficiary requests distribution. Earnings from the effective date of that request until the date of distribution are based on the average annualized rate. A recent audit revealed some inconsistencies across the program on what triggered those dates. Section (1) of this rule defines a “valid request for distribution” and section (2) lists some additional documents that may be required by PERS to make a “valid request for distribution.” Section (3) states that the pre-retirement death benefit for the IAP account is a lump sum payment of the IAP account balance and earnings crediting would be calculated the same as a member who retires from the IAP and requests a lump sum payment. This section clarifies that OAR 459-007-0320 will be used for purposes of calculating the pre-retirement IAP death benefit.

#### 459-014-0050 Designation of Beneficiary at Retirement and Survivor Benefits

Depending on the benefit option selected under ORS 238.300 and 238.305, if death occurs after the effective retirement date but before first payment is due, the death may be treated as if death occurred before retirement. This definition in section (1) provides clarity as to when the first payment is due. PERS encourages the submission of retirement applications within 90 days of the effective retirement date. We have had instances when the member dies before the effective retirement date and the beneficiary on file for pre-retirement death benefits is not the same as the beneficiary designated on the retirement application. Section (2) clarifies that the beneficiary designation on a retirement application is not effective until the effective retirement date and that if the application is rejected by PERS or cancelled by the member or alternate payee, the designation on the application is void. Section (3) specifies that a copy of a death certificate is required for purposes of paying the death benefit or survivor option benefit. In section (4), should death occur after the effective date of retirement but before the first payment is due, benefits are paid pursuant to the option selected under ORS 238.300 and 238.305. But if death occurs after the first payment is due, any unpaid benefits accrued by prior to death will be paid to the estate of the decedent. Section (5) provides when a monthly benefit is effective and payable to a beneficiary. Section (6) clarifies that at the death of a police officer or firefighter who was receiving a monthly benefit from the optional purchase of benefit units, the beneficiary will receive a lump sum payment of the remaining unit account balance. Section (7) provides clarity as to the treatment of an underpayment or overpayment in relation to the estate of the person who received the benefit.

#### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on November 22, 2011 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on December 1, 2011 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.

Impact: Members, employers, stakeholders, and staff will benefit from rules that clarify the administration of death and survivor benefits.

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

### RULEMAKING TIMELINE

October 14, 2011	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
November 1, 2011	<i>Oregon Bulletin</i> publishes the Notice. Notice is mailed to legislators, employers and interested parties. Public comment period begins.
November 18, 2011	PERS Board notified that staff began the rulemaking process.
November 22, 2011	Rulemaking hearing to be held at 2:00 p.m. in Tigard.
December 1, 2011	Public comment period ends at 5:00 p.m.
January 27, 2012	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 November 22, 2011 at PERS Headquarters in Tigard. The public comment period ends on December 1, 2011. The rules are scheduled to be brought before the PERS Board for adoption at the January 27, 2012 Board meeting.

B.6. Attachment 1 – 459-014-0030, *Pre-Retirement Designation of Beneficiary*

B.6. Attachment 2 – 459-014-0040, *Valid Request for Distribution of Pre-Retirement Death Benefits*

B.6. Attachment 3 – 459-014-0050, *Designation of Beneficiary at Retirement and Survivor Benefits*

Notice – Death and Survivor Benefits Rules

11/18/11

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OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 014 – DEATH AND SURVIVOR BENEFITS

1 **459-014-0030**

2 **Pre-Retirement Designation of Beneficiary**

3 *[(1) A member may designate a new beneficiary or revoke a previous designation by*  
4 *giving written notice to the Retirement Board, but no revocation or new designation shall*  
5 *be effective until received by the Public Employees Retirement Board. (Forms will be*  
6 *furnished by the Board upon request.)]*

7 *[(2) When a member designates a new beneficiary or beneficiaries, such action shall*  
8 *annul and revoke all prior designations.]*

9 **(1) At any time before the effective date of retirement, a member or alternate**  
10 **payee with a separate account may designate a new beneficiary or revoke a previous**  
11 **designation of beneficiary for the purposes of paying benefits under ORS 238.390**  
12 **and 238A.410.**

13 **(2) A designation of beneficiary must be:**

14 **(a) In a written format acceptable to PERS;**

15 **(b) Signed and dated by the member or alternate payee; and**

16 **(c) Received by PERS before the member or alternate payee's death.**

17 **(3) The receipt by PERS of a new beneficiary designation revokes all previous**  
18 **designations.**

19 **(4) A member who has a member account and IAP account or an alternate**  
20 **payee with separate accounts must file a designation of beneficiary for each account.**

1 (5) If the designation of beneficiary on file with PERS at the time of death is not  
2 administrable, distributions will be paid as if no designation of beneficiary had been  
3 made in accordance with ORS 238.390 and 238A.410.

4 (6) If a trustee of a trust is named as beneficiary, the individual beneficiary or  
5 beneficiaries of the trust will be treated as designated beneficiaries for the purpose  
6 of federal Required Minimum Distribution rules if the trust satisfies the following  
7 requirements:

8 (a) The trust is a valid trust under state law, or would be but for the fact it is  
9 not funded;

10 (b) The trust is irrevocable or will become irrevocable upon the death of the  
11 member or alternate payee;

12 (c) The beneficiaries of the trust, with respect to the trust's interest in the  
13 account, are identifiable from the trust instrument. The beneficiaries will be  
14 considered identifiable as long as it is possible to identify the beneficiary with the  
15 shortest life expectancy; and

16 (d) PERS is provided:

17 (A) A copy of the trust document; or

18 (B) A certification of trust containing the following:

19 (i) A list of all beneficiaries of the trust;

20 (ii) Certification that the list is correct and complete to the best of the member  
21 or alternate payee's knowledge and the trust satisfies the requirements in  
22 subsections (a), (b) and (c) of this section; and

1 (iii) A statement agreeing to provide a copy of the trust document upon  
2 demand.

3 (7) The beneficiary designation made by a Tier One or Tier Two member will  
4 apply to the member account as defined in ORS 238.005 and any optional unit  
5 account under ORS 238.440.

6 (8) A pre-retirement designation of beneficiary may not be made for the  
7 OPSRP Pension Program as ORS 238A.230 determines who is eligible to receive a  
8 pre-retirement death benefit.

9 ~~[(3)]~~ (9) The right of a beneficiary to receive *[the balance in a member's account in*  
10 *the Retirement Fund]* a death benefit payment ~~[shall]~~ may not be deemed nullified or  
11 waived by any agreement or property settlement between the member and the  
12 beneficiary, or on behalf of either of them, which does not specifically mention such right  
13 and waive it on the part of the beneficiary or vacate and set aside the designation of said  
14 beneficiary by such member.

