

OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM BOARD MEETING

**Friday
January 27, 2017
1:00 P.M.**

**PERS
11410 SW 68th Parkway
Tigard, OR**

ITEM	PRESENTER
A. Administration	
1. November 18, 2016 Board Meeting Minutes	RODEMAN
2. Director's Report	
a. Forward-Looking Calendar	
b. OPERF Investment Report	
c. Budget Execution Report	
d. Annual Report of Executive Director's Financial Transactions	STANLEY
3. Board Scorecard Report on Agency Performance Measures	ARMATAS, RICKARD & SOSNE
B. Administrative Rulemaking	
1. Notice of Disability Rules	VAUGHN
2. Adoption of IRC Limitations Rules	
C. Action and Discussion Items	
1. <i>Moro</i> Implementation Project Update	ELLEDDGE-RHODES
2. Legislative Update	TAYLOR
3. Preliminary 2016 Earnings Crediting and Reserving	DUNN, MARBLE

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2017 Meetings: · April 3* May 26 July 28* September 29 · November 17* * Audit Committee

Stephen Buckley Lawrence Furnstahl Krystal Gema John Thomas, Chair Pat West, Vice Chair Steve Rodeman, Executive Director

OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM BOARD MEETING MINUTES

November 18, 2016

Board members present:

Chair John Thomas, Stephen Buckley, Lawrence Furnstahl, Krystal Gema, and Vice-chair Pat West were present.

Staff present:

Linda Barnett, Dean Carson, Melanie Chandler, David Crosley, Mary Dunn, Yvette Elledge-Rhodes, Brian Harrington, Debra Hembree, Kyle Knoll, Jordan Masanga, Beth Porter, Janice Richards, Steve Rodeman, Jason Stanley, Marjorie Taylor, Peter Ungern, Stephanie Vaughn, Anne Marie Vu, and Joli Whitney.

Others present:

Taylor Anderson, Rob Bovett, Nancy Brewer, Alison Chan, Lance Colley, Shawn Cross, Steve Elzinga, Jeff Gudman, Greg Hartman, Celia Heron, David Lacy, Matt Larrabee, Samantha Naluai, Gordon Oliver, Scott Preppernau, Carol Samuels, Lori Sattenspiel, , Rick Stevens, , Deborah Tremblay, Trudy Vidal, Scott Winkles, Peter Wong.

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

ADMINISTRATION

A.1. MEETING MINUTES OF SEPTEMBER 30, 2016

Board Vice Chair Pat West moved and Board member Krystal Gema seconded approval of the minutes submitted from the September 30, 2016 Board meeting. The motion passed unanimously.

A.2. DIRECTOR'S REPORT

Executive Director Steve Rodeman reviewed the Forward Looking Calendar and highlighted the important items to be considered by the Board in the coming year.

Rodeman reviewed the OIC Investment Report of the Oregon Public Employees Retirement Fund (OPERF) for the period ending September, 2016.

Rodeman presented the Budget Execution Report. The items listed in the report which were scheduled to be considered by the Emergency Board (E-Board) and the additional limitation and the receipt of the report in a budget note, have since been approved by the E-Board.

Rodeman reviewed various articles from around the state that discussed how employers have been preparing for the PERS employer contribution rate increases in their individual jurisdictions.

ADMINISTRATIVE RULEMAKING

Stephanie Vaughn, Policy Analysis and Compliance Section Manager, presented.

B.1. NOTICE OF IRC LIMITATIONS RULE

Vaughn presented notice of rulemaking for IRC Limitations Rules, OAR 459-005-0525; -005-0545; and -080-0500. These rules are being updated to reflect the 2017 Internal Revenue Code (IRS) annual limits regarding retirement contributions and benefits. A rulemaking hearing has been scheduled for December 22, 2016, at PERS Headquarters. The public comment period ends December 30, 2016. No Board action was required.

B.2. ADOPTION OF REEMPLOYMENT OF RETIRED MEMBERS RULE

Vaughn presented the modifications to the Reemployment of Retired Members Rule OAR 459-017-0060. These modifications were made to reflect changes from recent legislative sessions, new Social Security annual compensation limits, and for comprehensiveness and clarity.

Board member Stephen Buckley moved to adopt modifications to the Reemployment of Retired Members rule as presented. Board member Lawrence Furnstahl seconded. The motion passed unanimously.

B.3. DISABILITY POLICY OBJECTIVES

The focus group which was formed in June continues to meet regularly. The group has encountered two areas which need policy guidance from the Board. Greg Hartman representing the PERS Coalition came forward to express his gratitude at the thoughtful process which staff and partners have gone through to fully vet the issues at hand and develop options which represent the interests of everyone involved.

Vaughn reviewed the first area which is a determination of what is the most appropriate specialist standard that meets the statutory requirement of medical examinations by “physicians selected by the board?” Four options developed by the focus group were presented for consideration: Option 1- Maintain current specialist requirements; Option 2- Expand current specialist requirements; Option 3- Expand use of independent medical exams to address specialist requirements; and Option 4- Require specialists at PERS’ discretion.

After Board discussion of the merits of the four options, Furnstahl moved to adopt staff’s recommendation of Option 3 in response to the first policy question. Gema seconded the motion. The motion passed unanimously.

Vaughn asked the Board to consider the second policy question which is a determination on what is the most appropriate standard for new applications that meets the statutory “unable to perform any work for which qualified” threshold. The focus group developed three options for the Board’s consideration:

- Option 1- Maintain current standard;
- Option 2- Reinstate similar in compensation standard; and
- Option 3- Establish standard based on ability to earn more than the member’s disability benefit.

Board members asked clarifying questions about the three options.

West moved to adopt staff’s and the focus group’s recommendation of Option 3 in response to the second policy question. Furnstahl seconded the motion. The motion passed unanimously. Vaughn noted that she anticipates bringing rule modifications based on these decisions to the January Board meeting.

ACTION AND DISCUSSION ITEMS

C.1. MORO IMPLEMENTATION PROJECT UPDATE

Chief Operations Officer Yvette Elledge-Rhodes presented an update on the status of the *Moro* Implementation Project. She noted that the last of the active benefit recipients have now been paid out which is a major milestone in the project. There are a few accounts with issues such as suspended benefits which are still being resolved. The project team is currently hard at work on the Population D benefits. This population is all benefit recipients who passed away before their cost-of-living-adjustment (COLA) was adjusted and represents about 7,400 accounts. The team has sent out almost 1,800 letters to date. This population is somewhat unknown and requires

extensive research. There is still ample budget left in the duration of this project. Most of the necessary programming has been completed.

No Board action was required.

C.2. LEGISLATIVE ADVISORY COMMITTEE AND LEGISLATIVE UPDATE

Senior Policy Director Marjorie Taylor presented.

Two new appointments have been proposed to fill vacancies on the Legislative Advisory Committee - Ed Edwards for Oregon School Employees Association and Lori Sattenspiel for Oregon School Boards Association.

Furnstahl moved to approve the recommended appointments. West seconded the motion. The motion passed unanimously.

In addition, Taylor presented policy papers on several issues which PERS anticipates will be discussed during the upcoming legislative session. Also included in the Board meeting materials were the actuarial analyses of the legislative proposals developed for the PERS Solutions Work Group by the Board's actuary, Milliman.

C.3. 2017-19 EMPLOYER RATES FOR JACKSON AND JOSEPHINE COUNTIES

Assistant Chief Administration Officer Mary Dunn presented. She reviewed the matter which was continued from the September Board meeting regarding the transitional liability assessed to Jackson and Josephine counties as well as past practices for how this type of issue has historically been addressed.

West moved to adopt the 2017-19 individual contribution rates for Jackson and Josephine County as presented by the PERS actuary on September 30, 2016. Gema seconded the motion. The motion passed unanimously.

C.4. OPSRP CONTRIBUTION START DATE

Elledge-Rhodes introduced Nancy Brewer of the City of Corvallis and Jeff White of Marion County. Brewer and White presented on behalf of the Employer Advisory Group (EAG). The EAG has submitted a request to the Board to approve the use of the Contingency Reserve to fund the costs associated with correcting the Contribution Start Date (CSD) for members during the period of 2004-2014. Greg Hartman of the PERS Coalition came forward and expressed opposition to the use of these funds for this purpose. He explained that this a premature decision and a policy should be established on when the Contingency Reserve will be used.

Buckley asked about the history of the CSD issue. Rodeman reviewed the changes to the system that gave rise to the varying compliance issues among employers. Elledge-Rhodes reviewed the administrative process which will need to be undertaken to clean up the data.

West noted that he agrees that a policy or guidelines for how the Contingency Reserve is used needs to be addressed.

Gema moved to use the Contingency Reserve as requested. Furnstahl seconded the motion. West opposed the motion. The motion passed 4-1.

C.5. ACTUARIAL FINANCIAL MODELING

Matt Larrabee and Scott Preppernau of Milliman presented long-term financial modeling projections reflecting published investment results through September 30, 2016. No Board action was required.

Thomas adjourned the Board meeting at 2:50 PM.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "S. Rodeman", with a long horizontal flourish extending to the right.

Steven Patrick Rodeman
Executive Director

PERS Board Meeting Forward-Looking Calendar

Monday, April 3, 2017

Notice of Public Records Requests Rule
Notice of Employer Definitions Rule
Final 2016 Earnings Crediting and Reserving
Audit Committee Meeting

Friday, May 26, 2017

Adoption of Public Records Requests Rule
Adoption of Employer Definitions Rule
Board Scorecard Report on Agency Performance Measures
2018 Retiree Health Insurance Plan Renewals and Rates
Overview of Methods and Assumptions for 2016 Valuation

Friday, July 28, 2017

2017 Legislative Session Review
Adoption of 2016 Valuation Methods and Assumptions Including Assumed Return Rate
Audit Committee Meeting

Friday, September 29, 2017

2016 Valuation Results

Friday, November 17, 2017

2016 Valuation Update and Financial Modeling Results
Board Scorecard Report on Agency Performance Measures
Audit Committee Meeting

Returns for periods ending DEC-2016

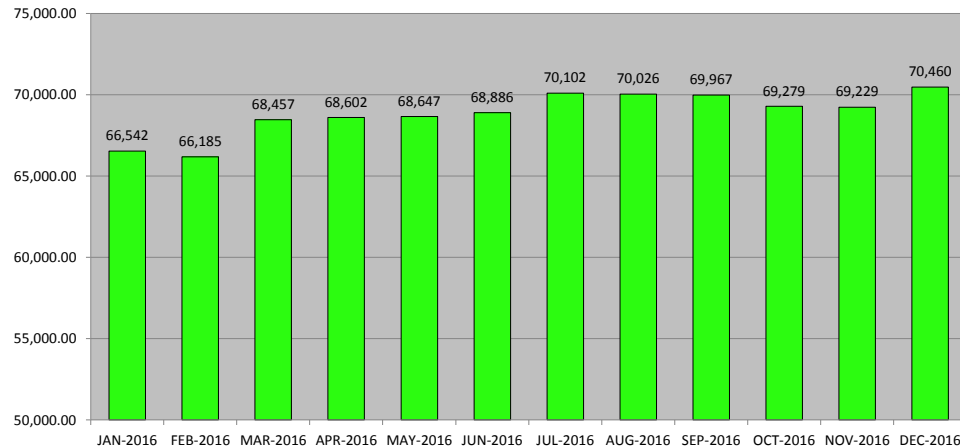
Oregon Public Employees Retirement Fund

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%	\$ 26,646,819	38.1%	9.80	9.80	3.86	3.68	9.00	10.65	8.42	4.19
Private Equity	13.5-21.5%	17.5%	\$ 13,873,866	19.9%	6.26	6.26	7.02	9.90	11.44	12.03	12.51	9.62
Total Equity	50.0-60.0%	55.0%	\$ 40,520,685	58.0%								
Opportunity Portfolio	0-3%	0%	\$ 1,472,796	2.1%	2.65	2.65	2.40	4.49	7.02	9.22	8.52	6.55
Total Fixed	15-25%	20.0%	\$ 14,881,965	21.3%	3.07	3.07	1.80	2.37	2.03	3.64	4.99	5.27
Real Estate	9.5-15.5%	12.5%	\$ 8,634,135	12.4%	6.58	6.58	8.23	10.17	10.83	11.38	9.81	5.20
Alternative Investments	0-12.5%	12.5%	\$ 4,033,611	5.8%	6.61	6.61	1.00	2.13	3.09	2.29		
Cash w/Overlay	0-3%	0%	\$ 311,169	0.4%	1.20	1.20	0.85	0.74	0.72	0.91	0.79	1.45
TOTAL OPERF Regular Account		100.0%	\$ 69,854,362	100.0%	6.88	6.88	4.47	5.40	7.86	9.11	8.59	5.47
OPERF Policy Benchmark					9.04	9.04	5.24	6.23	8.50	10.07	8.87	5.94
Value Added					(2.16)	(2.16)	(0.77)	(0.83)	(0.64)	(0.95)	(0.28)	(0.48)
TOTAL OPERF Variable Account			\$ 606,050		8.77	8.77	3.35	3.63	8.32	10.00	7.93	3.18

Asset Class Benchmarks:

Russell 3000	12.74	12.74	6.43	8.43	14.23	14.67	12.92	7.07
OREGON MSCI ACWI EX US IMI NET	4.41	4.41	(0.20)	(1.44)	2.61	5.35	3.28	1.35
MSCI ACWI IMI NET	8.36	8.36	2.95	3.25	7.99	9.61	7.57	3.84
RUSSELL 3000+300 BPS QTR LAG	18.37	18.37	10.15	13.73	16.49	19.80	16.55	10.99
OREGON CUSTOM FI BENCHMARK	2.52	2.52	1.33	1.90	1.49	2.88	3.76	4.35
OREGON CUSTOM REAL ESTATE BENCHMARK	9.62	9.62	11.53	11.44	11.33	11.26	11.15	7.26
CPI +4%	6.15	6.15	5.45	5.23	5.31	5.41	5.62	5.85
91 Day Treasury Bill	0.33	0.33	0.19	0.14	0.12	0.12	0.12	0.80

Total OPERF NAV
(includes Variable Fund asset)
One year ending DEC-2016
(\$ in Millions)



¹OIC Policy revised June 2015.

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.



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January 27, 2017

TO: Members of the PERS Board
FROM: Linda M. Barnett, Budget Officer
SUBJECT: January 27, 2017 Budget Execution Report

2015-17 OPERATIONS BUDGET

Operating expenditures for October 2016, November 2016, and preliminary expenditures for December 2016 were \$3,292,205, \$3,855,061 and \$3,063,507, respectively. Final expenditures for December closed on January 13, 2017, in the Statewide Financial Management System (SFMS), and will be included in the April 3, 2017, report to the Board. To date, through the first 18 months (or 75%) of the 2015-17 biennium, the Agency has expended a total of \$70,803,392 or 66.20% of PERS' legislatively approved operations budget of \$106,949,449. The current projected positive variance is \$2,965,259 or approximately 2.77% of the operations budget. The reduction in the positive variance from prior months is due to an increase in projected spending for the agency's cyber security initiative. The Agency's goal is to maintain a positive variance of at least \$2.1 million (2%).

As of December 2016, PERS is awaiting approval from the Legislative Fiscal Office on our request to reschedule \$3,466,176 to do the following:

- \$1,659,976 Pkg. 104 – IT Maintenance & Enhancements
- \$1,581,200 Pkg. 105 – to further develop the agency's Disaster Recovery and Business Continuity technology infrastructure in support of the Oregon Retirement Information Online Network (ORION).
- \$225,000 Pkg. 840 – to implement SB 370; this established a new benefit that allows an expense of an Oregon Public Service Retirement Plan (OPSRP) member to receive a death benefit if the member, who is vested, dies pre-retirement.

The 2017-19 PERS' Governor's Budget consists of \$109,143.993 in limited or operating budget and \$10,993,982,999 in non-limited budget which represents benefit payments made, health insurance premiums, and third-party administration payments for both the PERS Health Insurance Program and the Individual Account Program.

