

OREGON PUBLIC EMPLOYEES RETIREMENT BOARD

| Friday November 21, 2008 1:00 P.M. | | PERS 11410 SW 68 th Parkway Tigard, OR |
|---|--|---|
| ITEM | | PRESENTER |
| A. Administration – 1:00 P.M. | | |
| 1. | September 19, 2008 Board Meeting Minutes | CLEARY |
| 2. | Director's Report a. Forward-Looking Calendar and 2009 Meeting Schedule b. OIC Investment Report c. Employer Reporting Update d. Budget Report e. 2008 Customer Satisfaction Survey | SCHMITZ |
| B. Consent Action and Information Items | | |
| 1. | Notice of HEART Act Section 105 Rules | RODEMAN |
| 2. | Adoption of Leave of Absence Without Pay/Creditable Service Rules | |
| 3. | Adoption of Plan Qualification Updates Rules | |
| 4. | Adoption of Effective Date for Establishing Service Retirement Benefits Rule | |
| 5. | Adoption of OSGP Trading Restrictions Rule | |
| 6. | Update on ETOB Rules | |
| C. Action and Discussion Items | | |
| 1. | PERS Projected Cash Flow Analysis | MERCER |
| 2. | Approval of 2009 Legislative Concepts | RISWICK |
| D. Executive Session Pursuant to ORS 192.660(2)(f), (h), and/or ORS 40.225 | | |
| 1. | Litigation Update | LEGAL COUNSEL |

Audit Committee meeting immediately following the Board meeting.

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Note: If you have a disability that requires any special materials, services or assistance, call (503) 603-7575 at least 48 hours before the meeting.

Michael Pittman, Chair * James Dalton * Thomas Grimsley * Eva Kripalani * Brenda Rocklin, Vice-Chair
Paul R. Cleary, Executive Director

PUBLIC EMPLOYEES RETIREMENT BOARD

PERS Board Meeting
September 19, 2008
Tigard, Oregon

MINUTES

Board Members:

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

Staff:

| | | |
|---------------|------------------|------------------|
| Donna Allen | Yvette Elledge | Susan Riswick |
| Helen Bamford | Brian Harrington | Steve Rodeman |
| Paul Cleary | Elaine King | Jason Stanley |
| David Crosley | Zue Matchett | Dave Tyler |
| Joe DeLillo | Dale Orr | Stephanie Vaughn |

Others:

| | | | |
|----------------|----------------|------------------|---------------|
| Bruce Adams | Matt Larrabee | Elizabeth McCann | Scott Winkels |
| Linda Ely | Bill Hallmark | G.E. McAdams | David Wimmer |
| Keith Kutler | E. Marie Laird | Deborah Tremblay | Denise Yunker |
| Greg Hartman | Victor Nolan | Pat West | |
| Lorraine Haase | Steve Manton | Dallas Weyand | |

Board Chair Mike Pittman called the meeting to order at 1:00 P.M.

ADMINISTRATION

A.1. BOARD MEETING MINUTES OF JULY 25, 2008 AND AUGUST 19, 2008

Executive Director Paul Cleary noted a correction on page four, paragraph nine of the July 25, 2008 minutes. The last sentence should read as follows: This may help offset some of the rate impact from poor investment returns, helping stabilize contribution rates in the 2011-13 biennium.

The Board unanimously approved the July 25, 2008 Board meeting minutes as corrected and the August 19, 2008 Special Board Meeting minutes.

A.2. DIRECTOR'S REPORT

Executive Director Cleary presented the Board's forward looking calendar, noting that the next Board meeting will be on November 21, 2008, immediately followed by an Audit Committee meeting.

Cleary noted that the Oregon Investment Council report reflects returns through August 2008. The regular account was down 7.5 percent and the variable account was down almost 15 percent.

Staff commissioned a projected cash-flow analysis with Mercer that will be presented to the Board in November. This report will illustrate PERS' projected contribution inflows and earnings versus PERS' projected benefit payments.

Cleary presented an update on the elimination of "Break-in-Service" project implementing HB 2285 from the 2007 Session that retroactively transferred members that were placed in the

OPSRP program back to Tier One or Tier Two. This retroactive statutory change created some downstream impacts because of the difference in salary definition and contributions owed based on lump-sum payouts.

Staff will apply the same approach that the Board approved in correcting member accounts affected by HB 2189 from the 2005 session, and will charge the Contingency Reserve for the estimated \$150,000 difference in contributions and earnings.

Cleary noted the 2007-09 Budget Report reflected an increased positive variance of \$2.1 million. The 2009-11 Agency Request Budget (ARB) has been revised to include \$2.5 million for the RIMS Conversion Project (RCP) changes as presented to the Board on August 19, 2008. The RCP budget changes were also presented to the Joint Ways and Means Committee on September 18, 2008.

Cleary presented a policy regarding delegation of agency head financial transaction approval authority for the Board's review and approval. Staff recommended the Board approve the delegation of review and approval of agency head financial transactions to the Deputy Director and the Chief Financial Officer, combined with an annual Board review of those transactions. Vice-Chair Brenda Rocklin moved to adopt the policy and James Dalton seconded the motion.

The Board unanimously adopted the motion to approve the policy.

Cleary noted that the review of the annual report of financial transactions of the Executive Director was the next item of discussion and deferred the presentation to James Dalton, Audit Committee Chair and Dave Tyler, PERS Chief Financial Officer. Dalton stated that the expenditures on the report were reviewed and appeared appropriate and justified. The Board acknowledged receipt of the annual report.

Cleary announced that Brian Harrington who has been the interim Benefit Payments Division Administrator is now the official administrator of that division.

CONSENT ACTION AND INFORMATION ITEMS

B.1. NOTICE OF RULEMAKING FOR LEAVE OF ABSENCE WITHOUT PAY RULE

Susan Riswick, Policy, Planning and Legislative Analysis Division Interim Administrator, presented the notice of rulemaking on the above rule. This is a housekeeping rule to clarify that creditable service time will be granted for authorized leaves of absence without pay (LWOP) that occur prior to July 11, 1987, as provided by statute.

B.2. NOTICE OF RULEMAKING FOR PLAN QUALIFICATION UPDATES

Riswick noted that the proposed rule modifications reflect recent federal adjustments to the amounts of contributions paid to and benefits paid from a qualified plan. The proposed rule also updates references to federal regulations.

B.3. NOTICE OF RULEMAKING FOR EFFECTIVE RETIREMENT DATE RULES

Riswick noted the proposed rule modifications would require that a Tier One or Tier Two member submit an application for retirement benefits prior to their desired effective retirement date. A new rule reflecting the same requirement has been drafted for the OPSRP program.

B.4. NOTICE OF RULEMAKING FOR OREGON SAVINGS GROWTH PLAN (OSGP) TRADING RULES

Riswick noted that the proposed rule modification would remove the 90 day “round-trip” trading restriction on all OSGP investment options with the exception of the international equities option where the restriction would be reduced from 90 days to 30 days. The Oregon State Treasury and the Oregon Investment Council have modified investments to minimize potential cost impacts due to excessive trading. Because of those structural changes, the OSGP advisory committee and Treasury recommend revising the trading restrictions as proposed.

ACTION AND DISCUSSION ITEMS

C.1. ADOPTION OF “Equal to or Better Than” (ETOB) RULES

Dale Orr, PERS Actuarial Analyst, presented the modified ETOB rules for adoption. The rules have been modified to bring them into alignment with HB 2280, which passed in the 2007 legislative session.

HB 2280 eliminated the previous requirement to conduct an ETOB study every two years. The comparison benchmark for future ETOB studies was also set by HB 2280 as the PERS benefits that were in effect at the time the police officer or firefighter was hired. HB 2280 also eliminated the requirement for an employer to join PERS if their plan fails the ETOB study, instead leaving that resolution to the affected employer and employees.

Orr noted that a key policy issue to consider is: what circumstances or event should trigger a review of a previously granted ETOB exemption from PERS participation?

Staff recommended the Board delegate the authority to the PERS Executive Director to make the ETOB review determination whenever a change occurs in a previous exempt employer’s or PERS plan. The proposed rules also require that ETOB studies be conducted at least every 12 years.

Orr stated that the modified rules establish comparative benchmarks for ETOB review and require the Board to adopt actuarial assumptions and methods when an ETOB study is engaged. The rules further identify the types of data and information to be used in the ETOB study.

Orr noted that the rule modifications were developed through a collaborative effort with employers, stakeholders, and PERS staff. There were two public hearings for the modified rules and public comment was included in the Board packet.

Chair Pittman invited stakeholder and actuary testimony.

Steve Manton, city of Portland, testified that employers supported HB 2280 under the assumption that local plans that had previously been ETOB certified would not have to be retested unless their benefit structure changed. Manton said that he didn’t see a need for a new study if an employer or PERS had not experienced a plan change. Manton supported the 12 year minimum requirement for an ETOB review but not if a new study was immediately required.

Greg Hartman, PERS Coalition, testified that in his opinion, by creating new ETOB review standards, the legislature intended that a new ETOB review be performed. The Coalition also supported a minimum requirement of testing ETOB every 12 years.

Hartman reported that the PERS Coalition believes the rules as drafted are good rules and urged the Board to adopt them as presented.

Tom Grimsley, PERS Board member, noted that ETOB was really a collective bargaining issue that the Board was being asked to referee.

Chair Pittman invited Keith Kutler, Department of Justice, to share his opinion of the statutory requirements with the Board.

Kutler testified that he did not recall any requirement in the statute to perform an immediate test. He also noted there is a new provision that employees can sue their employers if they fail the test and do not raise their benefit standards to that of PERS' or better. Kutler noted that, because of the provision in the statute for an employee remedy, he did not think it likely that any failing plan would be folded into PERS.

Brenda Rocklin, Board Vice-Chair, asked why an employer would be subject to new ETOB testing if they had not experienced a change in their current benefit plan.

Kutler responded that the argument for not conducting a new test now would be that the plans passed the last test and have not changed nor has the PERS plan since that test. The opposing view would be that the last ETOB test criteria were a comparison of the employer's plan and what the employees' benefit would be under OPSRP. The new statutory language provides that the comparison be made between the employer's plan and what that employee would receive under the PERS plan in effect at the time of the employee's hire date (either Tier One, Tier Two, or OPSRP). However, there is nothing in the statute that specifically requires a new test even though it established new comparison criteria.

Hartman testified that he felt it was necessary for exempt plans to again be tested under the new criteria.

Manton again testified that he supported the basic rules, but not a new testing requirement, as he felt it was costly and unnecessary.

Bill Hallmark, Mercer, testified that a new ETOB test as contemplated would be significantly more complex than the last test. The last ETOB test assumptions were based only on future benefits. A new test could require that both past and future benefits be compared as well as using three PERS benefit standards depending on hire date. Mercer has not yet determined how they would do that comparison.

Hallmark also noted that a new test could require that PERS, a defined benefit plan, be compared to an employer's defined contribution plan. There are emerging changes in actuarial practices for comparing defined benefit plans with defined contribution plans and Hallmark would want the Board and PERS stakeholders to be made aware of those changes. Also, given the recent market volatility, an exempt plan could go from passing the ETOB test to not passing and then passing again, which probably wasn't a standard the legislature intended.

Hallmark noted that the cost of performing a new ETOB study could be significantly more than the last test, depending on how the above issues are resolved. Hallmark recommended that meetings be held with stakeholders to evaluate the issues in more detail and come to a consensus on how they are to be handled.

James Dalton, PERS Board member, said that he would like to see more detail on the potential new ETOB actuarial methods and test criteria. Dalton noted that he would also like to have PERS staff share that information with the legislature, so that when it came time for a new test, all parties would know what was involved.

Following further discussion, the Board decided to defer action on the ETOB rules as presented.

Pittman stated that both stakeholders and the Board would benefit from detail on potential actuarial methods and a clearer understanding of how the new provisions in the statute would be implemented. Pittman requested that staff and Mercer prepare more detailed, principle-based criteria on how the ETOB test would be performed and report back to the Board.

C.2. ADOPTION OF 2009-11 EMPLOYER RATES

Hallmark presented the employer rate information for the 2009-11 biennium, which was based on the December 31, 2007 valuation and employer payroll.

Hallmark noted that PERS has 587 different individual employers or employer groups and over 2000 different employer rates for adoption. Hallmark indicated that in general employer rates are decreasing because they are based on the 2007 valuation, which preceded the current market downturn. Eva Kripalani moved to adopt the 2009-11 employer rates as presented and Vice-Chair Rocklin seconded.

The Board unanimously passed the motion.

C.3. BOARD BEST PRACTICES REVIEW

Cleary presented the Board Best Practices Key Performance Measure Review. The Department of Administrative Services (DAS) and Legislative Fiscal Office (LFO) developed 15 standard best practices for governing boards to assess their performance against. The Board added three additional best practices and conducted self-assessments with the results then combined into a single scorecard.

Cleary noted that the key question was whether to categorize the “meets but needs improvement” responses as “yes” or “no” on the DAS scorecard. The Board determined that, other than the Board training practices, the items in the “meets but needs improvement” column can be rolled into the “yes” column on the DAS form. Going forward, staff will work with the Board on the “meets but needs improvement” practices to determine how we can best improve in those areas.

Chair Pittman recommended that he meet with Director Cleary to identify possible courses of action to make those improvements.

PUBLIC TESTIMONY

G.E. McAdams testified regarding the new Medicare drug coverage under PERS retiree health insurance and the fact that he could not get double coverage under both PERS (ODS) and the federal Department of Veterans Affairs (VA). McAdams has been told by ODS that the new Medicare prescription drug plan offsets the PERS coverage because the VA plan is considered creditable coverage.

PERS Board meeting

9/19/2008

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Chair Pittman requested that staff meet with Mr. McAdams at another time to discuss his possible options.

EXECUTIVE SESSION

There being no further business, Chair Pittman adjourned the meeting at 2:25 P.M.

Respectfully submitted,

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

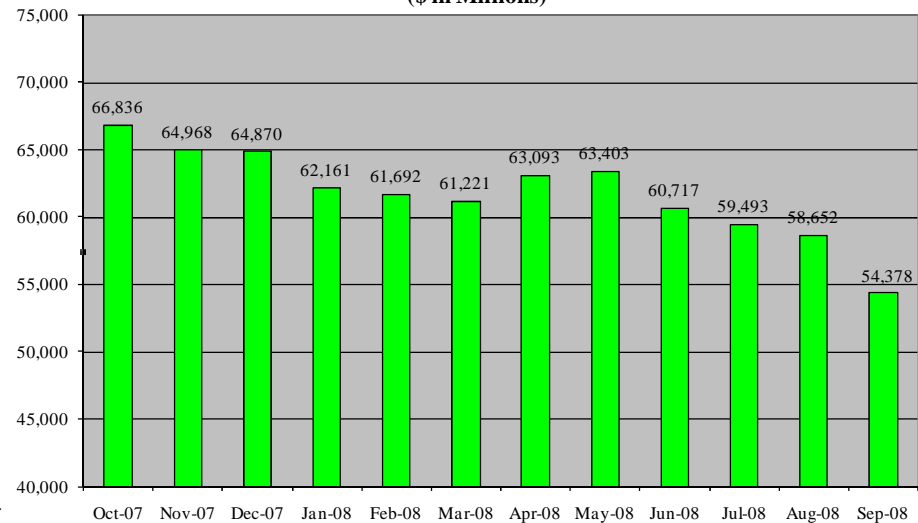
Paul R. Cleary
Executive Director

| 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 |
| Domestic Equity | 11-21% | 16% | \$ 8,933,564 | 16.8% | (20.38) | (22.99) | (5.38) | (0.65) | 3.35 | 5.56 |
| Non-US Equity | 17-29% | 23% | 11,545,798 | 21.7% | (28.77) | (29.29) | (4.15) | 3.20 | 9.33 | 12.05 |
| Global Equity | 4-10% | 7% | 2,842,014 | 5.3% | (31.18) | (33.27) | | | | |
| Private Equity | 12-20% | 16% | 10,234,252 | 19.2% | (0.68) | 1.39 | 12.89 | 16.69 | 21.37 | 22.52 |
| Total Equity | 57-67% | 62% | 33,555,628 | 63.0% | | | | | | |
| Opportunity Portfolio | | | 742,869 | 1.4% | (0.76) | (3.72) | 1.11 | | | |
| Total Fixed | 22-32% | 27% | 13,315,164 | 25.0% | (4.66) | (3.20) | 0.87 | 2.16 | 2.85 | 3.43 |
| Real Estate | 8-14% | 11% | 5,676,556 | 10.7% | (1.66) | (2.91) | 6.87 | 14.42 | 18.67 | 18.63 |
| Cash | 0-3% | 0% | - | 0.0% | (0.75) | 0.49 | 2.96 | 3.52 | 3.30 | 2.90 |
| TOTAL OPERF Regular Account | | 100% | \$ 53,290,217 | 100.0% | (14.19) | (14.80) | (0.26) | 3.98 | 7.39 | 8.96 |
| OPERF Policy Benchmark | | | | | (13.73) | (13.70) | 0.49 | 3.98 | 6.55 | 8.04 |
| Value Added | | | | | (0.46) | (1.10) | (0.75) | 0.00 | 0.84 | 0.92 |
| TOTAL OPERF Variable Account | | | \$ 1,089,067 | | (24.97) | (28.31) | (9.96) | (3.57) | 1.03 | |

Asset Class Benchmarks:

| | | | | | | |
|--|---------|---------|--------|-------|-------|-------|
| Russell 3000 Index | (18.81) | (21.52) | (4.38) | 0.26 | 3.66 | 5.70 |
| MSCI ACWI Ex US IMI Net | (29.96) | (30.40) | (4.49) | 2.88 | 8.96 | 11.66 |
| Russell 3000 Index + 300 bps--Quarter Lagged | (11.37) | (9.33) | 5.66 | 7.95 | 9.05 | 12.18 |
| LB Universal--Custom FI Benchmark | (0.06) | 2.53 | 3.82 | 3.88 | 3.84 | 3.93 |
| NCREIF Property Index--Quarter Lagged | 5.45 | 9.20 | 13.15 | 14.96 | 15.72 | 14.72 |
| 91 Day T-Bill | 1.83 | 2.90 | 4.05 | 4.20 | 3.80 | 3.26 |

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

¹OIC Policy 4.01.18, as revised September 2007.²Includes impact of cash overlay management.³For mandates beginning after January 1, YTD numbers are "N/A". Performance is reflected in Total OPERF.



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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November 21, 2008

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

| | |
|---------|----------------------------|
| MEETING | 11-21-08 |
| DATE | |
| AGENDA | |
| ITEM | A.2.c. ER Update |

PERS is currently working with 879 employers to process outstanding 2006 and 2007 employer reports and member records. In addition, PERS continues to monitor all employer account receivables and conduct its Employer Outreach Program.

EMPLOYER REPORTING

The table below shows the status as of **November 5, 2008** of employer reports and member records for calendar years 2006, 2007, and 2008.

| | Calendar Year 2006 | Calendar Year 2007 | Calendar Year 2008 |
|--------------------------------|--------------------|--------------------|--------------------|
| Reports due: | | | |
| ▪ Number expected | 12,936 | 12,988 | 11,014 |
| ▪ Number received | 12,919 | 12,967 | 10,831 |
| ▪ Percent received | 99.87% | 99.83% | 98.33% |
| Reports fully posted at 100%: | | | |
| ▪ Number | 12,772 | 12,673 | 9,340 |
| ▪ Percent fully posted at 100% | 98.65% | 97.56% | 84.71% |
| Records due (estimated) | 3,167,799 | 3,460,571 | 2,855,346 |
| Records not posted: | | | |
| ▪ Number | 540 | 2,254 | 82,138 |
| ▪ Percent not posted | ≤ .1% | ≤ .1% | 2.8% |
| Contributions posted | \$ 427,193,098 | \$452,614,171 | \$392,845,196 |
| Contributions not posted | \$7,501 | \$34,575 | \$3,562,618 |

As of November 5, 2008, employers submitted 99.87 % of the reports due for 2006. Of the reports submitted, less than 0.1% of records remain suspended (representing less than 0.01% of total contributions anticipated for 2006). For 2007, employers have submitted approximately 99.83% of the reports due. Of those reports submitted, approximately 97.56% are 100% posted. For 2008, employers have submitted approximately 98.33% of the reports due, with 84.71% of them posted at 100%.

There continues to be a significant increase in the number of suspended records for the current calendar year compared to the same time last year. Reasons vary by employer and getting records corrected had been slowed by earlier EDX system performance issues. Nonetheless, PERS employer service center staff is actively working with employers to ensure that they post and correct these records in a timely manner.

EMPLOYER OUTREACH PROGRAM

The employer outreach and education program continues to expand and cover more territory, traveling to remote sites to educate new employees that are responsible for EDX reporting and through our EDX training in a computer lab setting. Due to these continuous education and communication efforts, separate employer group presentations were not held this fall.

This past summer, PERS was invited to give presentations at the Oregon School Personnel Association conference and the Oregon Association of School Business Officers conference, covering a wide variety of EDX reporting topics for approximately 30 employers. EDX Basics and EDX Intermediate Reporting Topics classes were also held at Multnomah ESD and North Clackamas School District.

In October 2008, the Employer Advisory Committee meeting took place at PERS headquarters rather than the usual conference call due to employer concern over EDX system performance. The primary agenda items were a review of EDX system performance problems in July and September 2008, the resolution of those problems, and plans to ensure future performance as EDX grows. Other agenda items included a review of the RIMS Conversion Project, and an outline of EDX Stage 2a, the next major upgrade of EDX scheduled for mid-2009.