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

16 Stats. Implemented: ORS 238.390, 238A.230 & 238A.410





**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 014 – DEATH AND SURVIVOR BENEFITS**

1 **459-014-0040**

2 **Valid Request for Distribution of Pre-Retirement Death Benefits**

3 **(1) For the purposes of this rule, “valid request for distribution” is when PERS**  
4 **receives the last required document PERS has determined necessary to distribute a**  
5 **death benefit to a beneficiary.**

6 **(2) PERS must receive a copy of the death certificate of the deceased member or**  
7 **alternate payee. PERS will provide instructions to a beneficiary identifying**  
8 **additional documents that must be received to make a valid request for distribution.**

9 **Required documents may include but are not limited to:**

- 10 **(a) Death Benefit Election;**
- 11 **(b) Letters of Testamentary/Administration;**
- 12 **(c) Small Estate Affidavit or out of state equivalent;**
- 13 **(d) Affidavit of Next of Kin;**
- 14 **(e) Affidavit of Beneficiary;**
- 15 **(f) Declaration of Beneficiary;**
- 16 **(g) Proof of marriage;**
- 17 **(h) Proof of registered domestic partnership;**
- 18 **(i) Proof of birth of the beneficiary;**
- 19 **(j) Trust document or certification of trust;**
- 20 **(k) Proof of Conservatorship; and**
- 21 **(l) Proof of Guardianship.**

1 **(3) Earnings crediting for the distribution amount for an IAP account**

2 **beneficiary will be determined under OAR 459-007-0320.**

3 **Stat. Auth.: ORS 238.650 & 238A.450**

4 **Stats. Implemented: ORS 238.390, 238A.230 & 238A.410**

OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 014 – DEATH AND SURVIVOR BENEFITS

1 459-014-0050

2 Designation of Beneficiary at Retirement and Survivor Benefits

3 (1) For the purposes of this rule, “first payment is due” means the first of the  
4 calendar month after the effective retirement date.

5 (2) The beneficiary designated on an application for service retirement becomes  
6 effective on the effective retirement date. If the service retirement application is  
7 rejected by PERS or cancelled by the member, the beneficiary designation is null  
8 and void.

9 (3) PERS must receive a copy of the death certificate of the member or alternate  
10 payee.

11 (4) When a retired Tier One or Tier Two member or alternate payee dies:

12 (a) Before the first payment is due, the benefit option selected pursuant to ORS  
13 238.300 or 238.305 determines how benefits are paid to the designated beneficiary.

14 (b) After the first payment is due, unpaid benefits accrued by the member or  
15 alternate payee before their death will be paid to the member or alternate payee’s  
16 estate.

17 (5) A monthly benefit payable to a beneficiary is effective the first of the month  
18 after the last month payable to the member or alternate payee.

19 (6) If a retired member receiving unit payments under ORS 238.440 dies before  
20 the last payment has been made, the designated beneficiary will receive a lump sum  
21 payment of the remaining unit account balance. There is no benefit due from  
22 employer contributions.

1 (7) If adjustments are made to the retirement allowance or benefit of a deceased  
2 retiree:

3 (a) A member's estate will be paid any underpayment or invoiced for any  
4 overpayment of benefits paid to the member.

5 (b) An alternate payee's estate will be paid any underpayment or invoiced for  
6 any overpayment of benefits paid to the alternate payee.

7 (c) A beneficiary or a beneficiary's estate will be paid any underpayment or  
8 invoiced for any overpayment of benefits paid to a beneficiary.

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

10 Stats. Implemented: ORS 238.300, 238.305, 238.390, 238.715, 238A.190 &  
11 238A.400



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November 18, 2011

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Deputy Director  
SUBJECT: Response to Public Comment: PERS and Social Security "Return to Work"  
Standards for Disability Retirements

### OVERVIEW

At its September 30, 2011 meeting, the PERS Board asked staff to look into the feasibility of adopting a return to work policy and administrative rules similar to those used by the Social Security Administration, following up on a public comment from Nelson Hall regarding proposed modifications to OAR 459-015-0045.

The Social Security Administration (SSA) has work incentives for recipients of social security disability payments who want to test their ability to work. These incentives include continued cash benefits for a time while working; continued Medicare or Medicaid while working; and assistance in the form of education, training, and rehabilitation services provided by local private and public partners who work with SSA. PERS contacted Nelson Hall for more specific information on his suggestion and he responded that PERS should review the SSA return to work and income provisions under 20 CFR 404.1592 and unsuccessful work attempts under 20 CFR 404.1574(c).

### SUMMARY OF SSA RETURN TO WORK CRITERIA

In general, SSA disability rules provide a trial work period which begins with the month the individual is entitled to a disability benefit and ends on the ninth month in which "services" were performed within a period of 60 consecutive months. Work is considered "services" for a month if the disability recipient has earnings that are the larger of the average monthly earnings for the previous year or an amount adjusted for national wage growth using a formula and the national average wage index, which for 2011 is \$720. Hours of work are also considered if the individual is self-employed. The SSA disability recipient receives their full benefit during this period.

When the trial work period ends, the individual may continue to test their ability to work for an extended period in which the individual can work and still receive disability benefits for any month their earnings are not a "substantial gainful activity." "Substantial gainful activity" is the larger of the average monthly earnings for the previous year or the adjusted average wage index for the two calendar years before the year for which the amount is being calculated (for 2011, it's \$1,000). When a recipient has a month of "substantial gainful activity," their disability benefit is stopped two months later. If the recipient ceases to work and requests to have their benefits reinstated, benefits are resumed while a review is done to determine if they still meet the eligibility criteria.

The work will be considered to be an “unsuccessful work attempt” if the individual worked less than three months and the work ended or was reduced because of their disabling impairment or because of the removal of special conditions that were essential to the performance of work. The same criteria is used if the individual worked between three and six months, but SSA also does a review to see if the recipient was frequently absent from work; their work was unsatisfactory; they worked during a period of temporary remission; or they worked under special conditions that were essential to work performance and those conditions were removed. If they worked for more than six months, it is not considered an unsuccessful work attempt regardless of why it ended.

### FEASIBILITY OF PERS ADOPTING SIMILAR CRITERIA

SSA disability provides full benefits while a recipient is working; ORS 238.330(3) requires PERS to reduce a disability retiree’s monthly benefit if their monthly disability benefit and their earned income for that month exceeded the monthly salary received by the member at the time of disability. For PERS to pay full benefits while someone is working, the disability statute would have to be amended to eliminate the offset requirement.

Besides the earnings offset requirement, a PERS disability retiree who returns to work for a PERS participating employer is also limited by the number of hours they can work. If a retired member is hired into a “qualifying position,” they become an “active member” of the system, which cancels their retirement as of the date they returned to work. PERS cannot pay a retirement benefit to an “active member” without jeopardizing our plan qualification. The 90-day return to work criteria in OAR 459-015-0045 was crafted to preserve the retirement status for a disability recipient who wants to attempt to return to work in a “qualifying position” without having their disability retirement discontinued. The disability benefit is suspended during the 90-day trial period and, if the trial period fails, the disability benefit is resumed. No new application is required. Legislative changes would be required for PERS to provide for a disability recipient to work in a “qualifying position” and not be considered an “active member.” Whether such changes would be permissible under federal law on retirement systems is not clear.

SSA stops the benefits two months after a month of “substantial gainful activity” occurs and the person must file a request to restart their benefits. The recently adopted modifications to OAR 459-015-0045 provide for a review of eligibility if a disability retiree generates earnings “similar in compensation” for a period of three calendar months in six consecutive calendar months rather than a discontinuance of the disability benefit. Benefits would not be stopped unless the review determined that the disability recipient was no longer disabled.

For the fiscal year ending June 30, 2010, there were 4,318 members receiving disability retirement benefits. An average of about 50 recipients report wage information each month and, of those, an average of five per month has their disability benefit reduced for offset purposes under ORS 238.330(3). Due to the relatively low number of PERS disability recipients who would be affected, and absent some indication that SSA’s criteria or process is demonstrably better, the legislative changes needed to adopt SSA’s return to work process do not appear to be warranted at this time.



