

OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM BOARD MEETING

FRIDAY January 31, 2014 1:00 P.M.		PERS 11410 SW 68th Parkway Tigard, OR	
ITEM		PRESENTER	
A. Administration			
1.	November 22, 2013 Board Meeting Minutes Director's Report <ul style="list-style-type: none"> a. Forward-Looking Calendar b. OIC Investment Report c. Budget Execution Report d. Update on Final Average Salary Exclusion e. Update on Out of State Tax Remedy Elimination (SB 822) f. Annual Report of Executive Director's Financial Transactions 	CLEARY	
B. Administrative Rulemaking			
1.	Notice of Receipt Date Rule	RODEMAN	
2.	Notice of RHIPA Rules		
3.	Notice of Model Rules of Procedure Rule		
4.	Adoption of Senate Bill 861 Rules		
5.	Adoption of Final Average Salary Rule		
6.	Adoption of Data Verification Disputes Rule		
7.	Adoption of IRC and Social Security Limitations Rules		
C. Action and Discussion Items			
1.	PERS Health Insurance Special Open Enrollment Period	KOBBERVIG	
2.	2014 Legislative Session Preview and 2015 Preliminary Legislative Concepts	TAYLOR	
3.	Preliminary 2013 Earnings Crediting and Reserving	HOWITT / RODEMAN	
D. Executive Session Pursuant to ORS 192.660(2)(f), (h), and/or ORS 40.225			
1.	Litigation Update	LEGAL COUNSEL	

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2014 Meetings January 31 March 31 May 30 July 25 September 26 November 21

Krystal Gema Michael Jordan John Thomas, Chair Pat West, Vice Chair Rhoni Wiswall Paul R. Cleary, Executive Director

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OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM BOARD MEETING MINUTES

January 31, 2014

Board Members:

John Thomas, Chair
Krystal Gema
Michael Jordan
Pat West
Rhoni Wiswall

Staff:

Donna Allen	Brian Harrington	Jason Stanley
Melanie Chandler	Debra Hembree	Marjorie Taylor
Paul Cleary	Kyle Knoll	Stephanie Vaughn
David Crosley	Steve Rodeman	Dale Wakabayashi
Yvette Elledge	Michelle Shaffer	Ann Marie Vu

Others:

Linda Agee	Greg Hartman	Keith Kutler	Victoria Nolan
Nancy Brewer	Celia Heron	David Lacy	Scott Peppernau
Myrnie Daut	Hannah Hoffman	Matt Larrabee	Bill Robertson
Roger Dawes	Claire Hertz	Sharie Lewis	Carol Samuels
			Deborah Tremblay

Chair John Thomas called the meeting to order at 1:00 P.M.

ADMINISTRATION

A.1. BOARD MEETING MINUTES OF NOVEMBER 22, 2013

The Board unanimously approved the minutes from the November 22, 2013 Board meeting.

A.2. DIRECTOR'S REPORT

Executive Director Paul Cleary presented the Forward Looking calendar with the 2014 Board meeting dates and projected agenda items. Cleary noted the January 31 meeting will include a 2014 Legislative preview, and 2013 preliminary earnings crediting and reserving.

Presenting the OPERF investment returns for the period ending October 31, 2013, Cleary noted the regular account year-to-date returns were 12.41 percent and the variable returns were 19.81 percent for the same period, and that the net asset value of the fund is over \$66 billion.

Cleary detailed progress of the Work After Retirement project aimed at resolving some 1,800 retirees who exceeded the allowable work time between 2004 and 2012. Cleary said there were 210 retirees requiring re-employment and 122 retirees were invoiced for over-payments, with some of those in the appeal process. Cleary said that PERS staff has created a resolution for those retirees who chose the lump-sum option. Cleary asked that employers and retirees who return to work track hours more closely to avoid future over-payments.

Cleary presented a new Board Scorecard Report on Agency Performance Measures that was created to track progress on the agency's implementation of its new outcome-based management system. Cleary said this report will highlight key measures staff are using to identify and address current operational bottle-necks and service delivery challenges.

Cleary presented the Oregon Department of Justice opinion on Recognizing Same-Sex Marriages. Cleary said the opinion determines that it is legally defensible for state agencies to recognize same-sex marriages validly performed in other jurisdictions. PERS is in the process

of adjusting operations to administer PERS benefits based on the DOJ opinion and to the extent it has clear guidance on related federal tax qualification issues. Cleary noted that staff will be presenting policy options related to the Retiree Health Insurance Program at the January Board meeting.

ADMINISTRATIVE RULEMAKING

B.1. NOTICE OF RULEMAKING FOR SENATE BILL 861 RULES

Deputy Director Steve Rodeman presented the notice of rulemaking for the Senate Bill 861 Rules. Rodeman said the rules will implement provisions of SB 861 affecting the calculation of the cost-of-living adjustment (COLA) payable to benefit recipients on and after July 1, 2014, and the administration of the supplementary payments for PERS benefit recipients. Rodeman said that a rulemaking hearing will be held on November 26 and the public comment period ends on December 6. The Senate Bill 861 Rules will be presented for adoption at the January meeting. No Board action was required.

B.2. NOTICE OF RULEMAKING FOR THE FINAL AVERAGE SALARY RULE

Rodeman presented the notice of rulemaking to clarify final average salary determination. Rodeman said that a rulemaking hearing will be held on November 26 and the public comment period ends on December 6. The Final Average Salary Rule will be presented for adoption at the January meeting. No Board action was required.

B.3. NOTICE OF DATA VERIFICATION DISPUTES RULE

Rodeman presented notice of rulemaking for the Data Verification Disputes Rule that will provide housekeeping edits needed to clarify OAR 459-001-0030. Rodeman said that a rulemaking hearing will be held on November 26 and the public comment period ends on December 6. The Data Verification Disputes Rule will be presented for adoption at the January meeting. No Board action was required.

B.4. ADOPTION OF RECOVERY OF OVERPAYMENTS RULE

Rodeman presented the Recovery of Overpayments Rule for adoption. This rule clarifies the criteria and process for the recovery of overpayments and erroneous payments made by PERS. Rodeman noted several modifications have been made since the rule was first noticed at the September Board meeting in response to public comment.

Board member Pat West moved and Krystal Gema seconded to adopt the Recovery of Overpayments Rule as presented. The motion passed unanimously.

B.5. ADOPTION OF TIER ONE/TIER TWO DIVISION OF BENEFITS RULE

Rodeman presented the Tier One/Tier Two Division of Benefits Rule for adoption. This rule clarifies the requirements of a court-ordered divorce award.

Board member Pat West moved and Rhoni Wiswall seconded to adopt modifications to Tier One/Tier Two Division of Benefits Rule, as presented. The motion passed unanimously.

B.6. ADOPTION OF SENATE BILL 771 JUDGE MEMBER BENEFICIARY RULES

Rodeman presented the Judge Member Beneficiary Rules modifications for adoption. Rodeman said modifications to the rules would implement provisions of Senate Bill 771, which permits a judge member to elect more than one beneficiary under ORS 238.565.

Board member Krystal Gema moved and Rhoni Wiswall seconded to adopt the Senate Bill 771 related modifications to Judge Member Beneficiary Rules, as presented. The motion passed unanimously.

ACTION AND DISCUSSION ITEMS

C.1. LEGISLATIVE UPDATE AND MEMBERSHIP OF THE LEGISLATIVE ADVISORY COMMITTEE

Senior Policy Advisor Marjorie Taylor presented an overview of two legislative bills approved in the recent Special Session that impact PERS: Senate Bill 861 and Senate Bill 862, and described the agency's implementation plans for each bill.

Taylor previewed future legislative sessions and related PERS activities.

Taylor presented the proposed appointment of twelve Legislative Advisory Committee (LAC) members that reflects an equal number representing labor and management. Taylor briefly reviewed the committee's responsibilities in advising the Board on legislative proposals that impact PERS benefits.

Board member Michael Jordan moved and Pat West seconded to approve the recommended LAC appointments as presented. The motion passed unanimously.

C.2. 2012 VALUATION RESULTS

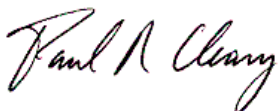
Milliman actuaries Matt Larrabee and Scott Preppernau presented an updated December 31, 2012 Actuarial Valuation that included the impact of Senate Bill 861 which further modified post 2013 COLA's. In addition, Milliman provided the results of the Retirement Health Insurance Account (RHIA)/Retirement Health Insurance Premium Account (RHIPA) valuation and updated system financial modeling results.

Key valuations results include a system-wide \$11.1 billion unfunded accrued liability (UAL) and 82% funded status (both excluding employer side accounts and retiree healthcare). The financial modeling projected system-wide average employer base contribution rates would increase by about 2% payroll in 2015-17 and average net rates (after side account offsets) would increase by about 1.2% in 2015-17. These projections will be affected by the actual 2013 year-end investment returns, which will be reflected in the 12/31/13 system-wide valuation.

Larrabee and Preppernau answered questions from the Board and audience members.

Thomas adjourned the Board meeting at 2:25 PM.

Respectfully submitted,



Paul R. Cleary
Executive Director

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PERS Board Meeting Forward-Looking Calendar

Monday, March 31, 2014

Final 2013 Earnings Crediting and Reserving
2014 Legislative Session Review and 2015 Proposed Legislative Concepts
Adoption of Retirement Credit Rules
Adoption of In-Plan Roth Conversion Rule
Adoption of Receipt Date Rules
Adoption of Model Rules of Procedure Rule
Audit Committee Meeting

Friday, May 30, 2014

2015-17 Agency Budget Development and Strategic Plan Update
2015 Retiree Health Insurance Plan Renewals and Rates

Friday, July 25, 2014

2013 Systemwide Valuation Results
2015-17 Agency Request Budget Approval
Audit Committee Meeting

Friday, September 26, 2014

2015-17 Employer Rate Adoption

Friday, November 21, 2014

Approval to File 2015 Final Legislative Concepts
Audit Committee Meeting

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Returns for periods ending 12/31/13

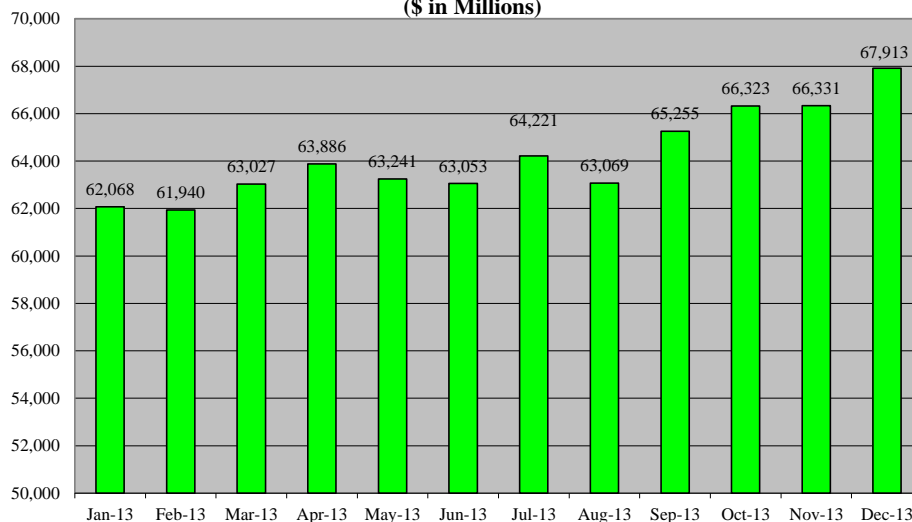
Oregon Public Employees Retirement Fund

OPERF	Regular Account				Historical Performance (Annual Percentage)							
	Policy ¹	Target ¹	\$ Thousands ²	Actual	Year-To-Date ³	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS	7 YEARS	10 YEARS
Public Equity	32.5-42.5%	37.5%	\$ 28,025,641	41.8%	26.68	26.68	21.99	10.95	12.11	16.69	4.41	7.64
Private Equity	16-24%	20%	14,287,161	21.3%	16.19	16.19	15.30	13.87	14.50	10.45	9.49	14.82
Total Equity	52.5-62.5%	57.5%	42,312,802	63.1%								
Opportunity Portfolio			828,354	1.2%	15.00	15.00	16.71	11.40	11.64	16.39	7.45	
Total Fixed	15-25%	20%	15,338,737	22.9%	1.04	1.04	5.58	5.76	7.00	10.51	6.53	6.14
Real Estate	9.5-15.5%	12.5%	7,473,648	11.1%	12.83	12.83	13.23	13.63	9.54	5.46	3.15	9.77
Alternative Investments	0-10%	10%	870,821	1.3%	6.02	6.02	2.53					
Cash	0-3%	0%	250,256	0.4%	0.66	0.72	1.15	0.80	0.82	1.13	1.75	2.18
TOTAL OPERF Regular Account		100%	\$ 67,074,618	100.0%	15.59	15.59	14.94	10.53	11.05	12.67	5.50	8.07
OPERF Policy Benchmark					15.67	15.67	16.12	10.77	10.91	11.82	5.83	7.78
Value Added					(0.08)	(0.08)	(1.18)	(0.24)	0.14	0.85	(0.33)	0.29
TOTAL OPERF Variable Account			\$ 838,703		23.71	23.71	20.30	10.19	11.27	15.75	2.98	

Asset Class Benchmarks:

Russell 3000 Index	33.55	33.55	24.69	16.24	16.41	18.71	6.50	7.88
MSCI ACWI Ex US IMI Net	15.82	15.82	16.43	5.12	6.97	13.46	2.58	8.00
MSCI ACWI IMI Net	23.55	23.55	19.91	9.82	10.93	15.62	4.09	7.59
Russell 3000 Index + 300 bps--Quarter Lagged	25.19	25.19	29.53	20.22	18.71	14.50	9.83	11.94
Oregon Custom FI Benchmark	0.29	0.29	4.36	4.68	5.18	5.73	5.42	5.07
NCREIF Property Index--Quarter Lagged	11.00	11.00	11.00	12.67	10.92	3.35	5.51	8.66
91 Day T-Bill	0.07	0.07	0.09	0.10	0.10	0.12	1.10	1.69

TOTAL OPERF NAV
(includes variable fund assets)
One year ending December 2013
(\$ in Millions)



¹OIC Policy 4.01.18, as revised October 2013.

²Includes impact of cash overlay management.

³For mandates beginning after January 1 (or with lagged performance), YTD numbers are "N/A". Performance is reflected in Total OPERF. YTD is not annualized.

Returns for periods ending 11/30/13

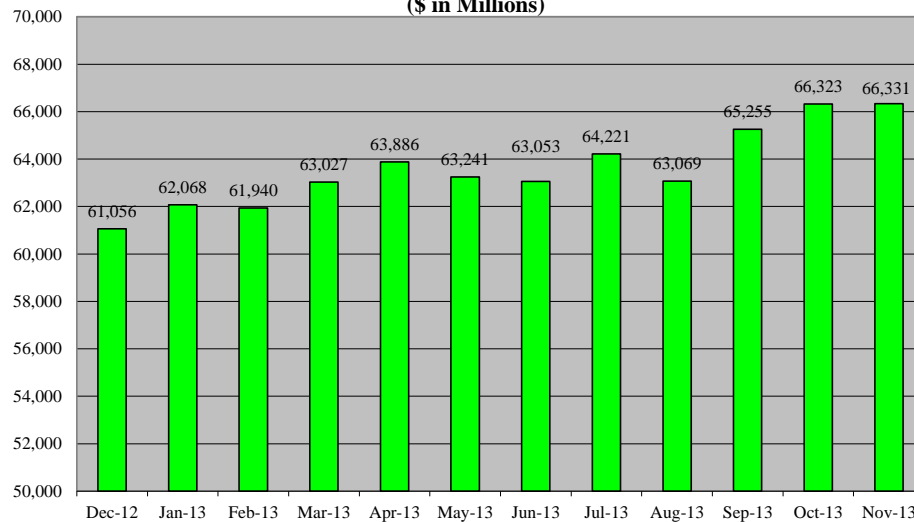
Oregon Public Employees Retirement Fund

OPERF	Regular Account				Historical Performance (Annual Percentage)							
	Policy ¹	Target ¹	\$ Thousands ²	Actual	Year-To-Date ³	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS	7 YEARS	10 YEARS
Public Equity	32.5-42.5%	37.5%	\$ 27,380,728	41.8%	24.33	27.80	20.48	12.96	12.37	17.23	4.43	8.00
Private Equity	16-24%	20%	13,661,547	20.9%	10.28	14.72	9.32	13.85	15.66	7.47	8.99	14.75
Total Equity	52.5-62.5%	57.5%	41,042,275	62.7%								
Opportunity Portfolio			814,238	1.2%	14.06	14.60	15.77	11.58	11.81	14.20	7.32	
Total Fixed	15-25%	20%	15,547,896	23.7%	1.12	1.65	6.17	5.87	7.18	11.22	6.51	6.30
Real Estate	9.5-15.5%	12.5%	7,468,123	11.4%	10.10	14.05	12.37	13.99	9.48	3.79	3.23	9.93
Alternative Investments	0-10%	10%	627,785	1.0%	5.89	5.91	1.98					
Cash	0-3%	0%	6,177	0.0%	0.66	0.72	1.14	0.82	0.81	1.26	1.81	2.20
TOTAL OPERF Regular Account		100%	\$ 65,506,494	100.0%	13.12	15.96	13.01	11.38	11.36	12.10	5.39	8.28
OPERF Policy Benchmark					12.90	15.76	13.71	11.87	11.05	11.59	5.72	7.95
Value Added					0.22	0.20	(0.70)	(0.49)	0.31	0.51	(0.33)	0.33
TOTAL OPERF Variable Account			\$ 824,010		21.57	24.55	19.10	12.22	11.45	16.25	2.89	

Asset Class Benchmarks:

Russell 3000 Index	30.12	31.71	23.58	17.78	16.47	18.54	6.28	8.09
MSCI ACWI Ex US IMI Net	14.68	18.73	15.16	7.53	7.28	14.55	2.88	8.69
MSCI ACWI IMI Net	21.40	24.32	18.69	11.86	11.11	16.11	4.15	8.02
Russell 3000 Index + 300 bps--Quarter Lagged	16.87	25.05	15.65	22.14	21.33	11.17	9.57	11.67
Oregon Custom FI Benchmark	1.12	1.65	6.17	5.87	7.18	11.22	6.51	6.30
NCREIF Property Index--Quarter Lagged	8.20	10.73	11.38	13.14	9.29	2.79	5.65	8.59
91 Day T-Bill	0.06	0.08	0.08	0.10	0.10	0.12	1.16	1.70

TOTAL OPERF NAV
(includes variable fund assets)
One year ending November 2013
(\$ in Millions)



¹OIC Policy 4.01.18, as revised October 2013.