As a result of this meeting, PERS staff made various employer site visits to determine how EDX is used by those reporting employers on a daily basis. Visits with five large employers in the Portland/Salem/Corvallis area were scheduled and completed the third week of October. PERS staff gained insight into EDX use by employers and returned with a list of suggested EDX enhancements. Some of those suggestions were already included in EDX Stage 2a features, some are scheduled as enhancements in a future EDX release, and others may become available as stand-alone reports. We are also looking into hosting quarterly meetings for the PERS User Group to continue this very useful dialogue.

ACCOUNTS RECEIVABLE PLAN

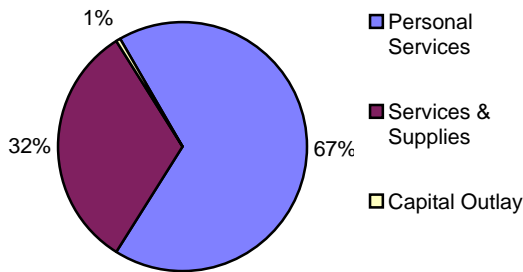
Besides assisting employers with overdue reports and electronic payments, PERS' accounts receivable staff proactively collects receivable balances that are more than 30 days overdue. As of November 5, 2008, we had 123 outstanding invoices (41 employers) with an aggregate balance of less than \$389,099. Our goal is to collect all outstanding invoices that exceed 30 days by following up with these employers by phone and letters each month.

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

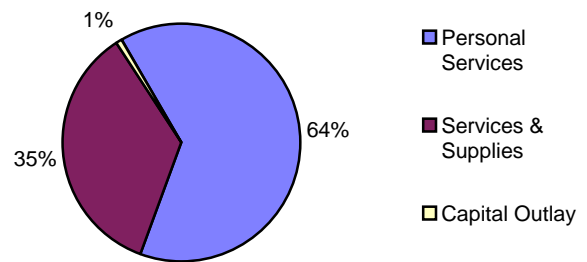
Biennial Summary

| Category | Actual Exp. To Date | Projected Expenditures | Total Est. Expend. | 2007-09 LAB | Variance |
|---------------------|---------------------|------------------------|--------------------|-------------------|------------------|
| Personal Services | 30,933,883 | 21,121,280 | 52,055,163 | 53,288,261 | 1,233,098 |
| Services & Supplies | 14,792,970 | 11,702,102 | 26,495,071 | 26,553,000 | 57,929 |
| Capital Outlay | 279,712 | 266,058 | 545,770 | 947,701 | 401,931 |
| Special Payments | | | | | |
| Total | 46,006,565 | 33,089,440 | 79,096,004 | 80,788,962 | 1,692,958 |

Actual Expenditures

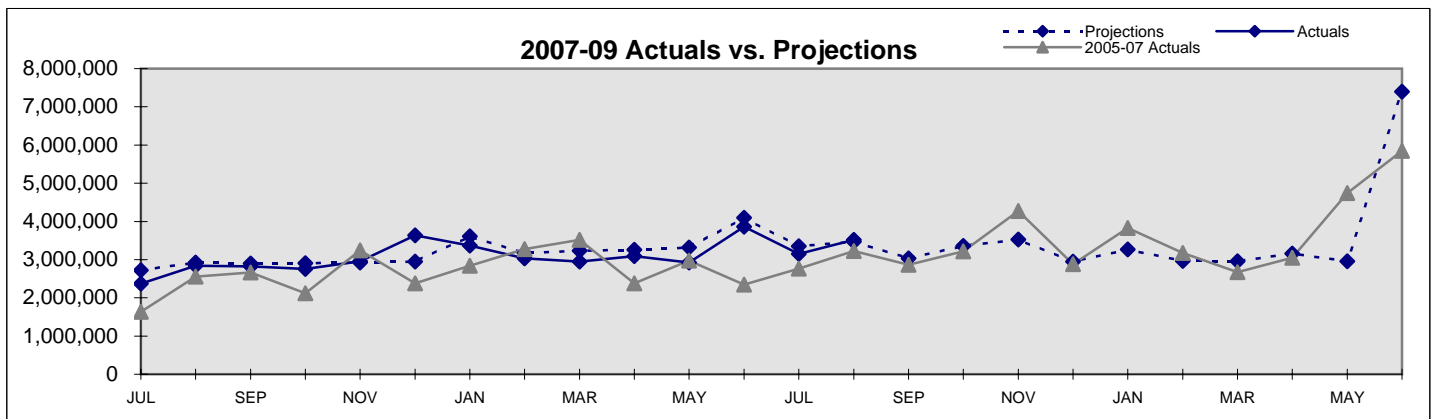


Projected Expenditures



Monthly Summary

| Category | Actual Exp. | Projections | Variance | Avg. Monthly Actual Exp. | Avg. Projected Expenditures |
|---------------------|------------------|------------------|----------------|--------------------------|-----------------------------|
| Personal Services | 2,041,752 | 2,261,503 | 219,751 | 2,062,259 | 2,346,809 |
| Services & Supplies | 686,523 | 768,146 | 81,623 | 986,198 | 1,300,234 |
| Capital Outlay | | | | 18,647 | 29,562 |
| Special Payments | | | | | |
| Total | 2,728,275 | 3,029,649 | 301,374 | 3,067,104 | 3,676,604 |



2005-07 Biennium Summary

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



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November 21, 2008

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

| | |
|--------------|-------------------------------|
| MEETING DATE | 11/21/08 |
| AGENDA ITEM | A.2.d. Budget Rpt. |

2007-09 BUDGET UPDATE

Operating expenditures for the month of September 2008 were \$2,728,275. To-date, through the first fifteen months (62.5 %) of the biennium, the Agency has expended a total of \$46,006,565, or 56.95% of PERS' 2007-09 operating budget. The positive budget variance for the biennium is currently projected at \$1,692,958.

Expenditures for the month of October 2008 close in the Statewide Financial Management System (SFMS) on November 14, 2008. Those expenditures, along with expenditures for November 2008, will be included in the January 22, 2009 Budget Report to the Board.

2009-11 GOVERNOR'S RECOMMENDED BUDGET (GRB) UPDATE

The 2009-11 Governor's Recommended Budget (GRB) will be released by December 1, 2008. A summary of the GRB and impact on PERS' 2009-11 Agency Request Budget (ARB) will also be included in the January Budget Report to the Board.



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November 21, 2008

TO: Members of the PERS Board
FROM: David Crosley, Communications Officer
SUBJECT: 2008 Customer Service Survey Results

| | |
|--------------|------------------|
| MEETING DATE | 11-21-08 |
| AGENDA ITEM | A.2.e. Survey |

PERS conducted customer satisfaction surveys for members (including retirees) and employers in August 2008. This was the third year of our survey program.

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

Our 2008 surveys show overall improvement from 2007 and provide a baseline for future improvement.

We will continue to conduct yearly surveys to measure and trend improvement in our customer service.

MEMBER CUSTOMER SATISFACTION SURVEY

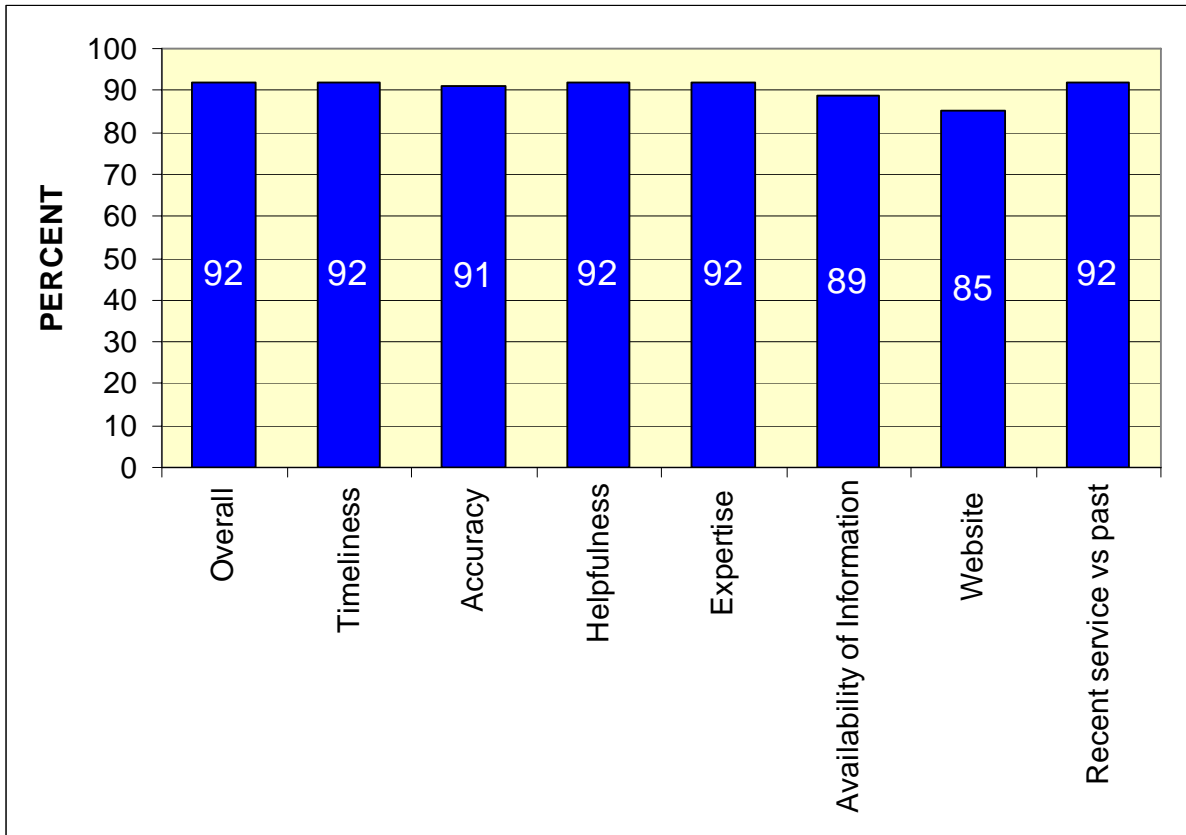
BACKGROUND

PERS posted a customer service survey on its website during August 2008. We also placed a hard copy of the survey in the August 1 retiree newsletter, *Perspectives*, that retirees could complete and mail to PERS. In total, we received 4,129 responses, a number of which included individual comments.

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

The following graphs and charts display the survey results and provide a comparison of 2006, 2007, and 2008 responses. Staff were pleased to note that customer satisfaction (measured as the percent of respondents rating a service factor as “excellent” or “good”) increased for all service factors when comparing our 2007 to 2008 survey results.

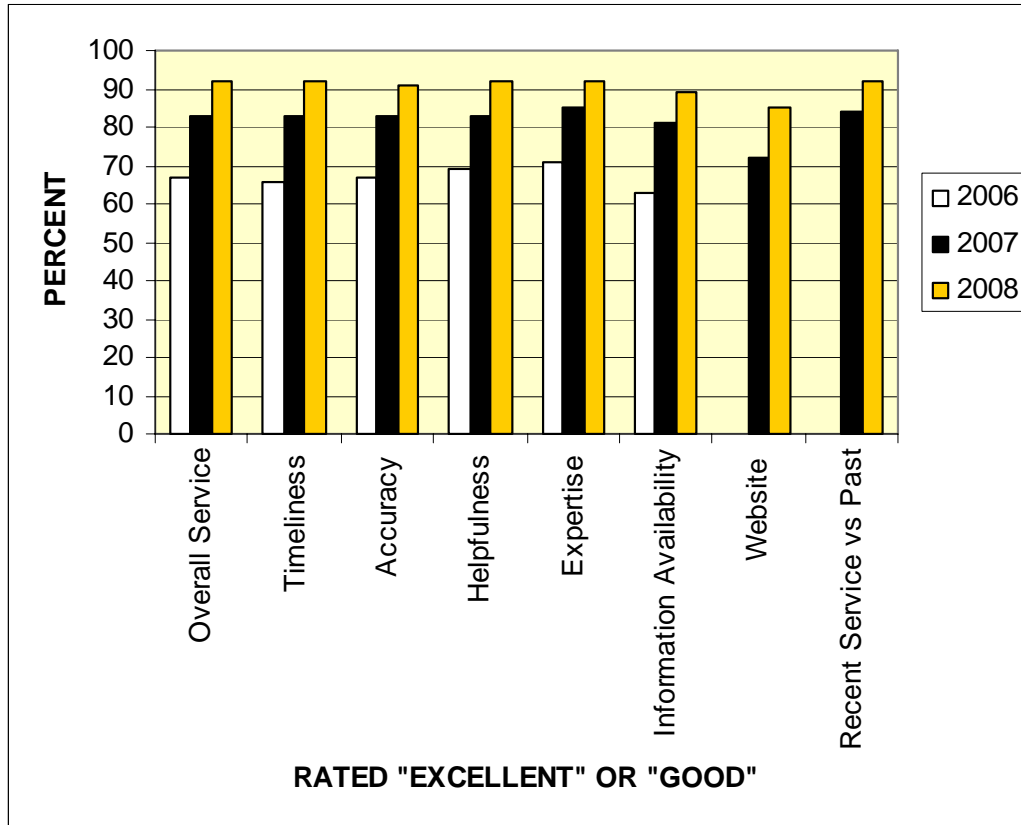
Percent of respondents rating “excellent” or “good” (the state’s Key Performance Measures do not include the “Don’t Know” responses; the numbers in the graph have been rebaselined to exclude those responses)



Numerical results (numbers rounded)

| How do you rate... | Percent | | | | |
|--|-----------|------|------|------|------------|
| | Excellent | Good | Fair | Poor | Don’t Know |
| The overall quality of service? | 56 | 30 | 5 | 3 | 6 |
| The timeliness of services PERS provides? | 58 | 28 | 4 | 3 | 7 |
| PERS’ ability to provide services accurately the first time? | 56 | 28 | 4 | 4 | 8 |
| PERS’ helpfulness? | 58 | 27 | 4 | 3 | 8 |
| The knowledge and expertise of PERS employees? | 51 | 29 | 5 | 3 | 12 |
| The availability of information at PERS? | 52 | 29 | 6 | 4 | 9 |
| The PERS website? | 19 | 17 | 5 | 1 | 58 |
| Our service in the past year compared to previous years? | 39 | 25 | 3 | 2 | 31 |

Comparison of 2006-2008 Member Results



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

1. It is sometimes difficult to get consistent, accurate answers to questions.

Members request information through phone calls, e-mail, letters, and by visiting a PERS office. In calendar year 2007, PERS received more than 345,000 member telephone calls, emails, and letters.

The need for consistent, accurate answers to questions was also a key issue in last year's survey.

Survey comments indicate that regardless of the method members use to contact PERS, they sometimes cannot get satisfactory answers to their questions. The three most common complaints are:

- Members sometimes get inconsistent answers to questions from one staff member to another;
- Staff sometimes does not have answers to questions and doesn't get back with the correct answers as promised; and
- Staff isn't knowledgeable in all aspects of the retirement plan.

Resolution

To address this issue, we are:

- Continuing to offer core staff training in features of the Tier One/Tier Two and OPSRP programs;
- Using the incoming telephone message to encourage callers to use the website and the A-Z topic listings both to answer those questions and to better focus any follow-up questions;
- Distributing internal newsletters to keep staff abreast of changes in business rules, Oregon Administrative Rules, and Board policy decisions and actions; and
- Ensuring our Information Center response scripting uses the same verbiage as publications and the A-Z directory to provide consistent answers.

2. PERS should provide on-line account and individual information access.

Members and retirees are interested in on-line account access, including the ability to view individual annual statements on-line and make demographic changes (addresses, beneficiaries, etc.).

Resolution

To address this issue, PERS is converting our legacy computer system to an upgraded system that will allow on-line access and member self-service transactions. We began the conversion in 2004 and plan to complete the project in 2010, at which time many of these services will be available.

SURVEY METHODOLOGIES

To maximize member response, PERS created this survey online and posted it in a prominent spot on our home page. We also published the location of the survey in our member and retiree newsletters, inviting members and retirees to participate. The online survey ran throughout August 2008.

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

We used surveymonkey.com to create the survey, using the six key questions the state requires all state agencies to use for the Customer Satisfaction Performance Measure survey. As we did in 2007, we included two additional questions:

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

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

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

EMPLOYER CUSTOMER SATISFACTION SURVEY

BACKGROUND

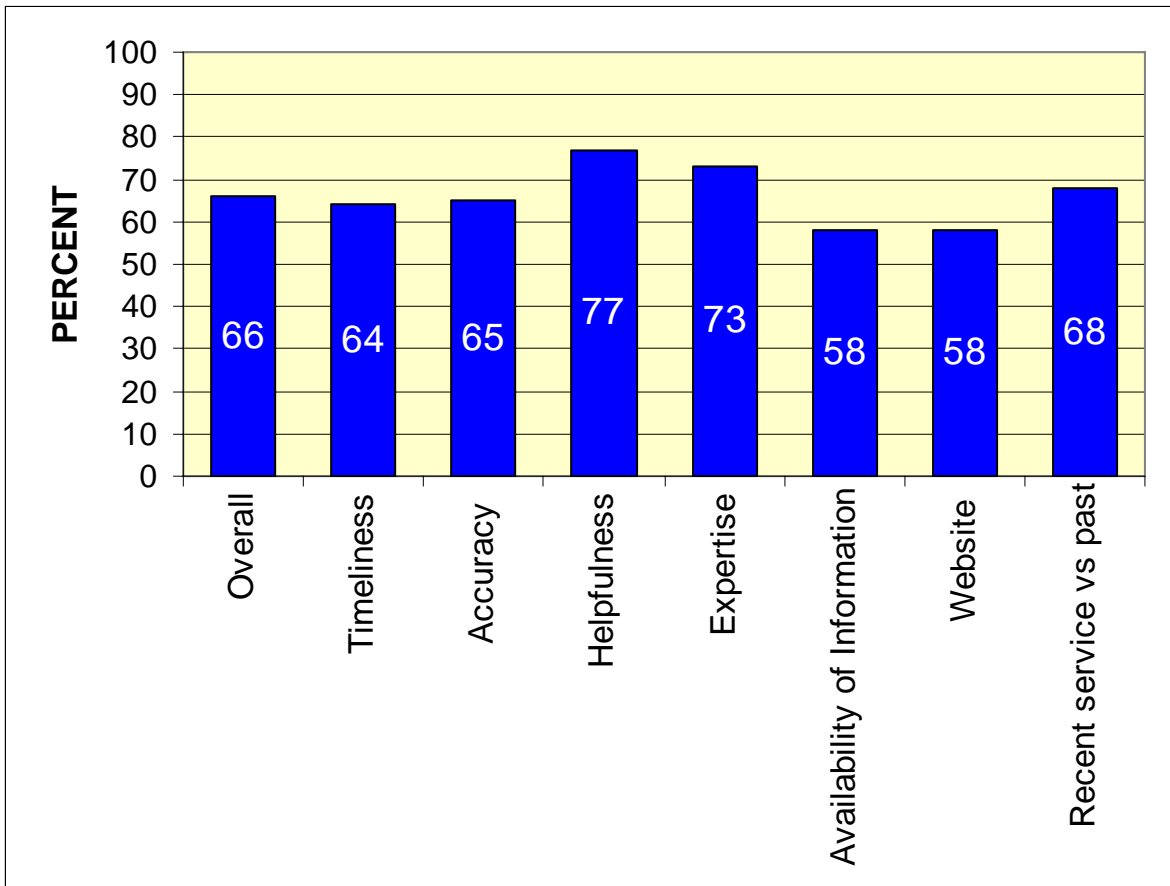
PERS surveyed employers online for the third consecutive year. The 2008 results are discussed below.

The employer satisfaction survey was posted online throughout August 2008. Employers received an e-mail inviting them to take the survey; 185 responses were received, a number of which included individual comments.

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

The following graphs and charts display the survey results and provide a comparison of 2006, 2007, and 2008 responses. Staff were pleased to note that customer satisfaction (measured as the percent of respondents rating a service factor as “excellent” or “good”) increased for six of the eight service factors when comparing 2007 to 2008 results.