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[www.oregon.gov/pers](http://www.oregon.gov/pers)

November 18, 2011

TO: Members of the PERS Board  
FROM: Joseph O'Leary, Administrator, PPLAD  
SUBJECT: Eugene Water and Electric Board 9/23/11 Petition for Declaratory Ruling

### THE PETITION AND PROCESS

The Eugene Water and Electric Board (EWEB) filed a petition for declaratory ruling with PERS pursuant to ORS 183.410<sup>1</sup> on September 26, 2011. EWEB's petition requests a ruling by PERS on the membership and creditable service for workers who were under the control and supervision of EWEB, a public employer, but whose salaries were entirely paid by a non-public agency staffing company. The only facts included in the petition pertain to an unnamed hypothetical worker who was hired and paid by a staffing company and placed at EWEB for seven months under the control and direction of EWEB. The petition also states the worker was subsequently hired by EWEB, which began paying the worker's salary and benefits.

EWEB asks PERS to conclude that the hypothetical worker described in the petition is not entitled to PERS membership or creditable service for the time served while working for the staffing company. EWEB also asks PERS to decide that the worker's membership and creditable service be counted from the date that EWEB began to pay the salary of the worker.

The statutes and administrative rules concerning petitions for declaratory rulings require the agency to respond to a petition within 60 days of receipt notifying the petitioner whether it will issue a ruling. November 24<sup>th</sup> is the 60<sup>th</sup> day for response on this petition. If the agency decides to issue a ruling, it must notify all persons named in the petition, must allow for intervention by interested parties, must provide opportunity for briefing and oral argument by interested parties, and must issue a written ruling within 60 days of the close of the record. Parties may seek judicial review of the ruling to the Court of Appeals. Alternatively, the agency may decline to issue a declaratory ruling. A declination is not subject to review by the court.

EWEB has provided a list of interested persons in its petition, consisting of 32 workers placed at EWEB by staffing companies and later hired by EWEB. The petition acknowledged that this is

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<sup>1</sup> **183.410 Agency determination of applicability of rule or statute to petitioner; effect; judicial review.** On petition of any interested person, any agency may in its discretion issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by it. A declaratory ruling is binding between the agency and the petitioner on the state of facts alleged, unless it is altered or set aside by a court. However, the agency may, where the ruling is adverse to the petitioner, review the ruling and alter it if requested by the petitioner. Binding rulings provided by this section are subject to review in the Court of Appeals in the manner provided in ORS 183.480 for the review of orders in contested cases. The Attorney General shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition. The petitioner shall have the right to submit briefs and present oral argument at any declaratory ruling proceeding held pursuant to this section.



not a complete list. All of the interested parties listed in the petition have established membership in the OPSRP Pension Program or the PERS Chapter 238 Program; some are active and others are retired. Attached to EWEB's petition are five different temporary services agency contracts, each with varying provisions.

The significance of issuing a declaratory ruling is that it becomes binding between the agency and the petitioner with respect to the facts alleged in the petition, unless it is set aside or altered by the court.

### EMPLOYEE VS. INDEPENDENT CONTRACTOR STATUS

ORS 238.015 (1) provides that "no person may become a member of the system unless that person is in the service of a public employer and has completed six months' service uninterrupted by more than 30 consecutive working days during the six months' period." The statute goes on to state that "every employee of a participating employer shall become a member of the system...following the six months' period." However, not every worker in the service of a participating public employer for more than six months becomes a member of the system. ORS 238.005(7)(a) specifically excludes "persons engaged as independent contractors" from the definition of "employee" for purposes of Chapter 238. Similarly, "persons engaged as independent contractors" are specifically excluded from the definition of "eligible employees" for purposes of Chapter 238A. ORS 238A.005(4)(a).

The determination of whether a worker is a member of PERS under ORS Chapter 238 or 238A is, in part, driven by a threshold determination whether the worker is an employee or independent contractor. Employees are eligible to become members of PERS, but independent contractors are not. The determination of whether a worker is actually an independent contractor or an employee is not always clear.

If a worker alleges that he or she was an employee rather than an independent contractor, PERS asks the public employer for information relevant to this determination and relies on OAR 459-010-0030 which contains the common law rules for determining whether an individual is an employee, and the IRS 20-factor test published in IRS Ruling 87-41 that further expands upon the common law "right to control" test. Under OAR 459-010-0032, unless it is clearly established that a worker is an independent contractor, "that person shall be deemed to be an employee." The determination whether a worker is an employee is made by applying the common law and IRS tests to individualized facts in each case. Specific details of the behavior and relationship between the parties are relevant for determining whether a worker is an employee or independent contractor.

### BACKGROUND

In early 2009, PERS began receiving inquiries from members about their creditable service with EWEB with respect to this issue. Since then, PERS completed eligibility determinations for five EWEB employees who claimed creditable service for the time they worked as temps for EWEB. In many of those cases, EWEB was asked by PERS to make a determination as to whether the members were employees or independent contractors, and in response EWEB communicated to PERS that the affected workers met the legal definition of employees even during the times their salaries were paid by a staffing company. As a result, PERS followed the employer's

characterization that the workers were employees of EWEB and invoiced EWEB a total of \$279,355.21. EWEB did not appeal these five invoices, which resulted from EWEB's report that the members were employees and not independent contractors.

### CONCERNS REGARDING EWEB'S PETITION

#### **1. The petition contains insufficient facts.**

PERS does not have adequate information to determine the true nature of the relationship between EWEB and the worker described in its petition. In determining whether a worker is an employee or independent contractor, the common law tests or the IRS 20-factor test must be applied in each circumstance by the employer in determining whether to report the person to PERS as an eligible employee. Persons working for a staffing agency but assigned to a public employer would seem to fall outside of the standard, but EWEB's reporting has concluded otherwise and they are in the best position to judge how an individual person's interaction with them fits into the applicable laws and rules. Note that, if such persons were EWEB employees for PERS purposes, they would likely also be considered employees for other labor law purposes, raising a myriad of issues outside of the PERS context.

PERS also does not have sufficient information to determine membership and service credit for the hypothetical worker in the petition; the determination would depend on whether that person had any prior membership status with PERS, the total number of hours that the worker performed in any calendar year (for EWEB and any other participating employer), and whether any exclusions would apply to disqualify them from membership.

#### **2. Issuing a declaratory ruling is not likely to dispose of the issue.**

If the agency makes a declaratory ruling, it is unlikely that it would diminish the incidence or need for individual member determinations. If EWEB employees dispute this issue in the future, it is more likely that the facts presented by the employees will be more specific and more comprehensive than the hypothetical presented by EWEB's petition. Thus, future cases with distinguishing facts would accordingly be beyond the binding effect of the declaratory ruling.

#### **3. Making a declaratory ruling on a hypothetical situation is inconsistent with PERS' longstanding practice to avoid speculative decisions.**

A broad declaratory ruling based on minimal, insufficient facts involving one hypothetical worker would not be useful in resolving individual employment situations. Such a ruling should not be applied to other workers with different employment relationships and covered under different and specific temporary services contracts. Applying a declaratory ruling broadly is not a fair or accurate determination for each individual member. Making a broad declaratory ruling will not prevent individuals from filing disputes, appeals, and contested case hearing requests and receiving individualized eligibility determinations.

BOARD OPTIONS

1. Decline to issue a declaratory ruling.
2. Request an amended petition from EWEB with additional, specific facts sufficient to make a determination of employee or independent contractor status.
3. Issue a declaratory ruling and begin the notice and hearing process required under ORS 183.410.

In light of the concerns outlined above, staff recommends the PERS Board choose Option 1 and decline to issue a declaratory ruling.