²Includes impact of cash overlay management.

³For mandates beginning after January 1 (or with lagged performance), YTD numbers are "N/A". Performance is reflected in Total OPERF. YTD is not annualized.



Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

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January 31, 2014

TO: Members of the PERS Board
FROM: Kyle J. Knoll, Administrator, Financial & Administrative Services
SUBJECT: Budget Execution Report

2013-15 OPERATIONS BUDGET

Operating expenditures for October, November and December 2013 were \$3,394,167, \$2,759,090, and \$3,466,594 respectively.

- To date, through the first six months (25.0%) of the 2013-15 biennium, the Agency has expended a total of \$18,117,024, or 22.2% of PERS' legislatively adopted operations budget of \$81,691,343.
- The current projected positive variance is \$1,854,591, or approximately 2.3% of the operations budget.
- The negative variance in Personal Services remains primarily due to currently unfunded annual salary "step" increases for eligible staff and cost of living allowance (COLA) increases of 1.5% effective December 2013, and 2.0% effective December 2014. The Department of Administrative Services anticipates requesting the required expenditure limitation and distribution of statewide funding for 2013-15 salary and COLA increases to state agencies during a May or June 2014 Emergency Board meeting.

PERS received a separate budget limitation to implement the provisions of Senate Bill 822 that require modifying the COLA formula and removing the tax remedy increase for benefit recipients who do not pay Oregon income taxes because they reside out of state. Expenditures to-date for SB 822 total \$142,605, or 14.1% of the legislatively adopted budget of \$1,008,151. The current projected variance is \$118,431. Note that the agency is planning to submit a request in the February 2014 session for additional budget limitation for the costs of implementing Senate Bill 861 from the September 2013 special session. More information on that request can be found under Agenda Item C.2.

2011-13 OPERATIONS BUDGET

PERS' 2011-13 biennial expenditures closed in the Statewide Financial Management System (SFMS) December 31, 2013. The final positive variance was \$4,214,750, or approximately 5.5% of the 2011-13 operating budget of \$77,260,820.

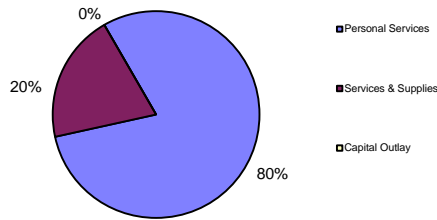
**2013-15 Agency-wide Budget Execution
Summary Budget Analysis
For the Month of: December 2013**

Limited - Operating Budget

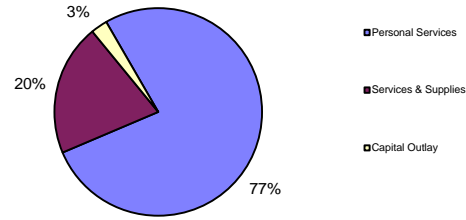
2013-15 Biennial Summary

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expenditures	2013-15 LAB	Variance
Personal Services	14,471,623	47,492,787	61,964,410	60,083,901	(1,880,509)
Services & Supplies	3,645,401	12,625,802	16,271,203	20,353,989	4,082,786
Capital Outlay	0	1,601,139	1,601,139	1,253,453	(347,686)
Total	18,117,024	61,719,728	79,836,752	81,691,343	1,854,591

Actual Expenditures



Projected Expenditures



Monthly Summary

Category	Actual Exp.	Projections	Variance	Avg. Monthly Actual Exp.	Avg. Monthly Projected Exp.
Personal Services	2,453,263	2,584,001	130,739	2,411,937	2,638,488
Services & Supplies	1,013,331	845,020	(168,312)	607,567	701,433
Capital Outlay	0	0	0	0	88,952
Total	3,466,594	3,429,021	(37,573)	3,019,504	3,428,874

2011-13 Biennium Summary (Payment of Outstanding Invoices & Corrections end on December 31, 2013)

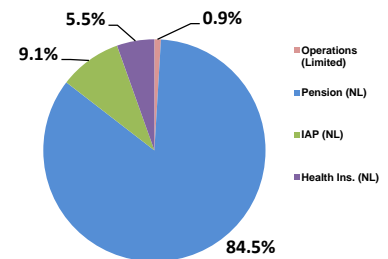
Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2011-13 LAB	Variance
Personal Services	54,316,993	0	54,316,993	55,827,463	1,510,470
Services & Supplies	17,298,631	0	17,298,631	20,505,769	3,207,138
Capital Outlay	1,430,446	0	1,430,446	927,588	(502,858)
Total	73,046,070	0	73,046,070	77,260,820	4,214,750

Non-Limited Budget

2013-15 Biennial Summary

Programs	Current Month Actual Exp	Biennium to Date Actual Exp	Non-Limited LAB
Pension	319,647,761	1,651,988,956	8,148,014,000
IAP	17,083,273	177,206,098	721,200,000
Health Insurance	21,326,194	106,784,444	408,661,000
Total	358,057,228	1,935,979,498	9,277,875,000

2013-15 Biennium To Date Actual Expenditures

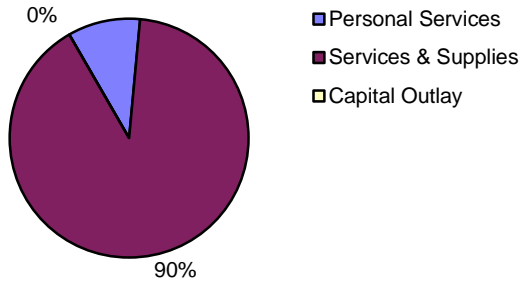


**2013-15 SB822 Project - Budget Execution
Summary Budget Analysis
For the Month of: December 2013**

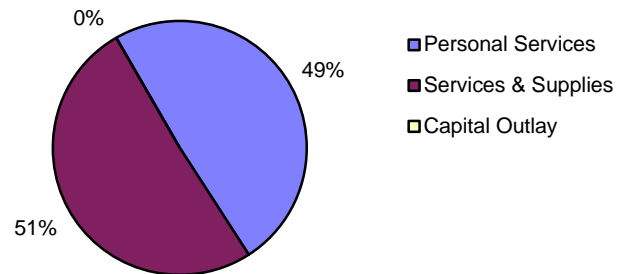
Biennial Summary

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2013-15 LAB	Variance
Personal Services	13,986	367,549	381,535	435,018	53,483
Services & Supplies	128,619	379,566	508,185	573,133	64,948
Capital Outlay					
Total	142,605	747,115	889,720	1,008,151	118,431

10%
Actual Expenditures

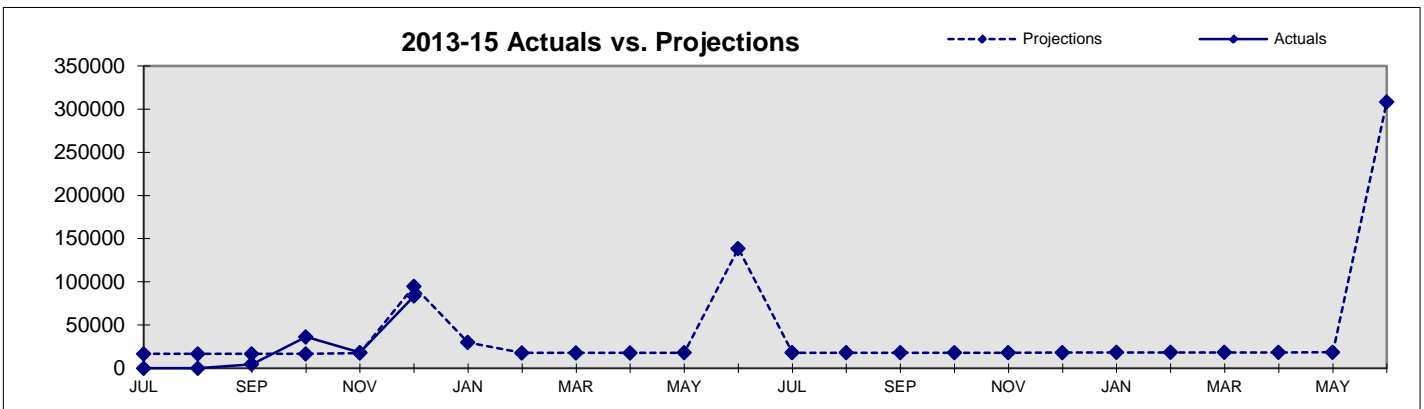


Projected Expenditures



Monthly Summary

Category	Actual Exp.	Projections	Variance	Avg. Monthly Actual Exp.	Avg. Monthly Projected Exp.
Personal Services	6,552	17,715	11,163	2,331	20,419
Services & Supplies	77,054	77,055	1	21,437	21,087
Capital Outlay					
Total	83,606	94,770	11,164	23,768	41,506



Project Tracker:

Percent of 2013-15 SB822 Budget Expended:	14.1%
Percent of 2013-15 Project Duration Expired:	25.0%



Oregon

John A. Kitzhaber, M.D., Governor

Item A.1.d.

Public Employees Retirement System

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11410 S.W. 68th Parkway, Tigard, OR
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January 31, 2014

TO: Members of the PERS Board
FROM: Brian Harrington, Administrator Benefit Payments Division
SUBJECT: Final Average Salary Audit Resolution Update

ISSUE

As reported at the November 22, 2013 Audit Committee meeting, staff is working on an action plan to both retroactively and prospectively correct a certain population of Tier Two and OPSRP full formula calculations affected by a 2005 statutory change that was missed in the agency's legislation implementation. The "Final Average Salary" used in some of these calculations included salary paid for work performed before the first full pay period which results in a benefit overpayment of approximately 2% of the gross benefit. Staff are currently implementing the statutory change for new retirements, so the issue is confined to a discrete population of prior benefit calculations.

BACKGROUND

Internal Audit report No. 2013-06 originally presented at the July 26, 2013 Audit Committee meeting identified a group of Tier Two and OPSRP full formula calculations where salary paid for work performed before the first full pay period was not excluded from Final Average Salary. Full Formula calculations for both these programs are calculated using the greater of the last 36 months of salary or the high three years; OPSRP includes an additional requirement that the high three years be consecutive.

Failing to exclude any salary paid for work performed before the first full pay period resulted in an overpayment in approximately half of the calculations sampled. The average Tier Two benefit payment in this group ranges from \$782 to \$890 per month, depending on whether the retiree elected a survivorship option. The average OPSRP payment ranges between \$378 and \$482 per month. The amount of overpayment averaged approximately two percent of the gross monthly benefit (\$7.56 to \$17.81 per month for the combined population).

UPDATE

Staff has identified a combined 4,774 Tier Two and OPSRP payees who are currently receiving a full formula based monthly payment. Additionally, 3,106 payees received a one-time lump sum payment. Based on our sampling, we know that not all of these cases are affected. To determine which accounts include the additional salary payment, each benefit calculation would need to be individually reviewed. For accounts with errors, a time consuming multiple step adjustment would be required to correct monthly benefit payments going forward and invoice for the overpayment from affected monthly benefit and lump sum benefit recipients.

Staff is evaluating the options to resolve this situation in a timely and cost-effective manner, including the potential of transferring funds from the Contingency Reserve to cover the projected actuarial cost of these overpayments.

The estimated total cumulative overpayment for the monthly benefit group as of January 1, 2014 is \$784,200. Staff consulted with Milliman to calculate the present value of the expected future overpayments for the affected payees remaining lifetime. Milliman estimated a present value of between \$5 million to \$6 million (using PERS current actuarial assumptions and staff's current estimate of the impacted benefit payments). The additional estimated overpayment for the lump-sum one time lump-sum payment group is \$241,100.

Staff will continue to refine the impacted Final Average Salary group, evaluate all options for resolution, and coordinate with Milliman. We will present the results of this further analysis and a recommendation for resolution at a future Board meeting.



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January 31, 2014

TO: Members of the PERS Board
FROM: Paul R. Cleary, Executive Director
SUBJECT: Update on Out of State Tax Remedy Elimination (SB 822)

OVERVIEW

Provisions of SB 822 (2013) required PERS to discontinue payment of the “tax remedy” as of January 1, 2014, to recipients whose PERS benefits are not subject to Oregon income tax because they are not residents of Oregon. In anticipation of this change, the agency communicated with benefit recipients about the pending change through the agency website, newsletters, customer service messages, and benefit recipient-specific letters outlining the potential impact.

We experienced a number of challenges implementing the tax remedy provisions of SB 822, particularly in trying to use state tax filing information as a proxy for state residency. We will apply that experience in the future to improve our processes for identifying benefit recipients who are not subject to Oregon personal income taxes because they are not residents of Oregon, and enhance our communications with impacted benefit recipients.

SENATE BILL 822 – ELIMINATION OF TAX REMEDY PAYMENT

As directed by statute, PERS worked with the Department of Revenue (DOR) to help identify the population of payment recipients who should no longer receive tax remedy as of January 1, 2014. DOR compared the PERS pension roll to 2012 Oregon income tax filing information as of October 15, 2013. Final data was received from DOR at the end of October to ensure those who filed timely returns by extension would be included. Through this comparison, non-filers, non-resident filers, and partial-year filers were identified.

Some benefit recipients with Oregon addresses, for reasons known to them, were determined to be non-filers for 2012 Oregon income taxes as of the end of October. We now understand that there are a number of reasons why Oregon residents may be non-filers. Likewise, just because a benefit recipient may have an Oregon mailing address does not establish that the benefit recipient is an Oregon resident. With this combination of unknowns, PERS experienced the unintended consequence of eliminating the tax remedy for some Oregon residents.

The following table shows the timeline of PERS communications with specific benefit recipients regarding this change and the number of benefit payments by mailing address type that were impacted by the elimination of the tax remedy effective with the January 1, 2014 benefit payment.

Tax Remedy Related Correspondence Timeline

Month (2013)	Total Letters	Population	Message
Aug.	9,531	Domestic and International low-benefit payment recipients. Includes 5,366 letters to Oregon addresses.	Info about tax remedy. Requests residency status form if Oregon resident.
Nov.	2,961	Domestic and International payment recipients. 333 sent to Oregon addresses not on the August list.	Info about tax remedy. Requests residency status form if Oregon resident.
Dec.	19,432	Domestic and International payment recipients. 4,551 to Oregon addresses (4,446 payees – of those, this was the first communication for 2,902 payees.)	Alert of monthly payment reduction and appeals process.

Distribution of Tax Remedy Reductions Effective January 1, 2014

Address Type	Number Affected	Range of Monthly Benefit Reductions	Total Monthly Benefit Reduction
International	212	<\$1.00 to \$1,665.34	\$31,613.44
Domestic – Oregon	4,551	<\$1.00 to \$1,064.89	\$461,918.13
Domestic – Non-Oregon	14,668	<\$1.00 to \$1,308.50	\$2,061,510.74
Total	19,431	<\$1.00 to \$1,665.34	\$2,555,042.31

There is no simple, consistent correlation between tax remedy payment and monthly benefit as the statutory formulas for eligible Tier One members are based either on when their service time occurred or the total amount of service time the member worked. The maximum remedy is 9.89% of the monthly benefit. Attached is the Frequently Asked Questions (FAQ) posting from the PERS website that explains the statutory tax remedy formulas in more detail.

RESPONSE TO AGENCY ACTION

As benefit recipients became aware of the specific impact of tax remedy elimination through our December correspondence and their January 1 payment reductions, call volume into our customer service center spiked to the point of overwhelming our phone system and staff, as did administrative appeal filings, and communications with legislators and their staff. Oregon residents who experienced the unintended consequence of tax remedy elimination were asked to file a Residency Status Certification form to acknowledge Oregon residency. An additional mailing to impacted Oregon address benefit recipients was also recently conducted to remind them of the importance of filing the residency form prior to the mid-February cut-off described below.

TAX REMEDY RESTORATION AND RETROACTIVE PAYMENTS

As Oregon residents file Residency Status Certification forms, PERS will restore their tax remedy consistent with the following schedule. If PERS received the form by December 22, 2013, we restored their tax remedy payment with the January 1, 2014 payment and those benefit

recipients continued to receive the tax remedy with no interruption. If PERS received the form by January 22, 2014, we will restore the tax remedy with the February 1, 2014 payment. If PERS receives the form by February 14, 2014, we will restore the tax remedy with the March 1, 2014 payment. Any benefit recipient who submits forms after February 14, 2014 will not have the tax remedy payment restored until January 1, 2015, nor will they be eligible for any retroactive payment for tax remedy payments missed during 2014.

The PERS benefit calculation and payment systems were designed for financial control and security, so any adjustments to member data and payments require multiple steps. We are working as quickly as possible to process residency certification information for our benefit recipients, restore the tax remedy for those who are eligible, and develop a process for making retroactive payments for tax remedy payments that were missed. We will continue to update our call center messaging and website postings as we establish the process and timeframe for the retroactive payments.

NEXT STEPS

PERS will continue to work with DOR to refine the annual tax filing data request to more effectively identify benefit recipients who receive PERS benefits that are not subject to Oregon personal income taxes because they are not residents of Oregon. In addition, residency forms received this year will help establish a baseline of benefit recipients with Oregon addresses who may continue to show up as non-filers in subsequent DOR tax filing comparisons.

PERS asks benefit recipients to notify the agency whenever they move, and statute now requires that they provide a written notice when they have a change in residency status for tax purposes. We may have to rely more on that change in residency communication in the future to help determine whether someone's benefit payments are subject to Oregon personal income tax.

A.1.e. Attachment 1- Tax Remedy Frequently Asked Questions



“Tax Remedy” Elimination for Certain Benefit Recipients (Senate Bill 822)

1. What is the “tax remedy?”

In 1991, the Oregon Legislature changed the law so recipients had to pay state income tax on the PERS benefits they received during a calendar year.

Senate Bill 656 (1991) and House Bill 3349 (1995) provided formulas by which PERS was directed to increase benefits for certain recipients as a remedy for now imposing state income tax on the benefits received. The increases that result from applying these formulas are known as the “tax remedy.”