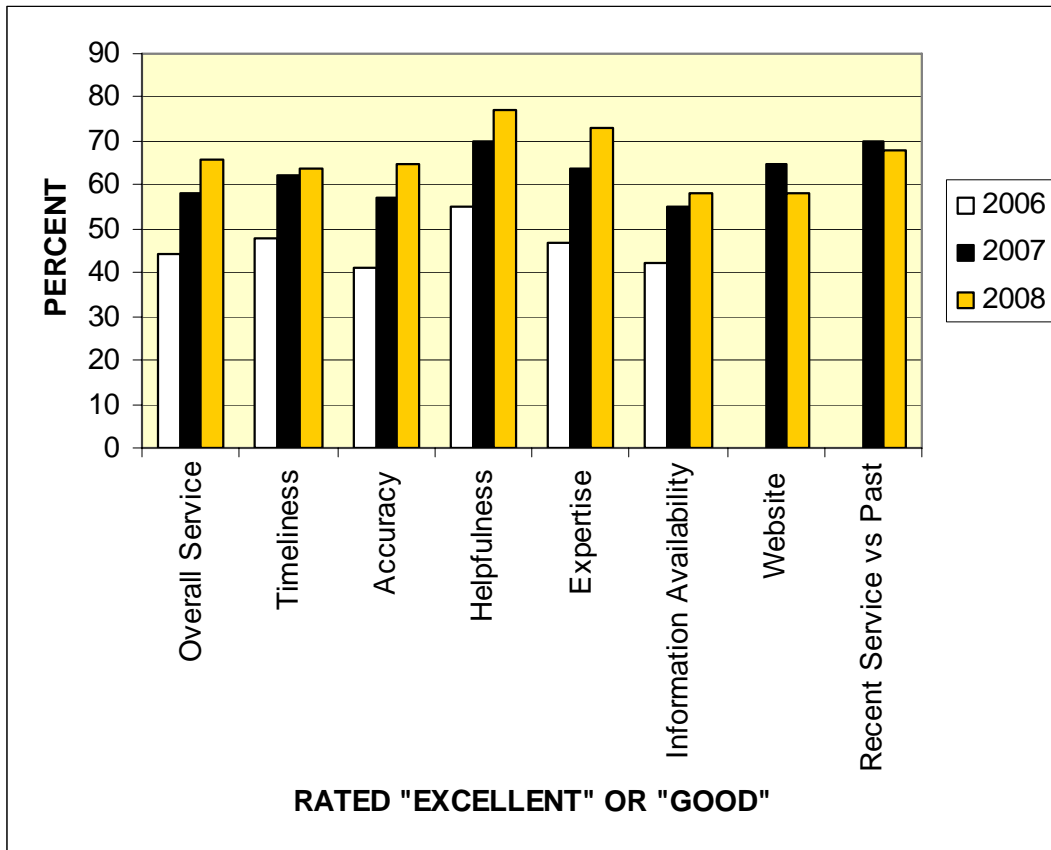
Percent of respondents rating “excellent” or “good” (the state’s Key Performance Measures do not include the “Don’t Know” responses; the numbers in the graph have been rebaselined to exclude those responses)



Numerical results (numbers rounded)

| How do you rate... | Percent | | | | |
|--|-----------|------|------|------|------------|
| | Excellent | Good | Fair | Poor | Don't Know |
| The overall quality of service? | 14 | 52 | 25 | 9 | 0 |
| The timeliness of services PERS provides? | 19 | 44 | 24 | 11 | 2 |
| PERS' ability to provide services accurately the first time? | 13 | 51 | 23 | 11 | 2 |
| PERS' helpfulness? | 28 | 48 | 18 | 6 | 0 |
| The knowledge and expertise of PERS employees? | 27 | 45 | 22 | 5 | 1 |
| The availability of information at PERS? | 15 | 43 | 28 | 13 | 1 |
| The PERS employer website? | 10 | 47 | 25 | 16 | 2 |
| Our service in the past year compared to previous years? | 14 | 47 | 24 | 5 | 10 |

Comparison of 2006-2008 Employer Results



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

1. The employer reporting system, EDX, is frustrating to use.

Many employers commented that EDX system performance is erratic and slow and more reporting features would make the system more efficient.

Resolution

PERS experienced intermittent performance issues with the employer reporting system, EDX, beginning in March 2008. The key issues included database locks and slow system response time, due in part to increased employer and PERS staff usage and the increasing amount of data being accessed on a real-time basis. Using monitoring and analysis, we identified and deployed configuration changes to the system on an incremental basis through July and early August. These changes resulted in significant performance and stability improvements.

EDX performance remained within acceptable limits until late September 2008 when additional changes were made in an attempt to further improve performance. Unfortunately, these changes degraded performance and were uninstalled. EDX has performed within acceptable limits since that time.

We continue to monitor the system's performance daily, and communicate with employers to assess problems and develop improvements. More EDX functionality enhancements are also scheduled for 2009 and 2010.

2. My customer service representative does not always return my telephone calls or emails in a timely manner or may be difficult to reach.

Survey comments indicate that many employers are frustrated with the length of time that passes before an Employer Service Center Representative returns a telephone call or email.

Resolution

This is an issue of time management and professional courtesy. To address this issue, we are:

- Involving the team in committing to meet our service standards for callbacks, whether it is with an answer or just to provide an update; and
- Using tools such as our Contact Management system to monitor staff workload and ensure that representatives are able to manage their calls and related callbacks.

SURVEY METHODOLOGIES

To maximize employer response, we created this survey online and sent an email to all employers inviting them to participate. The survey ran throughout August 2008. We set the survey so more than one employee per employer could respond since we often interact with more than one employer contact.

We used surveymonkey.com to create the survey, using the six key questions the state requires all state agencies to use for the Customer Satisfaction Performance Measure survey. As we did in 2007, we included two additional questions:

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

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



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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Tigard, OR 97281-3700
(503) 598-7377
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November 21, 2008

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

| | |
|--------------|-------------------|
| MEETING DATE | 11/21/08 |
| AGENDA ITEM | B.1. HEART Act |

OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: The proposed rule modifications are needed to comply with the federal Heroes Earnings Assistance and Relief Tax (HEART) Act of 2008.
- Subject: Benefit administration related to death or disability of a member performing qualifying military service, treatment of payments made to the member by the employer during a period of qualifying military service, and distributions to OSGP participants performing qualifying military service.
- Policy Issues: None at this time.

BACKGROUND

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

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

Therefore, an OSGP participant who meets the criteria may elect to receive a distribution from their OSGP account while performing qualifying military service. This provision is also effective January 1, 2009.

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

Additionally, the Act provides that, for the purposes of reemployment rights under USERRA, a retirement plan may treat a person who dies or is disabled while performing qualifying military service as if the person was reemployed on the day preceding the death or disability and terminated from employment on the actual date of death or disability. Provisions in the PERS Plan (ORS 238.156, 238A.150, and 238A.415) limit the benefits that can be provided for military service to those *required* by federal law. Staff is researching whether this statutory limitation prevents the PERS Plan from extending these new provisions to its members, since they are optional and not required by federal law. Should that choice be available under the current statutes, staff will return with additional draft rule modifications and a recommendation on the policy issue. Two rules, OAR 459-015-0055 and 459-075-0100, would need to be modified only if this provision may be applied. If these rules are so modified, then OAR 459-050-0072 may be similarly modified for parallel administration in PERS and OSGP. Accordingly, these three rules were noticed for rulemaking with the Secretary of State, but are not presented at this time.

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

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on November 25, 2008 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on January 14, 2009 at 5:00 p.m.

LEGAL REVIEW

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

IMPACT

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

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

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

RULEMAKING TIMELINE

| | |
|-------------------|---|
| October 15, 2008 | Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State. |
| October 31, 2008 | <i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began. |
| November 21, 2008 | PERS Board notified that staff began the rulemaking process. |
| November 25, 2008 | Rulemaking hearing held at PERS headquarters in Tigard. |
| January 14, 2009 | Public comment period ends at 5:00 p.m. |
| February 6, 2009 | Staff will propose adopting the permanent rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel. |

NEXT STEPS

A hearing will be held on November 25, 2008. The rules are scheduled to be brought before the PERS Board for adoption at the February 6, 2009 meeting.

- B.1. Attachment 1 – OAR 459-005-0001, *Definitions, Generally*
- B.1. Attachment 2 – OAR 459-011-0100, *Credit for Military Service under USERRA*
- B.1. Attachment 3 – OAR 459-011-0110, *Credit for Military Service under ORS 238.156(3)*
- B.1. Attachment 4 – OAR 459-015-0001, *Definitions*
- B.1. Attachment 5 – OAR 459-050-0075, *In-Service Distribution*
- B.1. Attachment 6 – OAR 459-070-0001, *Definitions*
- B.1. Attachment 7 – OAR 459-076-0001, *Definitions*
- B.1. Attachment 8 – OAR 459-080-0100, *Credit for Military Service under USERRA*

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

1 **459-005-0001**

2 **Definitions, Generally**

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

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

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

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

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

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

22 (a) Computing final average salary; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (A) In determining employee and employer contributions.

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

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

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

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

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

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

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

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

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

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

7 (a) Sick leave programs;

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

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

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

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

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

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

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

7 ~~[(36)]~~**(38) The effective date of this rule is January 1, 2009.** *[The provisions of*
8 *this rule are effective January 1, 2003.]*

9 Stat. Auth.: ORS 238.650

10 Stats. Implemented: ORS **Chapter** 238

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 011 – RETIREMENT CREDIT**

1 **459-011-0100**

2 **Credit for Military Service under USERRA**

3 (1) Purpose. The purpose of this rule is to implement ORS 238.156(1).

4 (2) Limitation of scope of rule. Contributions, benefits and service credit provided
5 under this rule *[shall]* **may** not exceed contributions, benefits and service credit required
6 under federal law for periods of military service.

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

8 (a) “Employee” means an individual employed by a participating public employer in
9 a qualifying position, as defined in ORS 238.005(19) and who is not excluded from the
10 definition of employee as set forth in ORS 238.005(7).

11 (b) “Employee contributions” means contributions made to the Fund.

12 (c) “Employer” means the legal entity that employed an individual at the time that
13 individual left for military service. For purposes of this rule, the State of Oregon is a
14 single legal entity. Each separate school district is a separate legal entity.

15 (d) “Military service” means the performance of duty on a voluntary or involuntary
16 basis in a uniformed service under competent authority and includes:

17 (A) Active duty;

18 (B) Active duty for training;

19 (C) Initial active duty for training;

20 (D) Inactive duty training;

21 (E) Full-time National Guard duty;

1 (F) A period for which an employee is absent from a position of employment for the
2 purpose of an examination to determine the fitness of the employee to perform any of the
3 above types of duty; or

4 (G) A period for which an employee is absent from employment for the purpose of
5 performing funeral honors duty as authorized by 10 U.S.C. § 12503 or 32 U.S.C. § 115.

6 (e) “Salary” means the rate of pay the employee would have earned if he or she had
7 remained employed during the period of military service, including any increases that
8 would have been awarded the employee based on longevity of employment or seniority
9 of position. If such rate of pay is not reasonably certain, the rate shall be based on the
10 employee’s average rate of pay from the employer. The average rate of pay shall be
11 calculated for a period not to exceed the 12-month period immediately preceding the
12 period of military service.

13 (f) “Uniformed services” means the following:

14 (A) Armed Forces; (B) Army National Guard;

15 (C) Air National Guard;

16 (D) Commissioned corps of the Public Health Service; and

17 (E) Any other category of individuals designated by the President in time of war or
18 national emergency.

19 *[(g) “USERRA” means the 1994 federal Uniformed Services Employment and*
20 *Reemployment Rights Act as in effect on the effective date of this rule.]*

21 (4) Retirement credit under USERRA.

22 (a) Eligibility. An employee shall be eligible for the benefits of this section if:

23 (A) The employee leaves PERS-covered employment to perform military service;

1 (B) The cumulative length of the employee’s absence from employment with the
2 employer for military service does not exceed the limits set forth in USERRA §4312;

3 (C) The employee initiates reemployment on or after December 12, 1994, with the
4 same PERS-covered employer within the time limits specified in USERRA §4312; and

5 (D) All other eligibility requirements for benefits under USERRA are met.

6 (b) Credit for military service. An employee who meets the eligibility requirements
7 of subsection (a) of this section shall be credited with the amount of retirement credit the
8 employee would have accrued if he or she had remained in employment with the
9 employer during the period of military service, only to the extent that the employee
10 contributions have been made.

11 (c) Termination. An employee’s eligibility for the benefits of this rule terminates
12 upon the occurrence of one of the disqualifying events listed in USERRA §4304.

13 (5) Employee contributions.

14 (a) Employee contributions shall be made upon reemployment for eligible military
15 service in accordance with the following:

16 (A) Contributions to be made by the employer. If the employee was entitled to
17 employer-paid pre-tax (EPPT) contributions as described in OAR 459-009-0200~~[(2)]~~ as
18 of the date the employee left employment to perform military service, the employer
19 ~~[shall]~~ **must** pay, in a lump sum payment, the amount of employee contributions that
20 would have been made if the employee had remained in the employment of the employer
21 during the period of military service, based on salary as defined in section (3) of this rule.

22 (B) Contributions to be made by the employee. If the employee was entitled to only
23 member-paid pre-tax (MPPT) or member-paid after-tax (MPAT) contributions **as**

1 described in OAR 459-009-0200 as of the date the employee left employment to
2 perform military service, the employee may contribute part or all of the employee
3 contributions that would have been made if the employee had remained in the
4 employment of the employer during the period of military service, based on salary as
5 defined in section (3) of this rule. Contributions made under this paragraph must be
6 remitted to PERS by:

7 (i) Payroll deduction; or

8 (ii) Monthly payment of no less than one month of contributions; or

9 (iii) Lump-sum payment.

10 (b) Any individual, agency, or organization may pay the employee contributions
11 specified in paragraph (5)(a)(B) on behalf of the employee under the payment provisions
12 set forth in subparagraph (5)(a)(B)(ii) or (iii).

13 (c) Contributions made under this section must be made during the period beginning
14 with reemployment and whose duration is three times the period of the employee's
15 military service, such period not to exceed five years.

16 (d) Any contributions made under this section shall be added to the employee's
17 regular or variable account(s).

18 (e) Contributions made under this section *[shall]* may not include nor be entitled to
19 earnings or losses that would have been credited during the period of military service.

20 (f) Contributions made under this section may not exceed the amount of
21 employee contributions that would have been made if the employee had remained in
22 the employment of the employer during the period of military service, based on
23 salary as defined in section (3) of this rule.

1 (A) The maximum amount of employee contributions that may be submitted
2 under this section must be reduced by the amount of employee contributions
3 attributable to differential wage payments received by the employee for the period
4 of military service.

5 (B) Employee contributions attributable to differential wage payments received
6 by the employee for the period of military service must be considered employee
7 contributions under subsection (4)(b) of this rule if the employer reports to PERS
8 that the employee is eligible for benefits pursuant to subsection (4)(a) of this rule.

9 (C) Employee contributions attributable to differential wage payments paid to
10 the employee during the period of military service are entitled to earnings or losses
11 that would have been credited during the period of military service.

12 (6) Employer contributions. Any employer contributions associated with credit for
13 military service under this rule *[shall]* must be made as directed by PERS in accordance
14 with ORS 238.225.

15 (7) The effective date of this rule is January 1, 2009.

16 *[[Publications: Publications referenced are available from the agency.]]*

17 Stat. Auth.: ORS 238.650 & 238.156

18 Stats. Implemented: ORS 238.156

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 011 – RETIREMENT CREDIT**

1 **459-011-0110**

2 **Credit for Military Service under ORS 238.156(3)**

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

4 (a) “Armed Forces” means the:

5 (A) Army;

6 (B) Navy;

7 (C) Air Force;

8 (D) Marine Corps; and

9 (E) Coast Guard.

10 (b) “Employee” means an individual employed by a participating public employer in
11 a qualifying position, as defined in ORS 238.005(19) and who is not excluded from the
12 definition of employee as set forth in ORS 238.005(7).

13 (c) “Employer” means the legal entity that employed an individual at the time that
14 individual left for military service. For purposes of this rule, the state of Oregon is a
15 single legal entity. Each separate school district is a separate legal entity.

16 (d) “Military service” means the period during which the employee is in active duty
17 service in the Armed Forces.

18 (e) “Salary” means the employee’s rate of pay, for contribution and benefit
19 calculation purposes, at the time the employee entered or reentered military service.

20 (2) Retirement credit under ORS 238.156(3).

21 (a) Eligibility. An employee shall be eligible for the benefits of this rule if:

22 (A) The employee leaves employment to perform military service;

1 (B) The employee returns to employment with the same employer after other than
2 dishonorable discharge from military service and within the time limits specified in ORS
3 238.156(3)(b); and

4 (C) The employee is either not entitled to or would receive a lower benefit under the
5 provisions of OAR 459-011-0100.

6 (b) Credit for military service. An employee who meets the eligibility requirements
7 of subsection (a) of this section shall be credited with the amount of retirement credit the
8 employee would have accrued if he or she had remained in employment with the
9 employer during the period of military service, provided that all required contributions
10 have been made.

11 (3) Contributions for the period of military service. To receive credit for the period
12 of military service, contributions must be made to the Fund in accordance with the
13 following:

14 (a) Contributions must be made in a lump sum payment as specified in ORS
15 238.156(3)(c);

16 (b) Such lump sum payment must equal six percent of the salary that would have
17 been paid to the employee had the employee remained in employment with the employer
18 during the period of military service based on the employee's salary rate at the time the
19 employee entered or reentered military service;

20 (c) Any individual, agency, or organization may pay the amount specified in this
21 subsection on behalf of the employee; and

1 (d) Any contributions made under this section shall be added to the employee's
2 regular account and in all respects shall be considered as though made by payroll
3 deduction.

4 (e) Contributions made under this rule *[shall]* **may** not include nor be entitled to
5 earnings or losses that would have been credited during the period of military service.

6 **(f) The amount of the lump sum payment required under subsection (b) of this**
7 **section must be reduced by the amount of employee contributions attributable to**
8 **differential wage payments received by the employee for the period of military**
9 **service.**

10 **(A) Employee contributions attributable to differential wage payments received**
11 **by the employee for the period of military service must be considered employee**
12 **contributions under subsection (2)(b) of this rule if the employee submits the lump**
13 **sum payment as reduced under this subsection.**

14 **(B) Employee contributions attributable to differential wage payments paid to**
15 **the employee during the period of military service are entitled to earnings or losses**
16 **that would have been credited during the period of military service.**

17 (4) Employer contributions. Any employer contributions associated with credit for
18 military service under this rule *[shall]* **must** be made as directed by PERS in accordance
19 with ORS 238.225.

20 **(5) The effective date of this rule is January 1, 2009.**

21 Stat. Auth.: ORS 238.650 & 238.156

22 Stats. Implemented: ORS 238.156

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

1 **459-015-0001**

2 **Definitions**

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

6 (1) Any work for which qualified: A job, not necessarily the last or usual job, which
7 the applicant for a disability retirement allowance:

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

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

11 (2) Certified vocational consultant: A person who satisfies the criteria set forth under
12 either of the following:

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

17 (b) Accredited as a [“]Certified Rehabilitation Counselor (CRC)[”] by the
18 Commission on Rehabilitation Counselor Certification; as a [“]Certified [*Insurance*
19 *Rehabilitation*] Disability Management Specialist [(CIRS)](CDMS) by the [*Certified*
20 *Insurance Rehabilitation*]Certification of Disability Management Specialists
21 Commission; or a [“]Certified Vocational Evaluation Specialist (CVE)[”] or a

1 [“]Certified Work Adjustment Specialist (CWA)[”] by the Commission on Certification
2 of Work Adjustment and Vocational Evaluation [s]Specialists.

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

5 (4) Date of disability: The later of:

6 (a) The day an active member ceased to work because of injury or disease;

7 (b) The date an inactive member separated from employment if the inactive member
8 applies for a disability retirement allowance within five years from date of separation and
9 the disability has been continuous from the date of separation;

10 (c) The date an inactive member was disabled if such disability occurred within six
11 months from date of separation; or

12 (5) Date of termination: The date a member terminates from employment such that
13 an employee/employer relationship no longer exists; the last day worked (physically on
14 the job), the last day of paid leave, or the last day of an official leave of absence,
15 whichever is the later.

16 (6) Extended duration: A period of not less than 90 consecutive calendar days, unless
17 the disability is expected to result in the death of the disabled member in less than 90
18 days.

19 (7) Independent medical exam: An exam or exams conducted by a physician chosen
20 by PERS for purposes other than treatment which results in the issuance of a report or
21 reports based on those exams, giving an opinion regarding the claimed injury or disease.

22 (8) Material contributing cause: The efficient, dominant, and proximate cause of the
23 disability, without which the member would not be disabled.

1 (9) Monthly salary: "Salary" as defined in ORS 238.005(2[0] 1)(a) that is earned in
2 the last full calendar month of employment, and includes employer payments under ORS
3 238.205. This includes a differential wage payment as defined in OAR 459-005-0001.

4 (a) Retroactive payments or payments made due to clerical errors, paid in accordance
5 with ORS 238.005(2[0] 1)(b)(C), are allocated to the period the salary was earned or
6 should have been earned.

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

9 (10) Monthly salary received[:] is the greater of [T] the salary paid, as defined in
10 section (9) of this rule for the last full calendar month of:

11 (a) Employment prior to the date of disability; or

12 (b) Differential wage payments made prior to the date of disability. This
13 subsection is effective January 1, 2009.

14 (11) Normal retirement age: The age at which a member can retire without a reduced
15 benefit as set forth under ORS 238.005 and 238.280.

16 (12) Other income: Includes, but is not limited to:

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

18 (b) Self-employment income from:

19 (A) Services industry;

20 (B) Sales;

21 (C) Assembly or manufacturing;

22 (D) Consulting;

23 (E) Property management;

1 (F) Hobby income; or

2 (G) Book advances.

3 (c) "Other income" does not include:

4 (A) Investment income;

5 (B) Rent; and

6 (C) Royalties.

7 (13) Physician: A medical doctor, a doctor of osteopathy, a doctor of oral surgery, a
8 chiropractic doctor, a naturopathic doctor, or a doctor of psychology practicing only
9 within the purview of their license issued by the designated authority of a state.

10 (14) Periodic review: A review of a member receiving a disability retirement
11 allowance to determine whether or not a continued allowance is warranted.

12 (15) Performance of duty: Mental or physical incapacitation arising out of and in the
13 course of duty and is not intentionally self-inflicted. The injury or disease must be
14 initially caused, aggravated or accelerated to cause incapacitation by the performance of
15 the member's duties in the employment of a participating public employer. The job must
16 be the material contributing cause of the injury or disease. Performance of duty includes
17 whatever an employee may be directed, required or reasonably expected to do in
18 connection with his or her employment, and not solely the duties peculiar to his or her
19 position.

20 (16) Pre-existing condition: A condition that was not sustained in actual performance
21 of duty with the current employer.