# Oregon

John A. Kitzhaber, M.D., Governor

## Public Employees Retirement System

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November 18, 2011

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Deputy Director  
SUBJECT: Recovery of Strunk/Eugene Overpayments

### BACKGROUND

On October 6, 2011, the Oregon Supreme Court issued unanimous decisions in the *Arken*, *Robinson*, and *Goodson* cases. Together, these decisions validated the PERS Board's Order Adopting Repayment Methods, issued January 27, 2006, that set the framework for recovering the overpayments to benefit recipients caused by the re-crediting of 1999 earnings to 11.33% from the original 20%.

Under that order, benefit recipients who were paid based on the erroneous earnings crediting were given two options to repay the overpaid amounts:

1. Each recipient was to repay in a single lump sum unless the recipient was receiving monthly benefit payments.
2. Any recipient receiving a monthly benefit payment would repay the overpaid amount through an actuarial reduction of their monthly payment, unless the recipient chose to repay in a single lump sum.

Attorneys in the *Robinson* case filed a petition for reconsideration which, at this point, has neither been accepted nor rejected by the Supreme Court. Once that petition is resolved, assuming the Supreme Court denies the petition for reconsideration or otherwise affirms its current decisions, the Supreme Court will enter an appellate judgment which remands the *Robinson* case back to Judge Kantor in the Multnomah County Circuit Court. Then, the Circuit Court will enter a judgment on remand, reversing his earlier judgment, and the cases will finally be resolved. The time line for that resolution is at the discretion of the respective courts, but is expected to take several weeks.

### RESUMING RECOVERY ACTIVITIES

When the Strunk/Eugene Adjustment project closed out in June 2009, all benefit payments had been recalculated based on the correct 1999 earnings crediting rate. On-going payments (retired members and beneficiaries with continuing monthly benefit payments or lump sum installments yet to be paid) were corrected as well. The remaining work to be done is to recover the overpayments that were made prior to these adjustments.

Memo on Recovery of *Strunk/Eugene* Overpayments

11/18/11

Page 2 of 2

Currently, that remaining workload is estimated to involve recovering \$156,333,437 in overpayments from 28,042 benefit recipients, spread across the following groups in the stated amounts:

Monthly Retirements	20,016	\$133,113,164
Lump Sum Retirements	1,372	\$11,458,293
Withdrawals	3,976	\$5,436,780
Police & Fire Unit Accounts	1008	\$403,200
Deceased Members (Received overpayment prior to death)	912	\$3,648,000
Beneficiaries (A survivor of a deceased person who is or has received benefits)	758	\$2,274,000

Under the Board's January 2006 order, those recipients still receiving monthly benefits will be given the option of either an actuarial reduction to recover the overpayment over the anticipated remaining period of those payments, or to return the overpayment in a lump sum. For those recipients who do not receive on-going benefits, we will recover the overpayment in a lump sum.

PERS staff will follow the established project methodology to develop and deploy the resources required to recover these overpayments. We have prepared the attached Business Case that is a high-level overview of the scope of that project. Our next step will be to create a project proposal to select the most reasonable approach to completing this project. In broad terms, the project proposal will be resource-loaded on the anticipated schedule of resuming recovery activities on or before April 1, 2012 (assuming the necessary preparation can be completed and the court processes have run their course), with a goal of completing the project's recovery activities no later than the close of calendar year 2012.

The agency currently does not have expenditure limitation or position authority to complete this recovery project. We anticipate the need to request that limitation and authority, most likely during the legislative session slated to start in February 2012.

C.2. Attachment 1 – Business Case, *Strunk/Eugene Overpayment Recovery*

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# Oregon Public Employees Retirement System

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## Business Case

**Title:** *Strunk/Eugene Overpayment Recovery*  
**Executive Sponsor:** Steve Rodeman  
**Creation Date:** 11/7/2011  
**Author:** Paul Brown

### Acceptance Sign-off:

By signing this document, you are approving the documents content and requesting that it be presented to the Steering Committee for their review & acceptance.

Signature and Title

Date

\_\_\_\_\_  
< Administrator >

Signature and Title

Date

\_\_\_\_\_  
< Business Sponsor >

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# Oregon Public Employees Retirement System

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## Revision History

Date	Description of the revision	Author's name
10/11/11	Original Draft	Paul M. Brown
10/19/11	Revised Draft	Paul M. Brown
10/28/11	Revised Draft	Paul M. Brown Steve Rodeman
11/7/11	Revised Draft	Steve Rodeman

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# Oregon Public Employees Retirement System

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6. What Business Rules and Processes are inputs to this project? .....	7
7. What is the impact to the organization if this operational need is not met? .....	7

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# Oregon Public Employees Retirement System

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## Business Case

### Introduction

By Spring 2005, the Oregon courts had issued rulings in the *Strunk* and *Eugene* cases which established that overpayments had been made because of an erroneous earnings crediting order for calendar year 1999. PERS planned, developed, and began executing a plan to adjust ongoing benefits and recover those overpayments. The recovery effort included an Order Adopting Repayment Methods issued by the PERS Board on January 27, 2006. That order was executed for several months until subsequent legal challenges, the *Arken* and *Robinson* cases, resulted in an injunction against further collection efforts.

The *Strunk/Eugene* project did, however, complete its work to adjust ongoing benefits by the project deadline of June 30, 2009. Consequently, the debtor populations are identified, recalculations are completed, and invoices can be generated for those individuals for whom overpayment collection activities were enjoined (a small percentage of the recipients were invoiced and overpayments collected before the injunction was placed; that includes ongoing benefit payments that were reduced through the actuarial reduction method and lump sum payment recoveries).

On October 6, 2011, the Oregon Supreme Court found that the PERS Board's order was valid, which now triggers a renewed effort to collect the overpayments created out of the original *Strunk* and *Eugene* adjustments.

The renewed effort will require validating the debtor population and status and then communicating with each to determine how to proceed under the PERS Board's order.

Since the project was halted, PERS has had staff turnover and promotions; teams have been disbanded; Limited Duration positions have terminated; and a new operating system has been deployed to production.

With these changes, a new recovery plan will need to be developed. The PERS Board's order will be used as the framework for the new plan, unless the Board orders that different methods be used. Development of this plan will follow the agency's established project methodology.

This effort will again require multiple divisions working in concert to be efficiently completed. Also, support systems like functionality within the ORION system may either need to be developed or enhanced to be used to effectively process recovery efforts on a project of this scale.

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# Oregon Public Employees Retirement System

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## 1. Description

### What do you want to do?

Effectively recover the overpayments generated from the *Strunk/Eugene* benefit adjustments. This effort is estimated to involve recoveries an estimated \$156,333,437 in overpayments from 28,042 benefit recipients, spread across the following groups in the stated amounts:

Monthly Retirements	20,016	\$133,113,164
Lump Sum Retirements	1,372	\$11,458,293
Withdrawals	3,976	\$5,436,780
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Deceased Members (Received overpayment prior to death)	912	\$3,648,000
Beneficiaries (A survivor of a deceased person who is or has received benefits)	758	\$2,274,000

This project will implement technical and business process changes necessary to complete this recovery effort.

### Why do you need to do this?

The recovery is in accordance with the PERS Board's January 27, 2006 Order Adopting Repayment Methods that was issued based on their fiduciary obligations as specified in ORS 238.715, Recovery of Overpayments, and the supporting administrative rules.

## 2. High Level Requirements:

To be successful, PERS shall recover, to the extent practicable, the overpayment amounts in the manner described in the PERS Board's order. That recovery includes adjust the on-going benefits for recipients still receiving monthly payments through the actuarial reduction method and executing a strategy to recover from those recipients who received benefits through a lump sum distribution. PERS shall also need to evaluate those overpayments that cannot be collected through practicable methods and account for those amounts accordingly. Some of the steps toward a successful execution of this project include:

- Refine and update the information on benefit recipients and the overpayment amounts owed by each.
- Develop an overall communication plan (e.g. web, call center, external communications, and letters) for those affected recipients as well as other stakeholders.