The tax remedy formulas are based on the time period and/or amount of service time the member worked in PERS-covered employment and is different for each benefit recipient. If eligible (see Question 2), the maximum is 9.89% of the initial benefit.

2. Who receives the “tax remedy?”

Tier One members who established PERS membership before July 14, 1995 and have either service time before October 1, 1991 or at least 10 years of creditable service are eligible for the tax remedy. Tier Two and OPSRP members are not eligible for any tax remedy.

3. How are the tax remedy increases determined?

Under the Senate Bill 656 formula, a benefit recipient receives a percentage increase based on the number of years of service credit that person has in PERS, from a minimum increase of 1% with 10 years of creditable service to a maximum of 4% with 30 years of creditable service.

Under the House Bill 3349 formula, a benefit recipient receives a percentage increase based on the ratio of his/her service in PERS that occurred before 1991 to total years of service. If a benefit recipient’s entire service occurred before October 1991, he/she would receive the maximum adjustment of 9.89%. If half of his/her service was before that date, the increase would be 50% of 9.89%, and so on.

Eligible benefit recipients receive the benefit increase under either the House Bill 3349 formula or the Senate Bill 656 formula, whichever is greater.

4. What effect did Senate Bill 822 have on the “tax remedy” for certain PERS benefit recipients?

Senate Bill 822 (2013) eliminated the tax remedy for benefit recipients who do not pay Oregon state income tax on their PERS benefits because they do not reside in Oregon. This is because the benefit increase was provided as a remedy for subjecting PERS benefits to Oregon state income tax.

5. How often does PERS review a benefit recipient’s residency status?

PERS will work with the Oregon Department of Revenue (DOR) each calendar year to determine a benefit recipient’s residency status based on income tax returns filed for the previous year.

A new Oregon Administrative Rule was adopted at the September 27, 2013 PERS Board meeting. Under the new rule, if DOR notifies PERS that a person:

- Filed personal income tax as an Oregon resident, PERS will continue or start paying that person the tax remedy.
- Filed personal income tax as a non-Oregon resident, PERS will stop paying that person the tax remedy.
- Did not file Oregon personal income tax, PERS will stop paying the tax remedy unless PERS has a [Residency Status Certification](#) on file that the benefit recipient is subject to Oregon income tax.
- Filed personal income tax as a partial-year resident in the most recent year and the prior year the person filed personal income tax as a resident (so the person moved out of state), PERS will stop paying that person the tax remedy.
- Filed personal income tax as a partial-year resident in the most recent year and the prior year the person filed personal income tax as a non-resident (so the person moved to Oregon), PERS will start paying that person the tax remedy.
- Filed personal income tax as a partial-year resident and the prior year the person did not file personal income tax, PERS will start paying that person the tax remedy.
- If PERS cannot determine the benefit recipient's residency based on information provided by DOR and the person has not provided PERS with a [Residency Status Certification form](#) that he/she is an Oregon resident, PERS will stop paying that person the tax remedy.

If a benefit recipient's residency status changes, he/she can submit a [Residency Status Certification form](#) to PERS to start or discontinue the tax remedy payment. Based on statute, any change to a benefit will be effective January 1 of the calendar year after PERS receives notice of the change.

6. How will PERS communicate to me if my tax remedy is eliminated or restored?

PERS will send a letter to a benefit recipient whose tax remedy is eliminated or restored. The letter will show the change in benefit amount.

7. Do I need to declare my residency status when I retire?

When a member completes a retirement application, the member must also complete a [Residency Status Certification form](#) and certify if he/she will be an Oregon resident when retired.

Updated January 2014



Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

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January 31, 2014

TO: Members of the PERS Board

FROM: Jason Stanley, Internal Audit Director

SUBJECT: Review the Annual Report of Financial Transactions of the Executive Director for the Fiscal Year Ended June 30, 2013

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, 2013 in the aggregate amount of \$230,439. Approximately 26 percent of this total relates to Other Payroll Expenses, such as health insurance, retirement contributions, the employer's portion of Social Security, and pension bond debt service payments. Details of this amount were provided at the Audit Committee meeting held on November 22, 2013. The financial records supporting this summary are maintained in the Financial and Administrative Services Division (FASD).

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 Officer 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.

I have 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, 2013, and 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 FASD Administrator. I reviewed the detailed financial summaries and identified no exceptions or inappropriate financial transactions. During the 2013 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, 2013 as submitted by the Internal Audit Director and document receipt and acceptance in the PERS Board minutes of January 31, 2014, in compliance with OAM 10.90.00 PO.



Oregon

John A. Kitzhaber, M.D., Governor

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January 31, 2014

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
SUBJECT: Notice of Rulemaking for Receipt Date Rule:
OAR 459-005-0220, *Receipt Date for Reports, Documents, Remittances, and Payments*

OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Modify the date that imaged items are deemed to be filed and received from five business days to three business days before the imaged date and clarify that the receipt stamp on items recorded on PERS' daily cash receipts log and/or check log satisfies the requirement for received items.
- Policy Issue: Should the date that imaged items are deemed to be filed and received be changed from five business days to three business days before the imaged date?

BACKGROUND

Numerous PERS statutory provisions require receipt of certain items such as documents or payments within a specified time period. OAR 459-005-0220 provides guidelines regarding when items are deemed to be received by PERS. The rule currently provides that any item imaged by PERS that does not display a PERS receipt stamp shall be deemed filed and received on the imaged date or, if the imaged date is later than the due date, then the item shall be deemed filed and received five business days before the imaged date. This window was established in 2007 because, at that time, the agency did not have a centralized process for receiving and imaging items. Past practice was to direct an item to the appropriate business division, which would then stamp the received date on the item before it was sent to imaging.

The proposed rule modifications narrow the window from five business days to three business days, for the reasons addressed below. Modifications are also proposed to clarify that the date recorded on PERS' daily cash receipts log and/or check log satisfies the requirement to establish the date of received items.

POLICY ISSUE

Should the date that imaged items are deemed to be filed and received be changed from five business days to three business days before the imaged date?

Since the rule's implementation, PERS document receipt processes have been streamlined so all documents are imaged on the same business day they are received. As such, the "imaged date"

and the “receipt date” are usually one and the same. An exception to this general rule is checks that are sent to a PERS post office box that is handled by a lockbox service through U.S. Bank. Because of the third party handling and processing, there is still a need to maintain a window to account for any potential delays in processing by the third party. Notwithstanding this limited exception, delays are rare and would not extend beyond a few business days. Therefore, three business days would be more than sufficient to address this narrow concern.

The proposed rule changes help protect the funds within PERS’ control, not only by encouraging members’ and employers’ timely compliance with deadlines required in statute, but also by allowing PERS to efficiently process purchases and other relevant transactions. In addition, a three business day window will reduce the number of recalculations that PERS will have to perform due to purchase submissions that come in after the purchase deadline but before the imaging window has ended and will allow PERS to process retirement applications in a timely manner. PERS considers three business days sufficient to avoid the risk of any delay attributable to the document being routed to imaging.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on February 25, 2014 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on March 4, 2014 at 5:00 p.m.

LEGAL REVIEW

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

IMPACT

Mandatory: No.

Impact: Members and staff will benefit from clarification of the receipt date requirements.

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

RULEMAKING TIMELINE

December 13, 2013	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
January 1, 2014	<i>Oregon Bulletin</i> published the Notice. Notice was sent to employers, legislators, and interested parties. Public comment period began.
January 31, 2014	PERS Board notified that staff began the rulemaking process.
February 25, 2014	Rulemaking hearing to be held at 2:00 p.m. at PERS in Tigard.
March 4, 2014	Public comment period ends at 5:00 p.m.

Notice – Receipt Date Rule

01/31/14

Page 3 of 3

March 31, 2014

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

NEXT STEPS

A rulemaking hearing will be held on February 25, 2014 at 2:00 p.m. at PERS headquarters in Tigard. The rule is scheduled to be brought before the PERS Board for adoption at the March 31, 2014 Board meeting.

B.1. Attachment 1 – 459-005-0220, *Receipt Date for Reports, Documents, Remittances, and Payments*

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

1 **459-005-0220**

2 **Receipt Date for Reports, Documents, Remittances, and Payments**

3 (1) As used in this rule:

4 (a) “Imaged date” means the date on which a report, document, remittance, or
5 payment is imaged and stored electronically to a dedicated network server.

6 (b) “Private express carrier” has the same meaning as in ORS 293.660(2).

7 (c) “Settlement date” means the date on which the participating Depository Financial
8 Institution (DFI) or its correspondent is scheduled to be debited or credited by the Federal
9 Reserve.

10 (2) If the due date of a report, document, remittance, or payment falls on a weekend
11 or legal holiday, the due date is deemed to be the next business day.

12 (3) Any report, document, remittance, or payment required by PERS shall be
13 deemed filed and received based on the receipt stamp affixed to the report, document,
14 remittance, or payment when received by PERS; or in the case of a check or cash
15 submission, on the date recorded in PERS’ daily cash receipts log or check log.

16 (4) Any report, document, remittance, or payment that does not display a PERS
17 receipt stamp, or has not been recorded in PERS’ daily cash receipts log or check log,
18 shall be deemed filed and received on the imaged date. If the imaged date is later than the
19 due date, the report, document, remittance, or payment shall be deemed filed and
20 received three (3) *[five]* business days before the imaged date.

1 (5) Any report, document, remittance, or payment required by PERS which is lost or
2 delayed in transmission through USPS or by a private express carrier, shall be deemed
3 filed and received on the date it was mailed or deposited for transmittal if the sender:

4 (a) Can establish by evidence satisfactory to PERS, which includes but is not limited
5 to documentation provided by USPS or the private express carrier, that the report,
6 document, remittance, or payment was deposited in the USPS or with a private express
7 carrier before the date due for filing, and was correctly addressed to PERS;

8 (b) Files with PERS a duplicate of the lost report, document, remittance, or payment,
9 in accordance with the transmittal requirements of OAR 459-005-0210 or 459-005-0215;
10 and

11 (c) Satisfies the requirements of subsections (a) and (b) of this section within 30 days
12 after PERS notifies the sender in writing of failure to receive the report, document,
13 remittance, or payment.

14 (6) An electronic funds transfer (EFT) shall be deemed received on the settlement
15 date of the transfer. A settlement date specified by an employer for an EFT shall be no
16 later than the due date specified by PERS for a remittance or a payment.

17 (7) Any report or document that PERS accepts by fax as provided in OAR 459-005-
18 0210 or 459-005-0215 which is:

19 (a) Transmitted by a fax device to any office of PERS shall be deemed filed or
20 received on the date of transmission as inscribed by the PERS fax device.

21 (b) Lost in transmission through a fax communication shall be deemed filed and
22 received when originally transmitted if the sender can establish by affidavit the proof of

1 sending and correct addressing, together with a copy of any activity report from the
2 sender's fax device, and a duplicate of the original report or document.

3 (8) A fax shall be accepted on weekends and holidays as long as the fax is otherwise
4 in compliance with due dates specified in administrative rule.

5 (9) Any report or document that PERS accepts by e-mail transmission as specified in
6 OAR 459-005-0210(5) which is:

7 (a) Transmitted by e-mail to any office of PERS shall be deemed received as of the
8 date PERS receives the transmission.

9 (b) Lost in transmission by e-mail shall be deemed filed and received when
10 originally transmitted if the sender can establish by affidavit the proof of sending and
11 correct addressing, together with a copy of any activity report from the sender's electronic
12 device, and a duplicate of the original report or document.

13 (10) A report or document transmitted by fax or e-mail must be transmitted in
14 accordance with the provisions of this rule and OAR 459-005-0215 and must be received
15 by PERS before midnight on the due date.

16 (11) When transmitting a document or report by use of fax or e-mail, the sender
17 bears the risk of failure of the transmission.

18 Stat. Auth.: ORS 238.650

19 Stats. Implemented: ORS 238, 238A



Oregon

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January 31, 2014

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
SUBJECT: Notice of Rulemaking for Retiree Health Insurance Premium Account Rules:
OAR 459-035-0001, *Definitions*
OAR 459-035-0050, *Contribution Payment from Retiree Health Insurance Premium Account for Eligible Retired State Employees Not Eligible for Medicare*

OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: To clarify participant eligibility and service time used in apportioning the health insurance premium.
- Policy Issue: No policy issues have been identified at this time.

BACKGROUND

ORS 238.415 established the Retiree Health Insurance Premium Account (RHIPA) to pay a monthly subsidy toward the cost of healthcare coverage for eligible retired state employees who are not Medicare eligible. This subsidy is actuarially funded solely by state employers as part of their employer rates and applies only to members who retire from a state employer and who immediately apply for their monthly retirement benefit.

To be eligible for the subsidy, the state employee (or their surviving spouse or dependent) must retire for service or disability and have 8 years or more of “qualifying service.” The monthly premium subsidy is calculated on a sliding scale that incrementally increases with years of “qualifying service” with a state employer. For Plan Year 2014, the RHIPA monthly premium subsidy will range from \$163.39 (8 years of service) to \$326.79 (30 + years of service).

SUMMARY OF RULE PROVISIONS

These rule revisions clarify that RHIPA eligibility and subsidy are based on “qualifying service” with a state employer only. This statutory interpretation was recently contested and the rule modifications clarify this point. Some housekeeping changes are also proposed to definitions and other non-substantive changes.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on February 25, 2014 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on March 4, 2014 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 clear and consistent rules that clarify the administration of the RHIPA subsidy.

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

RULEMAKING TIMELINE

December 13, 2013	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
January 1, 2014	<i>Oregon Bulletin</i> published the Notice. Notice was sent to employers, legislators, and interested parties. Public comment period began.
January 31, 2014	PERS Board notified that staff began the rulemaking process.
February 25, 2014	Rulemaking hearing to be held at 2:00 p.m. at PERS in Tigard.
March 4, 2014	Public comment period ends at 5:00 p.m.
March 31, 2014	Staff will propose adopting the rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

NEXT STEPS

A rulemaking hearing will be held on February 25, 2014 at 2:00 p.m. at PERS headquarters in Tigard. The rule is scheduled to be brought before the PERS Board for adoption at the March 31, 2014 Board meeting.

B.2. Attachment 1 – 459-035-0001, *Definitions*

B.2. Attachment 2 – 459-035-0050, *Contribution Payment from Retiree Health Insurance Premium Account for Eligible Retired State Employees Not Eligible for Medicare*

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

1 **459-035-0001**

2 **Definitions**

3 *[The words and phrases used in this division have the same meaning given them in*
4 *ORS Chapters 238 and 238A. Additional terms are defined as follows unless the context*
5 *requires otherwise.] **For purposes of this division:***

6 (1) “Dependent” means a PERS member’s or retiree’s dependent child. For the
7 purpose of this rule a “child” is defined as follows:

8 (a) A natural child.

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

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

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

15 (2) “Dependent Domestic Partner” means a person who has a relationship with a
16 PERS retiree that has the characteristics described below. To qualify as a “dependent
17 domestic partner”, the person and the PERS retiree must:

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

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

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

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

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

5 (f) Have the PERS retiree providing over one-half of the financial support for the
6 person and qualify as a dependent of the PERS retiree as determined under section 105(b)
7 of the Internal Revenue Code, 26 USC 105(b).

8 (3) “Eligible Person” means a person who is eligible for coverage under a PERS-
9 sponsored health insurance plan. The conditions for such eligibility are set forth in OAR
10 459-035-0020.

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

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

17 **(6) “Health Insurance Premium” means the self-sustaining premium calculated**
18 **to cover the projected claims and costs incurred by the insurance company for a**
19 **participant in a health care plan. “Health Insurance Premium” includes**
20 **retrospective premiums and employee contributions. “Health Insurance Premium”**
21 **does not include any intentional load to cover dependents or other groups or**
22 **participants.**

1 ~~[(6)]~~(7) “Medicare” means the federal health care insurance plan established under
2 Title XVIII of the Social Security Act as amended.

3 ~~[(7)]~~(8) “Medicare Companion Plan” means a PERS-sponsored health insurance
4 plan for eligible persons who are eligible for and enrolled in Medicare.

5 **(9) “Net to Carrier” means the health insurance premium due to the insurance**
6 **company. “Net to Carrier” does not include any charges for PEBB or PERS health**
7 **insurance administration.**

8 ~~[(8)]~~(10) “PEBB” means the Public Employees’ Benefit Board established under
9 ORS 243.061.

10 ~~[(9)]~~(11) “PERS Member” has the same meaning as “member” provided in ORS
11 238.005 and 238A.005.

12 ~~[(10)]~~(12) “Plan Year” means a 12-month period beginning January 1 and ending
13 December 31.

14 ~~[(11)]~~(13) “Qualifying Service” under ORS 238.415(1)(c) means[:]

15 ~~[(a) C]~~Creditable service, as defined in ORS 238.005, **with a state employer**, plus
16 any periods of employment with a[n] **state** employer participating in PERS that are
17 required of the employee before becoming a PERS member[; or]:

18 *~~[(b) Periods of employment in a qualifying position, as that term is defined in OAR~~*
19 *~~459-010-0003.]~~*

20 ~~[(12)]~~(14) “Retiree” means a PERS member who is receiving a service or disability
21 retirement allowance or benefit under PERS or who received a lump sum payment under
22 ORS 238.305(3), 238.315, or 238A.195, or payment(s) under ORS 238A.400, or a person

1 who is receiving retirement pay or pension calculated under ORS 1.314 to 1.380 (1989
2 Edition).

3 **(15) “Retrospective Premium” means any additional premium liability that is**
4 **determined at the end of the plan year, based on any pre-determined formula.**

5 ~~[(13)]~~**(16)** “RHIA” means the Retirement Health Insurance Account established
6 under ORS 238.420 to help defray the cost of the Medicare Companion Plan.

7 ~~[(14)]~~**(17)** “RHIPA” means the Retiree Health Insurance Premium Account
8 established under ORS 238.415 to help defray the cost of PERS-sponsored health plans
9 other than the Medicare Companion Plan.

10 ~~[(15)]~~**(18)** “SRHIA” means the Standard Retiree Health Insurance Account
11 established under ORS 238.410 to administer employee and the employer contributions
12 to the PERS sponsored health insurance program.

13 ~~[(16)]~~**(19)** “Staff” means the employees of the Public Employees Retirement
14 System.

15 ~~[(17)]~~**(20)** “Third Party Administrator” means the individual or organization that the
16 Board contracts with to provide administrative services as specified in the contract.