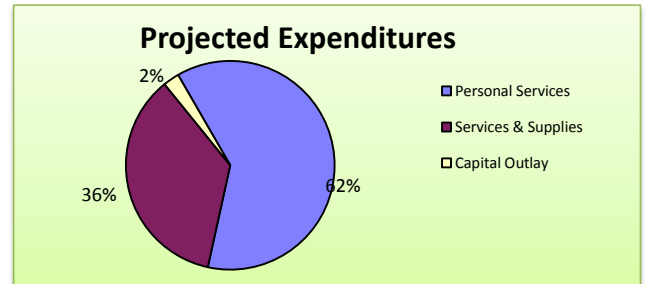
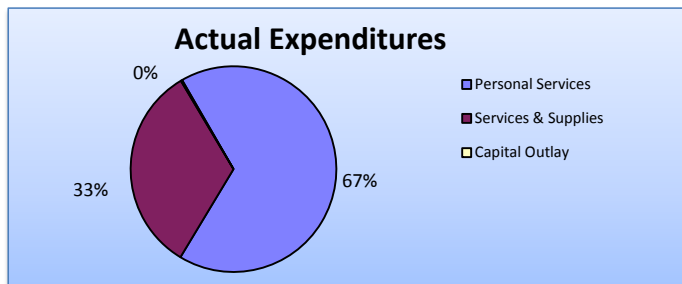
A.2.c. Attachment 1 – 2015-17 Agency-wide Budget Execution Summary Analysis

**2015-17 Agency-wide Budget Execution
Summary Budget Analysis
Preliminary For the Month of: December 2016**

Limited - Operating Budget

2015-17 Biennial Summary

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expenditures	2015-17 LAB	Variance
Personal Services	47,415,538	18,359,888	65,775,426	69,268,743	3,493,317
Services & Supplies	23,233,048	10,610,436	33,843,484	33,118,723	(724,761)
Capital Outlay	154,806	744,298	899,104	1,095,807	196,703
Unscheduled	0	3,466,176	3,466,176	3,466,176	0
Total	70,803,392	33,180,798	103,984,190	106,949,449	2,965,259



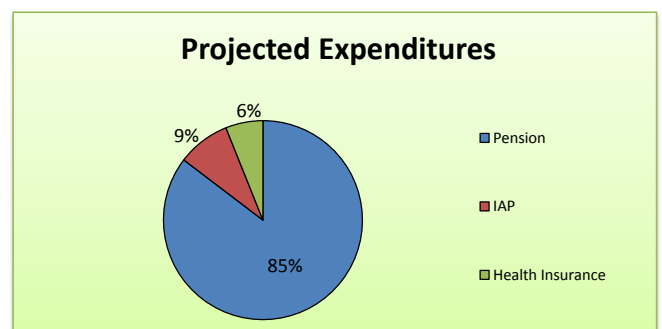
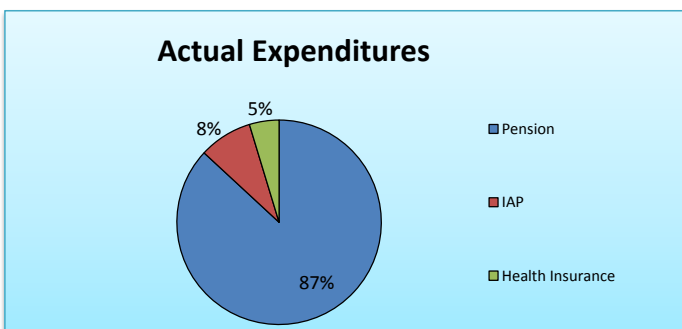
Monthly Summary

Category	Actual Exp.	Projections	Variance	Avg. Monthly Actual Exp.	Avg. Monthly Projected Exp.
Personal Services	2,707,313	3,027,064	319,751	2,634,197	1,019,994
Services & Supplies	356,194	424,651	68,457	1,290,725	589,469
Capital Outlay	0	0	0	8,600	41,350
Total	3,063,507	3,451,715	388,208	3,933,522	1,650,813

Non-Limited Budget

2015-17 Biennial Summary

Programs	Actual Exp To Date	Projected Expenditures	Total Est. Expenditures	Non-Limited LAB	Variance
Pension	6,079,373,645	2,153,293,243	8,232,666,888	8,291,874,726	59,207,838
IAP	589,671,286	216,574,813	806,246,099	873,488,891	67,242,792
Health Insurance	328,185,405	153,121,965	481,307,370	558,094,445	76,787,075
Total	6,997,230,336	2,522,990,022	9,520,220,357	9,723,458,062	203,237,705





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January 27, 2017

TO: Members of the PERS Board

FROM: Jason Stanley, Chief Compliance, Audit, and Risk Officer

SUBJECT: Review the Annual Report of Financial Transactions of the Executive Director for the fiscal year ended June 30, 2016

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 PERS Executive Director Steve Rodeman in the aggregate amount of \$267,860. This amount covers the period of July 1, 2015, through June 30, 2016. Details of this amount were provided at the November 18, 2016, Audit Committee meeting. The financial records supporting this summary are maintained in the Financial and Administrative Services Division (FASD).

BACKGROUND

Oregon Accounting Manual (OAM) policy number 10.90.00.PO requires boards and commissions to establish a formal structure to ensure the proper review and approval of the agency head's financial transactions. This is supported by PERS policy number 1.01.02.00.001.POL.

The policy requires the Chief Compliance, Audit, and Risk Officer or Chief Administration Officer to review and approve all financial transactions of the Executive Director, including monthly timesheets, travel claims (both in-state and out-of-state), Small Purchase Order Transaction System (SPOTS) card purchases, etc. The policy 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 their review and approval be documented in the Board meeting minutes.

I approved and reviewed the detailed transactions (payroll time reports, travel expense reimbursement claims, and SPOTS card purchases) of the PERS Executive Director for the period of July 1, 2015, through fiscal year ended June 30, 2016, and found no exceptions or inappropriate transactions. During this period, the Executive Director had no exceptional performance leave or vacation payouts.

The PERS Board minutes for this meeting will reflect receipt of this report on the Executive Director's financial transactions for the fiscal year ended June 30, 2016, as submitted by the Chief Compliance, Audit, and Risk Officer in compliance with OAM 10.90.00 PO.



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January 27, 2017

TO: Members of the PERS Board

FROM: Brandon Armatas, Member Account Adjustment Team Manager; Matthew Rickard, Central Data Coordinator; MaryMichelle Sosne, Business Solutions Analyst

SUBJECT: Board Scorecard Report on Agency Performance Measures

A key part of PERS' Outcome-Based Management System (POBMS) is a Quarterly Target Review (QTR) of scorecards that evaluate our effectiveness in a number of Outcome and Process Measures. These measures foster accountability and transparency in key operating areas. The scorecard results help direct strategic planning, resource allocation, and risk assessment.

Board Scorecard Report on Agency Performance Measures

The attached Board Scorecard Report for third quarter 2016 focuses on several measures we currently track based on essential business operations. A targeted performance range is created for each measure:

- “Green” – performance is at or above acceptable levels.
- “Yellow” – performance is marginally below acceptable levels.
- “Red” – performance is significantly below; corrective action such as assigning a problem solving team should be directed.

Highlights include:

- An upward trend with six of the eight measures, and green performances with the other two.
- Improvement from the red to yellow ranges with two of the measures – Call Wait Time and Appeal Reversal Rate.
- Improvement from the yellow range to green for Accuracy of Calculations.

We will present first quarter 2017 results at the May 2017 Board Meeting.

If you would like us to report on any different measures, please let us know.

POBMS Governance Council

In 2012, the Agency initiated POBMS, along with its associated Fundamentals Map and measures. Since that time, PERS has worked to integrate these concepts into the agency's culture.

To help further build on the success of integrating the system in the agency, PERS created the POBMS Governance Council in October 2016. The Council is charged with the following duties:

- Promote the education of managers and staff regarding POBMS concepts,
- Work as an advocate for the continued development and expansion of POBMS concepts within the agency,
- Provide stakeholders with an outlet for vetting POBMS opportunities within the agency,
- Oversee enterprise QTR process,
- Manage the Fundamentals Map,
- Facilitate process for modifying enterprise QTR scorecard, and
- Oversee the measure review process.

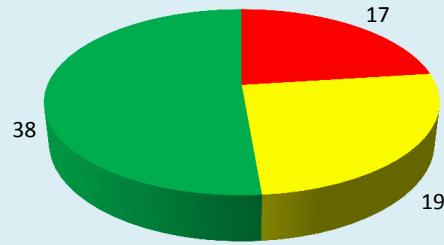
The Council is currently creating an action plan process to assist managers in addressing targets that have been “in the red” for two or more quarters. These action plans will serve as documented roadmaps to improvement as well as accountability measures. We plan to implement these action plans starting with the fourth quarter 2016 results.

A.3. Attachment 1 – Board Scorecard Report for Third Quarter 2016

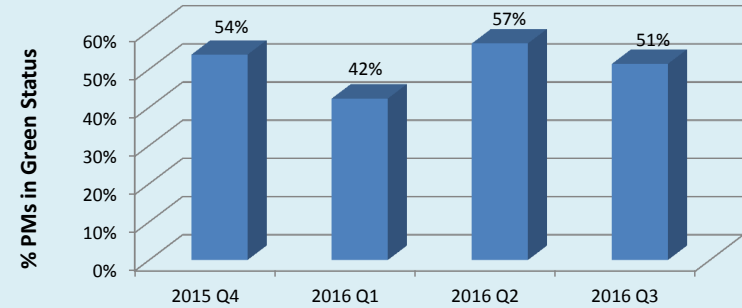
PUBLIC EMPLOYEES RETIREMENT SYSTEM Outcome-Based Performance Review

PERS Board Scorecard Report - QTR: 2016 Q3 - Quarter ended September 30, 2016

Outcome & Process Measure Performance



Quarterly Green Performance



Operating Processes - Highlighted Measures

	Measure Name	Measure Calculation	RANGE			Target	Desired Perform Trend	Data Collection Frequency	Q4 2015	Q1 2016	Q2 2016	Q3 2016	Trend	Corrective Action & Comments
			Red	Yellow	Green									
OP3c	Estimate KPM	% of estimate requests completed within 30 days of receipt	<75%	75-85	>85%	95%	↑	Quarterly	44.0%	38.1%	48.9%	53.5%	+	238 and 238A are still catching up on the annual spike. 238 completed 49.6% and 238A completed 87.7% Recruitments are in process to fill vacant positions
OP4a	Eligibility review completed	% of applications completed by the eligibility team within 30 days of the effective retirement	<50%	50-70	>70%	80%	↑	Monthly	82.0%	80.0%	80.0%	81.0%	+	
OP5b	Accuracy of calculations	% of sample calculations that are accurate within plus or minus \$5	<95%	95-99	>99%	100%	↑	Monthly	99.3%	97.0%	98.0%	100.0%	+	
OP5c	Timely benefit calculation	% of calculations completed within 15 calendar days from completed application date	<95%	95-99	>99%	100%	↑	Monthly	94.0%	96.6%	96.7%	97.7%	+	Trending in right direction

PUBLIC EMPLOYEES RETIREMENT SYSTEM Outcome-Based Performance Review

Supporting Processes - Highlighted Measures

	Measure Name	Measure Calculation	RANGE			Target	Desired Perform Trend	Data Collection Frequency	Q4 2015	Q1 2016	Q4 2015	Q1 2016	Trend	Corrective Action & Comments
			Red	Yellow	Green									
OP1f	Call Wait Time	Average length of wait before caller reaches live person	>6 minutes	6-4 minutes	<4 minutes	2 minutes	↓	Monthly	3.2	9.4	6.1	4.6	+	
SP2c	Appeal reversal rate	% of staff determinations that are reversed on appeal	>15%	15-10	<10%	5%	↓	Quarterly	3.8%	29.0%	16.0%	10.0%	+	Reversed 5 of 49 cases this quarter.
SP3h	System uptime	% of time systems are available during the service window	<97%	97-98	>98%	100%	↑	Monthly	94.45%	96.29%	99.37%	99.06%	-	
SP5c	Recruiting / Onboarding	% of employees completing trial service	<85%	85-94	>94%	100%	↑	Quarterly	100%	95%	100%	100%	=	



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January 27, 2017

TO: Members of the PERS Board

FROM: Stephanie Vaughn, Manager, Policy Analysis & Compliance Section

SUBJECT: Notice of Rulemaking for Disability Rules:
 OAR 459-015-0001, *Definitions (Tier One/Tier Two)*
 OAR 459-015-0010, *Criteria for Granting and Denying Disability Retirement Allowances*
 OAR 459-015-0020, *Application Required (Tier One/Tier Two)*
 OAR 459-015-0025, *Application Processing – Independent Examinations and Appeals (Tier One/Tier Two)*
 OAR 459-015-0040, *Proof of Case – Contested Case Hearings (Tier One/Tier Two)*
 OAR 459-015-0050, *Periodic Reviews (Tier One/Tier Two)*
 OAR 459-076-0001, *Definitions (OPSRP)*
 OAR 459-076-0010, *Criteria for Granting and Denying Disability Benefits*
 OAR 459-076-0020, *Application Required (OPSRP)*
 OAR 459-076-0025, *Application Processing – Independent Examinations and Appeals (OPSRP)*
 OAR 459-076-0040, *Proof of Case – Contested Case Hearings (OPSRP)*
 OAR 459-076-0050, *Periodic Reviews (OPSRP)*

OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Modify rules regarding disability to update and add definitions; update specialist requirements; address effect of unemployment benefits in determining disability eligibility; clarify when PERS may request evaluations or exams; add physical capacity to independent evaluations; clarify periodic review standard; clarify burden of proof for OPSRP disability.
- Policy Issue: *Should PERS adopt a standard of considering only the last 15 years of employment experience when considering what work for which an applicant is qualified?*

BACKGROUND

In response to concerns regarding changes to the disability rules, specifically the criteria for disability eligibility, we formed a disability focus group consisting of member representatives, employer representatives, and PERS staff. The group has been meeting regularly with the goal of reviewing PERS disability policies and processes. Policy questions were presented to the Board for consideration at the November 2016 meeting. Staff now presents another policy question stemming from the focus group discussions.

POLICY ISSUE

Should PERS adopt a standard of considering only the last 15 years of employment experience when considering what work for which an applicant is qualified?

Disability eligibility requires that the member not be able to perform any work for which the member is qualified; in making that determination, PERS considers a member's previous employment experience. The disability focus group considered whether PERS should adopt a policy to consider only the last 15 years of employment when determining which work a member is qualified to perform. The Social Security Administration, for example, considers experience beyond 15 years only if the experience is relevant to the member's current occupation. The focus group agreed that was a reasonable standard. Staff incorporated this standard into the definition of "previous employment experience" (OAR 459-015-0001 and 459-076-0001) in these rule modifications, and will retain this standard unless the Board directs otherwise.

PROPOSED RULE MODIFICATIONS

Staff has made the following rule modifications reflecting the focus group discussions and incorporating the disability policy decisions made at the November 2016 Board meeting. Note that the modifications are staff recommendations and not the focus group recommendations. Staff will continue to work to improve internal processes to further address the concerns raised in the focus group meetings.

Definition of Physician and Other Health Practitioner

Rules affected: 459-015-0001, 459-015-0010, 459-015-0020, 459-015-0025, 459-015-0040, 459-076-0001, 459-076-0010, 459-076-0020, 459-076-0025, 459-076-0040

PERS relies on physician statements and medical records to determine a member's eligibility for disability benefits. Currently, the definition of "physician" includes specialists who hold a doctorate rather than a degree in medicine. The modifications to the rules clarify that the definition of "physician" means a doctor with a degree in medicine who is properly licensed to practice medicine. We have also added a definition for "orthopedic specialist," which is a term used in other administrative rules but was not previously defined.

Previously, staff acknowledged that, with the removal of chiropractor, naturopaths, and other health providers from the definition of physician, the rules did not address how PERS will handle reports from these providers. To address this, a definition for "other health practitioner" has been added to include these other health providers and the term has been incorporated into the rules where appropriate.