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## Oregon Public Employees Retirement System

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- Determine what processes need to be changed or added to support the recovery effort under both the actuarial reduction method and lump sum; this determination includes reviewing options for out-sourcing recovery efforts and implementation of any necessary system enhancements, such as to ORION.
- Develop a resource plan to complete the recovery effort in a reasonable time, including the number and composition of the staff needed.

### 3. What are the benefits?

#### **Tangible (benefits that can be assigned an accurate or quantifiable value)**

Recovery of approximately \$156 million that was overpaid to PERS benefit recipients.

#### **Intangible (benefits that CANNOT be assigned an accurate or quantifiable value)**

Complies with the PERS Board's fiduciary responsibility to recover overpayments under Oregon law and is consistent with our Guiding Principles of being Trustworthy, Objective, Accountable, and Courageous.

### 4. Who does it impact and how?

The implementation of the PERS Board's order impacts all PERS divisions, as well as the benefit recipients and numerous other stakeholders. High-level impacts are noted below:

#### CSD:

- Member inquiries will increase customer service call volume.
- The project will need written communications in the form of letters and mailings.
- Member account flags will need to be corrected and cleared to facilitate the adjustments.

#### FSD:

- Invoice volume increases.
- Increased processing activity will require additional accounting entries and reconciliation efforts.
- Increased mail volume.
- Possible physical space needs.

#### BPD:

- Adjusting on-going benefits for those eligible for the actuarial reduction method.

#### PPLAD:

- Expected increase in contested case hearings.
- Increased policy guidance and support.
- Business rules review.

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## Oregon Public Employees Retirement System

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ISD:

- Increase in record retention and work load.
- System enhancements development, construction, and deployment.

Human Resources

- Possible increase in recruitment and training of new staff.

Oregon tax payers, members, and the general public:

- Personal financial impact to the invoiced benefit recipients.
- Additional questions from the press and public directed to the legislature and other stakeholder groups as individual situations raise awareness and concerns about recovery efforts.

### **5. What other system or processes does this request impact?**

Since this project affects virtually all divisions of PERS, the majority of systems will be impacted. Current processes will be modified and new processes will be developed.

### **6. What Business Rules and Processes are inputs to this project?**

Although this effort is an extension of the previous recovery efforts, the previous Business Rules and processes may not apply. Considering the new system and lessons learned from the previous efforts, new rules and processes will be required.

### **7. What is the impact to the organization if this operational need is not met?**

The agency would be in violation of ORS 238.715 by not recovering overpayments.

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# Oregon Public Employees Retirement System

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## Business Case

**Title:** *Strunk/Eugene Overpayment Recovery*  
**Executive Sponsor:** Steve Rodeman  
**Creation Date:** 11/7/2011  
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# Oregon Public Employees Retirement System

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The renewed effort will require validating the debtor population and status and then communicating with each to determine how to proceed under the PERS Board's order.

Since the project was halted, PERS has had staff turnover and promotions; teams have been disbanded; Limited Duration positions have terminated; and a new operating system has been deployed to production.

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This effort will again require multiple divisions working in concert to be efficiently completed. Also, support systems like functionality within the ORION system may either need to be developed or enhanced to be used to effectively process recovery efforts on a project of this scale.



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# Oregon Public Employees Retirement System

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## Oregon Public Employees Retirement System

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## Oregon Public Employees Retirement System

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John A. Kitzhaber, M.D., Governor

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November 18, 2011

TO: Members of the PERS Board  
FROM: Debra Hembree, Acting Actuarial Services Manager  
SUBJECT: GASB Proposed Changes to Employer Financial Reporting Standards

The Governmental Accounting Standards Board (GASB) has been engaged since early 2006 in a multi-year project to reexamine the current standards for public pension accounting and financial reporting.

On November 18 Matt Larrabee and Scott Preppernau of Mercer will discuss the GASB proposed changes and the potential effects on governmental financial reporting for PERS and our some 915 participating employers.

This presentation is informational only and will not require Board action.

When it becomes available, Mercer's presentation will be provided to the Board and posted on the agency website.



# PROPOSED CHANGES TO PENSION FINANCIAL REPORTING **OREGON PERS**

NOVEMBER 18, 2011

**Matthew R. Larrabee, FSA, EA, MAAA**

Portland, OR

# Overview

- Significant changes have been proposed to pension financial reporting rules
  - Changes have been proposed by GASB (Governmental Accounting Standards Board), which sets reporting standards
- Scheduled to take effect for fiscal years ending on or after June 30, 2014
- Requirements are expected to be finalized mid-2012
- PERS employers should become familiar with the proposed changes

# Overview

- If enacted as drafted, some key effects of the proposed changes are:
  - All PERS employers will have a portion of PERS funding shortfalls included in their financial balance sheet
  - Employers will have to include significantly more PERS-related disclosures in their financial statements
  - Employer contribution rates will differ from employer annual financial reporting costs for PERS on the operating statement
    - Determination of employer contribution rates will be a process that is separate and distinct from valuation under GASB standards
  - PERS staff should anticipate increased requests for assistance from employers and external auditors



## Current GASB Rules

- Current GASB financial reporting rules serve as a contribution policy standard for many sponsors
  - The current rules provide a fair amount of flexibility
- Current GASB rules permit a variety of alternatives to:
  - Allocate projected benefit costs across a member’s working career
    - Benefits allocated to past service are the “accrued liability”
  - Select time horizons for amortization of funding shortfalls
- The OPERS employer rate-setting policy is designed to be GASB compliant
  - It allocates costs using the “unit credit” method, which assigns benefits associated with member accounts and the “money match” formula to pre-2004 employment
  - Tier 1 / Tier 2 funding shortfalls are scheduled to be amortized over 20 years if all assumptions are met

## Current GASB Rules

- For PERS employers that participate in an experience sharing pool, financial reporting under current rules is simple and limited
  - The participating employer reports the GASB-compliant employer contribution rate, and then verifies the rate is being fully paid
  - Any funding shortfall associated with the experience sharing pool is not included in the employer's financial reporting
    - The principle behind the limited reporting is that since the employer is contributing a GASB-compliant rate, no balance sheet liability for missed contributions exists
    - The total shortfall is included in the system's financial reports
- Most PERS employers participate in either the State & Local Government Rate Pool (SLGRP) or the School District Pool for Tier 1 / Tier 2 experience
- Experience for all PERS employers is pooled statewide for the OPSRP tier

## Proposed GASB Rules

- The rule changes proposed by GASB represent a broad expansion and alteration of financial reporting requirements
  - The rules are intended to increase comparability between systems
  - The rules divorce financial reporting from system funding
- Under the new rules, there will be much less flexibility in financial reporting calculations
  - Projected benefit costs must be allocated over a member's full working career using the "entry age" cost allocation method
    - As currently drafted, a portion of projected benefits attributable to member accounts and the "money match" formula would be allocated to future years of employment
  - For systems where assets would be projected to be insufficient to pay all future benefits if assumptions are met, financial reporting liabilities would be increased via use of a lower discount rate

## Proposed GASB Rules

- The annual plan expense entry in the operating statement will be significantly different
  - Shortfalls will be amortized over shorter periods
  - Benefit changes and deviations from assumption will be recognized either immediately or over shorter periods
- For PERS employers that participate in an experience sharing pool, financial reporting under the proposed rules is more complex
  - The employer's pro-rata portion of the pool's funding shortfall will be introduced to the balance sheet
  - Additional narratives and numerical disclosures about PERS will also be required for employers