17 Stat. Auth.: ORS 238.410, 238.650 & 238A.450

18 Stats. Implemented: ORS 238.410, 238.415, 238.420 & 238A.050

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

1 **459-035-0050**

2 **Contribution Payment From Retiree Health Insurance Premium Account for**
3 **Eligible Retired State Employees Not Eligible for Medicare**

4 This rule establishes the procedure for determining the amount of contribution that
5 will be paid from the Retiree Health Insurance Premium Account (RHIPA)(ORS
6 238.415) on behalf of an eligible retired state employee under age 65, as described in
7 OAR 459-035-0040, who is enrolled in a health insurance plan sponsored by PERS.

8 *[(1) Definitions:]*

9 *[(a) “Health Insurance Premium” means the self-sustaining premium calculated to*
10 *cover the projected claims and costs incurred by the insurance company for a participant*
11 *in a health care plan. “Health Insurance Premium” includes retrospective premiums and*
12 *employee contributions. “Health Insurance Premium” does not include any intentional*
13 *load to cover dependents or other groups or participants;]*

14 *[(b) “Net to Carrier” means the health insurance premium due to the insurance*
15 *company. “Net to Carrier” does not include any charges for PEBB or PERS health*
16 *insurance administration;]*

17 *[(c) “Retrospective Premium” means any additional premium liability that is*
18 *determined at the end of the plan year, based on any pre-determined formula.]*

19 *[(2)]***(1)** On or before November 1 of each calendar year, staff shall determine the
20 monthly amount available to be paid from the RHIPA on behalf of an eligible retired
21 state employee enrolled in a PERS health insurance plan contracted for under ORS
22 238.410. In determining the average difference between the health insurance premiums

1 paid by retired state employees under contracts entered into by the Public Employees
2 Retirement Board and the health insurance premiums paid by state employees who are
3 not retired under contracts entered into by PEBB (without regard to employees who have
4 opted out of PEBB-sponsored health insurance coverage), the staff shall calculate the
5 change in value of the average of active PEBB plans after adjusting for the demographic
6 (age/sex) differences between:

7 (a) The active employee participants; and

8 (b) Retired members receiving a subsidy and participating in one of the PERS non-
9 Medicare health insurance plans as follows:

10 (A) Obtain the average employee participation for each health insurance plan
11 sponsored by PEBB for the most recent three-month period;

12 (B) Obtain the health insurance premium for each health insurance plan sponsored
13 by PEBB for the plan year next following;

14 (C) Obtain the average eligible retired state employee participation for each health
15 insurance plan sponsored by PERS for the most recent three-month period;

16 (D) Compute the average health insurance premium for all plans sponsored by PEBB
17 pursuant to the following formula:

18 (i) Step 1. Multiply the average participation in paragraph (A) of this subsection by
19 the health insurance premium in paragraph (B) of this subsection for each plan;

20 (ii) Step 2. Total the average participation for all plans;

21 (iii) Step 3. Total the result for all of the calculations in Step 1 of sub-paragraph (i)
22 of this paragraph; and

1 (iv) Step 4. Divide the total in Step 3 of sub-paragraph (iii) of this paragraph by the
2 total in Step 2 of sub-paragraph (ii) of this paragraph.

3 (E) Compute the change in value of the average active PEBB plan pursuant to the
4 following formula:

5 (i) Step 1. Divide the total in paragraph (C) of this subsection by the total in Step 2
6 of paragraph (D) of this subsection;

7 (ii) Step 2. Multiply the average participation for each plan in paragraph (A) of this
8 subsection by the result of Step 1 of sub-paragraph [(E)](i) of this [subsection]
9 paragraph for each plan;

10 (iii) Step 3. Multiply the premium for each plan in paragraph (B) of this subsection
11 by the [factor 1.6240. The factor 1.6240 is the] estimated [ratio] factor of non-Medicare
12 retiree claims cost to active claims cost;

13 (iv) Step 4. Multiply the result of Step 2 of sub-paragraph (ii) of this paragraph by
14 the result of Step 3 of subparagraph (iii) of this paragraph for each plan;

15 (v) Step 5. Total the results for all of the calculations in Step 4 of sub-paragraph (iv)
16 of this paragraph;

17 (vi) Step 6. Total the results of the average participation calculations for all plans in
18 Step 2 of sub-paragraph (ii) of this paragraph; and

19 (vii) Step 7. Divide the total premium in Step 5 of sub-paragraph (v) of this
20 paragraph by total average participation as calculated in Step 6 of sub-paragraph (vi) of
21 this paragraph.

22 (F) The result of Step 7 of sub-paragraph (E)(vii) of this subsection minus Step 4 of
23 sub-paragraph (D)(iv) of this subsection is the maximum monthly amount available to be

1 paid by *[the]* PERS on behalf of an eligible retired state employee. Under no
2 circumstances will this amount be less than \$0.

3 **[(G)] The maximum monthly amount paid by PERS on behalf of an eligible**
4 **retired state employee shall be determined using qualifying service.**

5 **[(3)](2)** The factor in Step 3 of sub-paragraph **[(2)](1)(b)**(E)(iii) of this rule shall be
6 evaluated no less frequently than every three years.

7 **[(4)](3)** The monthly amount available established under section **[(2)](1)** of this rule
8 shall be published by November 1 of each calendar year, or as soon as possible thereafter,
9 and shall be effective for the plan year next following for PERS sponsored plans.

10 **[(5)](4)** In the event an active plan is not to be renewed for a subsequent plan year,
11 the participants shall be deemed to be covered by another existing plan most similar in
12 benefits.

13 **[(6)](5)** This rule applies to the amount to be paid by PERS for the plan year 1993
14 and subsequent plan years.

15 **[(7)](6)** No person eligible for a contribution from the RHIPA as provided for in this
16 rule shall be entitled to a contribution from the RHIA.

17 Stat. Auth.: ORS 238.650

18 Stats. Implemented: ORS 238.415



Oregon

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January 31, 2014

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
SUBJECT: Notice of Rulemaking for Model Rules of Procedure Rule:
OAR 459-001-0005, *Model Rules of Procedure*

OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Update the Model Rules of Procedure Rule to reflect current state law.
- Policy Issue: No policy issues have been identified at this time.

BACKGROUND

The Oregon Administrative Procedures Act (APA) requires state agencies to adopt procedural rules for administrative rulemaking and conducting contested case proceedings. The APA also requires the Attorney General to adopt model rules that state agencies must use, although agencies may adopt additional rules governing administrative procedures. OAR 459-001-0005 adopted the Attorney General's Model Rules of Procedure. In response to statutory changes and appellate court decisions, the Attorney General updated the Model Rules, effective January 31, 2012. These rule modifications are only to conform to the date of and therefore adopt the updated Model Rules.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on February 25, 2014 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on March 4, 2014 at 5:00 p.m.

LEGAL REVIEW

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

IMPACT

Mandatory: Yes, to comply with statute.

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

Cost: There is not expected to be any cost incurred by members, employers, PERS administration or the fund.

RULEMAKING TIMELINE

December 13, 2013	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
January 1, 2014	<i>Oregon Bulletin</i> published the Notice. Notice was sent to employers, legislators, and interested parties. Public comment period began.
January 31, 2014	PERS Board notified that staff began the rulemaking process.
February 25, 2014	Rulemaking hearing to be held at 2:00 p.m. at PERS in Tigard.
March 4, 2014	Public comment period ends at 5:00 p.m.
March 31, 2014	Staff will propose adopting the rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

NEXT STEPS

A rulemaking hearing will be held on February 25, 2014 at 2:00 p.m. at PERS headquarters in Tigard. The rule is scheduled to be brought before the PERS Board for adoption at the March 31, 2014 Board meeting.

B.3. Attachment 1 – 459-001-0005, *Model Rules of Procedure*

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 001 – PROCEDURAL RULES**

1 **459-001-0005**

2 **Model Rules of Procedure**

3 The Attorney General’s Model Rules of Procedure under the Administrative
4 Procedures Act, as adopted and effective January 31, ~~[2008]~~2012, are adopted as rules of
5 procedure of the Public Employees Retirement Board, except as modified by other rules
6 of the Board.

7 [ED. NOTE: The full text of the Attorney General’s Model Rules of Procedure is
8 available from the office of the Attorney General or the Oregon Public Employees
9 Retirement System.]

10 Stat. Auth.: ORS 183.341, 237.470, ~~[&]~~ 238.650, 238A.450 & 243.470

11 Stats. Implemented: ORS ~~[238.005 - 238.715 &]~~ 237.410 - 237.620, chapters 238,
12 238A & 243.401-243.507



Oregon

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January 31, 2014

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
SUBJECT: Adoption of Senate Bill 861 Rules:
OAR 459-005-0510, *Cost-of-Living Adjustment*
OAR 459-005-0520, *Supplementary Payment*

OVERVIEW

- Action: Adopt modifications to Senate Bill 861 rules.
- Reason: Implement provisions of Senate Bill 861 (2013) affecting the calculation of the cost-of-living adjustment (COLA) payable to benefit recipients on and after July 1, 2014, and the administration of the supplementary payments for PERS benefit recipients.
- Policy Issue: No policy issues were identified.

SUMMARY OF RULE PROVISIONS

The 2013 Oregon Legislative Assembly (Special Session) passed Senate Bill 861, which modified the COLA structure previously adopted in Senate Bill 822 (2013) for COLAs paid on or after July 1, 2014. Under Senate Bill 861, the COLA is determined using the monthly allowance, pension, or benefit a recipient is entitled to on July 1 of the year in which the increase is calculated. The proposed OAR 459-005-0510 clarifies that the resulting annual COLA is paid during the following 12 months in the recipient's monthly allowance, pension, or benefit starting on August 1.

The bill includes an annual supplementary payment that begins in 2014 and sunsets on December 31, 2019. The proposed OAR 459-005-0520 provides that the supplementary payment may not be used in calculation of the yearly allowance for annual COLA and the supplementary payment is not subject to a tax remedy increase.

SUMMARY OF MODIFICATIONS TO RULES SINCE NOTICE

No modifications have been made to the rules.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on November 26, 2013 at 3:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended on December 6, 2013 at 5:00 p.m. No public comment was received.

LEGAL REVIEW

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

IMPACT

Mandatory: Yes, the rules should be updated to reflect the statutory changes.

Impact: Clarification of procedures in the administration of the annual cost-of-living adjustment and supplementary payments will benefit retirees, employers and staff.

Cost: An expenditure limitation for SB 861 was not provided during the 2013 special session but may be requested at a future Emergency Board meeting or during the 2014 legislative session.

RULEMAKING TIMELINE

October 15, 2013	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
November 1, 2013	<i>Oregon Bulletin</i> published the Notice. Notice was sent to employers, legislators, and interested parties. Public comment period began.
November 22, 2013	PERS Board notified that staff began the rulemaking process.
November 26, 2013	Rulemaking hearing held at 3:00 p.m. at PERS in Tigard.
December 6, 2013	Public comment period ended at 5:00 p.m.
January 31, 2014	Board may adopt the permanent rule modifications.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to the Senate Bill 861 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: Implement provisions of Senate Bill 861 (2013) affecting the calculation of the cost-of-living adjustment (COLA) payable to benefit recipients on and after July 1, 2014, and the administration of the supplementary payments for PERS benefit recipients.

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

B.4. Attachment 1 – 459-005-0510, *Cost-of-Living Adjustment*

B.4. Attachment 2 – 459-005-0520, *Supplementary Payment*

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

1 **459-005-0510**

2 **Cost-of-Living Adjustment**

3 **(1) As provided in ORS 238.360 and 238A.210, cost-of-living adjustment**

4 **(COLA) increases are calculated on an annual basis then divided by 12 to determine**

5 **the adjustment to the recipient’s monthly allowance, pension, or benefit.**

6 **(2) Monthly COLA increases end when the recipient is no longer eligible to**

7 **receive a monthly allowance, pension, or benefit.**

8 **(3) This rule is effective on July 1, 2014.**

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

10 **Stats. Implemented: ORS 238.360, 238.575 & 238A.210**

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

1 **459-005-0520**

2 **Supplementary Payment**

3 **(1) The purpose of this rule is to implement the supplementary payment under**
4 **Section 8 of Chapter 2, Oregon Laws 2013 (Special Session).**

5 **(2) For purposes of this rule, “benefit recipient” means a member, beneficiary,**
6 **alternate payee, or judge member.**

7 **(3) In accordance with ORS 238.465(5), an alternate payee is eligible for a**
8 **supplementary payment only if the associated member or judge member is eligible.**

9 **(4) Increased benefits under ORS 238.364 and 238.366 or cost-of-living**
10 **adjustments under 238.360 or 238A.210 are not applied to a benefit recipient’s**
11 **supplementary payments.**

12 **(5) A benefit recipient’s supplementary payment shall not be included in a**
13 **benefit recipient’s yearly allowance or yearly pension or benefit for the purpose of**
14 **calculating the cost-of-living adjustments under ORS 238.360, 238.575, or 238A.210.**

15 **Stat. Auth.: ORS 238.650, 238.465 & 238A.450**

16 **Stats. Implemented: ORS 238.360, 238.575 & 238A.210**



Oregon

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January 31, 2014

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
SUBJECT: Adoption of Final Average Salary Rule:
OAR 459-070-0100, *Employer Reporting*

OVERVIEW

- Action: Adopt modifications to Final Average Salary rule.
- Reason: Clarify final average salary determinations.
- Policy Issue: No policy issues were identified.

BACKGROUND

A recent Internal Audit Report identified certain issues relating to the agency's implementation of statutory provisions relating to determining final average salary for Tier 2 and OPSRP members. In both programs, retirement benefits are calculated using the greater of the last 36 months of salary or the high three years; OPSRP includes an additional requirement that the high three years be consecutive.

ORS 238.435(3)(c) and 238A.130(2)(c) require the exclusion of "...any salary for any pay period before the first full pay period that is included in the last 36 calendar months of membership under subsection (2)(b)." For employers whose payroll is after the first of the month, strict application of these statutory provisions could lead to less than 36 months of salary used in the member's final average salary. The proposed rule modifications clarify and address the anomaly of salary paid to a member whose pay period may cross over months.

SUMMARY OF MODIFICATIONS TO RULE SINCE NOTICE

No modifications have been made to the rule.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on November 26, 2013 at 3:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended on December 6, 2013 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 and staff will benefit from clarification of how PERS determines final average salary for a member whose pay period may cross over several months.

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

RULEMAKING TIMELINE

October 15, 2013	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
November 1, 2013	<i>Oregon Bulletin</i> published the Notice. Notice was sent to employers, legislators, and interested parties. Public comment period began.
November 22, 2013	PERS Board notified that staff began the rulemaking process.
November 26, 2013	Rulemaking hearing held at 3:00 p.m. at PERS in Tigard.
December 6, 2013	Public comment period ended at 5:00 p.m.
January 31, 2014	Board may adopt the permanent rule modifications.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to the Final Average Salary 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: Clarifies standards for final average salary determinations.

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.5. Attachment 1 – 459-070-0100, *Employer Reporting*

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

DIVISION 070 – OREGON PUBLIC SERVICE RETIREMENT PLAN, GENERALLY

1 **459-070-0100**

2 **Employer Reporting**

3 (1) Definition. “Pay period” means the span of time covered by an employer’s report
4 to PERS.

5 (2) Unless otherwise agreed upon by the PERS Executive Director and the employer,
6 an employer must transmit to PERS an itemized report of all information required by
7 PERS.

8 (a) A report must include wage, service, and demographic data for all employees for
9 a pay period.

10 (b) Except as provided in subsection (c) of this section, an employer may not submit
11 or modify a report for a pay period within a calendar year on or after the first date in
12 March of the subsequent calendar year on which PERS issues the employer a statement
13 of contributions due. This subsection applies to pay periods beginning on or after January
14 1, 2011.

15 (c) PERS will permit an employer to submit or modify a report subject to the
16 limitation of subsection (b) of this section if PERS determines the report is necessary for
17 accurate benefit administration.

18 (3) The report required under section (2) of this rule must be acceptable to PERS and
19 transmitted on forms furnished by the agency or in an equivalent format. The report must
20 be transmitted electronically, faxed, or postmarked, as applicable, no later than three
21 business days after the end of the pay period assigned to the employer under section (4)
22 of this rule.

1 (4) PERS will assign an employer a pay period which most closely matches the
2 employer’s pay cycle:

- 3 (a) Monthly: the pay period ends on the last day of the month;
- 4 (b) Semi-monthly: the pay period ends on the fifteenth of the month and the last day
5 of the month;
- 6 (c) Weekly: the pay period ends the Friday of every week; or
- 7 (d) Biweekly: the pay period ends every other Friday.

8 (5) For the purpose of determining a “pay period” under ORS 238.435(3) and
9 ORS 238A.130(2), when salary is paid on a day other than the first of the month or
10 the first business day of the month, that salary shall be considered earned in the
11 calendar month in which it is paid, unless the employer provides PERS records that
12 establish that the salary was not earned in that calendar month.

13 ~~[(5)]~~(6) If a report required under section (2) of this rule is accepted by PERS, PERS
14 will notify the employer of any exceptions and the employer must reconcile its report.
15 The corrected report must be transmitted to PERS before the employer is subject to the
16 limitation of subsection (2)(b) of this rule for that report.

17 ~~[(6)(a)]~~(7)(a) An employer that fails to transmit a report as required under sections
18 (2) and (3) of this rule must pay a penalty equal to one percent of the total amount of the
19 prior year’s annual contributions or \$2,000, whichever is less, for each month the
20 employer is delinquent.

21 (b) Penalties under subsection (a) of this section continue to accrue until the earlier
22 of the date the report is submitted or the date the limitation of subsection (2)(b) is
23 effective.

1 (c) Notwithstanding subsection (b) of this section, an employer that submits or
2 modifies a report pursuant to subsection (2)(c) of this rule must pay the penalty described
3 in subsection (a) of this section.

4 ~~[(7)]~~(8) The PERS Executive Director or a person designated by the Director may
5 waive the penalty described in section ~~[(6)]~~(7) of this rule for reports due on or after
6 January 1, 2011 and before January 1, 2012. For reports due on or after January 1, 2012,
7 penalties may be waived by the Director or the Director’s designee only upon written
8 petition from the employer.