OAR 459-015-0010 has been modified to specify that a physician assistant's examination will be treated as a report from a physician when also signed by the supervising physician. And, finally, since many rheumatologists will diagnose fibromyalgia, but will not treat it, we added physical medicine and rehabilitation physician as an alternate specialist for treatment of fibromyalgia.

Definition of Any Work for Which Qualified

Rules affected: 459-015-0001

Modification to the definition of "any work for which qualified" incorporates the new

standard based on the policy decision from November 2016. It compares what the member may earn in a position for which they are qualified and can perform given the limitations of their condition(s) to what they would receive if they were approved for disability. If, based on their employment experience, transferable skills, education, training, age, and physical or emotional limitations, they are qualified to perform work for which they could earn more than what they would receive in disability benefits, then they would not be eligible for disability benefits. Individuals on disability retirement can sometimes become inactive, deconditioned, disengaged from the community, and fall into depression. This standard promotes getting those who may be able to work, back to work.

Note that while we have incorporated the standard into the Tier One/Tier Two rule, we are not able to apply this same standard to OPSRP members, as the OPSRP statutes do not allow a member receiving disability benefits to work; if a member becomes re-employed to any extent, their disability benefits must be stopped.

Receipt of Unemployment Benefits

Rules affected: 459-015-0010, 459-076-0010

Staff previously presented edits relating to receipt of unemployment benefits. The language has been altered and expanded. PERS will consider receipt of earned income or unemployment benefits in making disability eligibility determinations. Applicants receiving unemployment benefits certify each week that they are able to work and are actively seeking work, and applicants receiving earned income are actually working. PERS will still perform a full medical review in making a final determination on disability eligibility. PERS will also be working with the Employment Department in the event a member is determined to be totally disabled and has received unemployment benefits.

Independent Examinations

Rules affected: 459-015-0001, 459-015-0025, 459-076-0001, 459-076-0025

Modifications to these rules incorporate the policy decision from November 2016 that allows PERS to request, at its expense, an independent medical evaluation when the member is not able to see a physician as required by PERS. PERS may request an evaluation or exam whenever it determines it is appropriate, but the rule outlines a few specific conditions in which PERS may make such a request. The types of independent evaluations include medical, vocational, and physical. The rule currently lists only medical and vocational evaluations. These rules have been amended to include a physical capacity evaluation by other health practitioners.

Periodic Review Standard

Rules affected: 459-015-0050, 459-076-0050

Members who receive a monthly disability retirement or benefit are subject to periodic reviews. This rule clarifies the current practice that the disability eligibility review follows the criteria established in the original approved disabling condition and the periodic review is based on the administrative rules in effect as of the review date.

New Proof of Case Rule for OPSRP

Rules affected: 459-076-0040

The new OPSRP proof of disability contested case rule mirrors the Tier One/Tier Two rule.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held February 22, 2017, at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends March 1, 2017, 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: Establish additional criteria for disability definitions and eligibility.

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

RULEMAKING TIMELINE

January 13, 2017	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
January 27, 2017	PERS Board notified that staff began the rulemaking process.
February 1, 2017	<i>Oregon Bulletin</i> publishes the Notice. Notice is sent to employers, legislators, and interested parties. Public comment period begins.
February 22, 2017	Rulemaking hearing to be held at 2:00 p.m. at PERS in Tigard.
March 1, 2017	Public comment period ends at 5:00 p.m.
April 3, 2017	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 February 22, 2017, 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 April 3, 2017 Board meeting.

B.1. Attachment 1 – 459-015-0001, *Definitions (Tier One/Tier Two)*

B.1. Attachment 2 – 459-015-0010, *Criteria for Granting and Denying Disability Retirement Allowances*

B.1. Attachment 3 – 459-015-0020, *Application Required (Tier One/Tier Two)*

B.1. Attachment 4 – 459-015-0025, *Application Processing - Independent Examinations and Appeals (Tier One/Tier Two)*

B.1. Attachment 5 – 459-015-0040, *Proof of Case – Contested Case Hearings (Tier One/Tier Two)*

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B.1. Attachment 6 – 459-015-0050, *Periodic Reviews (Tier One/Tier Two)*

B.1. Attachment 7 – 459-076-0001, *Definitions (OPSRP)*

B.1. Attachment 8 – 459-076-0010, *Criteria for Granting and Denying Disability Benefits*

B.1. Attachment 9 – 459-076-0020, *Application Required (OPSRP)*

B.1. Attachment 10 – 459-076-0025, *Application Processing – Independent Examinations and Appeals (OPSRP)*

B.1. Attachment 11 – 459-076-0040, *Proof of Case – Contested Case Hearings (OPSRP)*

B.1. Attachment 12 – 459-076-0050, *Periodic Reviews (OPSRP)*

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

1 **459-015-0001**

2 **Definitions**

3 The words and phrases used in this division have the same meaning given them in
4 ORS Chapter 238 and OAR 459-005-0001. Additional terms are defined as follows unless
5 the context requires otherwise.

6 (1) “Any work for which qualified” means a job, not necessarily the last or usual job,
7 which, considering the factors outlined in OAR 459-015-0010(7), satisfies all of the
8 following: *[the applicant for a disability retirement allowance:]*

9 (a) The applicant is *[Is]* physically and psychologically capable of performing the
10 job; *[and]*

11 (b) The applicant has *[Has]*, or may obtain with reasonable training, the knowledge,
12 skills, and abilities *[,]* to perform the job; and

13 (c) Is a job at which the applicant can earn more than the estimated disability
14 retirement allowance.

15 (2) “Certified vocational consultant” means a person who satisfies the criteria set forth
16 under either of the following:

17 (a) A Master’s Degree in vocational rehabilitation, and one year of experience in
18 performing vocation evaluations or developing individualized return-to-work plans; or a
19 Bachelor’s Degree and two years of such experience. All degrees must have been earned at
20 an accredited institution; or

21 (b) Accredited as a Certified Rehabilitation Counselor (CRC) by the Commission on
22 Rehabilitation Counselor Certification; as a Certified Disability Management Specialist

1 (CDMS) by the Certification of Disability Management Specialists Commission; or a
2 Certified Vocational Evaluation Specialist (CVE) or a Certified Work Adjustment
3 Specialist (CWA) by the Commission on Certification of Work Adjustment and
4 Vocational Evaluation Specialists.

5 (3) “Confidential information” means information of a personal nature such that
6 disclosure would constitute an unreasonable invasion of privacy as defined by state law.

7 (4) “Date an application for disability retirement is filed” means the receipt date as
8 determined pursuant to OAR 459-005-0220.

9 (5) “Date of disability” means the later of:

10 (a) The date an active member ceased to work because of inability to perform any
11 work for which qualified due to injury or disease; or

12 (b) The date an inactive member became unable to perform any work for which
13 qualified provided such inability occurred within six months after the date of separation
14 from service.

15 (6) “Date of separation from service” means the later of: the last day worked or the
16 last day of paid leave with a PERS participating employer.

17 (7) “Date of termination” means the date a member terminates from employment such
18 that an employee/employer relationship no longer exists.

19 (8) “Earned income” means income that includes, but is not limited to:

20 (a) Salary or wages received as an employee;

21 (b) Self-employment income from:

22 (A) Services industry;

23 (B) Sales;

1 (C) Assembly or manufacturing;

2 (D) Consulting;

3 (E) Property management;

4 (F) Hobby income; or

5 (G) Book advances.

6 (c) “Earned income” does not include:

7 (A) Investment income;

8 (B) Rent; and

9 (C) Royalties.

10 (d) Earned income is deemed to be received by the member on the date it is issued by
11 the payer.

12 (9) “Effective date of disability retirement” means the first day of the month
13 following the date of disability in which all of the following has been met:

14 (a) The member is paid no salary from a participating employer, and

15 (b) The member does not receive paid leave from a participating employer except for
16 any lump sum payment for accrued vacation leave or compensatory time.

17 (10) “Extended duration” means a period of not less than 90 consecutive calendar
18 days, unless the disability is expected to result in the death of the disabled member in less
19 than 90 days.

20 (11) “Granted service” means that portion of creditable service used solely to
21 calculate a disability retirement allowance under ORS 238.320 that is not performed or
22 earned.

1 (12) “Independent medical exam” means an exam or exams conducted by a physician
2 chosen by PERS for purposes other than treatment which results in the issuance of a report
3 or reports based on those exams, giving an opinion regarding the claimed injury or disease.

4 (13) “Material contributing cause” means the efficient, dominant, and proximate
5 cause of the disability, without which the member would not be disabled.

6 (14) “Monthly salary” means “salary” as defined in ORS 238.005 that is earned in the
7 last full calendar month of employment, and includes employer payments under ORS
8 238A.335 and differential wage payments as defined in OAR 459-005-0001.

9 (a) Retroactive payments or payments made due to clerical errors, paid in accordance
10 with ORS 238.005, are allocated to the period the salary was earned or should have been
11 earned.

12 (b) Payments of salary paid within 31 days of separation are allocated to the period
13 the salary was earned and should be considered as paid on the last date of employment.

14 (15) “Monthly salary received” means the greater of the monthly salary paid for the
15 last full calendar month of:

16 (a) Employment before the date of disability; or

17 (b) Differential wage payments made before the date of disability. This subsection is
18 effective January 1, 2009.

19 (16) “Normal retirement age” means the age at which a member can retire without a
20 reduced benefit as set forth under ORS 238.005 and 238.280.

21 **(17) “Orthopedic specialist” means an orthopedist, orthopedic surgeon, or**
22 **physical medicine and rehabilitation specialist.**

1 (18) “Other health practitioner” means a treating provider who is properly
2 licensed or certified and is performing within the scope of his or her practice in
3 accordance with the law or standards established by the appropriate governing
4 authority.

5 (19)~~[(17)]~~ “Performance of duty” means whatever an employee may be directed,
6 required or reasonably expected to do in connection with his or her employment, and not
7 solely the duties particular to his or her position.

8 (20)~~[(18)]~~ “Periodic review” means a review of a member receiving a disability
9 retirement allowance to determine whether or not a continued allowance is warranted.

10 (21) “Physical capacity evaluation” means a comprehensive and objective
11 evaluation performed by a physical therapist or occupational therapist to determine
12 the applicant’s physical or functional capacity to perform work. The evaluation may
13 include an analysis of a member’s ability to perform a specific job based on a position
14 description and his or her abilities and limitations.

15 (22)~~[(19)]~~ “Physician” means a person who holds a degree of doctor of medicine,
16 doctor of osteopathy, doctor of podiatric medicine, or~~[a medical doctor, a doctor of~~
17 ~~osteopathy, a] doctor of oral surgery, [a chiropractic doctor, a naturopathic doctor, or a~~
18 ~~doctor of psychology practicing only within the purview of their license issued by the~~
19 ~~designated authority of a state.]~~ and is licensed by law to practice medicine or perform
20 surgery by the designated authority of any state within the United States of America
21 or the District of Columbia. PERS may accept at its discretion a physician licensed by
22 another country.

1 **(23)**~~(20)~~ “Pre-existing condition” means a condition that was not sustained in actual
2 performance of duty in a qualifying position with a participating employer.

3 **(24)** “Previous employment experience” means the most recent fifteen (15) years
4 **of work experience from date of disability. Employment experience prior to the 15-**
5 **year period may be considered as relevant when a continuity of skills, knowledge,**
6 **and processes can be established between such work and the individual’s more recent**
7 **occupations.**

8 **(25)**~~(21)~~ “Protected health information” means health information created or
9 received by a health care provider, health plan, or health care clearinghouse, where an
10 individual has a reasonable belief that the information can identify the individual, which
11 relates to:

- 12 (a) The past, present, or future physical or mental health of an individual;
- 13 (b) The provision of health care to an individual; or
- 14 (c) The past, present, or future payment for the provision of health care to an
15 individual.

16 **(26)**~~(22)~~ “Similar in compensation” means salary or other earned income, excluding
17 overtime, equaling at least 80% of the monthly salary.

18 **(27)**~~(23)~~ “Total disability” means the inability to perform any work for which
19 qualified for an extended duration due to physical or mental incapacitation.

20 **(28)**~~(24)~~ “Training or vocational rehabilitation program” means a comprehensive,
21 coordinated program, usually state or federally funded, to train and assist individuals with
22 disabilities in securing gainful employment commensurate with their abilities and
23 capabilities.

1 (29)~~(25)~~ “Vocational evaluation” means an evaluation conducted by a certified
2 vocational consultant, to determine the ability of an applicant to perform any work for
3 which they are qualified.

4 (30)~~(26)~~ “Work related stress” means conditions or disabilities resulting from, but
5 not limited to:

- 6 (a) Change of employment duties;
- 7 (b) Conflicts with supervisors;
- 8 (c) Actual or perceived threat of loss of a job, demotion, or disciplinary action;
- 9 (d) Relationships with supervisors, coworkers, or the public;
- 10 (e) Specific or general job dissatisfaction;
- 11 (f) Work load pressures;
- 12 (g) Subjective perceptions of employment conditions or environment;
- 13 (h) Loss of job or demotion for whatever reason;
- 14 (i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;
- 15 (j) Objective or subjective stresses of employment; or
- 16 (k) Personnel decisions.

17 Stat. Auth.: ORS 238.650

18 Stats. Implemented: ORS 238.320 - 238.345

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

1 **459-015-0010**

2 **Criteria for Granting and Denying Disability Retirement Allowances**

3 **PERS shall determine eligibility for disability retirement allowances based on**
4 **an applicant’s capacity and qualifications as set out below.**

5 (1) Medical documentation is required by PERS. Each disability retirement applicant
6 shall supply any treating or consulting physician’s examination report or other medical
7 information requested by PERS. PERS may base its determination on either a treating or
8 consulting physician’s medical examination report or have the applicant examined by one
9 or more physicians selected by PERS, or both.

10 (2) All claims of a disability must be supported by at least one physician’s report,
11 resulting from a physical examination, documenting how the injury or disease
12 incapacitates the member. **A physician assistant’s examination report will be accepted**
13 **as a physician’s report when signed by the supervising physician.**

14 (3) In addition, a disability retirement applicant shall be required to furnish the
15 following:

16 (a) For claims of mental or emotional disorder, at least one report of examination by
17 a psychiatrist or at least one report of evaluation by a psychologist when accompanied by
18 a report of physical examination by a treating or consulting physician;

19 (b) For claims of orthopedic injury or disease, at least one report of a treating or
20 consulting orthopedic specialist;

21 (c) For claims of neurological or neurosurgical injury or disease, at least one report
22 of a treating or consulting neurologist or neurosurgeon;

1 (d) For claims of fibromyalgia, at least one documented diagnosis by a
2 rheumatologist, and at least one report of a treating or consulting rheumatologist or
3 physical medicine and rehabilitation physician; and

4 (e) Any other specialized physician’s report that PERS deems necessary.

5 (4) To demonstrate that he or she is unable to perform any work for which qualified,
6 as defined in OAR 459-015-0001(1), the applicant shall document how the injury or
7 disease incapacitates the applicant. The standard is subjective (that is, whether the
8 applicant is actually incapacitated) not objective (that is, whether a “normal” member
9 would have been incapacitated by the same events).

10 (5) When there are conflicting opinions among physicians referenced in section
11 (3) of this rule, more weight will be given to those medical opinions that are both
12 well-reasoned and based on complete information.

13 (6) As supporting evidence, PERS will accept reports from other health
14 practitioners. When there are conflicting opinions among other health practitioners,
15 more weight will be given to those medical opinions that are both well-reasoned and
16 based on complete information.

17 (7)[(a) In d]Determining what work for which a member is qualified.[,]

18 (a) [t]The following factors shall be considered:

- 19 (A) Previous employment experience;
- 20 (B) Formal education;
- 21 (C) Formal training;
- 22 (D) Transferable skills;
- 23 (E) Age; and

1 (F) Physical or mental impairment.