## Effect on Employer Contribution Rate Policy

- The proposed GASB rules end the connection between employer contribution rate costs and financial reporting costs
- As such, a contribution policy that is distinct from the financial reporting policy will be needed by all systems
  - The current contribution rate policy was established by the PERS Board in 2005 in consultation with the system actuary
- Since the new GASB rules are neither designed nor intended to be a contribution policy, no change in contribution rate policy in response to the proposed GASB changes is required
- The PERS Board does typically reapprove contribution rate methodology biennially during the methods and assumptions process

## Forward-Looking Calendar

- Mid 2012 : Finalization of GASB rules, with potential modifications based on stakeholder feedback
  - Feedback was provided both in written comments and oral statements to GASB
  - Potential modifications could include delayed implementation dates or simplified procedures for allocating unfunded liabilities
- Late 2012: Extensive employer outreach to communicate new rules and their effects
- Mid 2013: Incorporation of new rules in methods and assumptions process plus review of separate employer contribution rate policy
- Late 2014: First year-end financial statements using new rules (for June 30 fiscal year-end employers) are published
  - The 12/31/2013 rate-setting actuarial valuation would be used in those financial statements





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November 10, 2011

**Subject:** 2011 Purchasing Power Study

Dear Debra:

As requested, we updated the annual purchasing power study for 2011 to compare how well monthly benefits paid to retirees and beneficiaries have kept up with inflation since retirement. Since the last study, the Consumer Price Index for Portland increased 1.25% in 2010. All Tier 1/Tier 2 participants who retired prior to August 2008 received a 2.00% annual cost-of-living adjustment, experiencing an increase in purchasing power over the year. Participants who retired on or after August 2008 and prior to August 2011 received a 1.25% annual cost-of-living adjustment, maintaining their purchasing power.

Purchasing power in this report is defined as the cumulative post-retirement benefit increases in Tier 1/Tier 2 benefits compared to the cumulative CPI increases since the year of retirement. The chart below shows the change in purchasing power from 2010 to 2011 by year of retirement.

Year Retired	Purchasing Power	
	2010	2011
8/1/1980 – 7/1/1981 & prior	76.6%	77.2%
8/1/1981 – 7/1/1982	79.2%	79.8%
8/1/1982 – 7/1/1983	81.3%	81.9%
8/1/1983 – 7/1/1984	81.4%	82.0%
8/1/1984 – 7/1/1985	79.2%	79.8%
8/1/1985 – 7/1/1986	78.2%	78.8%
8/1/1986 – 7/1/1987	79.1%	79.7%
8/1/1987 – 7/1/1988	79.1%	79.7%
8/1/1988 – 7/1/1989	79.5%	80.1%
8/1/1989 – 7/1/1990	80.6%	81.2%
8/1/1990 – 7/1/1991	83.0%	83.6%
8/1/1991 – 7/1/1992	86.1%	86.7%
8/1/1992 – 7/1/1993	88.7%	89.3%
8/1/1993 – 7/1/1994	90.8%	91.4%
8/1/1994 – 7/1/1995	92.1%	92.8%
8/1/1995 – 7/1/1996	92.9%	93.6%

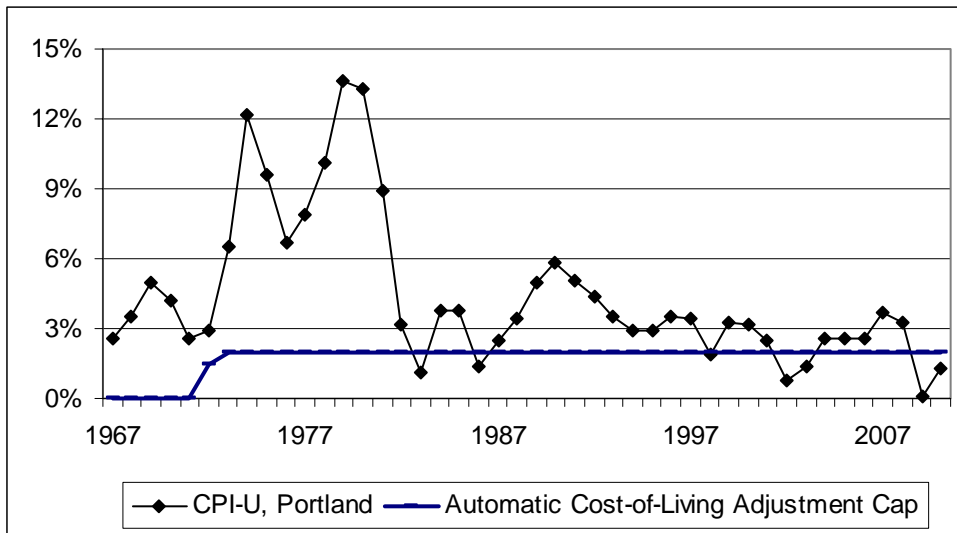
Year Retired	Purchasing Power	
	2010	2011
8/1/1996 – 7/1/1997	93.7%	94.4%
8/1/1997 – 7/1/1998	95.1%	95.8%
8/1/1998 – 7/1/1999	96.3%	97.1%
8/1/1999 – 7/1/2000	96.3%	97.1%
8/1/2000 – 7/1/2001	97.3%	98.0%
8/1/2001 – 7/1/2002	97.3%	98.0%
8/1/2002 – 7/1/2003	97.3%	98.0%
8/1/2003 – 7/1/2004	97.3%	98.0%
8/1/2004 – 7/1/2005	97.3%	98.0%
8/1/2005 – 7/1/2006	97.8%	98.6%
8/1/2006 – 7/1/2007	98.4%	99.1%
8/1/2007 – 7/1/2008	99.0%	99.7%
8/1/2008 – 7/1/2009	100.0%	100.0%
8/1/2009 – 7/1/2010	100.0%	100.0%
8/1/2010 – 7/1/2011	100.0%	100.0%



## Inflation

Cost-of-living adjustments (COLAs) are automatically granted each year to retirees and beneficiaries up to a maximum of 2 percent based on the Consumer Price Index for Portland (defined by All Items, All Urban Consumers, Portland-Salem, OR-WA, Annual Average) as released by the Department of Labor. If the Consumer Price Index for Portland (CPI – Portland) exceeds 2 percent, then the retiree receives a 2 percent COLA and the remaining percentage is carried forward in a “bank” to be used in future years when the CPI-Portland is less than 2 percent. Retirees who have recently retired, and do not have a “bank” balance, receive a COLA equal to the CPI-Portland amount if less than 2 percent, otherwise they receive 2 percent.

The graph below page shows the CPI-Portland compared to the automatic cost-of-living adjustment cap that is currently 2.0 percent.



The automatic COLA was established in 1972, and there have only been seven years (1983, 1986, 1998, 2002, 2003, 2009 and 2010) when inflation has been below the COLA cap. Consequently, retiree benefits have tended to lose their purchasing power. Attachment A shows the history of increases in CPI-Portland from 1962 through 2010.