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

10 Stats. Implemented: ORS 238A.050, 238A.130, 238.435 & 238.705



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January 31, 2014

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
SUBJECT: Adoption of Data Verification Disputes Rule:
OAR 459-001-0030, *Review of Staff Actions and Determinations Regarding Persons*

OVERVIEW

- Action: Adopt modifications to Data Verification Disputes Rule.
- Reason: Housekeeping edits to OAR 459-001-0030 are needed to clarify that this rule does not apply to disputes under ORS 238.285.
- Policy Issue: No policy issues were identified.

BACKGROUND

In 2010, Senate Bill 897 (2009) (codified as ORS 238.285) was passed relating to verification of certain retirement data upon a member's request. ORS 238.285(2) provides the procedure for disputing the accuracy of the data provided in a verification. Members have 60 days from the date of the verification to file a notice of dispute. Upon receipt of the dispute, the board determines the accuracy of the data and provides a written determination to the member that includes an explanation of any applicable statutes and rules. A member may seek judicial review of the decision as provided in ORS 183.484 and rules of the board. This procedure falls outside the standard review process provided in OAR 459-001-0030. The proposed modification to OAR 459-001-0030 clarifies that the administrative review process in OAR 459-001-0030 does not apply to data verification disputes.

SUMMARY OF MODIFICATIONS TO RULE SINCE NOTICE

No modifications have been made to the rule.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on November 26, 2013 at 3:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended on December 6, 2013 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 and staff will benefit from clarification on which rules apply in case of a data verification dispute.

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

RULEMAKING TIMELINE

October 15, 2013	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
November 1, 2013	<i>Oregon Bulletin</i> published the Notice. Notice was sent to employers, legislators, and interested parties. Public comment period began.
November 22, 2013	PERS Board notified that staff began the rulemaking process.
November 26, 2013	Rulemaking hearing held at 3:00 p.m. at PERS in Tigard.
December 6, 2013	Public comment period ended at 5:00 p.m.
January 31, 2014	Board may adopt the permanent rule modifications.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to the Data Verification Disputes 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: Clarifies that OAR 459-001-0030 does not apply to disputes under ORS 238.285.

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.6. Attachment 1 – 459-001-0030, *Review of Staff Actions and Determinations Regarding Persons*

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 001 – PROCEDURAL RULES**

1 **459-001-0030**

2 **Review of Staff Actions and Determinations Regarding Persons**

3 (1) For purposes of this rule, “Director” means the executive director of PERS, or an
4 administrator appointed by the executive director.

5 (2) Request for review. Any person may file with the Director a request for review of a staff
6 action or determination, except as provided for in ORS [238.285](#), 238.450 or in Board rules on
7 disability retirement. The request must be filed within 60 days following the date the staff action or
8 determination is sent to the person requesting review.

9 (3) Informal conferences. Informal conferences are available as an alternative means that may
10 achieve resolution of any matter under review. A request for an informal conference does not
11 change the time limit to file a request for review.

12 (4) Criteria for request. A request for review of a staff action or determination must be in
13 writing and set forth:

14 (a) A description of the staff action or determination for which review is requested;

15 (b) A short statement of the manner in which the action is alleged to be in error;

16 (c) A statement of facts that are the basis of the request;

17 (d) Reference to applicable statutes, rules or court decisions relied upon;

18 (e) A statement of the relief requested; and

19 (f) A request for review.

20 (5) Denial of request. The Director may deny any request for review within 45 days of receipt
21 of the request:

22 (a) If the request does not contain the information required under section (4) of this rule; or

1 (b) When, in the Director's view, there is no bona fide dispute of material fact, the pertinent
2 statutes and rules are clear in their application to the facts, and there is no material administrative
3 error.

4 (6) If a request is denied by the Director because it does not contain the information required
5 under section (4) of this rule, a requester will have one opportunity to correct that deficiency and
6 resubmit a request for review within 45 days of the date of denial.

7 (7) Approval of request. If the request for review is granted, the Director must issue a written
8 determination within 45 days of receipt of the request after:

9 (a) Considering the request;

10 (b) Directing staff to reconsider; or

11 (c) Directing staff to schedule an informal conference.

12 (8) Extension of deadline. Any 45-day deadline within this rule may be extended upon request
13 in writing for an additional 45 days.

14 (9) Resolution process.

15 (a) In lieu of issuing a written determination, the Director may direct staff to schedule a
16 formal contested case hearing. The hearing must be conducted in accordance with the Attorney
17 General's Model Rules of Procedure.

18 (b) If a request is denied or the Director's determination is not the relief sought by the person,
19 and the Director did not cause a contested case hearing to be scheduled, a person may file with the
20 Board a request for a contested case hearing pursuant to the Attorney General's Model Rules of
21 Procedure.

22 Stat. Auth.: ORS 238.650

23 Stats. Implemented: ORS 183.413 - 183.470



Oregon

John A. Kitzhaber, M.D., Governor

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January 31, 2014

TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Deputy Director

SUBJECT: Adoption of IRC and Social Security Limitations Rules:
OAR 459-005-0525, *Ceiling on Compensation for Purposes of Contributions and Benefits*
OAR 459-005-0545, *Annual Addition Limitation*
OAR 459-017-0060, *Reemployment of Retired Members*
OAR 459-080-0500, *Limitation on Contributions*

OVERVIEW

- Action: Adopt modifications to Social Security and IRC Limitations rules.
- Reason: Update rules to reflect the 2014 Internal Revenue Code (IRC) and Social Security annual compensation limitations.
- Policy Issue: No policy issues were identified.

BACKGROUND

Annually, the Internal Revenue Service (IRS) revises various dollar limits based on cost of living adjustments. These revisions are used throughout the PERS plan's statutes and rules, but revisions to the limits must be adopted by the legislature or PERS Board to be effective.

The IRS' revisions that are to be effective for calendar year 2014 have been announced. The proposed rule modifications incorporate these adjustments and make non-substantive edits to update citations and effective dates. These updates are necessary to ensure PERS compliance with the IRC's limits on the amount of annual compensation allowed for determining contributions and benefits, annual benefits, and annual additions to PERS.

Secondly, under ORS 238.082, a Tier One or Tier Two retired member who is receiving Social Security benefits and who returns to PERS-covered employment may continue to receive their PERS retirement benefits so long as they work less than 1040 hours or not exceed any related Social Security annual compensation limits. The proposed modifications to OAR 459-017-0060 adopt the 2014 Social Security earnings limitations. For these increases to be effective, the PERS Board has to adopt these rule modifications.

PUBLIC COMMENT AND HEARING TESTIMONY

No rulemaking hearing was held because the rules only adopt the new updates to federal law. The public comment period ends on January 31, 2014, at 1:30 p.m. No comments have been received to date, and staff will bring forward any comments received prior to the 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: Yes, statute requires the Board to update its rules to reflect revisions by the Internal Revenue Service. If not amended, OAR 459-017-0060 would provide incomplete guidance regarding reemployed retired members and outdated Social Security annual compensation limits.

Impact: Clarifies the current limits for contributions and benefits under federal law. Retired members will benefit from the updated Social Security annual compensation limits.

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

RULEMAKING TIMELINE

December 13, 2013	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
January 1, 2014	<i>Oregon Bulletin</i> published the Notice. Notice was sent to employers, legislators, and interested parties. Public comment period began.
January 31, 2014	Public comment period ended at 1:30 p.m.
January 31, 2014	Board may adopt the permanent rule modifications.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to the Social Security and IRC Limitations 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: Update rules to reflect the 2014 Internal Revenue Code (IRC) and Social Security annual compensation limitations.

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.7. Attachment 1 - 459-005-0525, *Ceiling on Compensation for Purposes of Contributions and Benefits*

B.7. Attachment 2 - 459-005-0545, *Annual Addition Limitation*

B.7. Attachment 3 - 459-017-0060, *Reemployment of Retired Members*

B.7. Attachment 4 - 459-080-0500, *Limitation on Contributions*

**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
4 Retirement System (PERS) with Internal Revenue Code (IRC) Section 401(a)(17)
5 relating to the limitation on annual compensation allowable for determining contribution
6 and benefits under 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
12 before January 1, 1996.

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

17 (d) “Noneligible participant” means a person who first becomes a member of PERS
18 after 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
21 apply for purposes of determining the amount of employee or employer contributions that
22 may be paid into PERS, and for purposes of determining benefits due under ORS

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

5 (4) For noneligible participants, the annual compensation taken into account for
6 purposes of determining contributions or benefits under ORS Chapters 238 and 238A
7 shall be measured on a calendar year basis, and shall not exceed [~~\$255,000~~] \$260,000 per
8 calendar year beginning in [~~2013~~] 2014.

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

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

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

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

22 (6) Notwithstanding sections (4) and (5) of this rule, if the Final Average Salary as
23 defined in ORS 238.005 with respect to Chapter 238 and as defined in 238A.130 with

1 respect to Chapter 238A is used in computing a noneligible participant’s retirement
2 benefits, the annual compensation shall be based on compensation paid in a 12-month
3 period beginning with the earliest calendar month used in determining the 36 months of
4 salary paid. For each 12-month period, annual compensation shall not exceed the amount
5 of compensation that is allowable under this rule for the calendar year in which the 12-
6 month period begins.

7 (7) With respect to ORS Chapter 238, creditable service, as defined in 238.005, shall
8 be given for each month that an active member is paid salary or wages and allowable
9 contributions have been remitted to PERS, or would be remitted but for the annual
10 compensation limit in IRC Section 401(a)(17). With respect to Chapter 238A, retirement
11 credit as determined in 238A.140, shall be given for each month that an active member is
12 paid salary or wages and allowable contributions have been remitted to PERS, or would
13 be remitted but for the annual compensation limit in IRC Section 401(a)(17).

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

15 Stat. Auth.: ORS 238.630, 238.650, 238A.370 & 238A.450

16 Stats. Implemented: ORS 238 & 238A

**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 ~~[2012]~~ 2013 may not exceed ~~[\$51,000]~~
8 \$52,000 (as adjusted under IRC Section 415(d)).

9 (3) Annual Additions. For purposes of this rule, the term "annual additions" has the same
10 meaning as under IRC Section 415(c)(2).

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

14 (a) If a member's after-tax contributions to purchase permissive service credit are
15 included in the member's annual additions under section (3) of this rule, the member shall not
16 be treated as exceeding the limitation under section (2) of this rule solely because of the
17 inclusion of such contributions.

18 (b) With respect to any eligible participant, the annual addition limitation in section (2) of
19 this rule shall not be applied to reduce the amount of permissive service credit to an amount
20 less than the amount that could be purchased under the terms of the plan as in effect on
21 August 5, 1997. As used in this subsection, the term "eligible participant" includes any
22 individual who became an active member before January 1, 2000.

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

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

8 (b) The payment shall not be treated as an annual addition for the calendar year in which
9 it is made; and

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

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

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

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

19 Stat. Auth.: ORS 238.630, 238.650, 238A.370 & 238A.450

20 Stats. Implemented: ORS 238.005 - 238.715, 238A.370

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

1 **459-017-0060**

2 **Reemployment of Retired Members**

3 (1) For purposes of this rule, “retired member” means a member of the PERS Chapter
4 238 Program who is retired for service.

5 (2) Reemployment under ORS 238.082. A retired member may be employed under
6 238.082 by a participating employer without loss of retirement benefits provided:

7 (a) The period or periods of employment with one or more participating employers
8 total less than 1,040 hours in a calendar year; or

9 (b) If the retired member is receiving retirement, survivors, or disability benefits under
10 the federal Social Security Act, the period or periods of employment total less than 1,040
11 hours in a calendar year or no more than the total number of hours in a calendar year that,
12 at the retired member’s specified hourly rate of pay, limits the annual compensation of the
13 retired member to an amount that does not exceed the following Social Security annual
14 compensation limits:

15 (A) For retired members who have not reached full retirement age under the Social
16 Security Act, the annual compensation limit is [~~\$15,120~~] \$15,480; or

17 (B) For the calendar year in which the retired member reaches full retirement age
18 under the Social Security Act and only for compensation for the months before reaching
19 full retirement age, the annual compensation limit is [~~\$40,080~~] \$41,400.

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

22 (4) The limitations on employment in section (2) of this rule do not apply if:

1 (a) The retired member meets the requirements of ORS 238.082(4), (5), (6), (7) or (8),
2 and did not retire at a reduced benefit under the provisions of 238.280(1), (2), or (3);

3 (b) The retired member retired at a reduced benefit under ORS 238.280(1), (2) or (3),
4 is employed in a position that meets the requirements of 238.082(4), the date of
5 employment is more than six months after the member’s effective retirement date, and the
6 member’s retirement otherwise meets the standard of a bona fide retirement;

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

9 (A) The retired member did not retire at a reduced benefit under the provisions of
10 ORS 238.280(1), (2), or (3); or

11 (B) If the retired member retired at a reduced benefit under the provisions of ORS
12 238.280(1), (2) or (3), the retired member is not so employed until more than six months
13 after the member’s effective retirement date and the member’s retirement otherwise meets
14 the standard of a bona fide retirement;

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

17 (e) The retired member is employed for service during a legislative session under ORS
18 238.092(2); or

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

21 (g) For purposes of population determinations referenced by statutes listed in this
22 section, the latest federal decennial census shall first be operative on the first day of the
23 second calendar year following the census year.

1 (h) For purposes of ORS 238.082(6), a retired member replaces an employee if the
2 retired member:

3 (A) Is assigned to the position of the employee; and

4 (B) Performs the duties of the employee or duties that might be assigned to an
5 employee in that position.

6 (5) If a retired member is reemployed subject to the limitations of ORS 238.082 and
7 section (2) of this rule, the period or periods of employment subsequently exceed those
8 limitations, and employment continues into the month following the date the limitations
9 are exceeded:

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

11 (A) PERS will cancel the member's retirement.

12 (i) If the member is receiving a monthly service retirement allowance, the last
13 payment to which the member is entitled is for the month in which the limitations were
14 exceeded.

15 (ii) If the member is receiving installment payments under ORS 238.305(4), the last
16 installment payment to which the member is entitled is the last payment due on or before
17 the last day of the month in which the limitations were exceeded.

18 (iii) If the member received a single lump sum payment under ORS 238.305(4) or
19 238.315, the member is entitled to the payment provided the payment was dated on or
20 before the last day of the month in which the limitations were exceeded.

21 (iv) A member who receives benefits to which he or she is not entitled must repay
22 those benefits to PERS.

1 (B) The member will reestablish active membership the first of the calendar month
2 following the month in which the limitations were exceeded.

3 (C) The member’s account must be rebuilt in accordance with the provisions of
4 section (7) of this rule.

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

6 (A) PERS will cancel the member’s retirement effective the date the member was
7 reemployed.

8 (B) All retirement benefits received by the member must be repaid to PERS in a single
9 payment.

10 (C) The member will reestablish active membership effective the date the member
11 was reemployed.

12 (D) The member account will be rebuilt as of the date that PERS receives the single
13 payment. The amount in the member account must be the same as the amount in the
14 member account at the time of the member’s retirement.

15 (6) For purposes of determining period(s) of employment in section (2) of this rule:

16 (a) Hours of employment are hours on and after the retired member’s effective
17 retirement date for which the member receives wages, salary, paid leave, or other
18 compensation.

19 (b) Hours of employment that are performed under the provisions of section (4) of this
20 rule on or after the later of January 1, 2004 or the operative date of the applicable statutory
21 provision are not counted.

1 (7) Reemployment under ORS 238.078(1). If a member has been retired for service
2 for more than six calendar months and is reemployed in a qualifying position by a
3 participating employer under the provisions of 238.078(1):

4 (a) PERS will cancel the member’s retirement effective the date the member is
5 reemployed.

6 (b) The member will reestablish active membership on the date the member is
7 reemployed.

8 (c) If the member elected a benefit payment option other than a lump sum option
9 under ORS 238.305(2) or (3), the last monthly service retirement allowance payment to
10 which the member is entitled is for the month before the calendar month in which the
11 member is reemployed. Upon subsequent retirement, the member may choose a different
12 benefit payment option.

13 (A) The member’s account will be rebuilt as required by ORS 238.078 effective the
14 date active membership is reestablished.

15 (B) Amounts from the Benefits-In-Force Reserve (BIF) credited to the member’s
16 account under the provisions of paragraph (A) of this subsection will be credited with
17 earnings at the BIF rate or the assumed rate, whichever is less, from the date of retirement
18 to the date of active membership.

19 (d) If the member elected a partial lump sum option under ORS 238.305(2), the last
20 monthly service retirement allowance payment to which the member is entitled is for the
21 month before the calendar month in which the member is reemployed. The last lump sum
22 or installment payment to which the member is entitled is the last payment due before the
23 date the member is reemployed. Upon subsequent retirement, the member may not choose

1 a different benefit payment option unless the member has repaid to PERS in a single
2 payment an amount equal to the lump sum and installment benefits received and the
3 earnings that would have accumulated on that amount.

4 (A) The member’s account will be rebuilt as required by ORS 238.078 effective the
5 date active membership is reestablished.

6 (B) Amounts from the BIF credited to the member’s account under the provisions of
7 paragraph (A) of this subsection, excluding any amounts attributable to repayment by the
8 member, will be credited with earnings at the BIF rate or the assumed rate, whichever is
9 less, from the date of retirement to the date of active membership.

10 (e) If the member elected the total lump sum option under ORS 238.305(3), the last
11 lump sum or installment payment to which the member is entitled is the last payment due
12 before the date the member is reemployed. Upon subsequent retirement, the member may
13 not choose a different benefit payment option unless the member has repaid to PERS in a
14 single payment an amount equal to the benefits received and the earnings that would have
15 accumulated on that amount.

16 (A) If the member repays PERS as described in this subsection the member’s account
17 will be rebuilt as required by ORS 238.078 effective the date that PERS receives the single
18 payment.

19 (B) If any amounts from the BIF are credited to the member’s account under the
20 provisions of paragraph (A) of this subsection, the amounts may not be credited with
21 earnings for the period from the date of retirement to the date of active membership.

22 (f) If the member received a lump sum payment under ORS 238.315:

1 (A) If the payment was dated before the date the member is reemployed, the member
2 is not required or permitted to repay the benefit amount. Upon subsequent retirement:

3 (i) The member may choose a different benefit payment option.

4 (ii) The member’s retirement benefit will be calculated based on the member’s periods
5 of active membership after the member’s initial effective retirement date.