2 (b) *[In determining what work for which a member is qualified,]* PERS may request,
3 at PERS' expense, a vocational evaluation be done by a vocational consultant who is
4 fully certified as set forth in OAR 459-015-0001(2).

5 (c) The inability of the applicant to perform the duties of his or her last job, in itself,
6 does not satisfy the criterion.

7 *[(5) When there is a dispute among medical experts, more weight will be given to*
8 *those medical opinions that are both well-reasoned and based on complete information.]*

9 **(8) [(6)]** The Board may deny any application or discontinue any disability
10 retirement allowance if an applicant:

11 (a) Refuses to submit to an independent medical or vocational examination; or

12 (b) Refuses to submit to any medical examination or supply a completed application
13 or review form.

14 **(9) Receipt of earned income or weekly unemployment insurance payments**
15 **after the date of disability is evidence that the member is able, available, and willing**
16 **to accept employment and is not totally and continuously disabled.**

17 Stat. Auth.: ORS 238.650

18 Stats. Implemented: ORS 238.320 & 238.335

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

1 **459-015-0020**

2 **Application Required**

3 (1) Application must be made on forms provided by PERS. PERS may require the
4 member to provide any information that PERS considers necessary to determine the
5 applicant’s eligibility for a disability retirement allowance.

6 (2) No disability retirement allowance will be paid unless the member files a timely
7 and complete application.

8 (3) Application must be made by a member or the member’s authorized
9 representative. A representative must submit to PERS written proof of the
10 representative’s authority, such as a power of attorney, guardianship or conservatorship
11 appointment.

12 (4) A member cannot apply for disability retirement before their date of disability.

13 (5) Upon the filing of an application for a disability retirement allowance, PERS will
14 notify the applicant’s current or most recent employer of the filing. Additionally, PERS
15 may request of an employer information pertaining to current or previous employment.

16 (6) When an active member becomes disabled due to injury or disease, the member
17 may make application immediately after the last day worked even though the member
18 may be on a paid leave or on an official leave of absence without pay. Total disability
19 must be continuous from the date of disability to the date the application is filed. If the
20 member becomes an inactive member, the application must be submitted within the
21 timelines outlined in section (8) of this rule.

1 (7)(a) For a member who becomes totally disabled due to injury or disease but does
2 not terminate employment, an application for disability retirement must be filed no later
3 than 90 calendar days from the earlier of:

4 (A) The date the member is medically released for work; or

5 (B) The date the member returns to work.

6 (b) Total disability must be continuous from the date of disability to the earlier of
7 paragraph (a)(A) or (B) of this section.

8 (8) An application by an inactive member is considered filed in a timely manner
9 when received by PERS as follows:

10 (a) For an inactive member who becomes totally disabled due to injury or disease
11 before the date of separation from service from all PERS qualifying positions and has not
12 withdrawn the amount credited to the account of the member in the system, the member
13 must file an application for a disability retirement allowance within five calendar years of
14 the date of separation from service. Total disability must be continuous from the date of
15 separation from service to the date the application is filed.

16 (b) For an inactive member who becomes totally disabled due to injury or disease
17 after the date of separation from service from all PERS qualifying positions and has not
18 withdrawn the amount credited to the account of the member in the system, the member
19 must file an application for a disability retirement allowance within six months (180
20 days) after the date of separation from service. Total disability must be continuous from
21 the date of disability to the date the application is filed.

22 (9) In determining the effective date of a disability retirement allowance, PERS may
23 allow up to 60 months of benefits retroactive from the date the application is filed with

1 PERS, but in no case earlier than the first day of the month following the date of
2 separation from service.

3 (10) When making application for a PERS disability retirement allowance, PERS
4 will request the applicant authorize any physician, other health practitioner, hospital,
5 clinic, pharmacy, employer, employment agency, or government agency to release and
6 disclose to PERS, or independent physicians and vocational consultants retained by
7 PERS, any information within their records or knowledge, including that information
8 otherwise protected under federal or state law, regarding the applicant’s health and
9 employment which PERS determines relates to the applicant’s claim of disability and
10 inability to perform any work for which qualified.

11 (11) When filing an application for disability retirement allowance, if the applicant
12 wishes to authorize release and disclosure of protected health information, as defined in
13 OAR 459-015-0001, the applicant must complete and sign a consent form which
14 specifically authorizes the release and disclosure of such information.

15 (a) This authorization is voluntary. PERS is not a covered entity as defined in 45
16 CFR Parts 160 and 164, and the protected health information is not subject to federal and
17 state health information privacy laws, but may be protected under Oregon State Public
18 Record disclosure laws.

19 (b) This authorization may be revoked in writing at any time, except to the extent the
20 entities named on the authorization form(s) have taken action in reliance of the
21 authorization.

1 (c) If the applicant refuses to give or revokes authorization to disclose to PERS
2 medical information that PERS determines it needs to evaluate the application, eligibility
3 for a disability retirement allowance may be affected.

4 Stat. Auth.: ORS 238.650

5 Stats. Implemented: ORS 238.320 - 238.345

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

1 **459-015-0025**

2 **Application Processing – Independent Examinations and Appeals**

3 (1) Following the timely filing of a completed application, PERS may, at its
4 discretion, request an independent medical exam, physical capacity evaluation, or a
5 vocational evaluation. If PERS requests one or more of these exams or evaluations, PERS
6 will pay the reasonable associated expenses.

7 (a) PERS is not required or obligated to request any evaluation or exam. The
8 burden of proof for eligibility for a disability retirement allowance is upon the
9 applicant, whether or not PERS requests any evaluation or exam. Situations in
10 which PERS may exercise its discretion to request an evaluation or exam include,
11 but are not limited to:

12 (A) When PERS receives conflicting reports from two physicians of the same
13 specialty;

14 (B) When the applicant cannot afford to see a physician required under OAR
15 459-015-0010(3) because they do not have health insurance;

16 (C) When the applicant cannot see a physician required under OAR 459-015-
17 0010(3) because the physician is not covered by the applicant’s health insurance; or

18 (D) When PERS receives a report from a physician required under OAR 459-
19 015-0010(3), but the physician will not address the eligibility questions required by
20 PERS.

21 ~~[(a)]~~(b) For independent medical exams and physical capacity evaluations, PERS
22 shall inform the applicant in writing and postmarked not less than ~~[ten]~~ 10 days before a

1 scheduled examination, of the identity of the physician~~[(s)]~~ or other health practitioner
 2 selected to examine the applicant, together with location, date and time.

3 ~~[(b)]~~(c) For vocational evaluations, the vocational consultant or locator service shall
 4 inform the applicant of the location, date and time of the scheduled examination.

5 ~~[(c)]~~(d) If the applicant fails to meet the scheduled appointment or fails to
 6 reschedule the examination within five days of notification, PERS will not reschedule an
 7 examination at PERS’ expense unless the applicant can demonstrate good cause for
 8 having failed to meet the scheduled appointment or reschedule the appointment as
 9 required.

10 ~~[(d)]~~(A) Good cause includes, but is not limited to:

11 ~~[(A)]~~(i) Physical or mental incapacitation preventing the member from meeting or
 12 rescheduling the examination;

13 ~~[(B)]~~(ii) Failure of PERS or the vocational consultant or locator service to send the
 14 member notice as described above; or

15 ~~[(C)]~~(iii) A death in the member’s immediate family.

16 ~~[(e)]~~(B) Good cause does not include:

17 ~~[(A)]~~(i) A member’s refusal to attend the scheduled appointment;

18 ~~[(B)]~~(ii) A member’s failure to meet the appointment with no reason provided; or

19 ~~[(C)]~~(iii) A member’s failure to make appropriate transportation arrangements.

20 (2) When PERS requires an applicant to travel to be examined by a physician,
 21 vocational consultant, or other health practitioner ~~[professional]~~, PERS will reimburse
 22 the applicant’s reasonable transportation costs based on the least costly alternative and on
 23 availability. Travel by private vehicle shall be compensated at the rate applicable to travel

1 by unrepresented state employees on state business. Transportation by taxi, bus, rail, or
2 other public carrier shall be paid only upon presentation of receipts from the providers.
3 Lodging and subsistence shall be allowed only when an overnight stay is necessary and
4 shall be paid at the rate applicable to unrepresented state employees traveling on state
5 business. Reimbursements will be reduced by the amount of any penalty assessed by
6 PERS because of a member's failure to meet a scheduled appointment.

7 (3) In the event a member fails to meet a scheduled appointment in accordance with
8 section (1) of this rule, and PERS is assessed a penalty by the service provider for the
9 failure to meet the scheduled appointment, the disability applicant shall bear the cost of
10 the penalty as follows:

11 (a) If the disability application is not approved, by making direct payment to the
12 service provider who assessed the penalty; or

13 (b) If the disability application is approved:

14 (A) By making direct payment to the service provider who assessed the penalty; or

15 (B) By having the amount of the penalty deducted from the monthly disability
16 retirement allowance, as provided for under ORS 238.715, payable to the member until
17 the invoice is satisfied.

18 (4) The Director, or the Director's designee, is hereby authorized to approve or deny
19 a disability retirement application. Upon receipt and review of all necessary
20 documentation, staff shall present applicant's claim to the Director, or the Director's
21 designee, with a recommendation to approve or to deny a disability retirement allowance.
22 The Director, or the Director's designee, may accept or reject the staff's recommendation,
23 or refer the application back to staff for further documentation and review.

1 (a) If the Director, or the Director’s designee, approves a disability claim, the staff
2 will notify the applicant and the applicant’s employer of such approval.

3 (b) If the disability claim is denied, the staff shall issue an Intent to Deny letter by
4 regular and certified mail, return receipt requested. The denial letter shall advise the
5 applicant that additional information to substantiate the claim, or a request for an
6 extension of 30 days to present additional information, may be submitted to the staff in
7 writing within 30 days of the date of the Intent to Deny letter.

8 (c) An applicant who is otherwise eligible for a service retirement allowance shall
9 have 30 days from the date of the Intent to Deny letter to apply for a service retirement
10 allowance and be entitled to establish an effective date of service retirement for the first
11 of the month that the application for disability retirement allowance was received by
12 PERS.

13 (d) The application for a service retirement allowance as provided for in subsection
14 (c) of this section shall not preclude a disability applicant from requesting a contested
15 case hearing under OAR 459-015-0030.

16 (5) Following the issuance of an Intent to Deny letter, staff will review any
17 additional information which is submitted within 30 days from the issuance of the Intent
18 to Deny letter.

19 (a) If the additional information results in a recommendation to approve the
20 application, staff shall resubmit the application to the Director, or the Director’s designee,
21 with the recommendation.

1 (b) If the additional information does not result in a recommendation to approve the
2 application, PERS will issue a final denial letter by regular and certified mail, return
3 receipt requested.

4 (c) If no additional information is received, PERS will issue a final denial letter by
5 regular and certified mail, return receipt requested.

6 (6) The final denial letter will provide the applicant with notification of the right to
7 request a contested case hearing as provided for in OAR 459-015-0030 and 459-001-
8 0035.

9 (7) PERS will notify the most recent employer of the approval or the denial of an
10 application for a disability retirement allowance, a request for review of the Director's
11 determination, and the Director's final action. Such notification will not contain any
12 confidential information as defined in OAR 459-015-0001(3).

13 Stat. Auth.: ORS 238.650

14 Stats. Implemented: ORS 238.320 & 238.335

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

1 **459-015-0040**

2 **Proof of Case – Contested Case Hearings**

3 (1) Burden of Proof in Hearings: The burden of proof for entitlement to a disability
4 retirement allowance is upon the applicant. The Board is not required to prove that the
5 applicant is entitled to a disability retirement allowance.

6 (2) Standards of Proof:

7 (a) An order granting entitlement to a disability retirement allowance shall be
8 supported in the record by sufficient evidence demonstrating that the applicant suffers
9 from a physical or mental/emotional injury or disease, and that the applicant is unable to
10 perform any work for which he or she is qualified;

11 (b) An order denying entitlement to a disability retirement allowance need not be
12 supported by medical or vocational evidence presented by the Board. An order may deny
13 entitlement to a disability retirement allowance if the applicant fails to present sufficient
14 proof of disability and inability to work. An order may deny entitlement to a disability
15 retirement allowance on the basis of medical or vocational evidence presented by the
16 Board.

17 (3) Professional opinions:

18 (a) A physician or other health practitioner may express an opinion regarding
19 whether the injury or disease was caused by the performance of job duties;

20 (b) A physician or other health practitioner may express an opinion regarding the
21 applicant’s ability to perform any work, related tasks, or functions;

1 (c) The administrative law judge shall have the discretion to give more weight to the
2 testimony (findings and opinions) of the treating, the examining, or the consulting
3 physician as the facts indicate.

4 Stat. Auth.: ORS 183.310 - 183.550, 183.600 - 183.690, 238.320, 238.335, 238.650

5 *[237.171, 237.191 & 237.263]*

6 Stats. Implemented:

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

1 **459-015-0050**

2 **Periodic Reviews**

3 (1) Members receiving a disability retirement allowance are subject to periodic
4 reviews of their disabled status until the member reaches normal retirement age or staff
5 determines that periodic reviews are no longer warranted.

6 (2) Periodic reviews will be used to determine that continued disability retirement
7 allowances are warranted. In recommending the continuance or discontinuance of a
8 disability retirement allowance, PERS will follow the criteria established under OAR
9 459-015-0005 for the original approved disabling condition or a new medical condition.
10 PERS will also consider the Return to Work provisions of ORS 238.330(3), 238.340, and
11 OAR 459-015-0045.

12 (3) For duty disability, the periodic review will not revisit the original determination
13 that the injury or disease was duty caused, unless there is evidence of misrepresentation
14 or fraud.

15 (4) PERS will establish review dates for each member subject to a periodic review
16 depending on type of disability, extent of disability, and medical reports unique to each
17 individual case.

18 (a) The reviews may be medical or vocational in nature, or both and will be based
19 on the administrative rules in effect when PERS initiates the disability periodic
20 review.

21 (b) Upon review, PERS may accept or require:

22 (A) New treating or consulting physician or specialist reports;

- 1 (B) Updated physician or specialist reports;
- 2 (C) Independent medical or vocational examinations; or
- 3 (D) Employment and wage information, including but not limited to, tax returns or
- 4 information from the State Employment Department.

5 (c) PERS may immediately discontinue the disability retirement allowance of any
6 person who refuses to provide current medical evidence or refuses to submit to an
7 examination.

8 (A) If the disability claim is discontinued, the staff shall issue an Intent to
9 Discontinue letter by regular and certified mail, return receipt requested. The
10 discontinuation letter shall advise the applicant that additional information to substantiate
11 the claim, or a request for an extension of 30 days to present additional information, may
12 be submitted to the staff in writing within 30 days of the date of the Intent to Discontinue
13 letter.

14 (B) Following the issuance of an Intent to Discontinue letter, staff will review any
15 additional information which is submitted within 30 days.

16 (i) If the additional information results in a recommendation to approve the
17 application, staff shall resubmit the application to the Director, or the Director's designee,
18 with the recommendation.

19 (ii) If the additional information does not result in a recommendation to approve the
20 application, PERS will issue a final discontinuation letter by regular and certified mail,
21 return receipt requested.

22 (C) If no additional information is received within 30 days, PERS will issue a final
23 discontinuation letter by regular and certified mail, return receipt requested.

1 (D) The final discontinuation letter will provide the applicant with notification of the
2 right to request a contested case hearing as provided for in OAR 459-015-0030 and 459-
3 001-0035.

4 (5) The member has the burden to prove continuing eligibility for a disability
5 retirement allowance.

6 (6) The Director, or the Director’s designee, may approve or deny the continuance of
7 a disability retirement allowance.

8 Stat. Auth.: ORS 238.650

9 Stats. Implemented: ORS 238.320 & 238.335

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 076 – OPSRP DISABILITY BENEFIT**

1 **459-076-0001**

2 **Definitions**

3 The words and phrases used in this division have the same meaning given them in ORS
4 Chapter 238A and OAR 459-070-0001. Additional terms are defined as follows unless the
5 context requires otherwise.