The historical COLA amounts granted to retirees and beneficiaries are shown below:

<b>Date</b>	<b>COLA</b>	<b>Exceptions</b>
July 1972	1.5%	
July 1973 – present	2.0% (maximum COLA)	1.08% in 1984 if retired on or after August 1983 1.41% in 1987 if retired on or after August 1986 1.89% in 1999 if retired on or after August 1998 1.24% in 2003 if retired on or after August 2001 and prior to August 2002 0.77% in 2003 if retired on or after August 2002 1.36% in 2004 if retired on or after August 2001 and prior to August 2004 1.73% in 2004 if retired on or after August 2000 and prior to August 2001 1.40% in 2010 if retired on or after August 2008 and prior to August 2009 0.12% in 2010 if retired on or after August 2009 and prior to August 2010 1.25% in 2011 if retired on or after August 2008 and prior to August 2011

## Benefit Increases

From April 1964 through December 1971 there were some one-time additional payments granted to retirees. These payments are not included in this analysis as they did not affect the ongoing benefit paid to the retiree. A summary of the one-time payments follows:

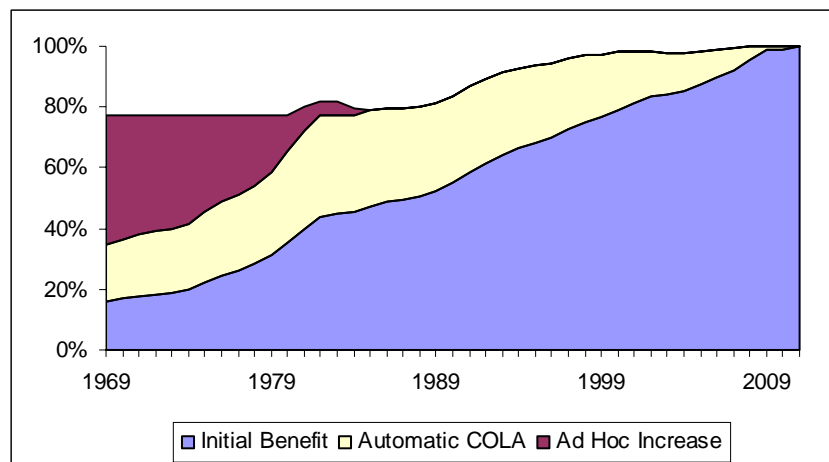
<b>Effective Date</b>	<b>One Time Payment Amount</b>
April 1964	Monthly Benefit
April 1965	1.5 x Monthly Benefit
April 1966, April 1967	2 x Monthly Benefit
April 1968, April 1969, April 1970, April 1971	3 x Monthly Benefit
December 1971	3.5 x Monthly Benefit

In addition, retirees and beneficiaries have been granted ad hoc benefit increases that resulted in increased monthly benefits going forward. A summary of the ad hoc increases granted by legislation is shown below, with the graded increases shown on Attachment B.

Effective Date	Ad Hoc Increase Granted by Legislation
January 1972	25% if retired prior to January 1968 12% if retired after December 1967 and prior to January 1972
January 1974	25% if retired prior to January 1968 20% if retired after December 1967 and prior to January 1972 12% if retired after December 1971 and prior to January 1974
October 1977	25% on first \$50 of monthly benefit 15% on next \$100 10% on next \$100 5% on next \$100 and 1% on monthly benefit over \$350
July 1979	2% for all retirees
July 1980	2% for all retirees
August 1981	Graded table by year of retirement to 11.40%
July 1982	Graded table by year of retirement to 11.40%
July 1985	Graded table by year of retirement to 7.28%
July 1986	Graded table by year of retirement to 7.28%
July 1989	Graded table by year of retirement to produce a 95% replacement of original purchasing power

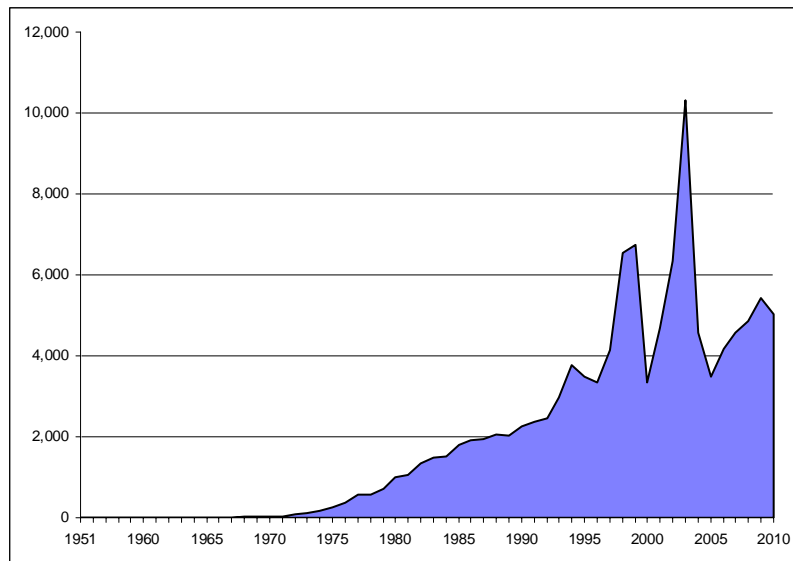
## Current Purchasing Power

The current purchasing power of retirees depends on both the automatic COLA increases and the ad hoc increases granted, compared to the growth in the CPI over the same time period. The graph below shows the cumulative effects of increases granted as a percentage of a benefit adjusted by CPI by year of retirement.



As shown in the graph above, for long-time retired members, the majority of the increases in their benefits since retirement have come from ad hoc increases. Retirees who retired within the past 26 years have not received any ad hoc increases. However, inflation has been significantly lower than in the late 1970's, and the automatic COLA increases have tracked changes in CPI more closely. Purchasing power for retirees since 1993 has remained within 90 percent of their original purchasing power.

The following graph shows the distribution of retirees and beneficiaries, from the December 31, 2010 actuarial valuation, by year of retirement. As shown in the graph below, a vast majority of retirees and beneficiaries have retired within the last 26 years and have not received any ad hoc increases. However, as their COLAs have tracked more closely with CPI, their purchasing power has remained higher than long-time retired members who have received ad hoc increases. For retirees/beneficiaries retired in the last 26 years, the average purchasing power is 95.1% compared to the average purchasing power of 79.3% for those retired more than 26 years ago.



Attachment C compares the cumulative post-retirement benefit increases in Tier 1/Tier 2 benefits to the cumulative CPI increases for the last 42 years. The middle columns show the level to which an initial benefit of \$100 per month would have risen, based on CPI increases and increases granted through PERS. The columns on the right show the percentage of the original \$100 benefit and the PERS-adjusted benefit as a percentage of the CPI-adjusted benefit.

For example, a 1969 retiree with an original benefit of \$100 per month would need to be receiving \$617.78 per month now to have kept pace with inflation. Benefit increases granted through PERS increased the \$100 per month benefit to \$476.63 per month. The original benefit of \$100 per

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month is 16.2% of the CPI-adjusted benefit and the PERS-adjusted benefit of \$476.63 is 77.2% of the CPI-adjusted benefit.

Our analysis and conclusions are based on the data, methods and assumptions described above. Differences in the methods and assumptions may produce different results.