1 (17) Protected health information: Health information created or received by a health
2 care provider, health plan, or health care clearinghouse, where an individual has a
3 reasonable belief that the information can identify the individual, which relates to:

4 (a) The past, present, or future physical or mental health of an individual;

5 (b) The provision of health care to an individual; or

6 (c) The past, present, or future payment for the provision of health care to an
7 individual.

8 (18) Qualifying position: One or more concurrent positions with a participating
9 employer, in a participating class, which requires 600 or more hours in a calendar year.

10 (19) Separation from all service entitling the member to membership in the system:
11 means the last day worked (physically on the job), the last day of paid leave, or the last
12 day of an official leave of absence, whichever is the later.

13 (20) Similar in compensation: Salary or income, excluding overtime, equaling at
14 least 80% of the monthly salary, as defined in section (9) of this rule.

15 (21) Similar location: A position in the same general area of the applicant's residence
16 or last employment location.

17 (22) Training or vocational rehabilitation program: A comprehensive, coordinated
18 program, usually state or federally funded, to train and assist individuals with disabilities
19 in securing gainful employment commensurate with their abilities and capabilities.

20 (23) Vocational evaluation: An evaluation conducted by a certified vocational
21 consultant, to determine the ability of an applicant to perform any work for which they
22 are qualified.

23 (24) Work related stress: Conditions or disabilities resulting from, but not limited to:

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

12 Stat. Auth.: ORS 238.650

13 Stats. Implemented: ORS 238.320 - 238.345 & 238.435(5)

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

1 **459-050-0075**

2 **In-Service Distribution**

3 The purpose of this rule is to describe the types of distributions available to a participant
4 who has not had a severance of employment. Distributions made while a participant is still
5 employed are “in-service” distributions.

6 (1) De minimis distribution. A de minimis distribution is an in-service distribution of
7 the entire balance of a small account *[prior to]* before the date a participant has a
8 severance of employment. A de minimis distribution may be made if all of the following
9 conditions are satisfied:

10 (a) No prior de minimis distribution was made to the participant;

11 (b) The total balance of the participant's account does not exceed the limitations in
12 the Internal Revenue Code Section (IRC) 457(e)(9)(A), which is \$5,000 *[for the year*
13 *2001]*;

14 (c) Participant has not made any contributions to the Deferred Compensation Plan in
15 the two-year period *[prior to]* before the date of distribution; and

16 (d) Participant has submitted an application for a de minimis distribution on forms
17 provided by, or other methods approved by the Deferred Compensation Program. No
18 distribution will be paid unless a complete application is filed with, and approved by, the
19 Deferred Compensation Program.

20 (2) Unforeseeable emergency withdrawal. An unforeseeable emergency withdrawal
21 is an in-service distribution made to a participant due to an unforeseeable emergency. This
22 withdrawal may be made *[prior to]* before the date a participant has a severance of

1 employment and as defined in OAR 459-050-0150. A participant must apply for an
2 unforeseeable emergency withdrawal using forms provided by, or other methods approved
3 by, the Deferred Compensation Program as provided for in OAR 459-050-0150(4).

4 **(3) Military distribution. A participant is treated as having been severed from**
5 **employment during any period the participant is performing service in the**
6 **uniformed services while on active duty for a period of more than 30 days for the**
7 **purposes of the limitation on in-service distributions. For purposes of this rule,**
8 **“uniformed services” has the same meaning as given in OAR 459-050-0072. This**
9 **section applies to distributions made on or after January 1, 2009.**

10 ~~[(3)]~~(4) Funds available for in-service distribution. Only funds contributed to a
11 deferred compensation plan, as defined in IRC 457, and earnings on those contributions
12 may be distributed in a de minimis distribution or unforeseeable emergency withdrawal.
13 Any funds directly transferred or rolled over to the Deferred Compensation Program from
14 any plan other than an IRC 457 deferred compensation plan shall not be distributed for a
15 de minimis distribution or an unforeseeable emergency withdrawal.

16 ~~[(4)]~~(5) Prohibitions on elective deferrals after an in-service distribution. A
17 participant who receives a de minimis distribution, ~~[or]~~ an unforeseeable emergency
18 withdrawal, or a military distribution ~~[shall be prohibited from]~~ may not make~~ing~~
19 elective deferrals and employee contributions to the Deferred Compensation Program for
20 a period of 6 consecutive months from the date of distribution.

21 [Publications: Publications referenced are available from the agency.]

22 Stat. Auth: ORS 243.470

23 Stats. Implemented: ORS 243.401 - ORS 243.507

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

DIVISION 070 – OREGON PUBLIC SERVICE RETIREMENT PLAN, GENERALLY

1 **459-070-0001**

2 **Definitions**

3 The words and phrases used in *[this]* divisions 70, 75, 76, and 80 have the same
4 meaning given them in ORS 238A.005 unless otherwise indicated. Specific and
5 additional terms for purposes of divisions 70, 75, 76 and 80 are defined as follows unless
6 context requires otherwise:

7 (1) “Academic employee of a community college” means an instructor who teaches
8 classes offered for college-approved credit or on a non-credit basis.

9 (a) Librarians, counselors, and aides in non-teaching positions, tutors, or other non-
10 teaching faculty, and classified, professional or nonprofessional support staff are not
11 academic employees for the purposes of section 20 of OL 2005 Ch. 332, but are subject
12 to the membership requirements under ORS 238A.100 and OAR 459-075-0010.

13 (b) The governing body of a community college *[shall]* **must** determine who is an
14 academic employee in its employ under this rule. In making that determination, a
15 community college *[shall]* **must** consider all disciplines (academic activity) collectively
16 when an employee’s assignment includes multiple disciplines.

17 (2) “Calendar month” means a full month beginning on the first calendar day of a
18 month and ending on the last calendar day of the same month.

19 (3) “Calendar year” means 12 calendar months beginning on January 1 and ending
20 on December 31 following.

21 (4) “Employee” has the same meaning as “eligible employee” in ORS 238A.005(4).

1 (5) “Employee class” means a group of similarly situated employees whose positions
2 have been designated by their employer in a policy or collective bargaining agreement as
3 having common characteristics.

4 (6) “Employee contributions” means contributions made to the individual account
5 program by an eligible employee under ORS 238A.330, or on behalf of the employee
6 under ORS 238A.335.

7 (7) “Final Average Salary” (FAS) has the same meaning given the term in:

8 (a) ORS 238A.130(1) for OPSRP Pension Program members who are not employed
9 by a local government as defined in ORS 174.116; or

10 (b) ORS 238A.130(3) for OPSRP Pension Program members who are employed by a
11 local government as defined in ORS 174.116.

12 (8) “Member” has the same meaning given the term in ORS 238A.005(10).

13 (9) “Member account” means the account of a member of the individual account
14 program.

15 (10) “Member of PERS” has the same meaning as “member” in ORS
16 238.005(12)(a), but does not include retired members.

17 (11) “OPSRP” means the Oregon Public Service Retirement Plan.

18 (12) “Overtime” means the salary or hours, as applicable, that an employer has
19 designated as overtime.

20 (13) “Partial year of separation” means a period in the calendar year the employee
21 separates from employment that begins on January 1 of the year and ends before the last
22 working day of the year.

1 (14) “Qualifying position” means a position designated by the employer as
2 qualifying, except:

3 (a) A position or concurrent positions in which an employee performs at least 600
4 hours of service in a calendar year is qualifying regardless of employer designation.

5 (b) A position in a partial year of separation is qualifying regardless of employer
6 designation if the position is continued from an immediately preceding calendar year in
7 which the employee performed at least 600 hours of service in the position or concurrent
8 positions.

9 (c) A position with one employer in which the employee is employed for the entire
10 calendar year and fails perform at least 600 hours of service in that position or concurrent
11 positions in the calendar year is non-qualifying regardless of employer designation.

12 (15) “Salary” has the same meaning given the term in ORS 238A.005(16) and
13 includes a differential wage payment, as defined in OAR 459-005-0001.

14 (16) “School employee” has the meaning given the term in ORS 238A.140(7).

15 (17) “Service” means a period in which an employee:

16 (a) Is in an employer/employee relationship, as defined in OAR 459-010-0030; and

17 (b) Receives a payment of “salary,” as defined in ORS 238A.005(16) or similar
18 payment from workers’ compensation or disability.

19 (18) The effective date of this rule is January 1, 2009. *[The provisions of this rule*
20 *are effective on January 1, 2004.]*

21 Stat. Auth.: 238A.450

22 Stats. Implemented: ORS Chapter 238A *[238A.005, 238A.025, 238A.140,*
23 *238A.330 & 238A.335, OL 2007 Ch. 769]*

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

1 **459-076-0001**

2 **Definitions**

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

6 (1) Any work for which qualified: A job, not necessarily the last or usual job, which
7 the applicant for disability benefits:

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

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

11 (2) Certified vocational consultant: A person who satisfies the criteria set forth under
12 either of the following:

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

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

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

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

5 (4) Date of disability: The day an active member ceased to work because of injury or
6 disease.

7 (5) Effective date of disability benefit: The first of the month following the later of:

8 (a) The last day the member worked for a participating employer;

9 (b) The last day the member was on paid leave; or

10 (c) The last day the member received any salary or paid leave benefits from a
11 participating employer, exclusive of the cash pay-off for accrued vacation or
12 compensatory time, as long as that payment is made within the 31 days after the member
13 separates from PERS covered employment.

14 (6) Extended duration: A period of not less than 90 consecutive calendar days unless
15 the disability is expected to result in the death of the disabled member in less than 90
16 days.

17 (7) Independent medical exam: An exam or exams conducted by a physician chosen
18 by PERS for purposes other than for treatment which results in the issuance of a report or
19 reports based on those exams, giving an opinion regarding the claimed injury or disease.

20 (8) Material contributing cause: The efficient, dominant, and proximate cause of the
21 disability, without which the member would not be disabled.

1 (9) Monthly salary: Salary as defined in ORS 238A.005(16) that is earned in the last
2 full calendar month of employment and includes a differential wage payment, as
3 defined in OAR 459-005-0001:

4 (a) Retroactive payments or payments made due to clerical errors, paid in accordance
5 with ORS 238A.005(16)(b)(E), are allocated to the period the salary was earned or
6 should have been earned.;

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

9 (10) Monthly salary received[:] is the greater of [T] the salary paid, as defined in
10 section (9) of this rule for the last full calendar month of:

11 (a) [e] Employment prior to the date of disability; or

12 (b) Differential wage payments made prior to the date of disability. This
13 subsection is effective January 1, 2009.

14 (11) Normal retirement age: The age at which a member can retire without a reduced
15 benefit as set forth under ORS 238A.160.

16 (12) Other income: Includes, but is not limited to:

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

18 (b) Self-employment income from:

19 (A) Services industry;

20 (B) Sales;

21 (C) Assembly or manufacturing;

22 (D) Consulting;

23 (E) Property management;

1 (F) Hobby income; or

2 (G) Book advances.

3 (c) "Other income" does not include:

4 (A) Investment income;

5 (B) Rent; and

6 (C) Royalties.

7 (13) Physician: A medical doctor, a doctor of osteopathy, a doctor of oral surgery, a
8 chiropractic doctor, a naturopathic doctor, or a doctor of psychology practicing only
9 within the purview of their license issued by the designated authority of a state.

10 (14) Periodic review: A review of a member receiving a disability benefit to
11 determine whether or not a continued benefit is warranted.

12 (15) Performance of duty: Mental or physical incapacitation arising out of and in the
13 course of duty and is not intentionally self-inflicted. The injury or disease must be
14 initially caused, aggravated or accelerated to cause incapacitation by the performance of
15 the member's duties in the employment of a participating public employer. The job must
16 be the material contributing cause of the injury or disease. Performance of duty includes
17 whatever an employee may be directed, required or reasonably expected to do in
18 connection with his or her employment, and not solely the duties peculiar to his or her
19 position.

20 (16) Pre-existing condition: A condition that was not sustained in actual performance
21 of duty with the current employer.

1 (17) Protected health information: Health information created or received by a health
2 care provider, health plan, or health care clearinghouse, where an individual has a
3 reasonable belief that the information can identify the individual, which relates to:

4 (a) The past, present, or future physical or mental health of an individual;

5 (b) The provision of health care to an individual; or

6 (c) The past, present, or future payment for the provision of health care to an
7 individual.

8 (18) Qualifying position: One or more positions with a participating employer, in a
9 participating class, which requires performance of 600 or more hours in a calendar year.

10 (19) Separation from all service: The date a member terminates from employment
11 such that an employee/employer relationship no longer exists; the last day worked
12 (physically on the job), the last day of paid leave, or the last day of an official leave of
13 absence, whichever is the later.

14 (20) Similar in compensation: Salary or income, excluding overtime, equaling at
15 least 80 percent of the monthly salary, as defined in section (9) of this rule.

16 (21) Similar location: A position in the same general area of the applicant's residence
17 or last employment location.

18 (22) Vocational evaluation: An evaluation conducted by a certified vocational
19 consultant, to determine the ability of an applicant to perform any work for which they
20 are qualified.

21 (23) Work related stress: Conditions or disabilities resulting from, but not limited to:

22 (a) Change of employment duties;

23 (b) Conflicts with supervisors;

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

10 Stat. Auth.: ORS 238A.450

11 Stats. Implemented: ORS 238A.235

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

1 **459-080-0100**

2 **Credit for Military Service under USERRA**

3 (1) Purpose. The purpose of this rule is to implement ORS 238A.415.

4 (2) Limitation of scope of rule. Contributions, benefits and service credit provided
5 under this rule *[shall]* **may** not exceed contributions, benefits and service credit required
6 under federal law for periods of military service.

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

8 (a) “Employee” means:

9 (A) An eligible employee, as defined in ORS 238A.005;

10 (B) An active member of PERS, as defined in ORS 238.005, on or after January 1,
11 2004; or

12 (C) An employee who is entitled to credit toward the probationary period required
13 by ORS 238.015.

14 (b) “Employer” means the legal entity that employed an individual at the time that
15 individual left for military service. For purposes of this rule, the state of Oregon is a
16 single legal entity. Each separate school district is a separate legal entity.

17 (c) “Military service” means the performance of duty on a voluntary or involuntary
18 basis in a uniformed service under competent authority and includes:

19 (A) Active duty;

20 (B) Active duty for training;

21 (C) Initial active duty for training;

22 (D) Inactive duty training;

1 (E) Full-time National Guard duty;

2 (F) A period for which an individual is absent from a position of employment for the
3 purpose of an examination to determine the fitness of the person to perform any of the
4 above types of duty; or

5 (G) A period for which an individual is absent from employment for the purpose of
6 performing funeral honors duty as authorized by 10 U.S.C. § 12503 or 32 U.S.C. § 115.

7 (d) “Salary” means the rate of pay the eligible employee would have earned if he or
8 she had remained employed during the period of military service, including any increases
9 that would have been awarded the employee based on longevity of employment or
10 seniority of position. If such rate of pay is not reasonably certain, the rate shall be based
11 on the employee’s average rate of pay from the employer. The average rate of pay shall
12 be calculated for a period not to exceed the 12-month period immediately preceding the
13 period of military service.

14 (e) “Uniformed services” means the following:

15 (A) Armed Forces;

16 (B) Army National Guard;

17 (C) Air National Guard;

18 (D) Commissioned corps of the Public Health Service; and

19 (E) Any other category of persons designated by the President in time of war or
20 national emergency.

21 *[(f) “USERRA” means the 1994 federal Uniformed Services Employment and*
22 *Reemployment Rights Act as of the effective date of this rule.]*

1 (4) Eligibility for retirement benefits under USERRA. An eligible employee shall be
2 entitled to the benefits of this rule if:

3 (a) The employee leaves employment with a participating public employer to
4 perform military service;

5 (b) The cumulative length of the employee’s absence from employment with the
6 employer for military service does not exceed the limits set forth in USERRA §4312;

7 (c) The employee initiates reemployment with the same participating public
8 employer within the time limits specified in USERRA §4312;

9 (d) All employee contributions have been made; and

10 (e) All other eligibility requirements for benefits under USERRA are met.

11 (5) Service credit for military service under USERRA. An employee who meets the
12 eligibility requirements of section (4) of this rule shall receive the amount of credit
13 toward the period of employment required under ORS 238A.300 and the vesting
14 requirements described under ORS 238A.320, the employee would have accrued if he or
15 she had remained in employment with the employer during the period of military service.

16 (6) Termination. An employee’s eligibility for the benefits of this rule terminates
17 upon the occurrence of one of the disqualifying events listed in USERRA §4304.

18 (7) Employee contributions.

19 (a) Employee contributions *[shall]* must be made upon reemployment for eligible
20 military service in accordance with the following:

21 (A) Employee contributions to be made by the employer. If the employee’s
22 employer had agreed to pay employee contributions under ORS 238A.335(2)(b) as of the
23 date the employee left employment to perform military service, the employer *[shall]*

1 must pay, in a lump sum payment, the amount of contributions that would have been
2 made if the employee had remained in the employment of the employer during the period
3 of military service, based on salary as defined in section (3) of this rule.

4 (B) Employee contributions to be made by the employee. If the employee's
5 employer had not agreed to pay employee contributions, or had agreed to pay employee
6 contributions under ORS 238A.335(2)(a) as of the date the employee left employment to
7 perform military service, the employee may pay all or part of the contributions that would
8 have been made if the employee had remained in the employment of the employer during
9 the period of military service, based on salary as defined in section (3) of this rule.

10 Contributions made under this paragraph may be remitted to PERS by:

11 (i) Payroll deduction; or

12 (ii) Monthly payment of no less than one month of contributions; or

13 (iii) Lump-sum payment.

14 (b) Any individual, agency or organization may pay the employee contributions
15 specified in paragraph (7)(a)(B) on behalf of the employee under the payment provisions
16 set forth in subparagraph (5)(a)(B)(ii) or (iii).

17 (c) Employee contributions may only be paid during the period beginning with
18 reemployment and whose duration is three times the period of the employee's military
19 service, such period not to exceed five years.

20 (d) Employee contributions shall be credited to the employee account established in
21 ORS 238A.350(2).

22 (e) Employee contributions *[shall]* may not include nor be entitled to earnings or
23 losses that would have been credited during the period of military service.

1 (f) Contributions made under this section may not exceed the amount of
2 employee contributions that would have been made if the employee had remained in
3 the employment of the employer during the period of military service, based on
4 salary as defined in section (3) of this rule.

5 (A) The maximum amount of contributions that may be submitted under this
6 section must be reduced by the amount of employee contributions attributable to
7 differential wage payments received by the employee for the period of military
8 service.

9 (B) Employee contributions attributable to differential wage payments paid to
10 the employee during the period of military service are entitled to earnings or losses
11 that would have been credited during the period of military service.

12 (8) Employer contributions.

13 (a) If the employee's employer had agreed to make employer contributions under
14 ORS 238A.340 as of the date the employee left employment to perform military service,
15 the employer *[shall]* **must** pay, in a lump sum payment, the amount of contributions that
16 would have been made if the employee had remained in the employment of the employer
17 during the period of military service, based on salary as defined in section (3) of this rule.

18 (b) Any contributions made under this section shall be added to the employee's
19 employer account established in ORS 238A.350(3).

20 (c) Contributions made under this section *[shall]* **may** not include nor be entitled to
21 earnings or losses that would have been credited during the period of military service.

22 (d) Contributions made under this section may not exceed the amount of
23 employer contributions that would have been made if the employee had remained in

1 the employment of the employer during the period of military service, based on
2 salary as defined in section (3) of this rule.

3 (e)The amount of contributions that must be submitted under this section must
4 be reduced by the amount of employer contributions attributable to differential
5 wage payments received by the employee for the period of military service.

6 (f) Employee contributions attributable to differential wage payments paid to
7 the employee during the period of military service are entitled to earnings or losses
8 that would have been credited during the period of military service.

9 (9) Military service that includes January 1, 2004. If an employee as defined in
10 section (3)(a)(B) or (C) of this rule performs military service over a period including
11 January 1, 2004:

12 (a) Retirement credit and contributions for military service *[prior to]* before January
13 1, 2004, shall be determined in accordance with OAR 459-011-0100.

14 (b) Retirement credit and contributions for military service on or after January 1,
15 2004, shall be determined in accordance with this rule and OAR 459-011-0100.

16 (10) The effective date of this rule is January 1, 2009.

17 *[[Publications: Publications referenced are available from the agency.]]*

18 Stat. Auth.: ORS 238A.450 & 238A.415

19 Stats. Implemented: ORS 238A.415



Oregon

Theodore R. Kulongoski, Governor

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November 21, 2008

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
SUBJECT: Adoption of Leave of Absence Without Pay Rule
OAR 459-010-0010, *Leave of Absence Without Pay*
(LWOP)

| | |
|-----------------|------------------------------------|
| MEETING DATE | 11/21/08 |
| AGENDA ITEM | B.2. LWOP/Creditable Service |

OVERVIEW

- Action: Adopt modifications to the Leave of Absence Without Pay rule.
- Reason: The rule currently excludes a leave of absence without pay (LWOP) from creditable service with no provision for LWOP before July 11, 1987.
- Subject: Creditable service for a leave of absence without pay before July 11, 1987.
- Policy Issues: No policy issues have been identified at this time.

BACKGROUND

ORS 238.300(2)(c), as amended by legislation effective on July 11, 1987, provides that PERS cannot grant creditable service for periods of leave of absence without pay (LWOP). Before that legislation, however, members were to receive creditable service for LWOP periods. OAR 459-010-0010 correctly states the current effect of LWOPs on creditable service, but does not address LWOPs that occurred before the legislation became effective. The proposed rule modifications explain this distinction to clarify the change in effect and provide a clearer explanation to members and employers.