6 (B) If the payment was dated on or after the date the member is reemployed, the
7 member must repay the benefit amount. Upon subsequent retirement:

8 (i) The member may choose a different benefit payment option.

9 (ii) The member’s retirement benefit will be calculated based on the member’s periods
10 of active membership before and after the member’s initial effective retirement date.

11 (iii) The member’s account will be rebuilt as described in ORS 238.078(2)

12 (g) A member who receives benefits to which he or she is not entitled must repay
13 those benefits to PERS.

14 (8) Reemployment under ORS 238.078(2). If a member has been retired for less than
15 six calendar months and is reemployed in a qualifying position by a participating employer
16 under the provisions of 238.078(2):

17 (a) PERS will cancel the member’s retirement effective the date the member is
18 reemployed.

19 (b) All retirement benefits received by the member must be repaid to PERS in a single
20 payment.

21 (c) The member will reestablish active membership effective the date the member is
22 reemployed.

1 (d) The member account will be rebuilt as of the date that PERS receives the single
2 payment. The amount in the member account must be the same as the amount in the
3 member account at the time of the member’s retirement.

4 (e) Upon subsequent retirement, the member may choose a different benefit payment
5 option.

6 (9) Upon the subsequent retirement of any member who reestablished active
7 membership under ORS 238.078 and this rule, the retirement benefit of the member must
8 be calculated using the actuarial equivalency factors in effect on the effective date of the
9 subsequent retirement.

10 (10) The provisions of paragraphs (7)(c)(B), (7)(d)(B), and (7)(e)(B) of this rule are
11 applicable to retired members who reestablish active membership under ORS 238.078 and
12 this rule and whose initial effective retirement date is on or after March 1, 2006.

13 (11) Reporting requirement. A participating employer that employs a retired member
14 must notify PERS in a format acceptable to PERS under which statute the retired member
15 is employed.

16 (a) Upon request by PERS, a participating employer must certify to PERS that a
17 retired member has not exceeded the number of hours allowed under ORS 238.082 and
18 section (2) of this rule.

19 (b) Upon request by PERS a participating employer must provide PERS with business
20 and employment records to substantiate the actual number of hours a retired member was
21 employed.

22 (c) Participating employers must provide information requested under this section
23 within 30 days of the date of the request.

1 (12) Sick leave. Accumulated unused sick leave reported by an employer to PERS
2 upon a member's retirement, as provided in ORS 238.350, may not be made available to a
3 retired member returning to employment under sections (2) or (7) of this rule.

4 (13) Subsections (4)(c) and (4)(d) of this rule are repealed effective January 2, 2016.

5 (14) This rule is effective January 1, ~~2013~~ 2014.

6 Stat. Auth.: ORS 238.650

7 Stats. Implemented: ORS 238.078, 238.082, 238.092, 399.075, & 2007 OL Ch. 499 &

8 774

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

6 (2) Annual addition limitation. Except as otherwise provided in this rule, the annual
7 addition to a member account for any calendar year may not exceed ~~[\$51,000]~~ \$52,000
8 effective January 1, ~~[2013]~~ 2014.

9 (3) Payment for military service. If a payment of employee contributions for a period
10 of military service is made under OAR 459-080-0100:

11 (a) The payment shall be treated as an annual addition for the calendar year(s) of
12 military service to which it relates;

13 (b) The payment shall not be treated as an annual addition for the calendar year in
14 which it is made; and

15 (c) For the purpose of allocating payments under this section, the member’s
16 compensation shall be the amount described in OAR 459-080-0100(3)(d).

17 Stat. Auth.: ORS 238A.450

18 Stats. Implemented: ORS 238A.370



Oregon

John A. Kitzhaber, M.D., Governor

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January 31, 2014

To: Members of the PERS Board
 From: Mini Kobbervig, PERS Health Insurance Manager
 Subject: PERS Health Insurance Special Open Enrollment Period

BACKGROUND

The PERS Health Insurance Program (PHIP) administers federal tax-qualified benefit trusts to provide payments to subsidize the cost of insurance for eligible retirees. Additionally, PHIP oversees the trust for the collection and the disbursement of member premium payments for participants' health insurance coverage. Previously, federal tax compliance requirements limited the participants in the PHIP to eligible members and their spouses and eligible dependents. Under the federal Defense of Marriage Act, "spouse" could not include a same-sex spouse, even if a state allowed such persons to legally marry.

Last summer, the U.S. Supreme Court struck down Section 3 of that act as unconstitutional and federal agencies have relaxed restrictions on recognition of same-sex spouses. Oregon's Department of Administrative Services, by adoption of a temporary rule, has directed state agencies to recognize same-sex marriages validly performed in other jurisdictions.

PROPOSED OPEN ENROLLMENT SOLUTION

The PHIP, along with our consultant (BP&A), began exploring the necessary steps to offer PHIP enrollment to eligible participants and their same-sex spouses and eligible dependents who had previously been unable to enroll because of the federal law limitation. Enrollment opportunities in PHIP are governed by administrative rule (OAR 459-035-0070). Now that the DAS rule has been adopted, PHIP is proposing an open enrollment period during which eligible participants with same-sex spouses from marriages validly performed in other jurisdictions can join PHIP. Under OAR 459-035-0070(1)(b)(D), the PERS Board is granted authority to offer enrollment "During an open enrollment period designated by the Board."

The open enrollment period would extend from February 1, 2014, through April 30, 2014, with coverage going into effect according to the following:

Application Received by:	Effective Date of Coverage:
February 28, 2014	March 1, 2014
March 31, 2014	April 1, 2014
April 30, 2014	May 1, 2014

Because our insurance carrier contracts and rates for the 2014 plan year were set with our carriers in May 2013, we conferred with our carriers to ensure that rates and benefits would not be adversely impacted by providing an open enrollment opportunity prior to the next plan year.

All carriers agreed that providing an open enrollment opportunity – for this population only – would not affect our current plan year rates or terms.

To be clear, this enrollment period would only be available to people eligible to participate in PHIP and their same-sex spouses – and eligible dependents – from same-sex marriages validly performed in other jurisdictions. PHIP continues to be restricted in enrolling registered domestic partners under Oregon’s law as that program is not considered the same as a marriage. For those persons, they may continue to qualify for enrollment as a dependent domestic partner under our current rules (OAR 459-035-0001(2)).

BOARD OPTIONS

The Board may:

1. Pass a motion to “designate an open enrollment period in PHIP from February 1, 2014 through April 30, 2014 for persons eligible to participate in PHIP and their same-sex spouses and eligible dependents.”
2. Direct staff to explore other options for compliance with the DAS temporary rule.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: Complies with the DAS rule in the most expeditious way, opening coverage to those same-sex spouses and eligible dependents who were previously excluded because of federal tax qualification restrictions.



Oregon

John A. Kitzhaber, M.D., Governor

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January 31, 2014

TO: Members of the PERS Board
FROM: Marjorie Taylor, Senior Policy Advisor
SUBJECT: 2014 Legislative Session Preview and 2015 Preliminary Legislative Concepts

FEBRUARY 2014 LEGISLATIVE SESSION PREVIEW

The Legislative Assembly will convene on Monday, February 3, 2014 for a short regular session. Although we do not anticipate as much PERS-related activity as we experienced during the 2013 session, due to the expedited timeframe for all activities, we must remain vigilant in monitoring legislative proposals.

The agency expects to present two budget-related requests and one report to the Ways and Means Subcommittee on General Government. The first request will be for funding the fiscal impact of Senate Bill 861. Implementing that measure requires funding for additional technology services, customer service positions, and increased Attorney General expenses. The second request is for funding to complete Phase II of a three-phase technology project necessary to support in-house administration of all elements of the Individual Account Program (IAP) and eliminate the use and annual cost of an outside vendor as a third-party administrator (TPA). Copies of those agency request letters are attached. Finally, the agency will also report on Board action regarding 2013 preliminary earnings crediting and reserving as presented in Agenda item C.3.

We will also follow action on Representative Doherty's bill (LC 121) that would prospectively expand the number of local government officials who may be elected to county sheriff, county judge, or county commissioner and serve in a full-time salaried position while receiving a PERS benefit. The bill is also retroactive to include the same expanded group of elected officials elected on or after November 1, 2012.

Agency staff will also monitor a bill that establishes Infrastructure Innovation Oregon - I2O (LC77) as a public advisory agency. We are unclear of the status of this proposed public body in PERS and we will seek clarification on that question. Similar to this new I2O public body, PERS inquired with the General Counsels for the University of Oregon, Oregon State University, and Portland State University about the intended relationship between the individual universities and PERS. We will monitor potential legislation for further clarification of this relationship.

Finally, we are prepared to answer questions from legislators, staff, and local governments regarding PERS' need for statutory authority to recover the administrative cost of providing standardized, audited actuarial data to comply with GASB No. 68 reporting standards. GASB is expected to issue implementation guidance this spring to help pension systems and state and local governments prepare for these new reporting standards.

POSSIBLE AGENCY CONCEPTS FOR 2015 LEGISLATIVE SESSION

The PERS Legislative Advisory Committee (LAC) met on December 17, 2013 to hear an initial presentation from agency staff regarding possible proposals for the 2015 session. Proposals included the following:

- 1. Police and Firefighters (P&F) Unit Purchases.** Currently, a P&F Unit purchase must be made within 60 days prior to the member’s effective retirement date. Technically, if a P&F member chooses to purchase P&F Units more than 60 days before the effective date of retirement, PERS is required to return the check and ask the member to submit the purchase within the 60-day window. A member may make other service time purchases within a 90-day window. This concept proposes to extend the P&F Unit purchase time period from 60 to 90 days before retirement to be consistent with other purchase times, including waiting and refunded time.
- 2. OPSRP Disability – Educational Employees Receiving a Non-Duty Disability Benefit.** Currently, there is a disparity in statute, where an OPSRP member who is an educational employee is required to have active membership in 10 or more calendar years to qualify for non-duty disability benefits. However, to be eligible to receive retirement credit at service retirement for their period of disability, the employee is required to have 10 years of retirement credit. This proposal will refine the disparity between active membership in 10 calendar years versus 10 years of retirement credit.
- 3. Housekeeping – Updating Statutory References.** This housekeeping concept is necessary to properly reflect newly codified statutes in all programs, such as including reference to ORS 238.372-.382 (tax remedy) in ORS 238.580 (judges), and including ORS 238.092 in ORS 238A.050, to clarify legislators can retire for legislative service from the IAP and retain their general service IAP account.

This table outlines next steps for drafting and requesting introduction of agency measures.

When	Who	Action
Late January	PERS Board	Acknowledge initial suggestions for 2015 concepts.
Early March	PERS LAC	Provide input on draft requests to be considered by Board.
Late March	PERS Board	Approve requests for drafting Legislative Concepts.
Late April	PERS Staff	Submit draft requests to Governor/DAS for consideration.
Mid June	DAS/Gov.	Submit approved requests to Legislative Counsel for drafting.
By Late September	Legislative Counsel	Return bill drafts to agency for review. PERS will distribute drafts to stakeholders and Board for comments and suggestions. Legislative Counsel will revise bills if requested.
Late November	PERS Board	Approve request to Governor/DAS to file bills on behalf of PERS.
Mid December	DAS/Gov.	Files agency bills and reports back on bill number assignments.

NEXT STEPS

In February and March, I look forward to summarizing activities of the 2014 legislative session and providing more information about proposed 2015 legislative concepts.

Attachment 1– SB 861 Funding Request Letter

Attachment 2 – IAP Administration Project Funding Request Letter



Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

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January 24, 2014

The Honorable Senator Richard Devlin, Co-Chair
The Honorable Representative Peter Buckley, Co-Chair
Joint Committee on Ways and Means
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Dear Co-Chairpersons:

Nature of the Request

The Public Employees Retirement System (PERS) requests an increase in the agency's Other Funds limitation for the 2013-15 biennium by \$1,022,945 to implement provisions of Senate Bill 861, which was approved during the 2013 Special Legislative Session. The October 1, 2013 Fiscal Impact Statement for Senate Bill 861 described these costs and indicated PERS would request the expenditure limitation during the 2014 legislative session or from the Emergency Board.

Agency Action

In addition to further modifying the Senate Bill 822 (2013) cost-of-living adjustment (COLA) beginning July 1, 2014, Senate Bill 861 directed the PERS Board to make a supplemental payment each year to eligible benefit recipients, starting in 2014 and ending in 2019. The Board is to pay a 0.25% supplemental payment to benefit recipients who annually receive up to \$60,000 in benefits, capped at \$150 to recipients with annual benefits greater than \$60,000. A second 0.25% supplemental payment is to be paid to recipients who annually receive benefits totaling \$20,000 or less.

This request is to cover the costs associated with building the information technology to support processing the supplemental benefit payments adding four limited duration positions in the agency call center to handle increased call volume, and paying the additional Attorney General charges related to defending Senate Bill 861 contested cases or litigation.

The information technology portion of this budget request covers one-time costs to implement the supplemental payment provisions of Senate Bill 861. The agency already received funding to modify its systems for the modified COLA provisions in Senate Bill 822, and that technology can instead implement the COLA modifications required under Senate Bill 861 at no additional cost. Implementing the supplemental benefit payments will require PERS to make programming changes within the agency's existing benefit payment system and integrate the supplemental payments into the agency's accounting and tax reporting systems.

The PERS call center received almost 170,000 calls in 2013, the highest volume of member calls ever recorded. The legislature's deliberation of potential benefit changes to the PERS plan, and ultimate adoption of Senate Bills 822 and 861, generated a large number of these calls. These changes will be implemented over the rest of the biennium, so a consistently high call volume is expected as members experience changes in their tax remedy, COLA, and supplemental payments. To bring customer

service metrics back to more acceptable levels and respond in a more timely and thorough manner to our members, four Retirement Counselor 1 limited duration positions (3.33 FTE) were administratively established effective November 1, 2013. This request does not seek any additional position or FTE authority; rather, this request is for additional limitation in Personal Services to cover the costs of these positions through the balance of the 2013-15 biennium.

Lastly, the provisions of Senate Bill 861 are being challenged in the Oregon Supreme Court, in connection with the challenges already filed against Senate Bill 822. Implementation of these bills is also being challenged through administrative appeals, which can include contested cases at which the agency is required to be represented by legal counsel. Consequently, this request includes the anticipated increased costs in Attorney General expenses related to these legal and administrative challenges.

Action Requested

PERS requests that the Joint Committee on Ways and Means:

Increase the agency's approved Other Funds Senate Bill 822 (2013) (Chapter 53, 2013 Oregon Laws) expenditure limitation from \$1,008,151 to \$2,031,096 for the 2013-15 biennium. The expenditure limitation increase would be allocated as set forth below:

Personal Services		
Salaries & OPE	\$387,168	
Overtime	5,260	
	_____	\$ 392,428
Services & Supplies		
Employee training	\$ 3,250	
Office Expense	16,667	
Expendable Property	4,000	
IT Expendable Property	16,000	
IT Professional Services	490,500	
Attorney General	100,000	
	_____	\$ 630,517
Total Costs		\$1,022,945

Legislation Affected

If approved, the additional Other Funds budget limitation would increase the amount of expenses allocated to this agency by Section 20 of Chapter 53 (2013 Laws).

Respectfully submitted,

Paul R. Cleary, Executive Director
Public Employees Retirement System



Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

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January 24, 2014

The Honorable Senator Richard Devlin, Co-Chair
The Honorable Representative Peter Buckley, Co-Chair
Joint Committee on Ways and Means
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Dear Co-Chairpersons:

Nature of the Request

The Public Employees Retirement System (PERS) requests an increase in the agency's Other Funds limitation by \$718,750 for the 2013-15 biennium to complete Phase II of a three-phase project to improve administration of the Individual Account Program (IAP), an account-based benefit program provided to all members.

Agency Action

PERS requested resources to improve the administration of the IAP during the 2013 budget process. A budget note in SB 5537 (2013) directs the agency to return during the 2014 session with a fully developed business case to bring all elements of IAP administration in-house. The business case justifies developing the system functionality and processes needed to eliminate use of a third-party administrator (TPA), improving service and reducing costs to IAP members. If executed through Phase III, this business case shifts the remaining administrative functions to PERS by the end of the 2015-17 biennium.

A \$300,000 one-time expenditure limitation was approved in Package 103 in the agency's 2013-15 Legislatively Adopted Budget Other Funds limitation (SB 5537). This was to add functionality for select system operations, and to initiate development and deployment of a module to administer the IAP elements that are currently outsourced to a TPA. As of December 31, 2013, PERS has used approximately one-third of these funds in IT Professional Services for the first phase of the IAP project.

Phase II of the project involves inception and elaboration of the required system programming for the remaining elements of IAP administration, and acquisition of supporting software and hardware. If executed through Phase III, this project would shift the remaining portions of IAP administration to PERS before the end of the 2015-17 biennium. The Phase III funding request (projected to total some \$1.2 million for completing the project) would be part of the PERS 2015-17 Agency Request Budget.

Background

PERS reform legislation enacted in August 2003 redirected member contributions from their Tier One and Tier Two regular and variable accounts to the newly created IAP beginning January 1, 2004. Members who joined PERS in the new program, OPSRP, also had an IAP account for their member contributions. Because development of an IT system to administer the new program within four

months was not feasible, and redirection of member contributions was immediately challenged in court, PERS contracted with a TPA for IAP record keeping and payment distribution.

Court challenges are resolved and the IAP program has matured. PERS is now in a position to develop enhancements to its ORION system (Oregon Retirement Information Online Network) that incorporate those remaining elements of IAP administration, allowing the agency to provide better service at a lower cost than currently provided in combination with the TPA.

Use of a TPA to administer elements of the IAP has been challenging in several areas because of the unique nature of the program. The IAP does not follow a traditional 401(k)-type account-based plan structure. Instead, the TPA has had to customize its systems, leading to more reliance on manual processing that can result in errors and delays in processing distributions, as well as challenges in reconciling PERS' records with the TPA.

PERS currently pays the TPA approximately \$2.2 million annually for record-keeping and benefit payment distribution services. Eliminating those charges will enhance the net annual return on members' IAP account investments.

A recent survey of PERS members shows a strong interest in having better access to information about IAP accounts and PERS benefits in a more streamlined manner. Currently, members must access multiple websites with different usernames and passwords, and IAP information may lag several weeks compared to up-to-date PERS information.