6 (1) “Any work for which qualified” means a job, not necessarily the last or usual job,
7 which, considering the factors outlined in OAR 459-076-0010(7), the applicant for
8 disability benefits:

9 (a) Is physically and psychologically capable of performing; and

10 (b) Has, or may obtain with reasonable training, the knowledge, skills and abilities, to
11 perform the job.

12 (2) “Certified vocational consultant” means a person who satisfies the criteria set forth
13 under either of the following:

14 (a) A Master’s Degree in vocational rehabilitation, and one year of experience in
15 performing vocation evaluations or developing individualized return-to-work plans; or a
16 Bachelor’s Degree and two years of such experience. All degrees must have been earned at an
17 accredited institution; or

18 (b) Accredited as a Certified Rehabilitation Counselor (CRC) by the Commission on
19 Rehabilitation Counselor Certification; as a Certified Disability Management Specialist
20 (CDMS) by the Certification of Disability Management Specialists Commission; or a
21 Certified Vocational Evaluation Specialist (CVE) or a Certified Work Adjustment Specialist

1 (CWA) by the Commission on Certification of Work Adjustment and Vocational Evaluation
2 Specialists.

3 (3) “Confidential information” means information of a personal nature such that
4 disclosure would constitute an unreasonable invasion of privacy as defined by state law.

5 (4) “Date an application for a disability benefit is filed” means the receipt date as
6 determined pursuant to OAR 459-005-0220.

7 (5) “Date of disability” means the date an active member ceased to work because of
8 inability to perform any work for which qualified due to injury or disease.

9 (6) “Date of separation from service” means the later of: the last day worked or the last
10 day of paid leave with a PERS participating employer.

11 (7) “Date of termination” means the date a member terminates from employment such
12 that an employee/employer relationship no longer exists.

13 (8) “Earned income” includes, but is not limited to:

14 (a) Salary or wages received as an employee;

15 (b) Self-employment income from:

16 (A) Services industry;

17 (B) Sales;

18 (C) Assembly or manufacturing;

19 (D) Consulting;

20 (E) Property management;

21 (F) Hobby income; or

22 (G) Book advances.

23 (c) “Earned income” does not include:

24 (A) Investment income;

1 (B) Rent; and

2 (C) Royalties.

3 (d) Earned income is deemed to be received by the member on the date it is issued by the
4 payer.

5 (9) “Effective date of disability benefit” means the first day of the month following the
6 date of disability, in which:

7 (a) The member is paid no salary from a participating employer; and

8 (b) The member does not receive paid leave from a participating employer, except for
9 any lump sum payment for accrued vacation leave or compensatory time.

10 (10) “Extended duration” means a period of not less than 90 consecutive calendar days
11 unless the disability is expected to result in the death of the disabled member in less than 90
12 days.

13 (11) “Independent medical exam” means an exam or exams conducted by a physician
14 chosen by PERS for purposes other than for treatment which results in the issuance of a report
15 or reports based on those exams, giving an opinion regarding the claimed injury or disease.

16 (12) “Material contributing cause” means the efficient, dominant, and proximate cause of
17 the disability, without which the member would not be disabled.

18 (13) “Monthly salary” means salary as defined in ORS 238A.005 that is earned in the last
19 full calendar month of employment and includes a differential wage payment, as defined in
20 OAR 459-005-0001.

21 (a) Retroactive payments or payments made due to clerical errors, paid in accordance
22 with ORS 238A.005, are allocated to the period the salary was earned or should have been
23 earned.

1 (b) Payments of salary paid within 31 days of separation are allocated to the period the
2 salary was earned and should be considered as paid on the last date of employment.

3 (14) “Monthly salary received” means the greater of the salary paid for the last full
4 calendar month of:

5 (a) Employment before the date of disability; or

6 (b) Differential wage payments made before the date of disability. This subsection is
7 effective January 1, 2009.

8 (15) “Orthopedic specialist” means an orthopedist, orthopedic surgeon, or physical
9 medicine and rehabilitation specialist.

10 (16) “Other health practitioner” means a treating provider who is properly licensed
11 or certified and is performing within the scope of his or her practice in accordance with
12 the law or standards established by the appropriate governing authority.

13 (17)~~(15)~~ “Performance of duty” means whatever an employee may be directed,
14 required or reasonably expected to do in connection with his or her employment, and not
15 solely the duties particular to his or her position.

16 (18)~~(16)~~ “Periodic review” means a review of a member receiving a disability benefit
17 to determine whether or not a continued benefit is warranted.

18 (19) “Physical capacity evaluation” means a comprehensive and objective
19 evaluation performed by a physical therapist or occupational therapist to determine the
20 applicant’s physical or functional capacity to perform work. The evaluation may include
21 an analysis of a member’s ability to perform a specific job based on a position
22 description and his or her abilities and limitations.

23 (20)~~(17)~~ “Physician” means a person who holds a degree of doctor of medicine,
24 doctor of osteopathy, doctor of podiatric medicine, or *[a medical doctor, a doctor of*

1 *osteopathy, a] doctor of oral surgery, [a chiropractic doctor, a naturopathic doctor, or a*
2 *doctor of psychology practicing only within the purview of their license issued by the*
3 *designated authority of a state] **and is licensed by law to practice medicine or perform***
4 **surgery by the designated authority of any state within the United States of America or**
5 **the District of Columbia. PERS may accept at its discretion a physician licensed by**
6 **another country.**

7 **(21)[(18)]** “Pre-existing condition” means a condition that was not sustained in actual
8 performance of duty in a qualifying position with a participating employer.

9 **(22) “Previous employment experience” means the most recent fifteen (15) years of**
10 **work experience from date of disability. Employment experience prior to the 15-year**
11 **period may be considered as relevant when a continuity of skills, knowledge, and**
12 **processes can be established between such work and the individual’s more recent**
13 **occupations.**

14 **(23)[(19)]** “Protected health information” means health information created or received
15 by a health care provider, health plan, or health care clearinghouse, where an individual has a
16 reasonable belief that the information can identify the individual, which relates to:

- 17 (a) The past, present, or future physical or mental health of an individual;
18 (b) The provision of health care to an individual; or
19 (c) The past, present, or future payment for the provision of health care to an individual.

20 **(24)[(20)]** “Total disability” means the inability to perform any work for which qualified
21 for an extended duration due to physical or mental incapacitation.

22 **(25)[(21)]** “Vocational evaluation” means an evaluation conducted by a certified
23 vocational consultant, to determine the ability of an applicant to perform any work for which
24 they are qualified.

1 (26)[(22)] “Work related stress” means conditions or disabilities resulting from, but not
2 limited to:

- 3 (a) Change of employment duties;
- 4 (b) Conflicts with supervisors;
- 5 (c) Actual or perceived threat of loss of a job, demotion, or disciplinary action;
- 6 (d) Relationships with supervisors, coworkers, or the public;
- 7 (e) Specific or general job dissatisfaction;
- 8 (f) Work load pressures;
- 9 (g) Subjective perceptions of employment conditions or environment;
- 10 (h) Loss of job or demotion for whatever reason;
- 11 (i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;
- 12 (j) Objective or subjective stresses of employment; or
- 13 (k) Personnel decisions.

14 Stat. Auth.: ORS 238A.450

15 Stats. Implemented: ORS 238A.235

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 076 – OPSRP DISABILITY BENEFIT**

1 **459-076-0010**

2 **Criteria for Granting and Denying Disability Benefits**

3 **PERS shall determine eligibility for disability benefits based on an applicant's**
4 **capacity and qualifications as set out below.**

5 (1) Medical documentation is required by PERS. Each disability benefit applicant
6 shall supply any treating or consulting physician's examination report or other medical
7 information requested by PERS. PERS may base its determination on either a treating or
8 consulting physician's medical examination report or have the applicant examined by one
9 or more physicians selected by PERS, or both.

10 (2) All claims of a disability must be supported by at least one physician's report,
11 resulting from a physical examination, documenting how the injury or disease
12 incapacitates the member. **A physician assistant's examination report will be accepted**
13 **as a physician's report when signed by the supervising physician.**

14 (3) In addition, a disability benefit applicant shall be required to furnish the
15 following:

16 (a) For claims of mental or emotional disorder, at least one report of examination by
17 a psychiatrist or at least one report of evaluation by a psychologist when accompanied by
18 a report of physical examination by a treating or consulting physician;

19 (b) For claims of orthopedic injury or disease, at least one report of a treating or
20 consulting orthopedic specialist;

21 (c) For claims of neurological or neurosurgical injury or disease, at least one report
22 of a treating or consulting neurologist or neurosurgeon;

1 (d) For claims of fibromyalgia, at least one documented diagnosis by a
2 rheumatologist, and at least one report of a treating or consulting rheumatologist or
3 physical medicine and rehabilitation physician; and

4 (e) Any other specialized physician’s report PERS deems necessary.

5 (4) To demonstrate that he or she is unable to perform any work for which qualified,
6 as defined in OAR 459-076-0001(1), the applicant shall document how the injury or
7 disease incapacitates the applicant. The standard is subjective (that is, whether the
8 applicant is actually incapacitated) not objective (that is, whether a "normal" member
9 would have been incapacitated by the same events).

10 (5) When there are conflicting opinions among physicians referenced in section
11 (3) of this rule, more weight will be given to those medical opinions that are both
12 well-reasoned and based on complete information.

13 (6) As supporting evidence, PERS will accept reports from other health
14 practitioners. When there are conflicting opinions among other health practitioners,
15 more weight will be given to those medical opinions that are both well-reasoned and
16 based on complete information.

17 (7)[(a) In d]Determining what work for which a member is qualified.[,]

18 (a) [t]The following factors shall be considered:

- 19 (A) Previous employment experience;
- 20 (B) Formal education;
- 21 (C) Formal training;
- 22 (D) Transferable skills;
- 23 (E) Age; and

1 (F) Physical or mental impairment.

2 (b) *[In determining what work for which a member is qualified,]* PERS may request,
3 at PERS’ expense, a vocational evaluation be done by a vocational consultant who is
4 fully certified as set forth in OAR 459-076-0001(2).

5 (c) The inability of the applicant to perform the duties of his or her last job, in itself,
6 does not satisfy the criterion.

7 *[(5) When there is a dispute among medical experts, more weight will be given to*
8 *those medical opinions that are both well-reasoned and based on complete information.]*

9 **(8) [(6)]** The Board may deny any application or discontinue any disability benefit if
10 an applicant:

11 (a) Refuses to submit to an independent medical or vocational examination; or

12 (b) Refuses to submit to any medical examination or supply a completed application
13 or review form.

14 **(9) Receipt of weekly unemployment insurance payments after the date of**
15 **disability is evidence that the member is able, available, actively seeking and willing**
16 **to accept employment and is not totally and continuously disabled.**

17 Stat. Auth.: ORS 238A.450

18 Stats. Implemented: ORS 238A.235

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 076 – OPSRP DISABILITY BENEFIT**

1 **459-076-0020**

2 **Application Required**

3 (1) Application must be made on forms provided by PERS. PERS may require the
4 member to provide any information that PERS considers necessary to determine the
5 member's eligibility for a disability benefit.

6 (2) No disability benefit will be paid unless the member files a timely and complete
7 application with PERS.

8 (3) Application must be made by a member or the member's authorized
9 representative. A representative must submit to PERS written proof of the
10 representative's authority; such as a power of attorney, guardianship or conservatorship
11 appointment.

12 (4) A member must file a timely application for disability benefits:

13 (a) An active member may file the application immediately after the last day worked
14 even though the member may be on a paid leave or on an official leave of absence
15 without pay. No application will be accepted that predates the last day the member was
16 actually on the job, and:

17 (A) The application must be filed no later than 90 calendar days from:

18 (i) The date the member is medically released for work; or

19 (ii) The date the member returns to work, whichever is earlier.

20 (B) Total disability must be continuous from the date of disability to the earlier of
21 paragraph (A)(i) or (ii) of this subsection.

1 (b) An inactive member who became totally disabled due to injury or disease while
2 the applicant was an active member and has not terminated membership, must file an
3 application for a disability benefit within five calendar years of the date of separation
4 from service. Total disability must have arisen while the applicant was an active member
5 and be continuous from the date of disability to the date the application is filed.

6 (c) A member cannot apply for disability benefits before their date of disability.

7 (5) In determining the effective date of a disability benefit, PERS may allow up to 60
8 months of benefits retroactive from the date the application is filed with PERS, but in no
9 case earlier than the first day of the month following the date of separation from service.

10 (6) Upon the filing of an application for a disability benefit, PERS will notify the
11 applicant’s current or most recent employer of the filing. Additionally, PERS may request
12 of an employer information pertaining to current or previous employment.

13 (7) When making application for a PERS disability benefit, PERS will request the
14 applicant authorize any physician, other health practitioner, hospital, clinic, pharmacy,
15 employer, employment agency, or government agency to release and disclose to PERS,
16 or independent physicians and vocational consultants retained by PERS, any information
17 within their records or knowledge, including that information otherwise protected under
18 federal or state law, regarding the applicant’s health and employment which PERS
19 determines relates to the applicant’s claim of disability and inability to perform any work
20 for which qualified.

21 (8) When filing an application for disability benefit, if the applicant wishes to
22 authorize release and disclosure of protected health information, as defined in OAR 459-

1 076-0001, the applicant must complete and sign a consent form which specifically
2 authorizes the release and disclosure of such information.

3 (a) This authorization is voluntary. PERS is not a covered entity as defined in 45
4 CFR Parts 160 and 164, and the protected health information is not subject to federal and
5 state health information privacy laws, but may be protected under Oregon State Public
6 Record disclosure laws.

7 (b) This authorization may be revoked in writing at any time, except to the extent the
8 entities named on the authorization form(s) have taken action in reliance of the
9 authorization.

10 (c) If the applicant refuses to give or revokes authorization to disclose to PERS
11 medical information that PERS determines it needs to evaluate the application, eligibility
12 for a disability benefit may be affected.

13 Stat. Auth.: ORS 238A.450

14 Stats. Implemented: ORS 238A.235

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 076 – OPSRP DISABILITY BENEFIT**

1 **459-076-0025**

2 **Application Processing – Independent Examinations and Appeals**

3 (1) Following the timely filing of a completed application, PERS may, at its
4 discretion, request an independent medical exam, physical capacity evaluation, or a
5 vocational evaluation. If PERS requests one or more of these exams or evaluations, PERS
6 will pay the reasonable associated expenses.

7 (a) PERS is not required or obligated to request any evaluation or exam. The
8 burden of proof for eligibility for a disability benefit is upon the applicant, whether
9 or not PERS requests any evaluation or exam. Situations in which PERS may
10 exercise its discretion to request an evaluation or exam include, but are not limited
11 to:

12 (A) When PERS receives conflicting reports from two physicians of the same
13 specialty;

14 (B) When the applicant cannot afford to see a physician required under OAR
15 459-076-0010(3) because they do not have health insurance;

16 (C) When the applicant cannot see a physician required under OAR 459-076-
17 0010(3) because the physician is not covered by the applicant’s health insurance; or

18 (D) When PERS receives a report from a physician required under OAR 459-
19 076-0010(3), but the physician will not address the eligibility questions required by
20 PERS.

21 ~~[(a)]~~(b) For independent medical exams and physical capacity evaluations, PERS
22 will inform the applicant in writing and postmarked not less than 10 days before a

1 scheduled examination, of the identity of the physician ~~[(s)]~~ or other health practitioner
 2 selected to examine applicant, together with location, date and time.

3 ~~[(b)]~~(c) For vocational evaluations, the vocational consultant or locator service shall
 4 inform the applicant of the location, date and time of the scheduled examination.

5 ~~[(c)]~~(d) If the applicant fails to meet the scheduled appointment or fails to
 6 reschedule the examination within five days of notification, PERS will not reschedule an
 7 examination at PERS’ expense unless the applicant can demonstrate good cause for
 8 having failed to meet the scheduled appointment or reschedule the appointment as
 9 required.