The rule modifications also delete OAR 459-010-0010(3)(c), which refers to the submission of employer annual reports that have not been used since the close of 2003 when payroll-based employer reporting was implemented in the EDX system.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on October 21, 2008 at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended on October 29, 2008 at 5:00 p.m. No public comment was received.

LEGAL REVIEW

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

IMPACT

Mandatory: No, as the rule does correctly state the current law, but the modifications will provide clarity on how PERS grants creditable service in all circumstances.

Impact: Clarifies that creditable service is granted only for the portion of an LWOP that occurs before July 11, 1987.

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

RULEMAKING TIMELINE

| | |
|--------------------|--|
| August 15, 2008 | Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State. |
| September 1, 2008 | <i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began. |
| September 19, 2008 | PERS Board notified that staff began the rulemaking process. |
| October 21, 2008 | Rulemaking hearing held at 2:00 p.m. in Tigard. |
| October 29, 2008 | Public comment period ended at 5:00 p.m. |
| November 21, 2008 | Board may adopt the rule modifications. |

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to OAR 459-010-0010, as presented.”
2. Direct staff to make other changes to the rule or explore other options.

STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

- Reason: The rule currently excludes a leave of absence without pay (LWOP) from creditable service with no provision for LWOP before July 11, 1987.

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.

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

1 **459-010-0010**

2 **Leave of Absence Without Pay**

3 (1) Employer/Employee Agreement. An official leave of absence without pay for
4 any purpose must have the following in order to be considered bona fide:

- 5 (a) An agreement in writing;
- 6 (b) Accordance with the applicable law, rules and regulations;
- 7 (c) The duration specifically stated at the time of granting; and
- 8 (d) Certification to PERS by the employer granting such leave.

9 (2) Creditable Service. (a) A leave of absence without pay occurring on or after
10 July 1, 1987, which constitutes the major fraction of a calendar month:

11 ~~[(a)]~~(A) ~~[Shall]~~May not be used to calculate “years of membership” under ORS
12 238.300; and

13 ~~[(b)]~~(B) ~~[Shall]~~May not be used to determine “creditable service” under ORS
14 238.005~~[(5)]~~ or “retirement credit” under ORS 238.005~~[(19)]~~.

15 (b) A leave of absence without pay occurring before July 1, 1987, which
16 constitutes the major fraction of a calendar month:

17 (A) Must be used to calculate “years of membership” under ORS 238.300; and

18 (B) Must be used to determine “creditable service” under ORS 238.005 or
19 “retirement credit” under ORS 238.005.

20 (3) Reporting Requirement. Unless otherwise agreed upon by PERS, the employer
21 shall report the following in a format acceptable to PERS:

1 (a) Any period of leave of absence without pay, which constitutes the major fraction
2 of a calendar month, for each member at the time the leave begins. The reported period of
3 leave of absence without pay must include an end date.

4 (b) Any amendment or extension to a previously reported period of leave of absence
5 without pay.

6 *[(c) All members on a leave of absence without pay, which constitutes the major*
7 *fraction of a calendar month, at the time the employer provides an itemized statement of*
8 *all employee contributions, such as in the annual or pre-annual report.]*

9 (4) A PERS member on an official leave of absence without pay is not considered
10 terminated from service with a participating employer.

11 (5) An employee on an official leave of absence without pay on the date the
12 employer begins to participate in PERS, shall be considered to be an employee on such
13 date for the purpose of determining eligibility for participation in PERS.

14 (6) A layoff from employment does not constitute a leave of absence without pay.

15 Stat. Auth.: ORS 238.650

16 Stats. Implemented: ORS 238.300



Oregon

Theodore R. Kulongoski, Governor

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November 21, 2008

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
SUBJECT: Adoption of Plan Qualification Updates Rules
OAR 459-005-0525, *Ceiling on Compensation of Contributions and Benefits*
OAR 459-005-0535, *Annual Benefit Limitation*
OAR 459-005-0545, *Annual Addition Limitation*

| | |
|--------------|---------------------------------|
| MEETING DATE | 11/21/08 |
| AGENDA ITEM | B.3. Plan Qlf. Update |

OVERVIEW

- Action: Adopt modifications to the plan qualification updates rules.
- Reason: Update rules to reflect changes in federal law regarding plan qualification issues.
- Subject: Limits on contributions and benefits.
- Policy Issue: No policy issues have been identified at this time.

BACKGROUND

The federal limits on the amount of contributions paid to and benefits paid from a qualified plan have been adjusted. The proposed rule modifications incorporate these adjustments as well as update references to Treasury Regulations. In addition, the definitions in one rule were re-ordered to be alphabetical and edited for consistency.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on October 21, 2008 at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended on October 29, 2008 at 5:00 p.m. No public comment was received.

SUMMARY OF CHANGES TO RULES SINCE NOTICE

Since these rules were noticed to the Board on September 19, 2008, the Internal Revenue Service has announced the increase in the annual limits for 2009. The limits on annual compensation listed in OAR 459-005-0525 and on contributions listed in OAR 459-005-0545 have been updated to reflect the new IRS limits for 2009.

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, changes in federal law affecting plan qualification need to be reflected in the PERS plan document.

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

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

RULEMAKING TIMELINE

| | |
|--------------------|--|
| August 15, 2008 | Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State. |
| September 1, 2008 | <i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began. |
| September 19, 2008 | PERS Board notified that staff began the rulemaking process. |
| October 21, 2008 | Rulemaking hearing held at 2:00 pm at PERS headquarters in Tigard. |
| October 29, 2008 | Public comment period ended at 5:00 p.m. |
| November 21, 2008 | Board may adopt the rule modifications. |

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to OAR 459-005-0525, 459-005-0035 and 459-005-0545, as presented.”
2. Direct staff to make other changes to the rules or explore other options.

STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

- Reason: Update rules to reflect changes in federal law regarding plan qualification issues.

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

B.3. Attachment 1 – OAR 459-005-0525, *Ceiling on Compensation of Contributions and Benefits*

B.3. Attachment 2 – OAR 459-005-0535, *Annual Benefit Limitation*

B.3. Attachment 3 – OAR 459-005-0545, *Annual Addition Limitation*

**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**
9 **238.205 with respect to ORS Chapter 238 and in ORS 238A.005 with respect to**
10 **Chapter 238A paid to the member during a calendar year or other 12-month period,**
11 **as specified in this rule.** *[A “participant” shall mean an active or inactive member of*
12 *PERS.]*

13 (b) *[An] “[e]Eligible participant” [shall] means* a person who first becomes a
14 member of PERS before January 1, 1996.

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

19 *[(c)](d) [A] “[n]Noneligible participant” [shall] means* a person who first becomes a
20 member of PERS after December 31, 1995.

21 **“(Participant” means an active or inactive member of PERS.** *[(d) “Annual*
22 *compensation” shall mean “salary,” as defined in ORS 238.005(21) and 238.205 with*

1 *respect to ORS Chapter 238 and in ORS 238A.005(16) with respect to Chapter 238A paid*
2 *to the member during a calendar year or other 12-month period, as specified in this*
3 *rule.]*

4 *[(e) For the purposes of this rule as it applies to ORS Chapter 238, an “employer”*
5 *shall mean a “public employer” as defined in ORS 238.005(17). For the purposes of this*
6 *rule as it applies to ORS Chapter 238A, an “employer” shall mean a “participating*
7 *public employer” as defined in ORS 238A.005(11).]*

8 (3) For eligible participants, the limit set forth in IRC Section 401(a)(17) shall not
9 apply for purposes of determining the amount of employee or employer contributions that
10 may be paid into PERS, and for purposes of determining benefits due under ORS
11 Chapters 238 and 238A. The limit on annual compensation for eligible participants shall
12 be no less than the amount which was allowed to be taken into account for purposes of
13 determining contributions or benefits under former ORS 237.001 to 237.315 as in effect
14 on July 1, 1993.

15 (4) For noneligible participants, the annual compensation taken into account for
16 purposes of determining contributions or benefits under ORS Chapters 238 and 238A
17 shall be measured on a calendar year basis, and shall not exceed [~~\$200,000~~245,000] per
18 calendar year beginning in [~~2002~~2009].

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

21 (b) A noneligible participant employed by two or more agencies or instrumentalities
22 of a PERS participating employer in a calendar year, whether concurrently or

1 consecutively, shall have all compensation paid by the employer combined for
2 determining the allowable annual compensation under this rule.

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

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

10 (6) Notwithstanding section (4) and (5) of this rule, if the Final Average Salary as
11 defined in ORS 238.005(8) with respect to Chapter 238 and as defined in ORS 238A.130
12 with respect to Chapter 238A is used in computing a noneligible participant's retirement
13 benefits, the annual compensation shall be based on compensation paid in a 12-month
14 period beginning with the earliest calendar month used in determining the 36 months of
15 salary paid. For each 12-month period, annual compensation shall not exceed the amount
16 of compensation that is allowable under this rule for the calendar year in which the 12-
17 month period begins.

18 (7) With respect to ORS Chapter 238, creditable service, as defined in ORS
19 238.005(5), shall be given for each month that an active member is paid salary or wages
20 and allowable contributions have been remitted to PERS, or would be remitted but for the
21 annual compensation limit in IRC Section 410(a)(17). With respect to ORS Chapter
22 238A, retirement credit as determined in ORS 238A.140, shall be given for each month
23 that an active member is paid salary or wages and allowable contributions have been

1 remitted to PERS, or would be remitted but for the annual compensation limit in IRC
2 Section 401(a)(17).

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

4 Stat. Auth.: ORS 238.630, 238.650 & 238A.005(16)(c)(I)

5 Stats. Implemented: ORS 238

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

1 **459-005-0535**

2 **Annual Benefit Limitation**

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

7 (2) Annual Benefit Limitation. The benefits payable to any member for a calendar
8 year, when expressed as an annual benefit, shall not exceed the applicable dollar
9 limitation for that year.

10 (3) Applicable Dollar Limitation. For purposes of this rule, the "applicable dollar
11 limitation" for each calendar year is the limitation in effect under IRC Section
12 415(b)(1)(A), with the adjustment described as follows:

13 (a) Cost-of-Living Adjustments. The limitation under IRC Section 415(b)(1)(A)
14 shall be adjusted for cost of living in accordance with IRC Section 415(d).

15 (b) Reduction for Retirement Before Age 62. Except as otherwise provided in the
16 paragraphs (A), (B), and (C) of this subsection, if the member's benefit begins before the
17 member reaches 62 years of age, the applicable dollar limitation shall be adjusted as
18 provided for in IRC Section 415(b)(2)(C).

19 (A) This reduction shall not apply to any member who has at least 15 years of
20 creditable service as a full-time employee of a police department or fire department
21 which is organized and operated by the state or a political subdivision of the state to

1 provide police protection, firefighting services, or emergency medical services for any
2 area within the jurisdiction of the state or political subdivision.

3 (B) This reduction shall not apply to disability retirement allowances or death
4 benefits.

5 (C) This reduction shall not apply to any portion of a member's annual benefit that is
6 derived from contributions to purchase service credit, as defined in OAR 459-005-0540,
7 Permissive Service Credit.

8 (c) Reduction for Less than 10 Years of Membership. Except as provided in
9 paragraphs (A) and (B) of this subsection, if the member has less than 10 years of active
10 membership in PERS, the applicable dollar limitation shall be reduced as provided for
11 under IRC Section 415(b)(5)(A).

12 (A) For the purposes of this section, a member with less than one year of active
13 membership shall be treated as having one year of active membership.

14 (B) The reduction under this section shall not apply to disability retirement
15 allowances or death benefits.

16 (d) Increase for Retirement After Age 65. If the member's benefit begins after the
17 member reaches 65 years of age, the applicable dollar limitation shall be increased as
18 provided for under IRC Section 415(b)(2)(D).

19 (4) Annual Benefit. For purposes of this rule, the "annual benefit" is the benefit
20 payable to a member under ORS Chapter 238 and the pension program under ORS
21 Chapter 238A for a calendar year, excluding any benefit payable under ORS 238.485
22 through 238.492, and adjusted as described in this section.

1 (a) Excludable Benefits. The annual benefit shall not include the portion of the
2 member's benefit that is attributable to:

3 (A) After-tax member contributions, other than member payments to purchase
4 permissive service credit as defined in OAR 459-005-0540, Permissive Service Credit;

5 (B) Rollover contributions, if such contributions are permitted;

6 (C) A transfer of assets from another qualified retirement plan; and

7 (D) Purchases of permissive service credit, as defined in OAR 459-005-0540,
8 Permissive Service Credit, if all of the member's payments to purchase permissive service
9 credit are treated as annual additions for purposes of OAR 459-005-0545, Annual
10 Addition Limitation, in the year purchased.

11 (b) Adjustment to Straight Life Annuity. The member's benefit shall be adjusted to
12 an actuarially equivalent straight life annuity beginning at the same age. For purposes of
13 this adjustment, the following values are not taken into account:

14 (A) The value of a qualified spouse joint and survivor annuity to the extent that the
15 value exceeds the sum of the value of a straight life annuity beginning on the same day,
16 and the value of any post-retirement death benefits that would be payable even if the
17 annuity was not in the form of a joint survivor annuity.

18 (B) The value of benefits that are not directly related to retirement benefits, such as
19 pre-retirement disability benefits and post-retirement medical benefits.

20 (C) The value of post-retirement cost of living increases, to the extent they do not
21 exceed the increase provided under IRC Section 415(d) and Treasury Regulation Section
22 ~~[1.415-5]~~1.415(d)-1.

1 (5) Interest Rates. The following interest rates shall apply for purposes of adjusting
2 the applicable dollar limitation under section (3) of this rule and the annual benefit under
3 section (4) of this rule.

4 (a) For purposes of reducing the applicable dollar limitation for retirement before 62
5 years of age under subsection (3)(b) of this rule, the interest rate shall be the greater of
6 five percent or PERS' assumed earnings rate.

7 (b) For purposes of determining the portion of a member's benefits attributable to
8 after-tax member contributions under paragraph (4)(a)(A) of this rule, the interest rate
9 shall be the greater of 5 percent or the PERS' assumed earnings rate.

10 (c) For purposes of adjusting the member's annual benefits under section (4) of this
11 rule (other than the adjustment for after-tax member contributions), the interest rate shall
12 be the greater of five percent or PERS' assumed earnings rate.

13 (d) For purposes of increasing the applicable dollar limitation for retirement after 65
14 years of age under subsection (3)(d) of this rule, the interest rate shall be the lesser of five
15 percent or PERS' assumed earnings rate.

16 (6) Mortality Table. For purposes of adjusting the applicable dollar limitation and
17 annual benefit under sections (3) and (4) of this rule, the mortality table used shall be the
18 table prescribed pursuant to the Internal Revenue Code.

19 (7) The provisions of this rule are effective on January 1, 2004.

20 Stat. Auth.: ORS 238.630, 238.650 & 238A.125

21 Stats. Implemented: ORS 238.005-238.715

**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, *[no]* **a**
8 member's annual additions to PERS for any calendar year *[() after [2001]]* **2008** *[shall]*
9 **may not** exceed the lesser of the following amounts:

10 (a) *[\$40,000]* **\$49,000** (as adjusted under IRC Section 415(d)); or

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

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

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

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

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

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

11 (a) The payment shall be treated as an annual addition for the calendar year to which
12 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) The member shall be treated as having received the following amount of
16 compensation for the period of service in the Armed Forces to which the payment relates:

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

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

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

2 Stat. Auth.: ORS 238.630, 238.650 and 238A.370

3 Stats. Implemented: ORS 238.005 - 238.715



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Theodore R. Kulongoski, Governor

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November 21, 2008

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
SUBJECT: Adoption of Effective Date of Retirement Rules
OAR 459-013-0260, *Effective Date Used in the Establishment of Service Retirement Benefits*
OAR 459-075-0175, *Effective Date Used in the Establishment of OPSRP Pension Program Benefits*

| | |
|--------------|---------------------------------|
| MEETING DATE | 11/21/08 |
| AGENDA ITEM | B.4. Eff. Date of Retirement |

OVERVIEW

- Action: Adopt modifications to the Effective Date of Retirement rules.
- Reason: The new rule and rule modifications make the process of establishing retirement benefits administratively more efficient.
- Subject: Effective date used in the establishment of Chapter 238 Program and OPSRP pension program benefits.
- Policy Issues: No policy issues have been identified.

BACKGROUND

Currently, members may apply for retirement with an effective date as of the first day of the calendar month in which the member's application is received (e.g., apply September 30 for a September 1 retirement). The Oregon Legislature established one of the agency's key performance measures to be that 80% of initial benefit payments be paid within 45 days of the member's effective retirement date. If the member submits a retirement application late in the month, the chances of calculating and issuing a benefit payment within that measure is substantially reduced.

Moreover, the reasons supporting this rule provision are not clear. Only about 17% of members apply after their retirement date, and the vast majority of them are within the first week of the month. With advance education and counseling, staff believes that members could submit their applications more timely. Therefore, the rules have a delayed effective date to August 1, 2009, to allow for that transition. Receiving the application well before the retirement date allows staff to begin review and processing sooner, increasing the chances of meeting our key performance measure and related member expectations. This also will help in identifying any problems with the application sooner to prevent further delays in benefit processing.

The proposed rule modifications would require a member to submit their retirement application before their effective retirement date. A new parallel rule for the OPSRP pension program has also been written for the same reasons.

SUMMARY OF CHANGES SINCE NOTICE

As originally presented, these rules were to be effective July 1, 2009. Retirement applications always peak on July 1 however because of the COLA and the end of the school year. In order to avoid affecting such a consequential retirement date, the effective date has been pushed out to August 1, 2009.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on October 21, 2008 at 2:00 p.m. at PERS headquarters in Tigard.

No members of the public attended. The public comment period ended on October 29, 2008 at 5:00 p.m. No public comment was received.

LEGAL REVIEW

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

IMPACT

Mandatory: No.

Impact: The new rule and rule modifications will enhance the agency's ability to achieve a key performance measure and provide more timely information and services to retiring members.

Cost: There are no discernible material costs attributable to these rules.

RULEMAKING TIMELINE

| | |
|--------------------|--|
| August 15, 2008 | Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State. |
| September 1, 2008 | <i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began. |
| September 19, 2008 | PERS Board notified that staff began the rulemaking process. |
| October 21, 2008 | Rulemaking hearing held at 2:00 p.m. in Tigard. |
| October 29, 2008 | Public comment period ended at 5:00 p.m. |
| November 21, 2008 | Board may adopt the rule modifications. |

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to OAR 459-013-0260 and 459-075-0175, as presented.”
2. Direct staff to make other changes to the rules or explore other options.

STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

Adoption – Effective Date of Retirement

11/21/2008

Page 3 of 3

- Reason: The new rule and rule modifications make the process of establishing retirement benefits administratively more efficient.

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

B.4. Attachment 1 – OAR 459-013-0260, *Effective Date Used in the Establishment of Service Retirement Benefits*

B.4. Attachment 2 – OAR 459-075-0175, *Effective Date Used in the Establishment of OPSRP Pension Program Benefits*

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

1 **459-013-0260**

2 **Effective Date Used in the Establishment of Service Retirement Benefits**

3 (1) A member’s service retirement allowance under ORS 238.300 and 238.305 will
4 be established as of the member’s effective date of retirement.

5 (2) A member’s effective date of retirement is **the later of:**

6 **(a) [t]**The first day of the calendar month specified by the member, who is eligible
7 for retirement under the provisions of ORS 238.280 or 238.005(5), on their service
8 retirement application[.]; **or**

9 *[(3) The effective date of retirement will be no earlier than:]*

10 **[(a)](b)** The first of the calendar month *[in which]* **following the date** an application
11 is received by the Public Employees Retirement System (PERS); or

12 **[(b)](c)** The first of the calendar month following the date of separation from all
13 employers participating in PERS and in the same controlled group.

14 **[(4)](3)** For the purpose of this rule, “controlled group” is a group of employers
15 required to be treated as a single employer for the purpose of satisfying the requirements
16 for qualified retirement plans under federal law.

17 **(4) The effective date of this rule is August 1, 2009.**

18 Stat. Auth.: ORS 238.650

19 Stats. Implemented: ORS 238.300 & 238.305

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

1 **459-075-0175**

2 **Effective Date Used in the Establishment of OPSRP Pension Program Benefits**

3 **(1) A member’s OPSRP pension program benefits under ORS 238A.125 and**
4 **238A.180 will be established as of the member’s effective date of retirement.**

5 **(2) A member’s effective date of retirement is the later of:**

6 **(a) The first day of the calendar month specified by the member, who is eligible**
7 **for retirement under the provisions of ORS 238A.160 to 238A.170, on their service**
8 **retirement application; or**

9 **(b) The first of the calendar month following the date an application is received**
10 **by the Public Employees Retirement System (PERS); or**

11 **(c) The first of the calendar month following the date of separation from all**
12 **employers participating in PERS and in the same controlled group.**

13 **(3) For the purpose of this rule, “controlled group” is a group of employers**
14 **required to be treated as a single employer for the purpose of satisfying the**
15 **requirements for qualified retirement plans under federal law.**

16 **(4) The effective date of this rule is August 1, 2009.**

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

18 **Stats. Implemented: ORS 238A.125 and 238A.180**



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November 21, 2008

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
SUBJECT: Adoption of OAR 459-050-0037, *Trading Restrictions*

| | |
|--------------|------------------------------|
| MEETING DATE | 11/21/08 |
| AGENDA ITEM | B.5. Trading Restrictions |

OVERVIEW

- Action: Adopt modifications to the OSGP trading restrictions rule, OAR 459-050-0037.
- Reason: Office of the Oregon State Treasurer (OST) and Oregon Savings Growth Plan (OSGP) recommend the removal of the 90-day restriction on all investment options, with the exception of the International Stock Option.
- Subject: Trading restrictions in Oregon Savings Growth Plan.
- Policy Issue: Should the time limit restriction on trades within the OSGP investment options be modified?