Action Requested

PERS requests that the Joint Committee on Ways and Means:

Increase the agency's approved Other Funds operations limitation from \$81,691,343 to \$82,410,093 for the 2013-15 biennium. This increase would be allocated as set forth below:

Services & Supplies		
IT Professional Services (one-time costs)		\$493,750
Capital Outlay		
Data Processing Software (one-time costs)	\$ 162,500	
Data Processing Hardware (one-time costs)	\$ 62,500	<u>\$225,000</u>
Total One-time Costs		\$718,750

Legislation Affected

If approved, the additional Other Funds budget limitation would increase the amount of expenses allocated to this agency by Section 1(1) of Chapter 548 (2013 Laws).

Respectfully submitted,

Paul R. Cleary, Executive Director
Public Employees Retirement System



Oregon

John A. Kitzhaber, M.D., Governor

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January 31, 2014

TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Deputy Director
Kyle J. Knoll, Administrator, Financial & Administrative Services

SUBJECT: 2013 Preliminary Earnings Crediting and Reserving

OVERVIEW

- Action: Adopt 2013 preliminary earnings crediting decisions.
- Reason: ORS 238.670(5) requires PERS to submit a preliminary proposal to the appropriate legislative committee at least 30 days before making a final decision on earnings crediting.
- Subject: Crediting earnings for calendar year 2013 to the PERS Fund's accounts and reserves, and use of the Contingency Reserve for supplemental payments as required by Senate Bill (SB) 861.
- Policy Issues:
 - Is the Contingency Reserve adequately funded?
 - Should the SB 861 supplemental annual benefit payments required to be paid from 2014 thru 2019 be funded "up-front" by earmarking \$65 million of the Contingency Reserve?

The PERS Board is charged with crediting earnings from the PERS Fund each calendar year. Some of those allocations are directed by statute or rule; the balance is at the PERS Board's discretion.

EARNINGS ALLOCATIONS DIRECTED BY STATUTE OR RULE

The following reserves and accounts are allocated earnings by applicable statute or rule. In compliance with these restrictions, the preliminary earnings allocation reflects the following:

- 1. Administrative Expenses:** PERS administrative costs are funded by earnings when they are sufficient, as they were in 2013 (ORS 238.610(1)).
- 2. Health Insurance Accounts:** These accounts are created as part of the PERS Fund and directed by statute to be credited with actual earnings or losses, less the expense related to the administration of the programs (ORS 238.410(7); 238.415(4); 238.420(4)). For 2013, the preliminary crediting rate for these accounts is estimated to be 14.94% for RHIA, 8.98% for RHIPA, and .55% for SRHIA (invested in the Treasury Short-Term Fund).
- 3. Employer Lump Sum Payment Accounts:** These accounts are credited with actual earnings or losses of the PERS Fund Regular Account less administrative expenses, as authorized by ORS 238.225(10). For 2013, the preliminary crediting rate for these accounts is estimated to average 16.85%.

- 4. Variable Annuity Account:** This account is credited with earnings and losses on its distinct asset allocation of the PERS Fund. The Variable Annuity Account is only invested in equities and therefore its earnings are discrete from those of the more diversified PERS Fund Regular Account. For 2013, preliminary variable earnings are estimated to be 25.72%.
- 5. Individual Account Program (IAP):** These member accounts are credited with actual earnings or losses of the PERS Fund Regular Account as required by ORS 238A.350(1). Preliminary IAP earnings for 2013 are estimated to be 15.59% after deducting IAP expenses.
- 6. Tier One Rate Guarantee Reserve:** This reserve, established under ORS 238.255(1), is used to credit the assumed rate to Tier One member regular accounts. The reserve is currently in deficit in the amount of (\$340.6 thousand) from the crediting required to Tier One member regular accounts in 2011, when earnings were less than the then assumed rate of 8%. As preliminary earnings on Tier One member regular accounts for 2013 exceed the assumed rate, those excess earnings will first be applied to eliminate this deficit. Based on preliminary crediting, the Tier One Rate Guarantee Reserve will end with a positive balance of up to \$437.3 million, depending on the amount of earnings the PERS Board decides to allocate to the Contingency Reserve.

POLICY ISSUE

- *Is the Contingency Reserve adequately funded?*

ORS 238.670(1) allows the PERS Board to establish a Contingency Reserve, which the Board can then allocate for specific purposes stated in the statute. Those purposes include addressing deficits caused by employer insolvencies, paying class action legal expenses or judgments, and providing for “any other contingency that the Board may determine to be appropriate” (see ORS 238.670 attached). The current beginning balance in the Contingency Reserve is \$600.2 million.

When the Fund’s earnings for a year exceed the assumed rate, the PERS Board can allocate to the Contingency Reserve “such sums as the board may deem advisable” but no more than 7.5% of the Fund’s total earnings for that year. Attached to this memo are allocation models that show the effect of the PERS Board allocating 2013 earnings to the Contingency Reserve under four scenarios:

- (1) Making no allocation to the Contingency Reserve;
- (2) Crediting the Contingency Reserve its proportional share of 2013 PERS Fund Regular Account earnings (an earnings rate of about 16.13%);
- (3) Allocating sufficient earnings to increase the Contingency Reserve balance to equal 1% of the PERS Fund Regular Account year-end balance; or
- (4) Allocating the maximum 7.5% of total PERS Fund Regular Account earnings to the Contingency Reserve.

Staff’s recommendation is to allocate sufficient 2013 earnings to maintain the Contingency Reserve at about 1% of the Fund’s Regular Account 2013 year-end balance (the third earnings allocation model attached). Please advise if staff should model other crediting scenarios to consider for the final earnings crediting decision at the PERS Board’s March 31, 2014 meeting.

To provide some context on the adequacy of the Contingency Reserve funding level relative to potential uses, if the Oregon Supreme Court overturns the SB 822 tax remedy elimination there could be an estimated \$60 to \$70 million exposure to restore benefit underpayments and if the court overturns the SB 822 and SB 861 COLA reductions there could be an estimated \$70 to \$85 million exposure. These estimates are based on the benefit reductions that have already occurred from the 2013 COLA, and are projected to occur through 2014 and 2015 (from reduced COLA and tax remedy elimination), which may be prior to a final court ruling.

2013 PRELIMINARY ALLOCATIONS

The PERS Board's Annual Earnings Crediting Rule (see OAR 459-007-0005 attached) directs the crediting to the Judge and Tier Two member regular accounts, as well as the OPSRP Pension, Benefits-in-Force, and Employer reserves. Staff recommends the following allocations be adopted preliminarily by the PERS Board:

Non-Discretionary Allocations

Credit administrative expenses, health insurance accounts, employer lump sum accounts, variable annuity accounts, and accounts in the Individual Account Program in the manner described above. Credit Tier One member regular accounts with the assumed earnings rate (8%) in effect during 2013.

Judge Member Accounts

Credit Judge Member Accounts with the assumed earnings rate (8%) in effect during 2013.

Tier Two Member Regular Accounts

Tier Two member regular accounts usually are credited with a proportional share of available PERS Fund Regular Account earnings which will result in a preliminary rate of up to 16.02%, depending on the amount of earnings the PERS Board decides to allocate to the Contingency Reserve.

Benefits-in-Force and Employer Reserves

Credit the Benefits-in-Force and Employer reserves evenly with the remaining available PERS Fund Regular Account earnings. The preliminary crediting rate to those accounts would be up to 16.02%, depending on the amount of earnings the PERS Board decides to allocate to the Contingency Reserve.

BOARD ACTION – EARNINGS CREDITING AND CONTINGENCY RESERVE ALLOCATION OPTIONS

The Board's options for 2013 preliminary earnings crediting include:

1. Pass a motion to "adopt the preliminary crediting of earnings as presented for calendar year 2013, subject to final adoption at the March 31, 2014 PERS Board meeting, with no allocation of earnings to the Contingency Reserve."
2. Pass a motion to "adopt the preliminary crediting of earnings for calendar year 2013, subject to final adoption at the March 31, 2014 PERS Board meeting," allocating a stated amount or percentage of 2013 earnings to the Contingency Reserve.
3. Pass a motion to "adopt the preliminary crediting of earnings for calendar year 2013, subject to final adoption at the March 31, 2014 PERS Board meeting, so that the Contingency Reserve is maintained at approximately 1% of the PERS Fund Regular Account year-end balance."

4. Pass a motion to “adopt the preliminary earnings as presented for calendar year 2013, subject to final adoption at the March 31, 2014 PERS Board meeting, allocating the maximum of 7.5% of total 2013 earnings to the Contingency Reserve”.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #3.

- Reason: This option is consistent with the PERS Board’s general practice of maintaining the Contingency Reserve at approximately 1% of the PERS Fund in years when allocations to the reserve can be made.

BOARD ACTION – SUPPLEMENTAL BENEFIT PAYMENTS (SB 861) EARMARKING

SB 861 requires the PERS Board to pay annual supplemental benefit payments out of the Contingency Reserve to PERS monthly benefit recipients beginning in 2014. The statute sets out a tiered formula for calculating these payments and limits the amount of any annual supplemental payment to no more than \$150. The statutory provision and requirement for the PERS Board to pay annual supplemental payments sunsets December 31, 2019. The total amount needed to fund these supplemental payments for the six-year period (2014 – 2019) is estimated to be \$65 million.

BOARD OPTIONS

1. Earmark \$65 million of the Contingency Reserve balance (after 2013 final crediting) to cover the estimated cost of the six years of supplemental payments required by SB 861.
2. Add \$65 million of additional funds to the Contingency Reserve to cover the estimated cost of the six years of supplemental payments required by SB 861.

STAFF RECOMMENDATION

Staff recommends the Board choose Option 1.

NEXT STEPS

Once the Board makes its preliminary decisions, staff will prepare and present the required report to the Oregon Legislature’s Ways and Means Committee. Any comments received from the committee will be presented to the Board prior to its final crediting decision on March 31, 2014.

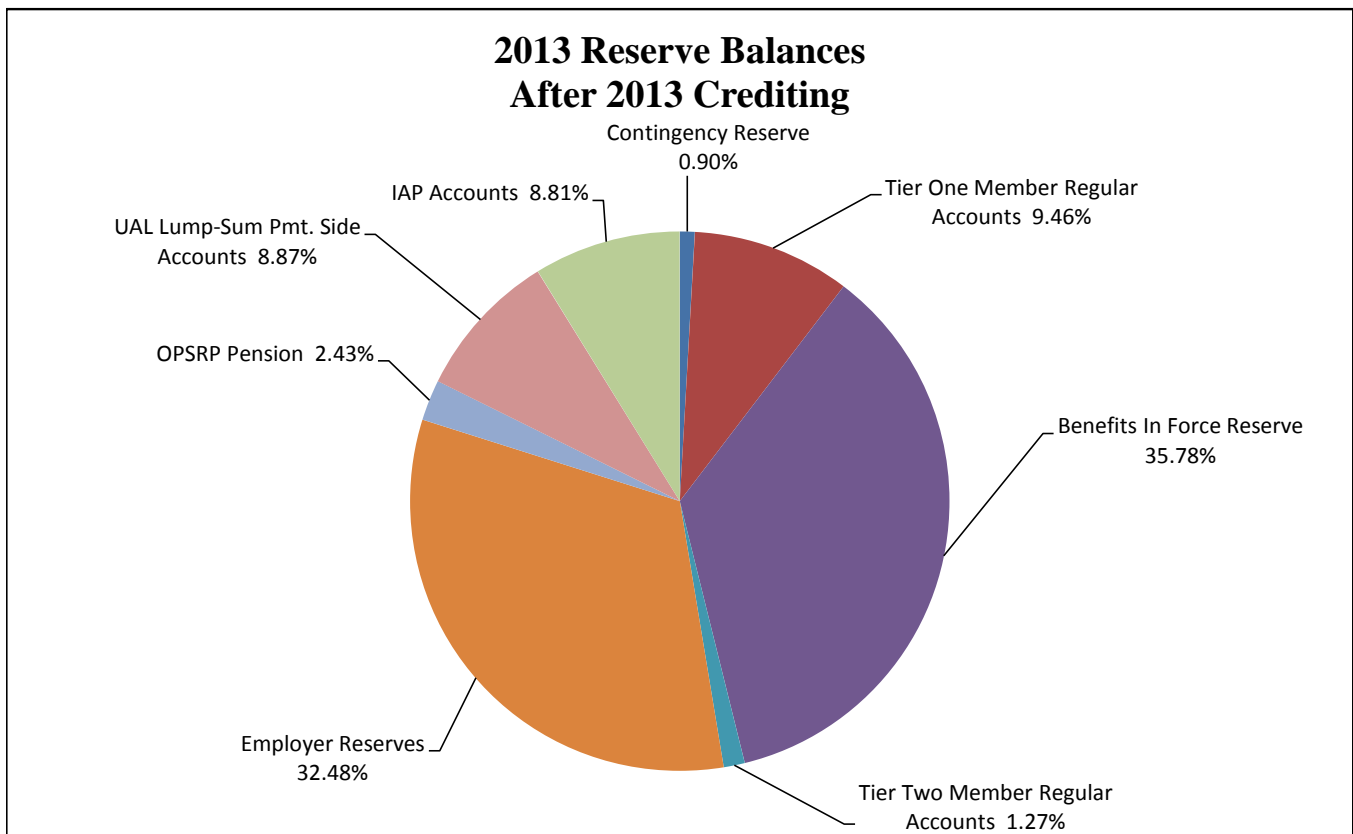
This preliminary action and the resulting report to the Legislature do not prohibit the PERS Board from changing its final crediting and reserving decisions, such as if new information becomes available. If the Board makes a significant change from its preliminary decisions, staff will report the Board’s actions to the Legislature.

Attachments:

- Option 1: Contingency Reserve Allocation Model for no allocation
- Option 2: Contingency Reserve Allocation Model for proportional share of 2013 earnings
- Option 3: Contingency Reserve Allocation Model maintains the reserve’s balance at 1% of the PERS Fund
- Option 4: Contingency Reserve Allocation Model of maximum 7.5% of 2013 earnings
- ORS 238.670 – Reserve Accounts in Fund
- OAR 459-007-0005 – Annual Earnings Crediting Rule

Oregon Public Employees Retirement System
2013 Crediting and Reserving
Credit Contingency Reserve with 0% of Earnings
 (All dollar amounts in millions)

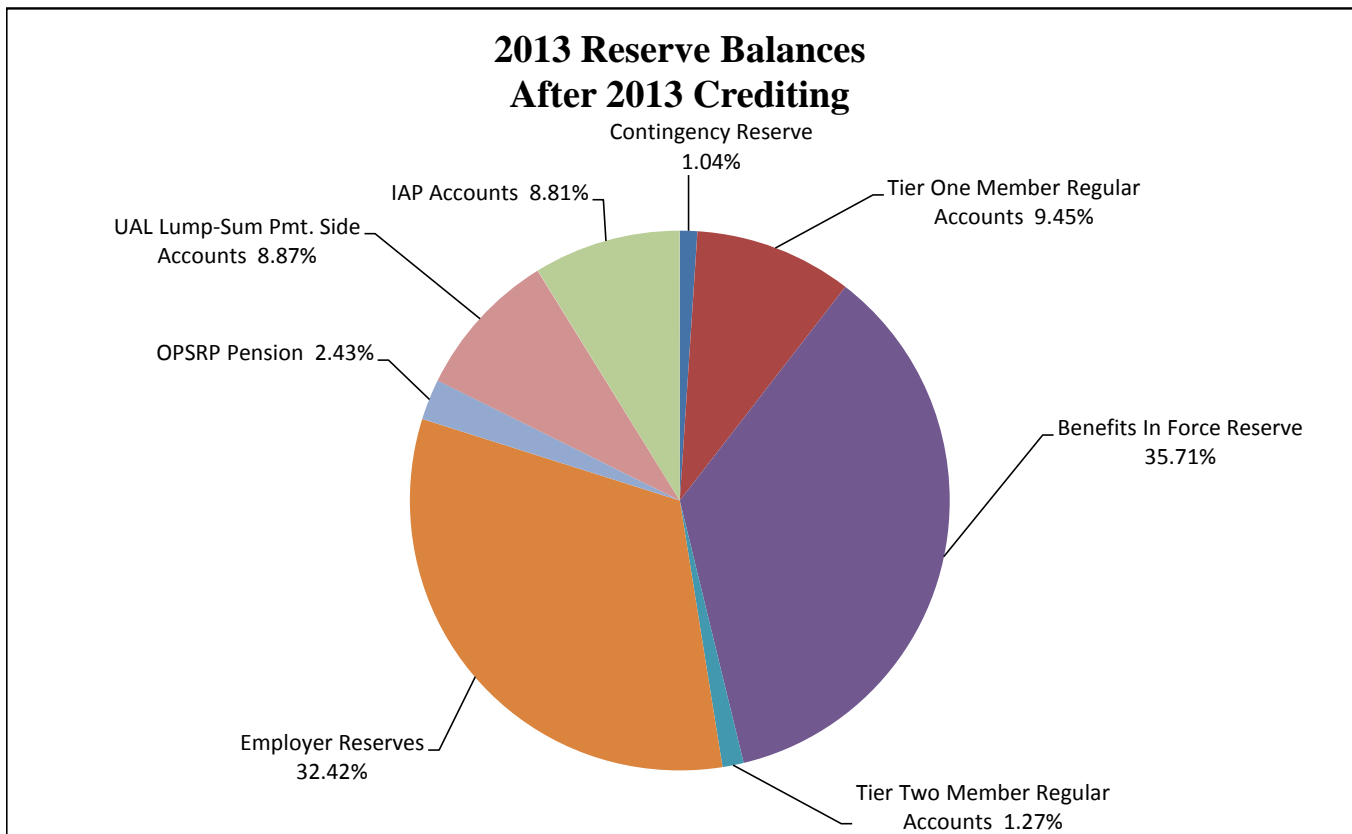
Regular Account Reserve	Reserves Before Crediting	2013 Crediting	Reserves After Crediting	2013 Rates
Contingency Reserve	\$600.2		\$600.2	N/A
Tier One Member Regular Accounts	5,457.1	436.6	5,893.7	8.00%
Tier One Rate Guarantee Reserve	(0.3)	437.6	437.3	N/A
Benefits In Force Reserve	20,621.3	3,303.6	23,924.9	16.02%
Tier Two Member Regular Accounts	733.6	117.5	851.1	16.02%
Employer Reserves	18,727.5	3,000.2	21,727.7	16.02%
OPSRP Pension	1,407.0	223.6	1,630.6	15.89%
*UAL Lump-Sum Pmt. Side Accounts	5,077.6	855.7	5,933.3	Various
*IAP Accounts	5,096.7	795.1	5,891.8	15.59%
Total	\$57,720.7	\$9,169.9	\$66,890.6	



*Informational only. Not affected by Board reserving or crediting decisions.
 IAP accounts receiving installments have already received 2013 earnings.