10 ~~[(d)]~~(A) Good cause includes, but is not limited to:

11 ~~[(A)]~~(i) Physical or mental incapacitation preventing the member from meeting or
 12 rescheduling the examination;

13 ~~[(B)]~~(ii) Failure of PERS or the vocational consultant or locator service to send the
 14 member notice as described above; or

15 ~~[(C)]~~(iii) A death in the member’s immediate family.

16 ~~[(e)]~~(B) Good cause does not include:

17 ~~[(A)]~~(i) A member’s refusal to attend the scheduled appointment;

18 ~~[(B)]~~(ii) A member’s failure to meet the appointment with no reason provided; or

19 ~~[(C)]~~(iii) A member’s failure to make appropriate transportation arrangements.

20 (2) When PERS requires an applicant to travel to be examined by a physician,
 21 vocational consultant, or other health practitioner ~~[professional]~~, PERS will reimburse
 22 the applicant’s reasonable transportation costs based on the least costly alternative and on
 23 availability. Travel by private vehicle will be compensated at the rate applicable to travel

1 by unrepresented state employees on state business. Transportation by taxi, bus, rail, or
2 other public carrier will be paid only upon presentation of receipts from the providers.
3 Lodging and subsistence will be allowed only when a stop-over is necessary and will be
4 paid at the rate applicable to unrepresented state employees traveling on state business.
5 Reimbursements will be reduced by the amount of any penalty assessed PERS because of
6 a member's failure to meet a scheduled appointment.

7 (3) In the event a member fails to meet a scheduled examination in accordance with
8 section (1) of this rule, and PERS is assessed a penalty by the service provider for the
9 failure to meet the scheduled appointment, the disability applicant will bear the cost of
10 the penalty as follows:

11 (a) If the disability application is not approved, by making direct payment to the
12 service provider who assessed the penalty; or

13 (b) If the disability application is approved:

14 (A) By making direct payment to the service provider who assessed the penalty; or

15 (B) By having the amount of the penalty deducted from the monthly disability
16 benefit, as provided for under ORS 238.715, payable to the member until the invoice is
17 satisfied.

18 (4) The Director, or the Director's designee, is hereby authorized to approve or deny
19 a disability benefit application. Upon receipt and review of all necessary documentation,
20 staff will present applicant's claim to the Director, or the Director's designee, with a
21 recommendation to approve or to deny a disability benefit. The Director, or the Director's
22 designee, may accept or reject the staff's recommendation, or refer the application back
23 to staff for further documentation and review.

1 (a) If the disability claim is approved, the staff will notify the applicant and the
2 applicant’s employer of such approval.

3 (b) If the disability claim is denied, the staff will issue an Intent to Deny letter by
4 regular and certified mail, return receipt requested. The Intent to Deny letter will advise
5 the applicant that additional information to substantiate the claim, or a request for an
6 extension of 30 days to present additional information, may be submitted to the staff in
7 writing within 30 days of the date of the Intent to Deny letter.

8 (5) Following the issuance of an Intent to Deny letter, staff will review any
9 additional information submitted within 30 days from the issuance of the Intent to Deny
10 letter.

11 (a) If the additional information results in a recommendation to approve the
12 application, staff will resubmit the application to the Director with the recommendation.

13 (b) If the additional information does not result in a recommendation to approve the
14 application, PERS will issue a final denial letter by regular and certified mail, return
15 receipt requested.

16 (c) If no additional information is received, PERS will issue a final denial letter by
17 regular and certified mail, return receipt requested.

18 (6) The final denial letter will provide the applicant with notification of the right to
19 request a contested case hearing as provided for in OAR 459-015-0030 and 459-001-
20 0035.

21 (7) A contested case hearing on the denial of disability benefits shall be conducted
22 according to OAR 459-015-0030, 459-015-0035, and 459-015-0040.

1 (8) PERS will notify the most recent employer of the approval or the denial of an
2 application for a disability benefit, a request for review of the Director’s determination,
3 and the Director’s final action. Such notification will not contain any confidential
4 information as defined in OAR 459-076-0001(3).

5 Stat. Auth.: ORS 238A.450

6 Stats. Implemented: ORS 238A.235

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 076 – OPSRP DISABILITY BENEFIT**

1 **459-076-0040**

2 **Proof of Case – Contested Case Hearings**

3 **(1) Burden of Proof in Hearings: The burden of proof for entitlement to a**
4 **disability benefit is upon the applicant. The Board is not required to prove that the**
5 **applicant is entitled to a disability benefit.**

6 **(2) Standards of Proof:**

7 **(a) An order granting entitlement to a disability benefit shall be supported in**
8 **the record by sufficient evidence demonstrating that the applicant suffers from a**
9 **physical or mental/emotional injury or disease, and that the applicant is unable to**
10 **perform any work for which he or she is qualified; and**

11 **(b) An order denying entitlement to a disability benefit need not be supported**
12 **by medical or vocational evidence presented by the Board. An order may deny**
13 **entitlement to a disability benefit if the applicant fails to present sufficient proof of**
14 **disability and inability to work. An order may deny entitlement to a disability**
15 **benefit on the basis of medical or vocational evidence presented by the Board.**

16 **(3) Professional opinions:**

17 **(a) A physician or other health practitioner may express an opinion regarding**
18 **whether the injury or disease was caused by the performance of job duties;**

19 **(b) A physician or other health practitioner may express an opinion regarding**
20 **the applicant’s ability to perform any work, related tasks, or functions; and**

1 (c) The administrative law judge shall have the discretion to give more weight
2 to the testimony (findings and opinions) of the treating, the examining, or the
3 consulting physician as the facts indicate.

4 Stat. Auth.: ORS 183.310 - 183.550, 183.600 - 183.690, 238A.450

5 Stats. Implemented:

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 076 – OPSRP DISABILITY BENEFIT**

1 **459-076-0050**

2 **Periodic Reviews**

3 (1) Members receiving a disability benefit are subject to periodic reviews of their
4 disabled status until the member reaches normal retirement age or staff determines that
5 periodic reviews are no longer warranted.

6 (2) Periodic reviews will be used to determine that continued disability benefits are
7 warranted. In recommending the continuance or discontinuance of a disability benefit,
8 PERS will follow the criteria established under OAR 459-076-0005 for the original
9 approved disabling condition or a new medical condition. If a member receiving a
10 disability benefit becomes employed, the member’s disability benefit will be terminated
11 as provided in OAR 459-076-0005.

12 (3) For a duty disability, the periodic review will not revisit the original
13 determination that the injury or disease was duty caused, unless there is evidence of
14 misrepresentation or fraud.

15 (4) PERS will establish review dates for each member subject to a periodic review
16 depending on type of disability, extent of disability, and medical reports unique to each
17 individual case:

18 (a) The reviews may be medical or vocational in nature, or both and will be based
19 on the administrative rules in effect when PERS initiates the disability periodic
20 review.^[;]

21 (b) Upon review, PERS may accept or require:

22 (A) New treating or consulting physician or specialist reports;

- 1 (B) Updated physician or specialist reports;
- 2 (C) Independent medical or vocational examinations; or
- 3 (D) Employment and wage information, including but not limited to, tax returns or
- 4 information from the State Employment Department.

5 (c) PERS may immediately discontinue the disability benefit of any person who
6 refuses to provide current medical evidence or refuses to submit to an examination:

7 (A) If the disability claim is discontinued, the staff shall issue an Intent to
8 Discontinue letter by regular and certified mail, return receipt requested. The
9 discontinuation letter shall advise the applicant that additional information to substantiate
10 the claim, or a request for an extension of 30 days to present additional information, may
11 be submitted to the staff in writing within 30 days of the date of the Intent to Discontinue
12 letter;

13 (B) Following the issuance of an Intent to Discontinue letter, staff will review any
14 additional information which is submitted within 30 days:

15 (i) If the additional information results in a recommendation to approve the
16 application, staff shall resubmit the application to the Director, or the Director's designee,
17 with the recommendation;

18 (ii) If the additional information does not result in a recommendation to approve the
19 application, PERS will issue a final discontinuation letter by regular and certified mail,
20 return receipt requested.

21 (C) If no additional information is received within 30 days, PERS will issue a final
22 discontinuation letter by regular and certified mail, return receipt requested;

1 (D) The final discontinuation letter will provide the applicant with notification of the
2 right to request a contested case hearing as provided for in OAR 459-015-0030 and 459-
3 001-0035.

4 (5) The member has the burden to prove continuing eligibility for a disability
5 benefit.

6 (6) The Director, or Director's designee, may approve or deny the continuance of a
7 disability benefit.

8 Stat. Auth.: ORS 238A.450

9 Stats. Implemented: ORS 238A.235



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January 27, 2017

TO: Members of the PERS Board

FROM: Stephanie Vaughn, Manager, Policy Analysis & Compliance Section

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

OVERVIEW

- Action: Adopt modifications to the IRC limitations rules.
- Reason: Update rules to reflect the 2017 Internal Revenue Code (IRC) annual limitations regarding retirement contributions and benefits.
- Policy Issue: None identified.

BACKGROUND

The Internal Revenue Service (IRS) revises various dollar limits annually 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 proposed rule modifications incorporate these federal adjustments and are necessary to ensure 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.

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 December 22, 2016, at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended December 30, 2016, at 5:00 p.m. No public comment was received.

LEGAL REVIEW

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

IMPACT

Mandatory: Yes, statute requires the Board to update its rules to reflect revisions by the IRS.

Impact: Clarifies the 2017 limits for contributions and benefits under federal law.

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

RULEMAKING TIMELINE

November 15, 2016	Staff began the rulemaking process by filing a Notice of Rulemaking with the Secretary of State.
November 18, 2016	PERS Board notified that staff began the rulemaking process.
December 1, 2016	<i>Oregon Bulletin</i> published the Notice. Notice was sent to employers, legislators, and interested parties. Public comment period began.
December 22, 2016	Rulemaking hearing held at 2:00 p.m. at PERS in Tigard.
December 30, 2016	Public comment period ended at 5:00 p.m.
January 27, 2017	Board may adopt the permanent rule modifications

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to the 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 2017 Internal Revenue Code (IRC) annual limitations regarding retirement contributions and benefits.

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

- B.2. Attachment 1 – 459-005-0525, *Ceiling on Compensation for Purposes of Contributions and Benefits*
- B.2. Attachment 2 – 459-005-0545, *Annual Addition Limitation*
- B.2. Attachment 3 – 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 [~~\$265,000~~] \$270,000 per
8 calendar year beginning in [~~2015~~] 2017.

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 chapters 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
5 regulations and Internal Revenue Service rulings and other interpretations issued
6 thereunder.

7 (2) Annual Addition Limitation. Except as otherwise provided in this rule, a
8 member’s annual additions to PERS for any calendar year after ~~2014~~ 2016 may not
9 exceed ~~[\$53,000]~~ \$54,000 (as adjusted under IRC Section 415(d)).

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

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

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

19 (b) With respect to any eligible participant, the annual addition limitation in section
20 (2) of this rule shall not be applied to reduce the amount of permissive service credit to an
21 amount less than the amount that could be purchased under the terms of the plan as in

1 effect on August 5, 1997. As used in this subsection, the term “eligible participant”
2 includes any individual who became an active member before January 1, 2000.

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

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

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

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

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

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

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

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

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

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

1 **459-080-0500**

2 **Limitation on Contributions**

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

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

5 (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 ~~[\$53,000]~~ \$54,000
8 effective January 1, ~~[2015]~~ 2017.

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



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January 27, 2017

TO: Members of the PERS Board
FROM: Yvette Elledge-Rhodes, Chief Operations Officer
SUBJECT: *Moro* Implementation Project Update

PROJECT ACTIVITIES

For the *Moro* project, we are in the process of resolving the final population which represents all benefit recipients (about 7,400) who passed away before their cost-of-living adjustment (COLA) was adjusted. About 300 benefit recipients pass away every month, so this population is comprised of people who did so between the time that the Oregon Supreme Court's decision in the *Moro* case was issued and we adjusted the COLA in accordance with those rules. We are resolving these by researching whether an authorized representative was established for the recipient's estate and, if not, attempting to notify the recipient's survivors of the amount of unclaimed benefits. Our goal is to complete this work by the end of June 2017.

As of January 10, 2017, we have sent out 2,765 letters to this population, which is 45% of the population that we need to notify. PERS has received forms from and paid out 424 accounts. Our response rate is declining now that we are moving into the non-survivor accounts.

COLA RESTORATION FUNDING

In September 2015, the Board approved funding the restored COLA payments from the Contingency Reserve at an estimated cost of \$63.4 million. Below are the actual charges based on the completion of the majority of adjustments in October 2015 and February and October 2016:

- October 2015 retroactive COLA payments grossed \$71.4 million, reduced by \$8.8 million from recovered Supplementary Payments resulting in a net of \$62.6 million charged to the Contingency Reserve.
- February 2016 retroactive COLA payments grossed \$4.9 million, reduced by \$704,384 from recovered Supplementary Payments and \$248,189 from Actuarial Equivalency Factor Invoices resulting in a net of \$3.9 million charged to the Contingency Reserve.
- October 2016 retroactive COLA payments grossed \$447,433, reduced by \$20,030 from recovered Supplemental Payments resulting in a net of \$427,403 charged to the Contingency Reserve.
- Total charged to the Contingency Reserve to date: \$66.9 million

There will be additional charges to the Contingency Reserve for the remaining populations of deceased accounts, which we will include in our project closeout report at the Board's July 2017 meeting.



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January 27, 2017

TO: Members of the PERS Board
FROM: Marjorie Taylor, Senior Policy Director
SUBJECT: Legislative Update

2017 REGULAR LEGISLATIVE SESSION

The 2017 Regular Legislative Session will convene Wednesday, February 1. On January 9, an Organizational Day was held for the purpose of swearing in members, naming committees, and introducing more than 1,500 bills for consideration. Most of the remaining bills will be introduced by late February, but some will continue to trickle through the end of session – each one will be reviewed for impact to the PERS system or agency. Most committees will hold work sessions on their chambers' bills no later than Tuesday, April 18. Second chamber work sessions on most bills are scheduled to end by Friday, June 2. The Constitutional deadline for the end of session is Monday, July 10.

LEGISLATION IMPACTING PERS STATUTES, RETIREMENT, or refer to PERS

Of the bills introduced on January 9, some impact the system and others may impact various aspects of agency operations (public records, administrative rules, procurement, human resources, etc.). During session, our highest priority will be to monitor bills that impact the PERS plan directly by amending or adding to ORS Chapters 238 and 238A, refer to “retirement,” or include incidental reference to PERS in non-PERS statutes. The following 50 bills currently qualify for close monitoring.