BACKGROUND

In 2007, the PERS Board adopted OAR 459-050-0037, placing trading restrictions on all investment options in the Oregon Savings Growth Plan (OSGP) to prevent excessive trading. The rule restricted participants from transferring money out of one option and into another option for 90 days, with a maximum daily transfer set at \$100,000. Since that rule was adopted, the OST staff has modified their investments to reduce some of the cost impacts of excessive trades. The Treasury staff recommends amending the rule to remove the 90-day restriction on all investments options, with the exception of the International Stock Option. The restriction on that option would be reduced to 30 days. The \$100,000 daily trade restriction (per option) and the equity wash restriction on the Stable Value option will remain in place.

POLICY ISSUE

Should the time limit restriction on trades within the OSGP investment options be modified?

The Oregon Investment Council (OIC) elected to add a BGI EAFE index fund to the International Stock Option which allowed ING to change its daily transfer activity from a prorated methodology spread across all funds in each option to using only the BGI index funds. Because the index funds are commingled funds, and not mutual funds, they are not subject to the Security and Exchange Commission (SEC) rules governing mutual fund redemption fees. Therefore, participants' accounts should not be subject to redemption fees. There are no redemption restrictions or provisions on BGI's funds, and BGI monitors trade activity to identify inappropriate trading. BGI would notify the Treasury department if BGI noticed significant trading activity, particularly if it looked like it was caused by market timing. BGI could then ask

OST and OSGP to implement additional trading restrictions; however, OST staff believes this would be quite unlikely. There should be no consequences for any other funds in the plan if BGI determined inappropriate trading had occurred. The processing changes should eliminate any concern that participants could be subject to redemption fees for transfer activity. The trading restrictions should keep the total daily transfer activity at levels which BGI considers acceptable.

The addition of the EAFE index commingled fund, and the absence of potential redemption fees, ease the constraints that established the need for the OSGP trading restrictions. OSGP would still retain a 30-day restriction on the International Stock Option and maintain the \$100,000 daily trade restriction, which should limit any opportunities to time the market or trade excessively.

SUMMARY OF CHANGES SINCE NOTICE

The effective date of the rule in section (8) was changed to December 5, 2008, which is the earliest date ING can implement the trading restriction changes.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on October 21, 2008 at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended on October 29, 2008 at 5:00 p.m. No public comment was received.

LEGAL REVIEW

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

IMPACT

Mandatory: No.

Impact: Revision of the rule will allow more flexibility for OSGP participants.

Cost: There are no discernible material costs attributable to this rule. ING has indicated that there will be no charges associated with implementing the necessary system changes.

RULEMAKING TIMELINE

| | |
|--------------------|--|
| August 15, 2008 | Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State. |
| September 1, 2008 | <i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began. |
| September 19, 2008 | PERS Board notified that staff began the rulemaking process. |
| October 21, 2008 | Rulemaking hearing held at 2:00 p.m. in Tigard. |
| October 29, 2008 | Public comment period ended at 5:00 p.m. |
| November 21, 2008 | Board may adopt the rule modifications. |

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to OAR 459-050-0037, as presented.”
2. Direct staff to make other changes to the rules or explore other options.

STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

- Reason: The rule modifications reflect the structural changes that OST has made to the International Stock Option to minimize cost impacts of excessive trading, while providing greater flexibility for OSGP participants to trade in other investment options.

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.

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

1 **459-050-0037**

2 **Trading Restrictions**

3 The purpose of this rule is to establish criteria under which a participant may make
4 trades in the Deferred Compensation Program. The Program is designed for long-term
5 investment and periodic adjustment of asset allocation. Restrictions upon trades are
6 necessary to protect participants and the Program from adverse financial impact
7 attributable to frequent trading. Frequent trading by some participants can lower returns
8 and increase transaction costs for all participants. Frequent trading *[also]* can trigger the
9 imposition of redemption fees and restrictions by mutual funds within the Program and
10 may cause the Program to be eliminated as an allowable investor in an an *[mutual]*
11 investment fund.

12 (1) Definitions. For the purposes of this rule:

13 (a) “Investment Option” means an investment alternative made available under ORS
14 243.421.

15 (b) “Trade” means a purchase or redemption in an investment option for the purpose
16 of moving monies between investment options.

17 (2) Restrictions. The following restrictions apply to all participants:

18 (a) A participant may not make a trade that exceeds \$100,000.

19 (b) A purchase that is attributable to a trade may not be redeemed from the
20 *[investment option in which the purchase was made]* International Stock Option for a
21 period of *[90]* 30 days following the date of the trade.

1 (c) No trade may move monies directly from the Stable Value Option to the Short-
2 Term Fixed Income Option or the Intermediate Bond Option.

3 (3) The Deferred Compensation Manager, if necessary to comply with trading
4 restrictions imposed by a participating mutual fund or the Securities and Exchange
5 Commission, may establish additional temporary trading restrictions.

6 (4) The Deferred Compensation Manager, in the event of extraordinary market
7 conditions, may temporarily suspend any or all trading restrictions established by this
8 rule.

9 (5) Any action taken by the Deferred Compensation Manager under sections (3) or
10 (4) of this rule must be presented to the Board at its next scheduled meeting. The Board
11 may take action as authorized by ORS 243.401 to 243.507. If the Board does not act, the
12 action(s) taken by the Deferred Compensation Manager shall expire on the first business
13 day following the date of the meeting.

14 (6) The provisions of this rule are not applicable to trades attributable to the
15 operation of an automatic account rebalancing function offered by the Program.

16 (7) The trading restrictions provided in this rule are not exclusive. The Board may
17 establish additional restrictions or sanctions as authorized by ORS 243.401 to 243.507.

18 (8) The effective date of this rule is May 1, 2007.

19 Stat. Auth.: ORS 243.470

20 Stats. Implemented: ORS 243.401 – 243.507



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November 21, 2008

TO: Members of the PERS Board
FROM: Dale S. Orr, Actuarial Services Manager
SUBJECT: Update on "Equal To or Better Than" Rules
OAR 459-030-0011, *Equal To or Better Than Exemption*
OAR 459-030-0025, *Standards for Review of Police Officers and Firefighters Retirement Plans*
OAR 459-030-0030, *Board Action on Petition and Review of Order*

| | |
|--------------|--------------------|
| MEETING DATE | 11/21/2008 |
| AGENDA ITEM | B.6. ETOB Rules |

OVERVIEW

- Action: Informational only. No action required.
- Reason: Update on potential changes to the proposed ETOB rules.
- Subject: Report on the guiding principles and criteria for actuarial components to be included in the ETOB rules.

BACKGROUND

HB 2280 (2007 Session) eliminated the requirement that the PERS Board conduct an ETOB study every two years. This bill also set the comparative benchmark for the ETOB study to the PERS benefits that were in effect at the time the police officer or firefighter was hired. The ETOB administrative rules were modified to conform with these statutory changes and presented to the Board for adoption on September 19, 2008. At that meeting, the Board deferred adoption of the rules and directed staff to work with the actuary and stakeholders to define the actuarial methods and assumptions to be included in the ETOB studies. The Board also directed staff to develop a recommendation regarding the timing of the next ETOB study. Staff has, in consultation with the PERS actuary, created an approach for achieving these directives.

APPROACHES

DEVELOPMENT OF ACTUARIAL METHODS AND ASSUMPTIONS

The determination as to which methods and assumptions to use in ETOB studies will be based on two 'Guiding Principles' and a limited set of evaluation criteria. These principles and criteria will provide a filter through which the actuarial parameters will be identified and selected. This multi-level approach will allow for an objective and supportable basis for the methods and assumptions included in the revised ETOB rules.

Guiding Principles:

1. The ETOB study will be based on the valuation of benefits received by the employee. The study will not focus on the employer cost of providing those benefits.

2. The ETOB analysis will be a comparative based on the present value of benefits provided by the ETOB employer and equivalent benefits provided by PERS for each employee class.

Evaluation Criteria:

1. **Comparable:** The methods and assumptions must allow for an “apples to apples” comparison between the employer and PERS’ benefits. For instance, using an employer’s assumed earnings rate to value the employer’s benefits and the PERS assumed earnings rate to value PERS’ comparative benefits may not allow for a symmetrical comparison. The optimal set of methods and assumptions will be the same for both the employer benefits and PERS.
2. **Durable:** The methods and assumptions selected should provide a comparison that will provide the greatest stability to study results over a long-term time horizon. Using variables that may vary significantly from one year to the next might undermine the longevity and validity of the study.
3. **Cost Effective:** The methods and assumptions selected should not be unnecessarily complicated and should provide a reasonable, cost-effective comparison without compromising the validity of the ETOB study.

Next Steps:

Staff, in collaboration with the PERS actuary, will identify the categories of methods and assumptions needed to conduct an ETOB study that complies with actuarial standards and allows a reasonable comparison based on the statutory standard. Within each of these categories, the different options will be assessed in the context of the above Guiding Principles and Evaluation Criteria. The initial results from this assessment will be discussed with stakeholders prior to inclusion in revised ETOB rules. The objective is to present the revised ETOB rules for Board consideration at its February 6, 2009 meeting.

TIMING OF NEXT ETOB STUDY

Whether or not an ETOB study should be conducted immediately upon adoption of the new ETOB rules will be discussed with stakeholders and the result of those discussions will be conveyed to the Board. In addition to stakeholder input, staff’s final recommendation will be based on the ETOB statutes, the Board’s responsibilities under those statutes, and the efficacy of previous ETOB studies in the context of the revised rules. The goal is to make a study timing recommendation to the Board at its February 6, 2009 meeting.



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November 21, 2008

TO: Members of the PERS Board

FROM: Dale S. Orr, Manager, Actuarial Analysis Section

SUBJECT: PERS Projected Cash Flow Analysis - Mercer

| | |
|-----------------|---------------------------|
| MEETING DATE | 11/21/08 |
| AGENDA ITEM | C.1. Cash Flow |

On November 21, 2008, Bill Hallmark of Mercer will present the attached financial modeling analysis of PERS' cash flow. This study will provide the Board with a better understanding of PERS' liquidity needs. Because PERS' benefit payments significantly exceed incoming contributions, the system is technically in a negative cash flow situation. Typical of a mature pension plan such as PERS, the spread between benefits paid and contributions received will increase as more members retire. To study this dynamic, Mercer analyzed the system's near-term cash flow needs assuming a range of retirement scenarios.

Attachment: PERS Projected Cash Flow Analysis



November 21, 2008

Projected Net Cash Outflow Oregon Public Employees Retirement System

Bill Hallmark, Matt Larrabee

Agenda

- Overview
- Baseline Projections
- Variance in Expected Benefit Payments
- Descriptive Statistics

Overview

Purpose of Study

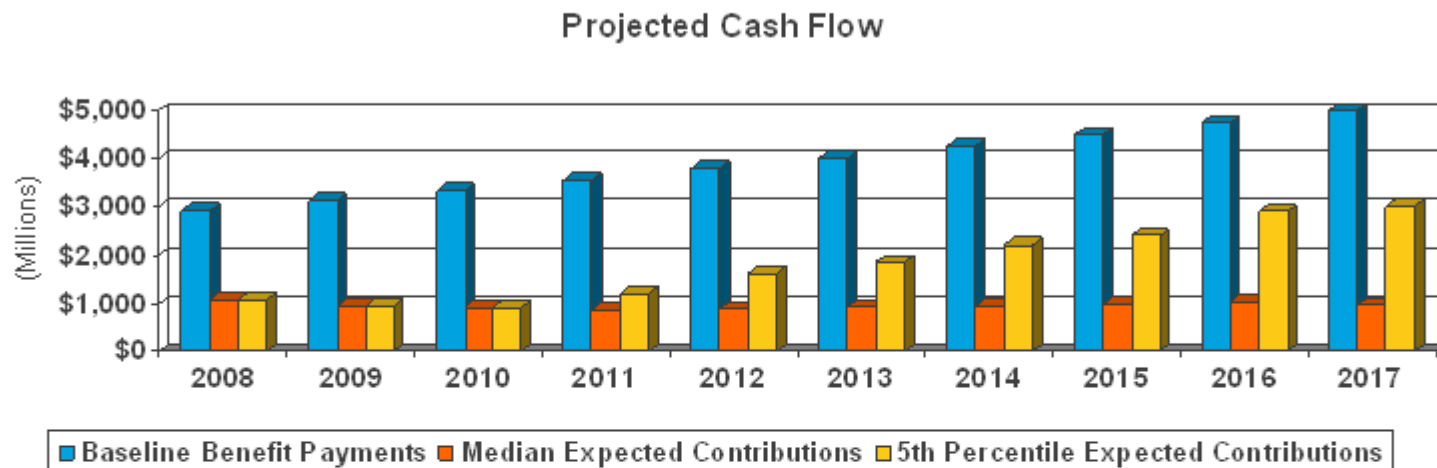
- Benefit payments from the System currently exceed contributions by a factor of 3 to 1.
- The negative cash flow requires PERS and the OIC to manage the liquidity of the fund to make sure there is always enough cash available to make benefit payments.
- A significant allocation to illiquid investments increases the importance of planning for fluctuations in cash requirements.
- This study is intended to provide PERS and the OIC a better understanding of expected benefit payment requirements and the variability likely in those requirements over the next several years.
- In addition, this study provides some background on the dynamics between the three primary benefit formulas in PERS: Full Formula, Money Match and Pension Plus Annuity.

Overview

Summary of Key Findings

- Benefit payments are expected to increase from approximately \$2.9 billion in 2008 to approximately \$5.0 billion in 2017.
- The present value of net expected cash outflow over the next 10 years is equivalent to over 30% of December 31, 2007 assets requiring significant investment planning, particularly given current market conditions.
- Because most of the expected payments are due to current retirees and beneficiaries, future disabled retirees, and other factors not dependent on rates of retirement, the variability in these expected payments is relatively small.
- There are currently about 38,000 active members eligible to retire. If all of these members elected to retire immediately, it would increase benefit payments from approximately \$2.9 billion to approximately \$3.6 billion next year.

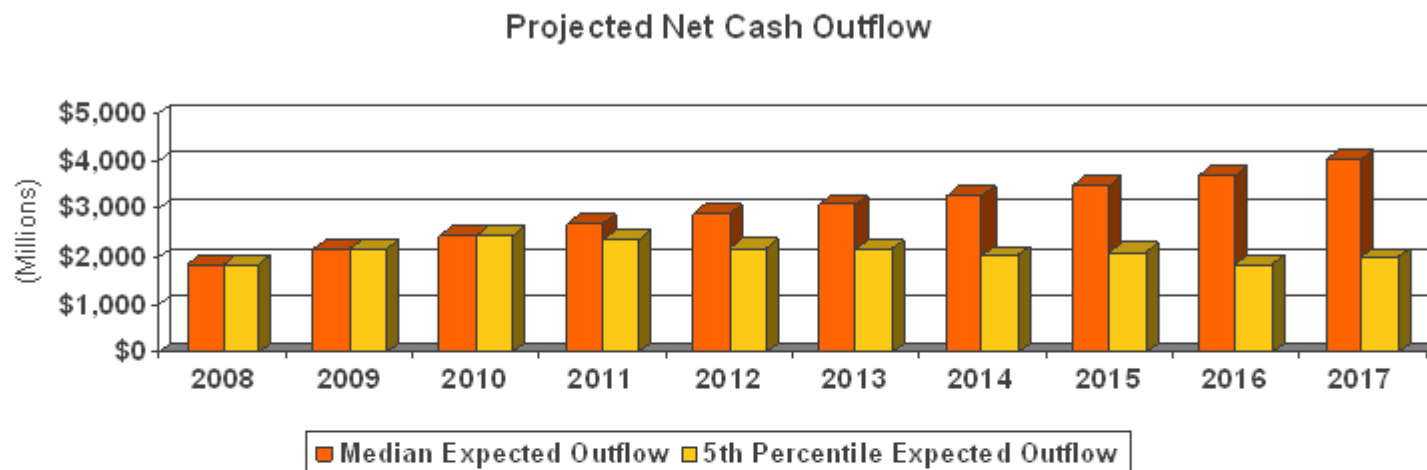
Baseline Projections



Contributions are the actual cash contributed by employers and members during the year to Tier 1/2, OPSRP and IAP. Transfers from side accounts are not considered contributions.

- Over the next 10 years, benefit payments (including IAP) are expected to increase over 70% from approximately \$2.9 billion in 2008 to approximately \$5.0 billion in 2017.
- As of 12/31/2007, contributions (including the IAP) were expected to remain relatively constant over this same period at about \$1.0 billion per year.
- Using the 5th percentile employer contribution rate results in each year of our financial modeling study, however, contributions would increase to \$3.0 billion by 2017 (28% of payroll). Because the 5th percentile in one year is not necessarily the same scenario as the 5th percentile in the next year, this level of contribution rate over the entire 10-year period is significantly less likely than the 5th percentile.
- In any scenario, contribution rates through July 1, 2011 will not change regardless of market performance, so actual changes in contributions will depend on changes in payroll.

Baseline Projections

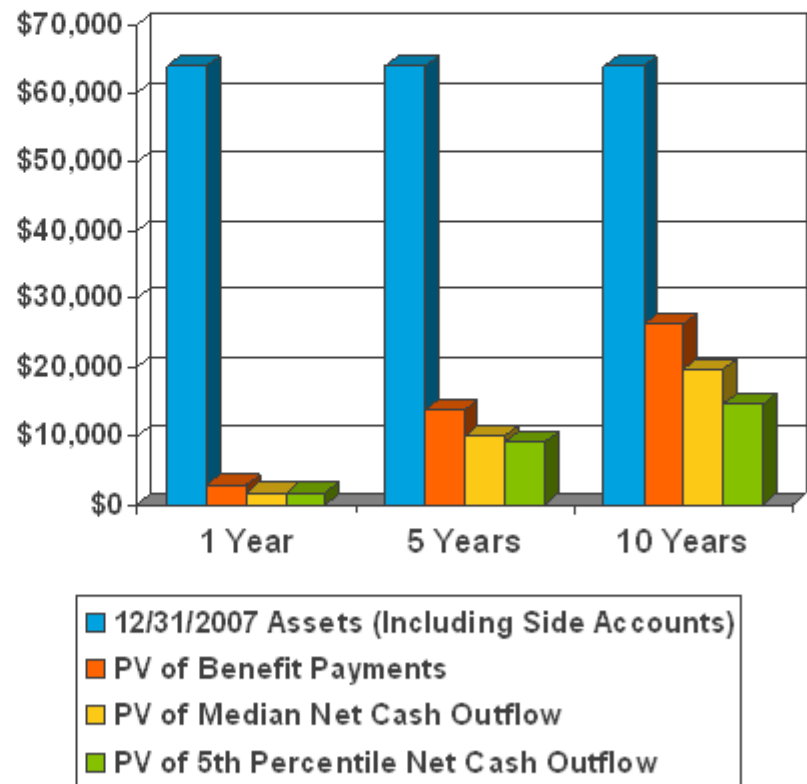


- As of 12/31/2007, the net cash outflow over the next 10 years was expected to more than double from approximately \$1.8 billion in 2008 to approximately \$4.0 billion in 2017.
- As of 12/31/2007, using the 5th percentile results in each year of our financial modeling study, the net cash outflow is expected to increase from \$1.8 billion in 2008 to \$2.4 billion in 2010 before declining to \$2.0 billion in 2017.
- While the 5th percentile outflow shown above does not reflect the current significant market downturn, it reflects poor long-term investment experience. If the markets rebound or even return to expected levels of investment return, the net cash outflow will be greater than shown in the 5th percentile results.

Baseline Projections

- The present value of median expected net cash outflow over the next 5 years represents about 15% of December 31, 2007 assets and over the next 10 years represents over 30% of December 31, 2007 assets.
- The recent market downturn increases the percentage of current assets projected as short-term net cash outflow. For example, if current assets are 30% lower, expected net cash outflow over the next 5 years represents approximately 20% to 22% of current assets (33% to 44% over 10 years).
- The ongoing net cash outflow may impact the portfolio's asset allocation, particularly at a time when even corporate bonds aren't very liquid.