Oregon Public Employees Retirement System
2013 Crediting and Reserving
Credit Contingency Reserve with Equal Earnings
 (All dollar amounts in millions)

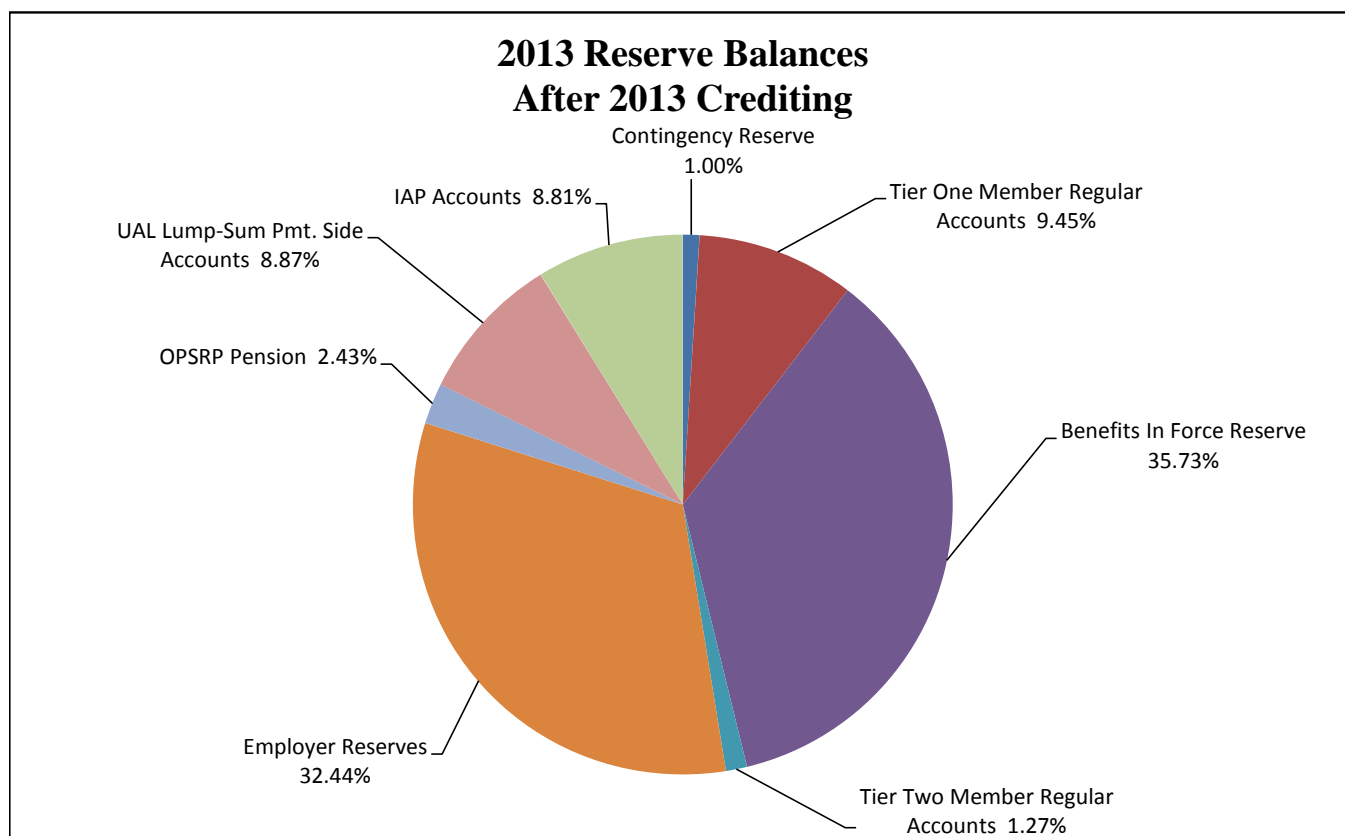
Regular Account Reserve	Reserves Before Crediting	2013 Crediting	Reserves After Crediting	2013 Rates
Contingency Reserve	\$600.2	\$96.9	\$697.1	16.13%
Tier One Member Regular Accounts	5,457.1	436.6	5,893.7	8.00%
Tier One Rate Guarantee Reserve	(0.3)	426.3	426.0	N/A
Benefits In Force Reserve	20,621.3	3,261.1	23,882.4	15.81%
Tier Two Member Regular Accounts	733.6	116.0	849.6	15.81%
Employer Reserves	18,727.5	2,961.5	21,689.0	15.81%
OPSRP Pension	1,407.0	220.7	1,627.7	15.68%
*UAL Lump-Sum Pmt. Side Accounts	5,077.6	855.7	5,933.3	Various
*IAP Accounts	5,096.7	795.1	5,891.8	15.59%
Total	\$57,720.7	\$9,169.9	\$66,890.6	



*Informational only. Not affected by Board reserving or crediting decisions.
 IAP accounts receiving installments have already received 2013 earnings.

Oregon Public Employees Retirement System
2013 Crediting and Reserving
Credit Contingency Reserve to 1% of Reserves
 (All dollar amounts in millions)

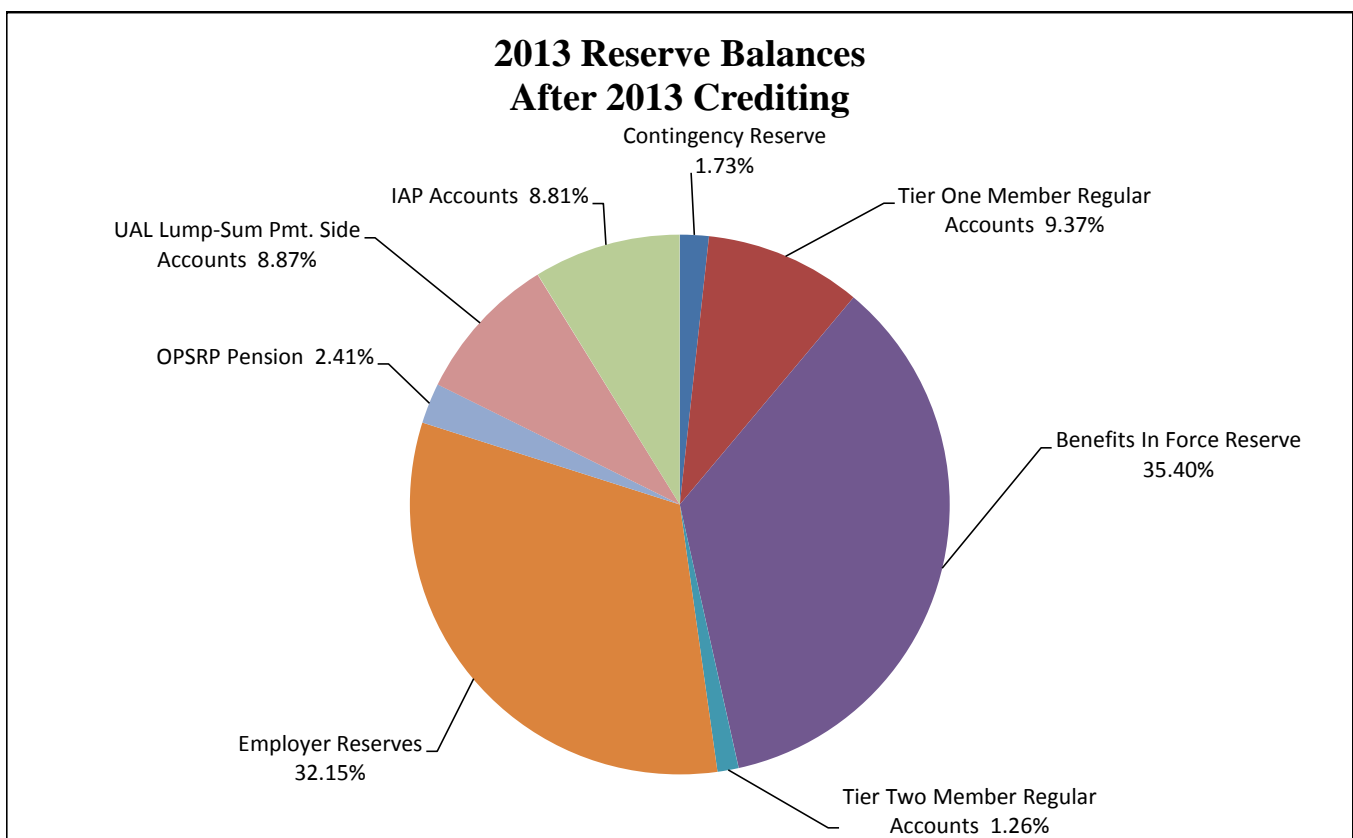
Regular Account Reserve	Reserves Before Crediting	2013 Crediting	Reserves After Crediting	2013 Rates
Contingency Reserve	\$600.2	\$68.7	\$668.9	N/A
Tier One Member Regular Accounts	5,457.1	436.6	5,893.7	8.00%
Tier One Rate Guarantee Reserve	(0.3)	429.6	429.3	N/A
Benefits In Force Reserve	20,621.3	3,273.4	23,894.7	15.87%
Tier Two Member Regular Accounts	733.6	116.4	850.0	15.87%
Employer Reserves	18,727.5	2,972.8	21,700.3	15.87%
OPSRP Pension	1,407.0	221.6	1,628.6	15.74%
*UAL Lump-Sum Pmt. Side Accounts	5,077.6	855.7	5,933.3	Various
*IAP Accounts	5,096.7	795.1	5,891.8	15.59%
Total	\$57,720.7	\$9,169.9	\$66,890.6	



*Informational only. Not affected by Board reserving or crediting decisions.
 IAP accounts receiving installments have already received 2013 earnings.

Oregon Public Employees Retirement System
2013 Crediting and Reserving
Credit Contingency Reserve with 7.50% of Earnings
 (All dollar amounts in millions)

Regular Account Reserve	Reserves Before Crediting	2013 Crediting	Reserves After Crediting	2013 Rates
Contingency Reserve	\$600.2	\$556.5	\$1,156.7	N/A
Tier One Member Regular Accounts	5,457.1	436.6	5,893.7	8.00%
Tier One Rate Guarantee Reserve	(0.3)	372.9	372.6	N/A
Benefits In Force Reserve	20,621.3	3,059.2	23,680.5	14.83%
Tier Two Member Regular Accounts	733.6	108.8	842.4	14.83%
Employer Reserves	18,727.5	2,778.2	21,505.7	14.83%
OPSRP Pension	1,407.0	206.9	1,613.9	14.70%
*UAL Lump-Sum Pmt. Side Accounts	5,077.6	855.7	5,933.3	Various
*IAP Accounts	5,096.7	795.1	5,891.8	15.59%
Total	\$57,720.7	\$9,169.9	\$66,890.6	



*Informational only. Not affected by Board reserving or crediting decisions.
 IAP accounts receiving installments have already received 2013 earnings.

238.670 Reserve accounts in fund. (1) At the close of each calendar year in which the earnings on the Public Employees Retirement Fund equal or exceed the assumed interest rate established by the Public Employees Retirement Board under ORS 238.255, the board shall set aside, out of interest and other income received through investment of the Public Employees Retirement Fund during that calendar year, such part of the income as the board may deem advisable, not exceeding seven and one-half percent of the combined total of such income, which moneys so segregated shall remain in the fund and constitute therein a reserve account. The board shall continue to credit the reserve account in the manner required by this subsection until the board determines that the reserve account is adequately funded for the purposes specified in this subsection. Such reserve account shall be maintained and used by the board to prevent any deficit of moneys available for the payment of retirement allowances, due to interest fluctuations, changes in mortality rate or, except as provided in subsection (3) or (4) of this section, other contingency. In addition, the reserve account may be used by the board for the following purposes:

(a) To prevent any deficit in the fund by reason of the insolvency of a participating public employer. Reserves under this paragraph may be funded only from the earnings on employer contributions made under ORS 238.225.

(b) To pay any legal expenses or judgments that do not arise in the ordinary course of adjudicating an individual member's benefits or an individual employer's liabilities.

(c) To provide for any other contingency that the board may determine to be appropriate.

(2) At the close of each calendar year, the board shall set aside, out of interest and other income received during the calendar year, after deducting the amounts provided by law and to the extent that such income is available, a sufficient amount to credit to the reserves for pension accounts and annuities varying percentage amounts adopted by the board as a result of periodic actuarial investigations. If total income available for distribution exceeds those percentages of the total accumulated contributions of employees and employers, the reserves for pensions and annuities shall participate in such excess.

(3) The board may set aside, out of interest and other income received through investment of the fund, such part of the income as the board considers necessary, which moneys so segregated shall remain in the fund and constitute one or more reserve accounts. Such reserve accounts shall be maintained and used by the board to offset gains and losses of invested capital. The board, from time to time, may cause to be transferred from the reserve account provided for in subsection (1) of this section to a reserve account provided for in this subsection such amount as the board determines to be unnecessary for the purposes set forth in subsection (1) of this section and to be necessary for the purposes set forth in this subsection.

(4) The board may provide for amortizing gains and losses of invested capital in such instances as the board determines that amortization is preferable to a reserve account provided for in subsection (3) of this section.

(5) At least 30 days before crediting any interest and other income received through investment of the Public Employees Retirement Fund to any reserve account in the fund, the board shall submit a preliminary proposal for crediting to the appropriate legislative review agency, as defined in ORS 291.371 (1), for its review and comment. [Formerly 237.281; 2001 c.945 §5]

459-007-0005**Annual Earnings Crediting**

- (1) For purposes of this rule, “remaining earnings” means earnings available for distribution to a particular account or reserve after deduction of amounts required or authorized by law for other purposes.
- (2) Except as otherwise specified in this division, earnings on all accounts and reserves in the Fund shall be credited as of December 31 of each calendar year in the manner specified in this rule.
- (3) Health insurance accounts. All earnings attributable to the Standard Retiree Health Insurance Account (SRHIA), Retiree Health Insurance Premium Account (RHIPA) or Retirement Health Insurance Account (RHIA) shall be credited to the account from which they were derived, less administrative expenses incurred by each account, as provided in ORS 238.410, 238.415 and 238.420, respectively.
- (4) Employer lump sum payments. All earnings or losses attributable to the employer lump sum payment accounts established under ORS 238.229 shall be credited to the accounts from which they were derived.
- (5) Member variable accounts. Earnings on the Variable Annuity Account shall first be used to pay a pro rata share of administrative expenses in accordance with ORS 238.260(6). If the annual earnings from the Variable Annuity Account are insufficient to pay for the pro rata share of administrative expenses, those administrative expenses shall be paid from earnings on other accounts within the Public Employees Retirement Fund (PERF), if available. If earnings from those accounts within the PERF are insufficient to pay for the administrative expenses, those expenses shall be paid from employer accounts as required by ORS 238.610. All remaining earnings or losses attributable to the Variable Annuity Account shall be credited to the participants of that account, as provided under 238.260(6) and (7)(b).
- (6) Individual Account Program accounts. Earnings on the Individual Account Program accounts shall first be used to pay a pro rata share of administrative expenses in accordance with ORS 238A.350(1). If the Individual Account Program experiences a loss, the loss shall be increased to pay a pro rata share of administrative expenses. All remaining earnings or losses attributable to the Individual Account Program shall be credited to the participant accounts of that program, as provided under 238A.350.
- (7) Administrative expenses. Earnings attributable to Tier One regular accounts, the Tier One Rate Guarantee Reserve, Tier Two member regular accounts, judge member regular accounts, the OPSRP Pension Program reserve, employer contribution accounts, the Contingency Reserve, the Benefits-in-Force Reserve and the Capital Preservation Reserve shall first be used to pay the system’s remaining administrative expenses under ORS 238.610.

(8) Contingency Reserve.

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

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

(9) Tier One Member Rate Guarantee Reserve. All remaining earnings attributable to Tier One regular accounts, the Tier One Member Rate Guarantee Reserve, Judge member regular accounts, the Benefits-in-Force Reserve, and the Contingency Reserve may be credited to the Tier One Member Rate Guarantee Reserve established under ORS 238.255(1).

(10) Capital Preservation Reserve. Remaining earnings attributable to the Tier Two member regular accounts, Judge member regular accounts, OPSRP Pension Program reserve, employer contribution accounts, the Benefits-in-Force Reserve, the Contingency Reserve and the Capital Preservation Reserve may be credited from those sources to one or more reserve accounts that may be established under ORS 238.670(3) to offset gains and losses of invested capital.

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

(12) Judge member regular accounts. All remaining earnings attributable to Judge member regular accounts shall be credited to all active and inactive Judge member regular accounts at the Judge member rate. Crediting under this subsection shall be funded first by all remaining earnings attributable to the Judge member regular accounts and the Tier One Rate Guarantee Reserve, then moneys in the Tier One Rate Guarantee Reserve.

(13) Tier Two member regular accounts. All remaining earnings or losses attributable to Tier Two member regular accounts shall be credited to all active and inactive Tier Two member regular accounts under ORS 238.250.

(14) OPSRP Pension Program Reserve. Remaining earnings attributable to the OPSRP Pension Program Reserve, the Contingency Reserve, and the Capital Preservation Reserve may be used to credit the OPSRP Pension Program reserve.

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

(16) Employer contribution accounts. All remaining earnings attributable to employer contribution accounts shall be credited to employer contribution accounts.

(17) Remaining earnings. Any remaining earnings shall be credited to accounts and reserves in the Fund at the Board's discretion.

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

Stats. Implemented: ORS 238, 238A.350

Hist.: PERS 8-2004, f. & cert. ef. 4-15-04; PERS 18-2005(Temp), f. & cert. ef. 10-26-05 thru 4-19-06; PERS 1-2006, f. & cert. ef. 2-1-06; PERS 4-2009, f. & cert. ef. 4-6-09; PERS 9-2012, f. & cert. ef. 5-24-12