Bill	Relating Clauses for Bills that Impact PERS (ORS 238/238A), “Retirement”, or include Incidental Reference to PERS
HB 2163	Relating to contributions to retirement plans
HB 2198	Relating to cannabis
HB 2200	Relating to cannabis
HB 2207	Relating to payments under the Public Employees Retirement System subject to Oregon personal income tax
HB 2213	Relating to state agencies
HB 2230	Relating to taxation
HB 2231	Relating to intercept agreements
HB 2252	Relating to reemployment of retired public employees
HB 2298	Relating to statements of economic interest
HB 2303	Relating to health policy
HB 2312	Relating to implementation of the federal Workforce Innov. and Opportunity Act
HB 2323	Relating to reemployment of retired public employees
HB 2423	Relating to teacher qualifications
HB 2425	Relating to public employee retirement
HB 2441	Relating to public employees
HB 2604	Relating to judicial marshals
HB 2632	Relating to reemployment of retired members of the Public Employees Retirement

	System
HB 2646	Relating to credit for periods of disability under the Oregon Public Service Retirement Plan
HB 2653	Relating to death benefits under the Public Employees Retirement System
HB 2674	Relating to the status in the Public Employees Retirement System of police officers commissioned by universities
SB 41	Relating to workforce information
SB 107	Relating to public investments
SB 124	Relating to payments under the Public Employees Retirement System subject to Oregon personal income tax
SB 148	Relating to the correction of erroneous material in Oregon tax law
SB 193	Relating to state agencies
SB 196	Relating to employees at public institutions of higher education
SB 200	Relating to retirement credit for periods of service in uniformed services
SB 201	Relating to salary of employees of universities with a governing board under the Oregon Public Service Retirement Plan
SB 209	Relating to employers of administrators of virtual public charter schools
SB 214	Relating to the eligibility of post-doctoral scholars for retirement benefits
SB 219	Relating to the state administration of education
SB 224	Relating to Oregon Health and Science University as an in-network provider for state benefit plans
SB 302	Relating to cannabis
SB 309	Relating to distributions under the individual account program of the Public Employees Retirement System
SB 404	Relating to prohibiting automatic enrollment in the Oregon Retirement Savings Plan
SB 405	Relating to the repeal of the Oregon Retirement Savings Plan
SB 413	Relating to joint committees of the Legislative Assembly
SB 459	Relating to benefits offered to volunteer firefighters
SB 464	Relating to payments under the Public Employees Retirement System subject to Oregon personal income tax
SB 486	Relating to police officers commissioned by universities
SB 496	Relating to recording of grand jury proceedings
SB 505	Relating to recording of grand jury proceedings
SB 508	Relating to images of death
SB 519	Relating to polygraph tests
SB 530	Relating to enhancing trade in goods
SB 559	Relating to the calculation of final average salary under the Public Employees Retirement System
SB 560	Relating to public employee retirement
SB 603	Relating to a contract preventing contributions to the Oregon Retirement Savings Plan from being combined with moneys in the Public Employees Retirement Fund
SB 621	Relating to the Sunset Advisory Committee
SB 5534	Relating to the financial administration of the Public Employees Retirement System

PERS LEGISLATIVE ADVISORY COMMITTEE

The PERS Legislative Advisory Committee meeting scheduled for December 8, 2016, was cancelled due to inclement weather and we have not rescheduled the meeting. In advance of the legislative session, we planned to review the PERS Policy Papers (“Police & Fire” Classification; Public Employment After Retirement; and Tax Remedy Payments) that were made available for the November 18, 2016 Board meeting. A variety of legislative proposals address these three topics, so we prepared these background/policy documents for legislators, stakeholders, and the public to refer to. The papers are again attached to this memo; any questions that a bill’s proponent may have regarding these policy papers should be brought to me so we can discuss prior to any legislative action on their bill.

The cancelled meeting was also to be a venue for LAC members to voluntarily discuss any legislation they sought to introduce. Throughout the interim we have offered assistance with language review or policy analysis of proposed legislation.

PERS BUDGET BILL

The PERS budget bill is Senate Bill 5534. We expect that the budget bill will be considered by the Ways and Means Subcommittee on General Government. Four of eight committee members are new to the Oregon Legislative Assembly and we look forward to answering their questions about PERS, the system, and PERS, the agency.

- C.2. Attachment 1 - PERS Policy Paper – “Police & Fire” Classification
- C.2. Attachment 2 - PERS Policy Paper – Public Employment After Retirement
- C.2. Attachment 3 - PERS Policy Paper – Tax Remedy Payments



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PERS Policy Paper – “Police & Fire” Classification

Background

PERS members who work in a position that meets the definition for “Police Officer” and “Firefighter” (“P&F”) are eligible for special benefit provisions such as retiring at an earlier age and calculating their retirement benefit with a higher statutory factor. Frequently, legislation is introduced to expand the definition of “Police Officer” to afford P&F status to a broader range of positions. Recent proposed expansions have included dog control officers, physicians and nurses at Oregon State Hospital, juvenile detention workers, and community college police.

Policy Issue

What should determine whether a position is re-defined as a “Police Officer?”

Discussion

1. Compliance with Federal Tax Law

The federal tax code has special rules for benefits paid to “Public Safety Employees” – positions that principally engage police protection, firefighting services, or emergency medical services. Police protection positions are recognized as those that involve the custody, control, or supervision of individuals convicted of, or arrested for, a criminal offense or confined to a place of incarceration or detention. Those special tax provisions include broader exceptions from the 10% penalty for early distributions from tax-advantaged accounts like the PERS Individual Account Program (IAP) and, in certain circumstances, fully deducting health insurance premiums. Normal retirement age is another – PERS P&F members can retire at an earlier age, but if they do not meet the federal “public safety officer” definition, they could be treated as early retirements, which may change the taxation of their benefits.

Members who do not conform to the federal law definition, regardless of the classification of their position as P&F in the Oregon PERS plan, may have federal tax problems and PERS could incur compliance concerns if they do not qualify for these special federal tax provisions.

2. Cost for P&F Benefits

PERS P&F members are eligible to retire at an earlier age and their retirement benefit is calculated using a higher factor. These enhanced benefits (as well as some other provisions) mean that P&F status raises the cost of the benefits members earn while in that status by 4-5% of payroll. Those costs increase further if existing General Service (non-P&F) members move into that classification.

For example, if a 55 year old Tier One member is in a position that is reclassified as P&F, that member can take full retirement immediately instead of waiting until the General Service normal retirement age of 58. Normally, retiring three years “early” would reduce that member’s benefit by about 24%. Retiring as P&F with an unreduced benefit at age 55 increases the system’s costs for that member’s benefits earned from General Service because the pay-out will be longer than previously expected.

3. Alternate Benefit Structure

Proponents of bills to expand PERS’ “Police Officer” definition generally describe the jobs in question as having high physical demands or high stress levels. These characteristics are similar to traditional P&F classifications; members in such positions generally have shorter careers. Given the federal tax law concerns, however, expanding the “Police Officer” definition is not the most appropriate solution for members who are not in positions that principally engage in the custody, control, or supervision of individuals convicted of, or arrested for, a criminal offense or confined to a place of incarceration or detention.

A model for enhanced benefits exists in PERS for “high risk, high stress” jobs. ORS 238.280(2) has a special retirement eligibility rule for telecommunicators, otherwise known as 911 operators. Members with 25 years of service in those positions can retire earlier than General Service members. Their benefit is actuarially reduced and the member does not receive a cost of living adjustment until reaching age 55. These special provisions were added in recognition of the demanding nature of those positions, but modified to limit the cost increase of allowing these members to retire early. Similar limitations and adjustments could be made for other “high risk, high stress” jobs.

Policy Recommendation

Proposals to expand the PERS definition of “Police Officer” should use the same criteria as that classification has in federal tax law. Differences between the state and federal definition put PERS members at risk for federal tax consequences and may subject the overall plan to additional scrutiny of its tax qualified status.

Positions that fall outside the federal tax law definition could be afforded special provisions similar to telecommunicators, in light of their shortened expected careers, but similarly modified to reduce the cost impacts of a reclassification.



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PERS Policy Paper – Public Employment After Retirement

Background

Public employers face a complicated statutory framework if they decide to employ a member who has retired from PERS. A retired member could return as an active member – the member’s benefit payments are stopped, additional credit towards retirement begins to accrue, and contributions are assessed to the member and employer upon re-entering public employment.

Instead, the retired member and their public employer more commonly want to avoid affecting the member’s retired status (and have the member’s benefits continue), but there are limits on how much that member can work after retirement. A retired Tier One or Tier Two member can work for up to 1,040 hours in a calendar year; retired OPSRP members may only work up to 600 hours in the calendar year that they retire before they return to active membership.

There are exceptions to the Tier One/Tier Two limits in statute (see Appendix A). These exceptions vary by the type of employer, geographic location, population of the employer’s city or county, type of position, and other factors. Those limits have been adopted over time and with no consistent policy direction; consequently, a complicated framework has been built that allows certain members to “double dip” by continuing to work but still receive retirement benefits, while other members who don’t fit one of these exceptions must limit their public employment after retirement. Notably, however, these restrictions only apply to public employment; a PERS retired member can work in the private sector without constraint or limitation after retirement.

By statute, the public employer has to be satisfied that the reemployment is in the public’s interest, and the employer and member must carefully monitor the hours actually worked or whether they comply with exception. If not, when a retired member exceeds the limit, or their work falls outside of an allowed exception, PERS has to stop the member’s retirement benefit, invoice the member for benefits paid after the member exceeded the limit, and return them to active membership. Employers must pay the contributions and earnings for the salary paid to members after they had returned to active membership.

Policy Issue

Should public employers be allowed to employ PERS retired members without affecting that member’s retired status and, if so, under what conditions?

Discussion

In 1997, the “work after retirement” limit was raised from 600 to 1,040 hours; each legislative session since then has considered proposals to add or extend exceptions to that limit. This piecemeal approach has led to inconsistent expectations and results for the variety of employers and members in PERS. In reviewing this policy issue, the following perspectives should be weighed:

1. Public Employer Workforce Management

Employers have a variety of reasons to retain or employ a PERS member after that person has retired. These employees have served a significant portion of their career in public service and a fair amount of their skills and abilities have been developed while working for Oregon’s taxpayers. The current reemployment restrictions mean that a large segment of the potential workforce is either foreclosed from a public employer’s consideration, or subject to complicated

restrictions, depending on that employer’s appetite to navigate the existing maze. Appendix B shows the number of members who worked after retirement and the associated salary in 2015.

2. Administrative Challenges

When a retired member appears to exceed the limit, PERS compiles the number of hours worked, based on reports filed by their employer(s). Then, the employer(s) are engaged to evaluate whether any exceptions apply to that member’s particular employment (or to part of their employment, as they could be working for multiple public employers). If reports confirm that the member has exceeded the limits and no exception applies, PERS cancels the member’s retirement and then invoices the member for any benefits received and the employer(s) for contributions (and associated earnings, if any) that are owed. As employer reports can sometimes lag behind for months, these situations are not always discovered promptly. This unwinding process can occur several months after the limit was exceeded, increasing the financial consequences for members and employers.

3. Federal law considerations

PERS must maintain its status under federal tax law as a qualified retirement plan. Generally, that law requires that benefits only be paid when the member has a “bona-fide” retirement – a term that is not defined, but can include starting benefits only after the member has reached normal retirement age or been absent from employment for a certain period of time (e.g., six months). Any policy decision to relax (or eliminate) return to work restrictions must consider these federal standards so that policy is in line with, or more restrictive, than federal law allows.

Current PERS Board Policy Position

The PERS Board’s policy position on new exceptions has been that they should be narrowly tailored to meet an identified workforce shortage and should sunset within a reasonable period for that shortage to be remedied. In fact, the shortages associated with the exceptions that have been enacted have not been resolved, and proponents are perpetually seeking renewal of those that would sunset. The shortages giving rise to exception requests seem to be systemic, rather than temporary, and creating or extending exceptions does not solve the core workforce management problems that have given rise to the demand. Instead, the current work after retirement scheme leads to uncertainty and confusion for both members and employers as to whether an exception applies, or may be amended to continue into the future.

Policy Recommendation

A retired PERS member may work for any private employer in the state of Oregon, or public or private employer outside the state, without limitation or constraint, and have no effect on the PERS benefit they earned through their public service in Oregon. An Oregon public employer can hire any qualified person to work for them, but if that person happens to be a retired PERS member (over 100,000 Oregonians are), that employment decision has to be balanced against that employer’s appetite for negotiating the current maze of limits or exceptions.

Conversely, allowing a retired member to continue employment prevents another person from filling that position. Also, some critics don’t believe that people should be able to receive both a retirement benefit and a paycheck at the same time.

The “middle ground” that has been shifting since the first “crack” was enacted in 1997 has led to frustrated member and employer expectations and serial proposals to expand that crack. Oregon’s public employers would be better served by a clear and consistent standard on one side of the question or the other.

APPENDIX A –Current Exceptions to 1,040 Hour Limit for Tier One and Tier Two

- As an administrator or teacher by a school district or educational service district that has its administrative office located in a county of 35,000 or less population:
 - 1) As an administrator or teacher by a school district or community college district located in a county of 35,000 or less population; or
 - 2) As an administrator or teacher by an education service district and the retired member's primary work duties are performed in a county of 35,000 or less population.
- By the sheriff of a county with less than 75,000 population.
- By the municipal police department of a city with less than 15,000 population.
- By the state or a county for work in a correctional institution in a county of less than 75,000 population.
- By the Oregon State Police for work in a county of less than 75,000 population.
- As a temporary replacement for an employee called to active duty in the National Guard or an Armed Forces Reserve component.
- By a road assessment district organized under ORS 371.405-.535.
- By Black Butte Ranch R.F.P.D., the Black Butte Ranch Service District, or the Sunriver Service District.
- As a deputy director or assistant director of the Department of Human Services (exception must be approved by the Governor).
- As a deputy director or assistant director of the Oregon Health Authority (exception must be approved by the Governor).
- As a teacher of career and technical education (licensed by the Teacher Standards and Practices Commission to instruct any career and technical education course or program in any career and technical education field).
- As a nurse or for the purpose of teaching nursing, provided the retiree is a nurse. This exception is only available during a nursing workforce shortage declared by the Legislative Assembly or the Governor (a nursing workforce shortage was declared when this exception was passed into law).
- As a nursing instructor (the retiree must be a registered nurse).
- By the Department of Public Safety Standards and Training to provide training.
- By a school district or education service district as a speech-language pathologist or speech-language pathologist assistant.
- Is on state active duty with the National Guard and has reached “normal” retirement age (ORS 399.075(8)) (available to early retiree only if the retiree has reached normal retirement age).
- By the Legislative Assembly or the Oregon State Police for service during a legislative session. (ORS 238.092(2)).

APPENDIX B – Retired Member Hours Worked and Salary Paid in Calendar Year 2015

Tier One and Tier Two Members

Hours	State Agencies		Local Governments		School Districts		All Employers	
	Members	Salary	Members	Salary	Members	Salary	Members	Salary
< 200	452	\$1,313,865	1,155	\$3,877,649	2,890	\$6,412,685	4,497	\$11,608,243
200 – 400	307	\$3,048,539	590	\$6,282,686	1,345	\$9,691,847	2,242	\$19,025,006
401 – 600	294	\$4,904,999	465	\$8,527,579	974	\$12,435,942	1,733	\$25,869,960
601 – 800	180	\$4,082,249	329	\$7,833,400	696	\$13,674,047	1,205	\$25,590,722
801 – 1039	310	\$10,346,977	415	\$12,881,218	737	\$22,246,622	1,462	\$45,475,969
> 1039	153	\$7,339,937	279	\$21,531,130	231	\$10,834,283	663	\$39,705,860
TOTAL	1,696	\$31,036,565	3,233	\$60,933,663	6,873	\$75,295,426	11,802	\$167,275,759

OPSRP Members

Hours	State Agencies		Local Governments		School Districts		All Employers	
	Members	Salary	Members	Salary	Members	Salary	Members	Salary
< 200	24	\$72,449	27	\$87,102	55	\$67,044	106	\$226,677
200 – 400	7	\$70,303	14	\$154,470	17	\$112,800	38	\$337,603
401 – 600	12	\$164,958	21	\$395,036	20	\$230,184	53	\$790,219
601 – 800	2	\$67,048	0	\$0	0	\$0	2	\$67,048
801 – 1039	0	\$0	1	\$26,238	0	\$0	1	\$26,239
> 1039	1	\$53,945	1	\$13,912	0	\$0	2	\$67,858
TOTAL	46	\$428,702	64	\$676,757	92	\$41,0028	202	\$1,515,644

All Members

Hours	State Agencies		Local Governments		School Districts		All Employers	
	Members	Salary	Members	Salary	Members	Salary	Members	Salary
< 200	476	\$1,386,313	1,182	\$3,964,751	2,945	\$6,479,729	4,603	\$11,834,920
200 – 400	314	\$3,118,841	604	\$6,437,155	1,362	\$9,804,646	2,280	\$19,362,609
401 – 600	306	\$5,069,957	486	\$8,922,615	994	\$12,666,127	1,786	\$26,660,179
601 – 800	182	\$4,149,296	329	\$7,833,400	696	\$13,674,047	1,207	\$25,657,769
801 – 1039	310	\$10,346,977	416	\$12,907,456	737	\$22,246,622	1,463	\$45,502,207
> 1039	154	\$7,393,882	280	\$21,545,042	231	\$10,834,283	665	\$39,773,718
TOTAL	1,742	\$31,465,267	3,297	\$61,610,420	6,965	\$75,705,454	12,004	\$168,791,403



Oregon

Kate Brown, Governor

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PERS Policy Paper – Tax Remedy Payments

Background

Until the late 1980s, PERS benefit payments were exempt from state income taxes, while federal retirement benefits were partially exempt. A 1989 federal Supreme Court ruling directed that states must tax federal and state retirement benefits in the same manner. In 1991, the Oregon legislature passed a law to subject PERS benefits to state income tax. Imposing that tax on PERS benefits was challenged to the Oregon Supreme Court, which held that the legislature's imposition violated the benefit contract for PERS members.