Comparison of Assets to Present Value of Net Cash Outflow



Baseline Projections

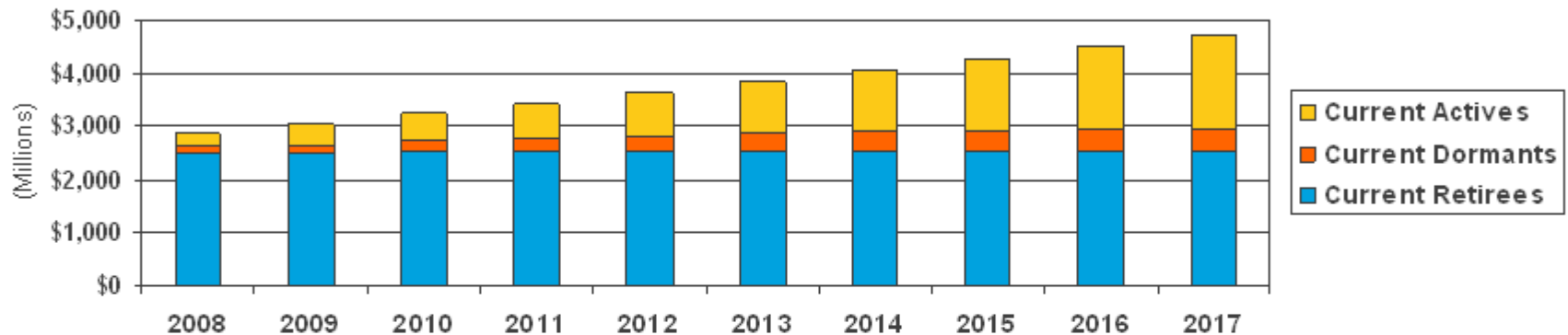
Potential Implications

- Current coupon payments and dividends from investments amount to approximately \$1.8 billion, matching the current net cash outflow.
- As of September 30, approximately 30% of the portfolio was invested in private equity and real estate, much of which may be illiquid.
- Because it is difficult to re-balance illiquid assets, an even greater portion of the portfolio may now be invested in illiquid assets (unless their market value has declined as much as the rest of the portfolio).
 - There may be further capital commitments to private equity that will be called over the next few years, exceeding returns realized over that period, which would further increase the portfolio weighting to private equity.
- With significant net cash outflow from liquid assets, it will be even more difficult to maintain the target portfolio balance.
- Given the market turmoil and illiquidity for many asset classes, Mercer Investment Consulting has been recommending greater cash allocations than normal to meet liquidity needs. Such a policy for PERS would result in relatively significant allocations of cash compared to historic norms and possibly further distorting the target investment policy.

Variance in Expected Benefit Payments

Breakdown of Baseline Projections

Breakdown of Projected Benefit Payments

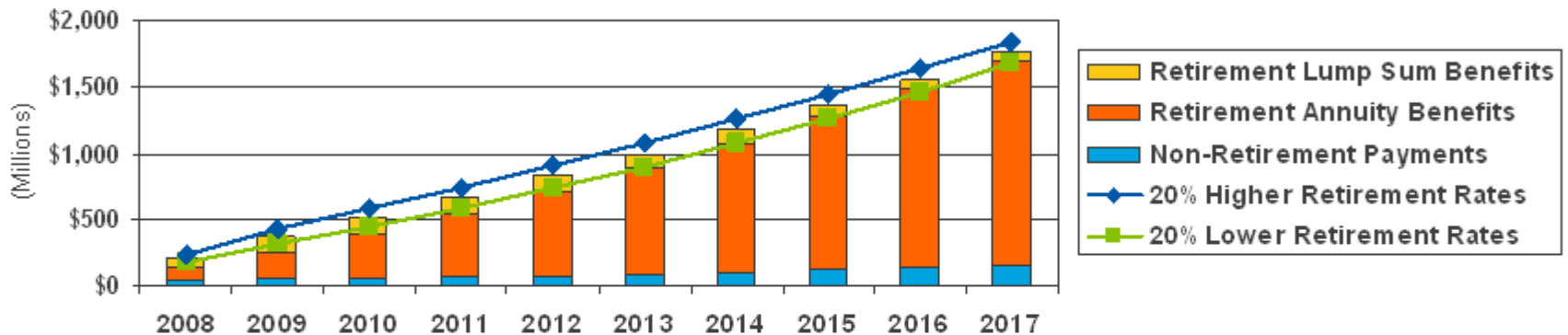


- Projected benefit payments are dominated in the near term by expected payments to current retirees and beneficiaries.
- Although there are approximately 38,000 active members currently eligible to retire, we expect 4,000 to 6,000 to retire each year compared to approximately 105,000 current retirees and beneficiaries.
- In the first year, we expect a little less than \$350 million in annual benefit payments to new retirees. Historically, the first year estimate has been high due to assumptions that dormants will commence their benefits when economically most valuable and that everyone over age 70 will retire immediately.

Variance in Expected Benefit Payments

20% Change in Retirement Rates

Breakdown of Projected New Benefit Payments



- Varying retirement rates by 20% can have an impact early in the projection period, but over longer time frames has very little impact as most of those eligible to retire will retire sometime in the 10-year period regardless of the assumption.
- Because of the size of the base of current retirees, a 20% variance in any single year does not have a significant impact on total benefit payments.

Variance in Expected Benefit Payments

Other Possible Scenarios

- If every active member eligible to retire did so immediately, it would add approximately \$730 million to annual benefit payments (about a 25% increase).
- As shown in the table on the top, if everyone who had a replacement ratio greater than 60% retired immediately, it would add about \$325 million to annual benefit payments.
- As shown in the table on the bottom, if everyone over age 60 retired, it would add about \$228 million to annual benefit payments.
- While it is easy to imagine scenarios that produce a much greater number of retirements or much greater increase in benefit payments than anticipated in a single year, these potential increases are not very significant in the context of the entire system.

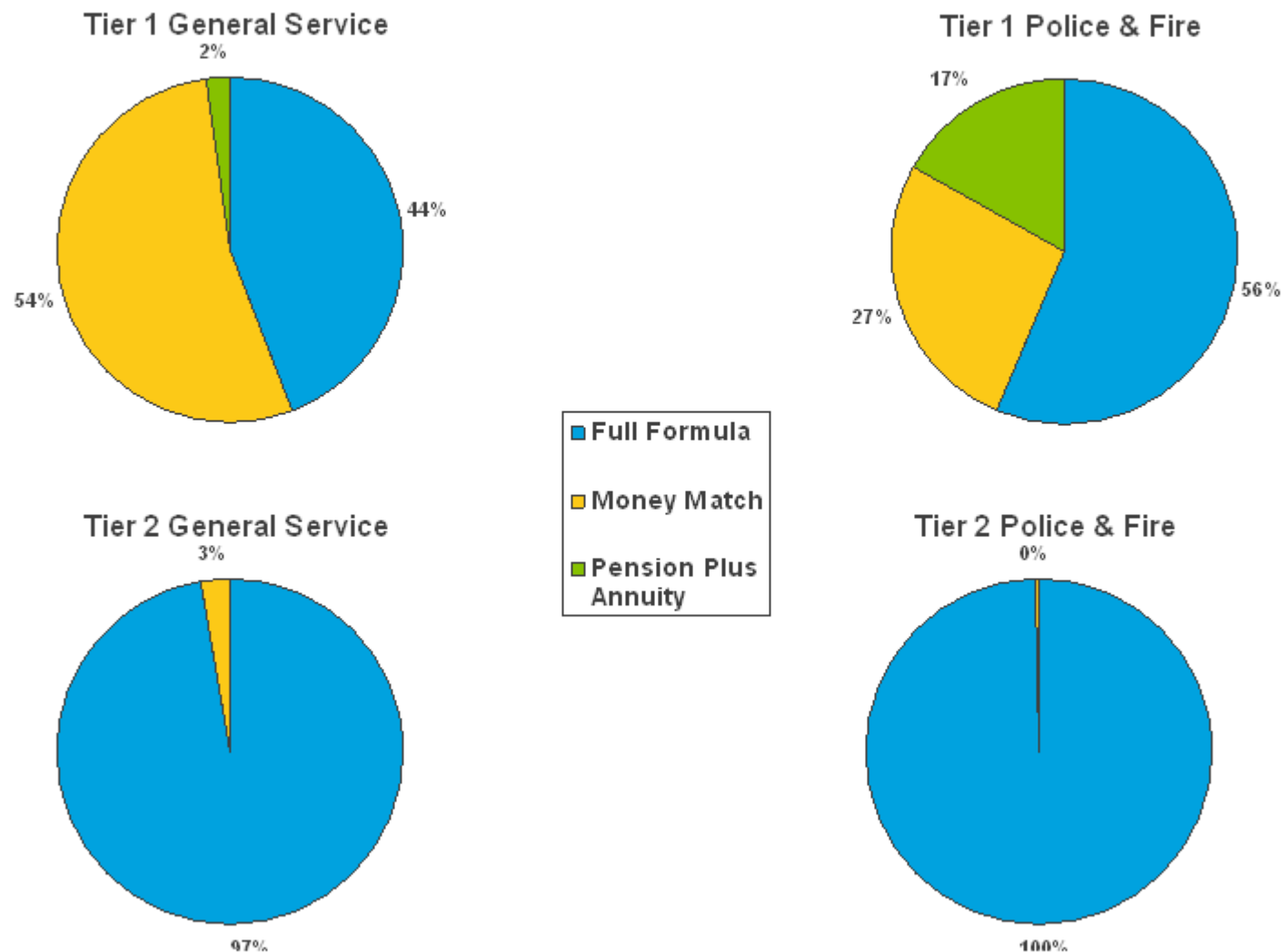
| Annual New Benefit Payments | | | |
|-----------------------------|--------|---------------|-------------------|
| Replacement Ratio | Count | Annual Amount | Cumulative Amount |
| 100% + | 1,471 | \$79 | \$79 |
| 80% - 100% | 2,222 | \$111 | \$191 |
| 60% - 80% | 3,293 | \$135 | \$325 |
| 40% - 60% | 6,720 | \$173 | \$498 |
| 20% - 40% | 14,564 | \$191 | \$689 |
| 0% - 20% | 9,611 | \$42 | \$731 |

| Annual New Benefit Payments | | | |
|-----------------------------|--------|---------------|-------------------|
| Age | Count | Annual Amount | Cumulative Amount |
| 70 + | 470 | \$7 | \$7 |
| 65 - 69 | 2,030 | \$34 | \$41 |
| 60 - 64 | 10,173 | \$187 | \$228 |
| 55 - 59 | 23,467 | \$452 | \$680 |
| 50 - 54 | 1,741 | \$50 | \$731 |

Dollar amounts in millions

Descriptive Statistics for Actives

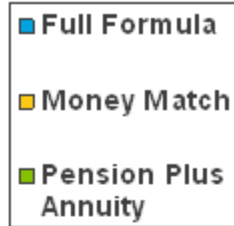
Dominant Formula Assuming Immediate Retirement (if eligible)



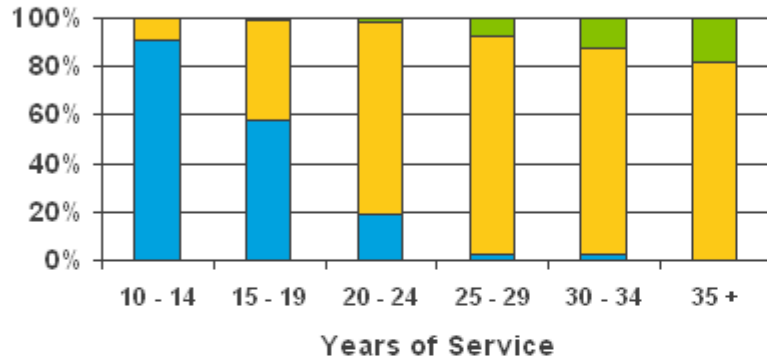
Charts exclude Members reported with less than \$15,000 annual salary for 2007

Descriptive Statistics for Actives

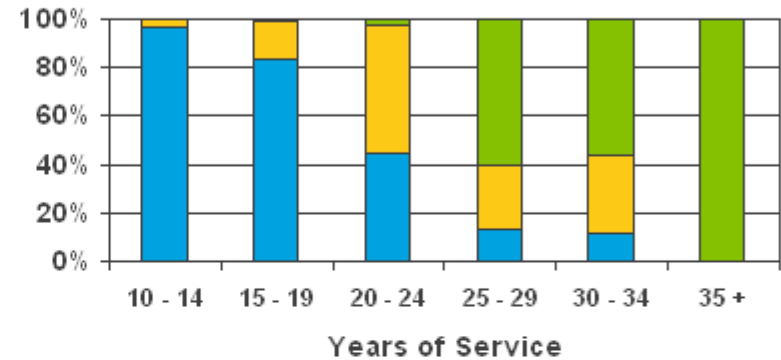
Dominant Formula Assuming Immediate Retirement (if eligible)



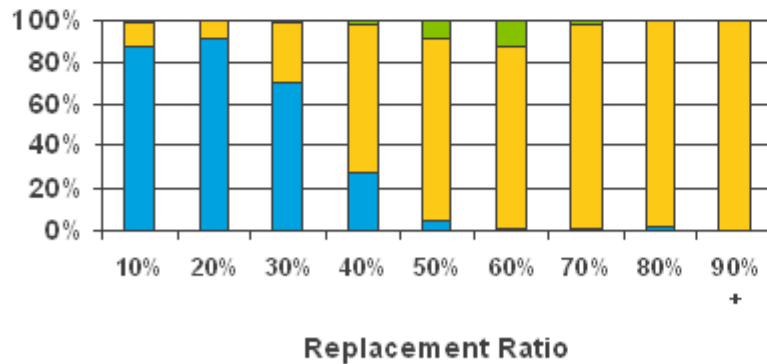
Tier 1 General Service



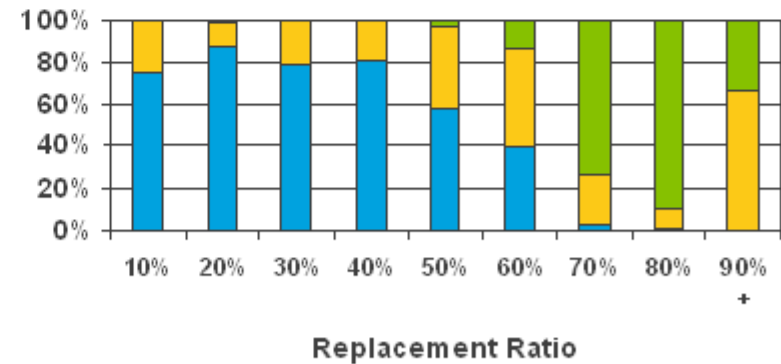
Tier 1 Police & Fire



Tier 1 General Service



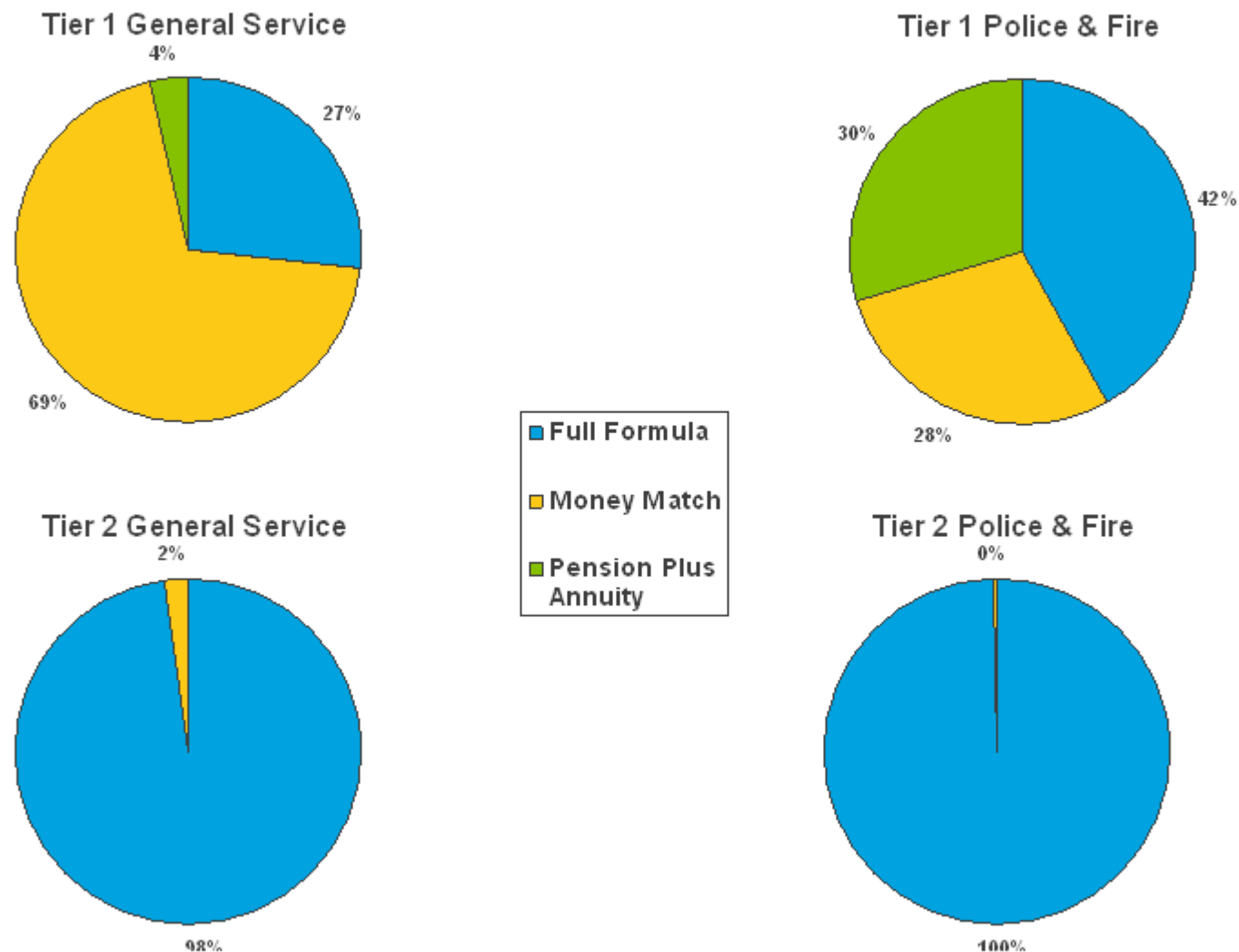
Tier 1 Police & Fire



Charts exclude Members reported with less than \$15,000 annual salary for 2007

Descriptive Statistics for Actives

Total Benefit Amounts by Formula Assuming Immediate Retirement



Charts exclude Members reported with less than \$15,000 annual salary for 2007

Descriptive Statistics for Actives

Ratio of Total Accrued Benefits to Full Formula Benefits

- The longer a Tier 1 member has been employed, the greater the difference is likely to be between a Money Match or Pension Plus Annuity benefit and the Full Formula benefit.
- Since Full Formula benefits are greater for Police & Fire members, the historical advantages of Money Match and Pension Plus Annuity are less.

Average Percentage Excess of Total Benefit Over Full Formula Benefit

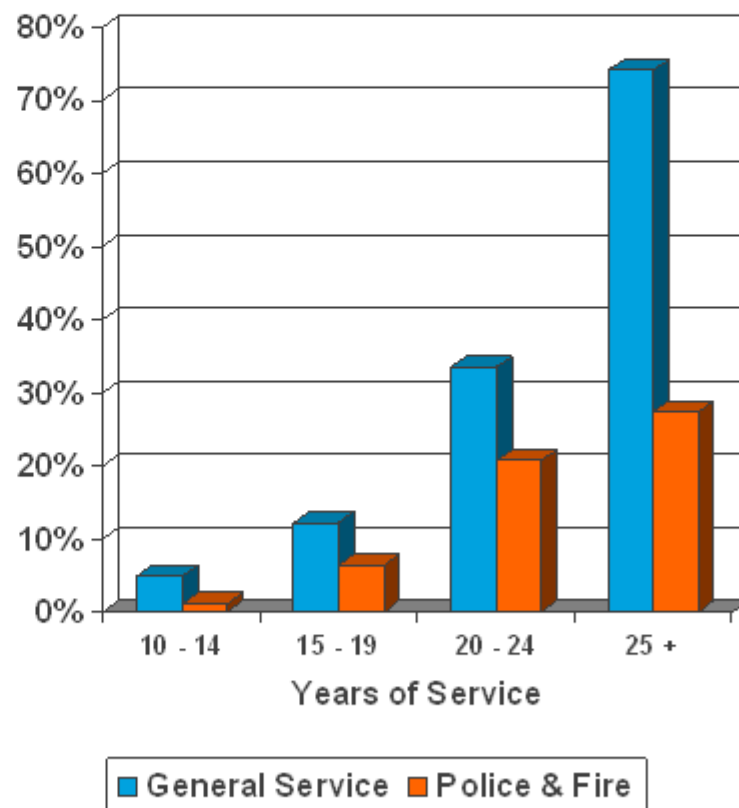


Chart excludes Members reported with less than \$15,000 annual salary for 2007

Descriptive Statistics for Actives

- For Tier 2 Members, Full Formula benefits dominate the System.
- For Tier 1 Members, Full Formula is emerging as the dominant formula for members with fewer years of service. Longer service members, however, tend to have significantly greater benefits under Money Match (or Pension Plus Annuity for Police & Fire members).

Next Steps

- Present Net Cash Outflow information to the OIC and their investment consultants.
- Potential financial modeling study
 - Baseline assumes perfect rebalancing of portfolio.
 - Alternative scenarios examine potential impacts of cash requirements and illiquid investments interacting with investment performance and contribution rate changes.

Appendix

Basis for Study

- All benefit payment projections and descriptive statistics were based on the data, assumptions and methods from the December 31, 2007 actuarial valuation report and a projected stable active population.
- All contribution projections are based on the results of our financial modeling study presented to the Board on May 16, 2008. This study was based on the data, assumptions, and methods from the December 31, 2006 actuarial valuation.
- For IAP projections, we assumed a constant 6% of pay contribution rate and benefit payments (and expenses) equal to 3% of expected prior year assets (projected assuming an 8% return).
- Actual plan experience may differ significantly and materially from the scenarios examined in this study.

The information contained in this document (including any attachments) is not intended by Mercer to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code that may be imposed on the taxpayer.