If you have any questions about the purchasing power report or need any additional information, please let us know

Sincerely,



Scott D. Preppenau, FSA, EA, MAAA  
Senior Associate

GCD/SDP/sdp/mrl:gjw  
Enclosures

Copy:  
Matt Larrabee

**The information contained in this document (including any attachments) is not intended by Mercer to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code that may be imposed on the taxpayer.**

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# ATTACHMENT A

## History of Consumer Price Index — Portland

Year	CPI 1967 Basis	CPI 1982-84 Basis	Annual Percentage Increase	Year	CPI 1982-84 Basis	Annual Percentage Increase
1962	88.5			1987	110.9	2.50%
1963	90.2		1.92%	1988	114.7	3.43%
1964	92.2		2.22%	1989	120.4	4.97%
1965	94.6		2.60%	1990	127.4	5.81%
1966	97.5		3.07%	1991	133.9	5.10%
1967	100.0		2.56%	1992	139.8	4.41%
1968	103.5		3.50%	1993	144.7	3.51%
1969	108.6		4.93%	1994	148.9	2.90%
1970	113.2		4.24%	1995	153.2	2.89%
1971	116.1		2.56%	1996	158.6	3.52%
1972	119.5		2.93%	1997	164.0	3.40%
1973	127.3		6.53%	1998	167.1	1.89%
1974	142.8		12.18%	1999	172.6	3.29%
1975	156.5		9.59%	2000	178.0	3.13%
1976	167.0		6.71%	2001	182.4	2.47%
1977	180.2		7.90%	2002	183.8	0.77%
1978	198.4		10.10%	2003	186.3	1.36%
1979	225.4		13.61%	2004	191.1	2.58%
1980	255.4		13.31%	2005	196.0	2.56%
1981	278.2		8.93%	2006	201.1	2.60%
1982	287.0		3.16%	2007	208.6	3.71%
1983	290.1		1.08%	2008	215.4	3.28%
1984	301.0		3.76%	2009	215.6	0.12%
1985	312.4		3.79%	2010	218.3	1.25%
1986	316.8	108.2	1.41%			

Source: U.S. Department of Labor, Bureau of Labor Statistics  
 Consumer Price Index, All Items, All Urban Consumers, Portland-Salem, OR-WA, Annual Average

## ATTACHMENT B

Year Retired	Ad Hoc Adjustments by Effective Year				
	1981	1982	1985	1986	1989
1950	11.40	11.40	7.28	7.28	18.00
1951	10.64	10.64	7.28	7.28	19.00
1952	10.56	10.56	7.28	7.28	10.00
1953	10.16	10.16	7.28	7.28	8.00
1954	10.04	10.04	7.28	7.28	8.00
1955	10.00	10.00	7.25	7.25	7.00
1956	9.68	9.68	7.06	7.06	9.00
1957	9.28	9.28	6.82	6.82	9.00
1958	9.08	9.08	6.70	6.70	5.00
1959	8.96	8.96	6.62	6.62	3.00
1960	8.76	8.76	6.50	6.50	3.00
1961	8.64	8.64	6.42	6.42	2.00
1962	8.56	8.56	6.37	6.37	1.00
1963	8.32	8.32	6.22	6.22	1.00
1964	8.12	8.12	6.09	6.09	–
1965	7.88	7.88	5.94	5.94	–
1966	7.56	7.56	5.73	5.73	–
1967	7.36	7.36	5.60	5.60	–
1968	7.20	7.20	5.49	5.49	7.00
1969	6.88	6.88	5.28	5.28	4.00
1970	6.60	6.60	5.09	5.09	–
1971	6.36	6.36	4.93	4.93	–
1972	6.20	6.20	4.82	4.82	15.00
1973	5.92	5.92	4.63	4.63	14.00
1974	5.28	5.28	4.17	4.17	25.00
1975	4.92	4.92	3.92	3.92	15.00
1976	4.72	4.72	3.77	3.77	7.00
1977	4.44	4.44	3.57	3.57	3.00
1978	4.76	4.76	3.80	3.80	16.00
1979	4.32	4.32	3.48	3.48	11.00
1980	4.00	4.00	3.24	3.24	3.00
1981	–	4.00	3.09	3.09	–
1982		–	3.01	3.01	–
1983			3.00	3.00	–
1984			–	3.00	–
1985			–	–	–
1986				–	–
1987					–
1988					–
1989					–

# ATTACHMENT C

## Comparison of Tier 1/Tier 2 Benefits to CPI at August, 2011

Year Retired	Number of Years	Cumulative Increase		Purchasing Power	
		CPI	Tier 1/Tier 2	Initial	Tier 1/Tier 2
8/1/1969-7/1/1970	42	617.78	476.63	16.2%	77.2%
8/1/1970-7/1/1971	41	588.76	454.24	17.0%	77.2%
8/1/1971-7/1/1972	40	564.81	435.76	17.7%	77.2%
8/1/1972-7/1/1973	39	550.71	424.89	18.2%	77.2%
8/1/1973-7/1/1974	38	535.03	412.79	18.7%	77.2%
8/1/1974-7/1/1975	37	502.24	387.49	19.9%	77.2%
8/1/1975-7/1/1976	36	447.71	345.42	22.3%	77.2%
8/1/1976-7/1/1977	35	408.53	315.19	24.5%	77.2%
8/1/1977-7/1/1978	34	382.84	295.37	26.1%	77.2%
8/1/1978-7/1/1979	33	354.81	273.74	28.2%	77.2%
8/1/1979-7/1/1980	32	322.26	248.63	31.0%	77.2%
8/1/1980-7/1/1981	31	283.66	218.85	35.3%	77.2%
8/1/1981-7/1/1982	30	250.34	199.85	39.9%	79.8%
8/1/1982-7/1/1983	29	229.81	188.13	43.5%	81.9%
8/1/1983-7/1/1984	28	222.77	182.73	44.9%	82.0%
8/1/1984-7/1/1985	27	220.39	175.77	45.4%	79.8%
8/1/1985-7/1/1986	26	212.41	167.33	47.1%	78.8%
8/1/1986-7/1/1987	25	204.65	163.05	48.9%	79.7%
8/1/1987-7/1/1988	24	201.81	160.78	49.6%	79.7%
8/1/1988-7/1/1989	23	196.88	157.66	50.8%	80.1%
8/1/1989-7/1/1990	22	190.35	154.59	52.5%	81.2%
8/1/1990-7/1/1991	21	181.34	151.56	55.1%	83.6%
8/1/1991-7/1/1992	20	171.38	148.59	58.3%	86.7%
8/1/1992-7/1/1993	19	163.07	145.68	61.3%	89.3%
8/1/1993-7/1/1994	18	156.18	142.82	64.0%	91.4%
8/1/1994-7/1/1995	17	150.88	140.01	66.3%	92.8%
8/1/1995-7/1/1996	16	146.63	137.27	68.2%	93.6%
8/1/1996-7/1/1997	15	142.51	134.58	70.2%	94.4%
8/1/1997-7/1/1998	14	137.67	131.95	72.6%	95.8%
8/1/1998-7/1/1999	13	133.14	129.22	75.1%	97.1%
8/1/1999-7/1/2000	12	130.67	126.83	76.5%	97.1%
8/1/2000-7/1/2001	11	126.51	124.01	79.0%	98.0%
8/1/2001-7/1/2002	10	122.67	120.24	81.5%	98.0%
8/1/2002-7/1/2003	9	119.71	117.33	83.5%	98.0%
8/1/2003-7/1/2004	8	118.80	116.43	84.2%	98.0%
8/1/2004-7/1/2005	7	117.20	114.87	85.3%	98.0%
8/1/2005-7/1/2006	6	114.26	112.62	87.5%	98.6%
8/1/2006-7/1/2007	5	111.40	110.41	89.8%	99.1%
8/1/2007-7/1/2008	4	108.58	108.25	92.1%	99.7%
8/1/2008-7/1/2009	3	104.70	104.70	95.5%	100.0%
8/1/2009-7/1/2010	2	101.37	101.37	98.6%	100.0%
8/1/2010-7/1/2011	1	101.25	101.25	98.8%	100.0%
8/1/2011-7/1/2012	0	100.00	100.00	100.0%	100.0%