Senate Bill 656 (1991) and House Bill 3349 (1995) were passed to establish "tax remedy" payments to mitigate the effect of subjecting PERS benefits to state income tax. SB 656 was found by the Oregon Supreme Court to be an inadequate remedy, and HB 3349 was enacted as a settlement of the litigation. As a result, eligible members receive the higher of the two tax remedy payments. The tax remedy formula under SB 656 is based on the member's total service time. Under HB 3349, the tax remedy is based on the amount of the member's service time before the tax was imposed.

Eligibility for Tax Remedy Payments

Tier Two and OPSRP members are NOT eligible for tax remedy payments. Tier One members who established membership before July 14, 1995, and have either service time before October 1, 1991, or at least 10 years of creditable service, are eligible. Legislation approved in 2011 (House Bill 2456) eliminated the tax remedy payment for members retiring on or after January 1, 2012, who do not pay Oregon income taxes because they are not residents of Oregon.

Recent Legislation

In 2013, Senate Bill 822 eliminated tax remedy payments for all out-of-state benefit recipients, regardless of when the member retired. This expansion was challenged and the Oregon Supreme Court, in its 2015 *Moro* decision, upheld the Legislature's elimination of the tax remedy for those who do not pay Oregon state income tax on their PERS benefits because they do not reside in Oregon. This expansion reduced employer costs by \$55 million in the 2015-17 biennium because system liability was reduced by over \$400 million, based on the December 31, 2013 system valuation.

Elimination or Restoration of Tax Remedy Payments

ORS 238.372-384 establishes two ways for PERS to determine a benefit recipient's residency: 1) receive information from the Oregon Department of Revenue (DOR) to determine whether the recipient filed an Oregon income tax return as a resident in the previous calendar year; or 2) receive a certification from the recipient that, under penalty of perjury, their benefit is subject to Oregon income taxes as an Oregon resident. This determination is limited to these two methods because other indications of residency (address on file, driver's license, or voter registration) do not always correlate to whether the recipient actually pays income taxes as an Oregon resident.

In mid-October each year, PERS works with the DOR to determine whether a benefit recipient from the prior calendar year did file an Oregon income tax return as a resident. If PERS cannot determine that the recipient did so, PERS then sends a letter to the recipient asking them to certify residency status, either by returning a form to PERS or going online to certify residency.

If the recipient does not certify before the end of that calendar year, the statute directs PERS to stop paying the tax remedy benefit for that next calendar year. A second letter is sent to those recipients who have not certified, explaining that the tax remedy payment will be removed for the next calendar year. If the recipient certifies at a later time that their benefit is subject to Oregon income tax as a resident, the tax remedy payment is restored for the next calendar year.

Tax Remedy Payment Data

Year Processed (following calendar year payment affected)	2013	2014	2015
# of Payment Recipients Submitted to DOR	112,707	109,374	116,469
# That DOR Reported as Tax Filing Residents in Prior Year	92,810	93,964	96,061
# That DOR Reported as NOT Filing Taxes	19,897	15,410	20,408
# of Accounts Tax Remedy Turned OFF for Next Year	17,208	1,362	2,518
Amount Turned OFF Each Month	\$2,280,670	\$170,015	\$240,121

Policy Considerations

1. Administrative Challenges. PERS' determination that the recipient is not eligible for the tax remedy payment, because the recipient did not file an Oregon resident return with the DOR nor separately certify their status, can be challenged through the administrative review process. The following table shows the number of administrative appeals and contested case hearings that have resulted from this process over the last three years:

Year Processed (following calendar year payment affected)	2013	2014	2015
# of Tax Remedy Administrative Appeals Filed	841	76	119
# of Contested Case Hearings From Those Appeals	22	9	17
# of Tax Remedy Appeals Not Filed Timely	44	13	12

After 2013, the first year of the program, the number of challenges dropped significantly to less than 1% of the tax remedy benefit tested each year. Anecdotal complaints about the process are not a significant share of those who are reviewed each year. The once-a-year reporting and payment cycle was established to make this process administratively feasible and would always be expected to catch people both coming in and leaving Oregon over the course of time.

2. Cost Savings. Eliminating the tax remedy payment for those who do not pay Oregon income taxes saved PERS employers millions of dollars in this biennium, and those savings will persist so long as those benefits are not restored, either by relaxing controls or requiring restoration to those recipients who do not timely re-certify when prompted.

3. Judicial Review. Importantly, the Oregon Supreme Court has already reviewed the statute and found it to be a constitutional reduction in benefits, which resulted in the savings to employer costs. Modifications to the tax remedy eligibility review process not only could impact system-wide savings but also open the reduction to another round of judicial review.

Policy Recommendation

The significant employer cost savings from eliminating tax remedy payments for those recipients who do not pay Oregon income taxes because they do not reside in Oregon should remain in place. PERS will continue to seek to improve its communication and processes to ensure recipients who need to certify their eligibility understand the importance of doing so, and have simple and efficient ways to do so. Those few members who have failed to file their tax returns or process their certifications timely do not indicate that wholesale changes to the current system are warranted at this time.



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January 27, 2017

TO: Members of the PERS Board

FROM: Mary Dunn, Assistant Chief Administration Officer
Kyle J. Knoll, Chief Administration Officer

SUBJECT: 2016 Preliminary Earnings Crediting and Reserving

OVERVIEW

- Action: Preliminarily allocate 2016 earnings, and review and approve the recommended account adjustments for achieving the Contingency Reserve funding level established by the Board at the March 28, 2016 meeting.
- 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 2016 to the PERS Fund's accounts and reserves.

The PERS Board is charged with crediting the earnings from the PERS Fund each calendar year. Some of those allocations are directed by statute or rule; the balance are 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 2016 (ORS 238.610(1)). As directed by House Bill 4155 (2014 Regular Session), the administrative costs to comply with Governmental Accounting Standards Board (GASB) 68 reporting standards were \$190,533, and will be recovered from earnings on employer's contributions.
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 2016, the preliminary crediting rate for these accounts is estimated to be 4.88% for RHIA, 2.10% for RHIPA, and 0.77% 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. For 2016, the preliminary crediting rate for these accounts is estimated to average 7.63%.
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 2016, preliminary Variable Annuity Account earnings are estimated to be 8.76%

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 2016 are estimated to be 7.14% after deducting IAP expenses.
6. **Tier One Rate Guarantee Reserve:** This reserve, established under ORS 238.255(1), is used to fund crediting of the assumed rate to Tier One member regular accounts when earnings are less than the assumed rate. A transfer of \$3.93 million from the existing reserve will be credited to Tier One member regular accounts for 2016 earnings crediting, resulting in a remaining balance of \$179.2 million. Over the last two calendar years, this reserve has decreased by 60%.

CONTINGENCY RESERVE ALLOCATION

When the PERS Fund's calendar year earnings exceed the assumed rate, the PERS Board can make an allocation to the Contingency Reserve. Because 2016 earnings did not exceed the assumed earnings rate of 7.50%, the PERS Board cannot allocate any earnings to the Contingency Reserve, but there is an existing balance of \$583.7 million. Of this balance, \$25 million was set aside from earnings on Employer Reserves, as directed by statute, to be applied against any deficit in the fund by reason of an insolvent participating employer. Also, approximately \$21.8 million was authorized by the PERS Board at its November 18, 2016 meeting to be applied against the costs of resolving the OPSRP Contribution Start Date issue, as requested by the Employer Advisory Group. All the material costs for the *Moro* Project have already been recovered, so that leaves \$536.3 million in the Contingency Reserve.

At its March 28, 2016 meeting, the PERS Board adopted a funding level for the Contingency Reserve of 0.25% of the system's accrued liability. Based on the December 31, 2015 system valuation, the Contingency Reserve is currently over-funded by \$345.8 million. As in the past, when the PERS Board has determined that this reserve is over-funded, there are a number of options for lowering this reserve to the designated level:

- Redistribute the excess funding proportionally to those accounts and reserves whose earnings are used to fund the Contingency Reserve;
- Credit the excess funding to an existing reserve or account (e.g., the Benefits-in-Force Reserve to support future benefit payments or, previously, this reserve was used to eliminate the deficit from 2008 in the Tier One Rate Guarantee Reserve);
- Retain the excess funding in the Contingency Reserve and allow future charges against the reserve or growth in the system's accrued liability gradually move towards the adopted funding level;
- Apply the excess funding towards other purposes, as this reserve can be used to provide for any contingency that the PERS Board may determine to be appropriate.

To the extent that the Contingency Reserve is deployed to member or employer accounts and reserves, those funds would increase the assets available to be applied against the plan's liabilities and reduce the system's unfunded actuarial liability. Funds held in the Contingency Reserve (and the Tier One Rate Guarantee Reserve) are not factored into the system valuation.

Given the PERS Board's broad discretion and the substantial amount of excess funds, staff suggests that the Board solicit stakeholders to provide their direction on a proposed reallocation. Staff can compile and evaluate these recommendations and return to the PERS Board's April 3, 2017 meeting with a recommendation. For that input to be timely, stakeholders should forward their suggestions or considerations by March 15, 2017.

2016 PRELIMINARY ALLOCATIONS

The PERS Board's Annual Earnings Crediting rule (see OAR 459-007-0005, Attachment 3 to this memo) directs the crediting to the Judge and Tier Two member regular accounts, as well as the OPSRP Pension Program, 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 (7.5%) in effect during 2016.

Judge Member Accounts

Credit Judge Member Accounts with the assumed earnings rate (7.5%) in effect during 2016.

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 7.12%.

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 is 7.12%.

BOARD ACTION – PRELIMINARY EARNINGS CREDITING

The Board's options for 2016 preliminary earnings crediting include:

1. Pass a motion to "adopt the preliminary crediting of earnings as presented for calendar year 2016, subject to final adoption at the April 3, 2017 PERS Board meeting."
2. Pass a motion preliminarily allocating 2016 earnings in a different proportion, subject to final adoption at the April 3, 2017 PERS Board meeting.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

NEXT STEPS

Preliminary Earnings Crediting: Once the Board makes its preliminary allocation, staff will prepare and present the required report to the Joint Legislative Committee on Ways and Means. Any comments received from the committee will be presented to the Board prior to the final crediting decision at its meeting on April 3, 2017.

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

Attachments:

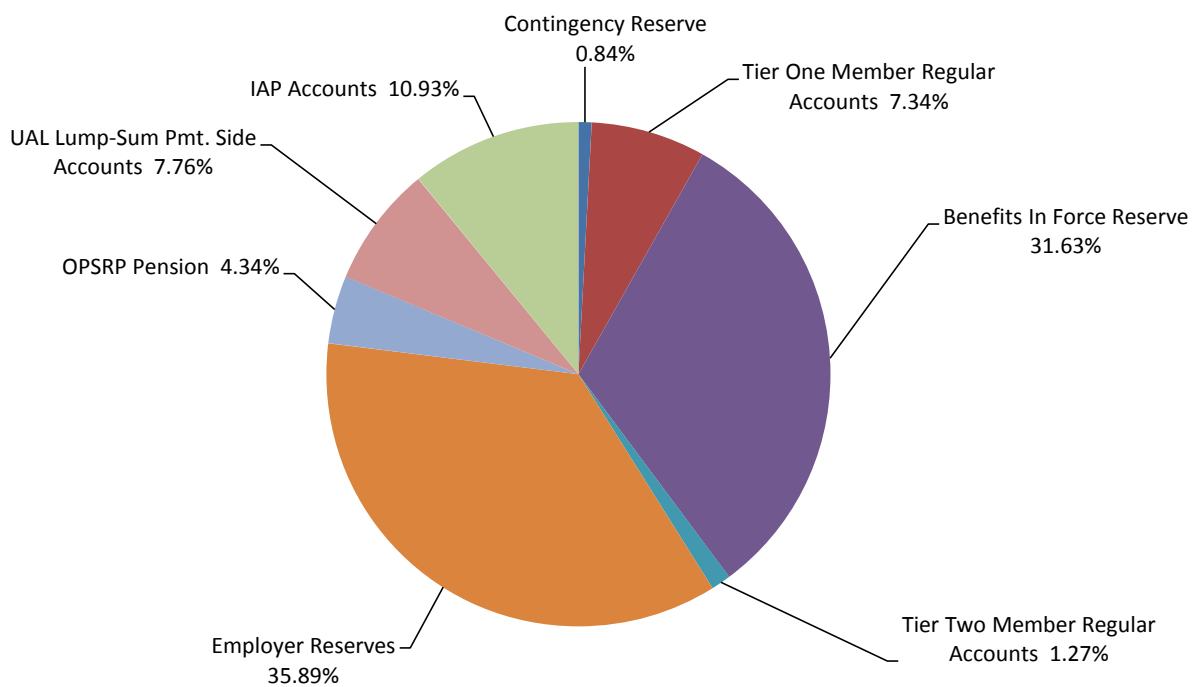
- C.3. Attachment 1 – Preliminary 2015 Accounts and Reserves Crediting
- C.3. Attachment 2 – ORS 238.670 – Reserve Accounts in Fund
- C.3. Attachment 3 – OAR 459-007-0005 – Annual Earnings Crediting Rule
- C.3. Attachment 4 – Contingency Reserve Balance

Oregon Public Employees Retirement System Preliminary 2016 Crediting and Reserving

(All dollar amounts in millions)

	Reserves Before Crediting	2016 Crediting	Reserves After Crediting	2016 Rates
Contingency Reserve	\$583.7	-	\$583.7	N/A
Tier One Member Regular Accounts	4,575.5	343.2	4,918.7	7.50%
Tier One Rate Guarantee Reserve	183.2	(3.9)	179.3	N/A
Benefits In Force Reserve	20,498.8	1,461.3	21,960.1	7.12%
Tier Two Member Regular Accounts	819.9	58.4	878.3	7.12%
Employer Reserves	23,258.5	1,657.7	24,916.2	7.12%
OPSRP Pension	2,817.1	198.9	3,016.0	7.06%
*UAL Lump-Sum Pmt. Side Accounts	5,004.6	382.0	5,386.6	Various
*IAP Accounts	7,085.8	505.9	7,591.7	7.14%
Total	\$64,827.1	\$4,603.5	\$69,430.6	

2016 Reserve Balances After 2016 Crediting



*Informational only. Not affected by Board reserving or crediting decisions.
IAP accounts receiving installments have already received 2016 earnings.

ORS 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]

OAR 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

As of December 31, 2015 (amounts in millions)	Tier 1/Tier 2		Pension System	System-Wide		
	Pension	OPSRP	Total ¹	RHIA	RHIPA	Total ¹
Actuarial Accrued Liability	72,454.1	3,742.5	76,196.6	465.6	67.8	76,730.0
Contingency Reserve = 0.25%	181.1	9.4	190.5	1.2	0.2	191.8

¹ Includes Multnomah Fire District #10

Source: 12/31/2015 Actuarial Valuation

Contingency Balance Available as of 12/31/2016:	\$ 583,657,273.28
<u>Less:</u> Employer Contingency	(25,000,000.00)
October Moro Payments	(497,474.03)
November 2016 EAG request for OPSRP CSD	(21,809,890.00)
Total General Contingency	<u>536,349,909.25</u>
Adjustment to arrive at Reserve Target	(345,858,409.25)
Proposed Contingency Reserve Target	<u>\$ 190,491,500.00</u>