MERCER



MARSH MERCER KROLL
GUY CARPENTER OLIVER WYMAN



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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November 21, 2008

TO: Members of the PERS Board
FROM: Susan Riswick, Interim Administrator, PPLAD
SUBJECT: Approval of 2009 Legislative Concepts

| | |
|--------------|--------------------|
| MEETING DATE | 11/21/08 |
| AGENDA ITEM | C.2. Lg. Cncpts |

Legislative concepts to be introduced on behalf of state agencies for the Oregon State Legislature's 2009 session must be submitted to the Department of Administrative Services no later than December 15, 2008 for pre-session filing. Two concepts have been drafted for the PERS Board's consideration.

These concepts were developed through the Board's Legislative Advisory Committee. A meeting of that committee is scheduled for November 14, 2008, at which time these two concepts will be reviewed.

REVIEW AND APPROVAL OF 2009 LEGISLATIVE CONCEPTS

The following is an overview of the two concepts. Copies of the bill summaries and the bills as drafted by legislative counsel are attached.

LC 332 Return To Work Retirees

Summary: Allows a retired member who elected to receive a total lump sum payment to be reemployed by a PERS employer under the same provisions as members receiving a monthly benefit. By correcting the omission of these members from the commonly understood 1,040-hour limitation of ORS 238.082, this concept provides a uniform standard of treatment to retired members regardless of the benefit option they choose.

Committee Comments: The LAC supported providing the consistent parameters as outlined in this legislative concept.

Fiscal/Actuarial Impact: None.

Staff Recommendation: Approve for submission.

LC 333 Tier Two Disability

Summary: Eliminates the actuarial reduction for Tier Two members in disability retirement benefit calculations. The effect of the higher normal retirement age for Tier Two members on the disability benefit calculation was not accounted for when Tier Two was established; this concept corrects that oversight. As drafted, this concept would result in that actuarial reduction only being removed for benefits payable after the law's effective date.

This measure also extends the deadline for mailing the initial disability benefit payment from 10 to 15 business days after the members' application is approved.

Committee Comments: The LAC briefly discussed this concept and comments were supportive.

Fiscal/Actuarial Impact: None

Staff Recommendation: Approve for submission.

BOARD OPTIONS

The Board may:

1. Pass a motion to "approve the submission of LC 332 and 333, as presented, to the 2009 Oregon legislative session."
2. Pass a motion to approve only one of the two concepts for submission, as presented, to the 2009 Oregon legislative session.
3. Do nothing; staff will direct DAS to withdraw these concepts from submission.

STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

- Reason: These legislative concepts correct oversights or omissions that presently result in inconsistencies among similarly situated members. The Legislative Advisory Committee vetted these concepts and unanimously recommends submission of these concepts.

C.2.1 Attachment 1 –LC 332 *Return to Work Retirees Bill Summary*

C.2.1.a. Attachment 1 –LC 332 *Draft Bill*

C.2.2. Attachment 1 –LC 333 *Tier Two Disability Bill Summary*

C.2.2.a. Attachment 1 –LC 333 *Draft Bill*



Oregon

Theodore R. Kulongoski, Governor

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LC 332 (H/SB #####) Committee Name Here

What the measure does: This measure would allow a retired member of the Public Employees Retirement System who at retirement elected to receive a total lump sum payment, to be reemployed by a PERS participating public employer under the same provisions as members receiving a monthly benefit, providing a more consistent application of the return-to-work standard regardless of the benefit option chosen by the retired member in the Tier One and Tier Two Program.

Background: The Tier One and Tier Two Program contains varying restrictions and consequences for a retired member who returns to work with a PERS-covered employer. Currently, ORS 238.078 explains the consequences to a retired member if they return to PERS-covered employment. Those consequences depend on whether the member was retired for more or less than six months. Retirement benefits cease and repayment of benefits received may be required depending on the circumstances.

ORS 238.082 provides an exception to ORS 238.078 in several respects, the most common of which is to allow a retired member to work less than 1040 hours in a calendar year without being subject to any of the consequences under ORS 238.078. This exception only applies to retired members who are receiving a monthly service retirement allowance. Members who elect a total lump sum option or are forced to receive a lump sum payment in lieu of a small allowance under ORS 238.315 do not fall under this exception. This “exception to the exception” is not widely understood. That confusion has resulted in numerous inadvertent violations. Members have incurred unexpected repayment obligations and faced tax implications for lump-sum payments rolled to qualified plans. Administration has been disproportionately burdensome for stakeholders and staff.

Solution: This measure would extend the provisions of ORS 238.082 to retired members who receive a lump sum benefit. By applying the more commonly understood 1,040-hour limitation, this measure would provide a uniform standard that avoids the disparate treatment of retired members. It will not affect the limitations of a retired member receiving a monthly retirement allowance nor will it affect the ability of a retired member who elects the total lump sum option to work unlimited hours after the first six months after retirement. However, if the 1,040-hour limitation is violated after the first six months, the member would return to active membership, and lump-sum installment payments, if any, would cease, but the member would incur no repayment obligation for benefits received.

Contact:

- Susan Riswick, PERS Legislative Coordinator (503) 431-8902
- Steve Rodeman, PERS Deputy Director (503) 603-7695
- Paul Cleary, PERS Director (503) 603-7701

LC 332
45900-002
10/16/08 (DH/ps)

D R A F T

SUMMARY

Allows member of Public Employees Retirement System who has been retired for service for more than six months, and who elected to receive lump sum payment or installment payments, to be reemployed by public employer without repayment of lump sum or installment amounts received by member.

Allows retired member who elected to receive lump sum payment or installment payments to be reemployed by public employer, subject to limitations on number of hours of employment.

A BILL FOR AN ACT

1
2 Relating to reemployment of retired members of Public Employees Retirement System; creating new provisions; and amending ORS 238.078, 238.082,
3 238.092 and 399.075 and section 2, chapter 499, Oregon Laws 2007, and
4 section 3, chapter 774, Oregon Laws 2007.
5

6 **Be It Enacted by the People of the State of Oregon:**

7 **SECTION 1.** ORS 238.078 is amended to read:

8 238.078. (1)(a) A [*retired*] member who has been retired for **service for**
9 more than six consecutive calendar months may be reemployed by a partic-
10 ipating public employer in the manner provided by this subsection.

11 (b) Any person reemployed as provided in this subsection shall resume
12 making **employee** contributions [*to the retirement fund*], and the employer
13 shall make contributions on behalf of the person as provided in ORS 238.225.

14 **Except as provided in paragraph (c) of this subsection,** payments of re-
15 tirement allowance **and other benefits** received by [*such person during*
16 *separation from the service*] **the person, including lump sum or install-**
17 **ment payments received by the person under ORS 238.305 (2) or (3),**
18 **shall not be repaid into the retirement fund after the person reenters public**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 employment [except as provided in paragraph (c) of this subsection; but the
2 amount of such payment shall be deducted from such employee's reserve in the
3 retirement fund and the remainder shall be credited pro rata to the funds from
4 which it was derived]. Upon reemployment under this subsection, the
5 board shall cease making payments of retirement allowance and other
6 benefits to the person, including installment payments to the person
7 under ORS 238.305 (4). The board shall reestablish the member account
8 of the person and reduce the account by all payments of retirement
9 allowance and other benefits, including installment payments, that
10 were previously received by the person and that were derived from the
11 member account. Amounts that were credited to the reserve estab-
12 lished by the board for the payment of the person's benefits that were
13 not derived from the member account shall be credited pro rata to the
14 funds from which the amounts were derived.

15 (c) Upon [reentering public employment as provided in] reemployment
16 under this subsection, the former retirement of [such] the reemployed per-
17 son and any election of option for payment of retirement benefits
18 [theretofore] made by the person shall be canceled. [; and thereafter upon re-
19 tiring such person] When the person again retires the person may elect
20 any option for payment of retirement benefits authorized by this chapter,
21 except that a person who elected to receive [lump sum payment of benefits]
22 a service retirement benefit pursuant to ORS 238.305 (2) or (3) at the time
23 of former retirement may not elect any other option at the time of subse-
24 quent retirement unless an amount equal to the lump sum and the interest
25 that would have accumulated on the sum has been repaid by the employee
26 to the fund. Upon such subsequent retirement any prior service pension due
27 the employee shall be derived from the unused portion of the prior service
28 credit reserve and shall be calculated on the basis of then attained age.

29 (2) A [retired] member who has been retired for service for less than six
30 consecutive calendar months may be reemployed by a participating public
31 employer only upon immediate repayment in a lump sum by the member of

1 the amount of retirement benefits drawn. The member account of the mem-
2 ber shall be reestablished just as it was at the time of [earlier] **former** re-
3 tirement after the lump sum repayment is made.

4 (3) If a member of the system who retired before August 21, 1981, is re-
5 employed, as provided in subsection (1) or (2) of this section, beginning on
6 or after August 21, 1981, the service retirement allowance received upon
7 subsequent retirement by the member shall be:

8 (a) For service before August 21, 1981, an allowance including a current
9 service pension computed on the basis of ORS 237.147 (2) (1979 Replacement
10 Part).

11 (b) For service on or after August 21, 1981, an allowance including a
12 current service pension computed on the basis of ORS 238.300 (2).

13 (4) A person may be reemployed by a public employer that is not partic-
14 ipating in the system, or may be employed by a participating public employer
15 in a position that is in a class of employees that was not designated by the
16 public employer under ORS 238.035 as a class of employees that become
17 members of the system, without affecting the person's status as a retired
18 member or the person's continued receipt of retirement benefits.

19 (5) Subsection (4) of this section does not apply to any member who re-
20 tires under the provisions of ORS 238.280 (1), (2) or (3).

21 **SECTION 2.** ORS 238.082 is amended to read:

22 238.082. (1) Subject to the limitations in [subsection (2) of] this section,
23 any public employer may employ any [person receiving a service retirement
24 allowance] **member who is retired for service** if the administrative head
25 of [such] **the public** employer is satisfied that such employment is in the
26 public interest.

27 [(2) *The period or periods of employment by one or more public employers*
28 *of any person receiving a service retirement allowance may not total 1,040*
29 *hours or more in any calendar year; but if the person is receiving old-age,*
30 *survivors or disability insurance benefits under the federal Social Security*
31 *Act, the person may be employed for the number of hours for which the salary*

1 equals the maximum allowed for receipt of the full amount of those benefits
2 to which the person is entitled.]

3 (2) Except as provided in this section, the period or periods of em-
4 ployment by one or more public employers of a retired member who
5 is reemployed under this section may not total 1,040 hours or more in
6 any calendar year.

7 (3) A retired member who is receiving old-age, survivors or disabil-
8 ity insurance benefits under the federal Social Security Act may be
9 employed under this section for the number of hours permitted by
10 subsection (2) of this section, or for the number of hours for which the
11 salary equals the maximum allowed for receipt of the full amount of
12 those benefits to which the person is entitled, whichever is greater.

13 [(3)] (4) Except as provided in subsection (9) of this section, the lim-
14 itations on employment imposed by [subsection (2)] subsections (2) and (3)
15 of this section do not apply to a retired member who is employed as a teacher
16 or as an administrator, as those terms are defined in ORS 342.120, if the re-
17 tired member is employed by a school district or community college district
18 located within a county with a population of not more than 35,000 inhabit-
19 ants according to the latest federal decennial census, or is employed by an
20 education service district and the retired member's primary work duties are
21 performed in a county with a population of not more than 35,000 inhabitants
22 according to the latest federal decennial census. A retired member who is
23 employed under this subsection as a teacher, as defined in ORS 342.120, by
24 the same public employer that employed the member at the time of retire-
25 ment remains in the same collective bargaining unit that included the mem-
26 ber before retirement.

27 [(4)] (5) Except as provided in subsection (9) of this section, the lim-
28 itations on employment imposed by [subsection (2)] subsections (2) and (3)
29 of this section do not apply to a retired member who is employed:

30 (a) By the sheriff of a county with a population of fewer than 75,000 in-
31 habitants, according to the latest federal decennial census;

1 (b) By the municipal police department of a city with a population of
2 fewer than 15,000 inhabitants, according to the latest federal decennial cen-
3 sus;

4 (c) By the state or a county for work in a correctional institution located
5 in a county with a population of fewer than 75,000 inhabitants, according to
6 the latest federal decennial census;

7 (d) By the Black Butte Ranch Rural Fire Protection District, the Black
8 Butte Ranch Service District or the Sunriver Service District;

9 (e) By the Oregon State Police for work in a county with a population
10 of fewer than 75,000 inhabitants, according to the latest federal decennial
11 census; or

12 (f) As a deputy director or assistant director of the Department of Human
13 Services, if the Governor approves the exemption for the person from the
14 limitations on employment imposed in [subsection (2)] subsections (2) and
15 (3) of this section.

16 [(5)] (6) **Except as provided in subsection (9) of this section**, the lim-
17 itations on employment imposed by [subsection (2)] subsections (2) and (3)
18 of this section do not apply to a retired member who is employed to tempo-
19 rarily replace an employee who serves in the National Guard or in a reserve
20 component of the Armed Forces of the United States and who is called to
21 federal active duty.

22 [(6)] (7) **Except as provided in subsection (9) of this section**, the lim-
23 itations on employment imposed by [subsection (2)] subsections (2) and (3)
24 of this section do not apply to a retired member who is employed by a road
25 assessment district organized under ORS 371.405 to 371.535.

26 [(7)] (8) **Except as provided in subsection (9) of this section**, the lim-
27 itations on employment imposed by [subsection (2)] subsections (2) and (3)
28 of this section do not apply to a retired member who is a nurse and is em-
29 ployed by a public employer as a nurse or for the purpose of teaching nursing
30 during the period in which a nursing workforce shortage declared by the
31 Legislative Assembly or the Governor is in effect.

1 [(8)(a)] **(9)(a)** Except as provided in paragraph (b) of this subsection,
2 subsections [(3) to (7)] **(4) to (8)** of this section do not apply to any member
3 who retires under the provisions of ORS 238.280 (1), (2) or (3).

4 (b) Subsection [(3)] **(4)** of this section applies to a person who retires
5 under the provisions of ORS 238.280 (1), **(2)** or (3) as long as the person's date
6 of retirement is more than six months before the date the person is employed
7 under subsection [(3)] **(4)** of this section.

8 [(9)] **(10)** Employment under this section does not affect the status of a
9 person as a retired member of the system and a recipient of retirement ben-
10 efits under this chapter.

11 **SECTION 3.** ORS 238.092 is amended to read:

12 238.092. (1) Notwithstanding any other provision of this chapter:

13 (a) A retired member of the system who has retired as other than a
14 member of the Legislative Assembly and who thereafter becomes a member
15 of the Legislative Assembly and elects to become an active member of the
16 system as a member of the Legislative Assembly may also elect, by giving
17 the board written notice of desire to do so, to receive the pension and an-
18 nuity provided by this chapter for service as other than a member of the
19 Legislative Assembly, and be an active member of the system as a member
20 of the Legislative Assembly for the period the member holds office as a
21 member of the Legislative Assembly. The notice provided for in this para-
22 graph shall be given within 30 days after the retired member takes office as
23 a member of the Legislative Assembly.

24 (b) A member of the Legislative Assembly who is a member of the system
25 as a member of the Legislative Assembly and who becomes eligible to retire
26 by reason of service as other than a member of the Legislative Assembly,
27 without regard to when that service was performed, may elect, by giving the
28 board written notice of desire to do so, to retire and receive the pension and
29 annuity provided by this chapter for service as other than a member of the
30 Legislative Assembly, and to continue, for the period the member holds office
31 as a member of the Legislative Assembly, as an active member of the system

1 as a member of the Legislative Assembly.

2 (c) Upon receipt of the notice provided for in paragraphs (a) and (b) of
3 this subsection, the board shall determine that portion of the accumulated
4 contributions, if any, of the member and interest thereon attributable to
5 service as other than a member of the Legislative Assembly, which shall be
6 used in determining the amount of the annuity the member shall receive for
7 that service. The portion of the accumulated contributions, if any, of the
8 member and interest thereon attributable to service as a member of the
9 Legislative Assembly shall remain in the member account of the member and,
10 together with any subsequent contributions and interest thereon, be used in
11 determining the amount of the additional annuity the member shall receive
12 for that service upon ceasing to hold office as a member of the Legislative
13 Assembly. If the member does not have a member account, the board shall
14 determine the member's retirement allowance for nonlegislative service based
15 on the number of years of nonlegislative service, and shall determine any
16 additional benefit to be received after the member ceases to hold office as a
17 member of the Legislative Assembly based on the number of years of service
18 in the Legislative Assembly.

19 (2) If a retired member of the system is employed by the Legislative As-
20 sembly, or by the Oregon State Police, for the purpose of service during a
21 regular or special session of the Legislative Assembly, the hours worked
22 during the session shall not be counted for the purpose of the limitations on
23 employment imposed by ORS 238.082 (2) **and** (3).

24 **SECTION 4.** ORS 399.075 is amended to read:

25 399.075. (1) The Adjutant General, with the approval of the Governor, may
26 order members of the organized militia to active state duty. Members, while
27 on active state duty, shall receive not less than the pay and allowances of
28 their corresponding grades in the Armed Forces of the United States in ac-
29 cordance with a schedule approved by the Adjutant General for the period
30 of time in active state duty. Active state duty under this subsection includes,
31 but is not limited to, support of federal, state and local drug eradication,

1 interdiction and other counterdrug operations under a counterdrug support
2 plan approved by the Governor, and reasons related to homeland security.
3 When participating in such support operations, and to the extent authorized
4 by 32 U.S.C. 112, applicable regulations of the National Guard Bureau and
5 the Oregon Counterdrug Support Plan, the Oregon Military Department is
6 designated as a law enforcement agency for the purpose of carrying out fed-
7 eral asset forfeiture laws only.

8 (2) Members of the organized militia serving on courts-martial, courts of
9 inquiry, efficiency boards, medical boards or other special duty requiring
10 absence from their stations or business under competent orders may be re-
11 imbursed for necessary expenses incurred at the rate established for state
12 employees under appropriate travel regulations issued by the Oregon De-
13 partment of Administrative Services.

14 (3) In lieu of other provisions of this chapter, a medical examiner may
15 be paid for services and necessary disbursements and a properly appointed
16 judge advocate may be paid for legal services and necessary disbursements
17 in any suit, action or proceeding, such amounts as shall be approved by the
18 Governor.

19 (4) Members of the organized militia shall not receive from the state the
20 pay or the pay and allowances provided for by this section when eligible for
21 such pay and allowances from federal funds.

22 (5) Notwithstanding any of the provisions of this chapter, members of the
23 organized militia may with their consent perform without pay or without pay
24 and allowances any of the types of military duty prescribed in this chapter
25 and ORS chapters 396 and 398 pursuant to orders issued by competent mili-
26 tary authority; provided however, that necessary traveling expenses,
27 subsistence and per diem allowances may be furnished such members within
28 the discretion of the Adjutant General and within the amount appropriated
29 therefor.

30 (6) All pay and allowances provided for by this chapter, except per diem,
31 mileage and expenses while traveling under orders shall be subject to be

1 applied to the payment of penalties and fines imposed by military courts, and
2 to the payment of any shortage of or injury to state or United States prop-
3 erty or funds for which a member of the organized militia is responsible or
4 accountable where such responsibility has been fixed by competent authority.

5 (7)(a) Except as provided in paragraph (b) of this subsection, members of
6 the organized militia who are ordered to active state duty shall be considered
7 temporary employees of the military department.

8 (b) Members of the organized militia who are ordered to active state duty
9 are not subject to ORS chapter 240 and ORS 243.650 to 243.782.

10 (8) The limitations on employment imposed by ORS 238.082 (2) **and** (3) do
11 not apply to a retired member of the Public Employees Retirement System
12 who has attained normal retirement age and is on active state duty.

13 **SECTION 5.** Section 2, chapter 499, Oregon Laws 2007, is amended to
14 read:

15 **Sec. 2.** (1) The limitations on employment imposed by ORS 238.082 (2) **and**
16 (3) do not apply to a retired member who is a registered nurse and who is
17 employed by a public employer as a nursing instructor.

18 (2) The limitations on employment imposed by ORS 238.082 (2) **and** (3) do
19 not apply to a retired member who is employed by the Department of Public
20 Safety Standards and Training for the purpose of providing training under
21 ORS 181.610 to 181.712.

22 (3) This section does not apply to any member who retires under the
23 provisions of ORS 238.280 (1) or (3).

24 (4) Employment under this section does not affect the status of a person
25 as a retired member of the Public Employees Retirement System and a re-
26 cipient of retirement benefits under this chapter.

27 **SECTION 6.** Section 3, chapter 774, Oregon Laws 2007, is amended to
28 read:

29 **Sec. 3.** (1) The limitations on employment imposed by ORS 238.082 (2) **and**
30 (3) do not apply to a retired member who is employed by a school district
31 or education service district to provide services as a speech-language

1 pathologist or speech-language pathologist assistant.

2 (2) This section does not apply to any member who retires under the
3 provisions of ORS 238.280 (1) or (3) unless the person's date of retirement is
4 more than six months before the date the person is employed under this
5 section.

6 (3) Employment under this section does not affect the status of a person
7 as a retired member of the Public Employees Retirement System and a re-
8 cipient of retirement benefits under this chapter.

9 **SECTION 7. The amendments to ORS 238.078, 238.082, 238.092 and**
10 **399.075 and section 2, chapter 499, Oregon Laws 2007, and section 3,**
11 **chapter 774, Oregon Laws 2007, by sections 1 to 6 of this 2009 Act apply**
12 **to any retired member of the Public Employees Retirement System**
13 **who is employed by a participating public employer before the effective**
14 **date of this 2009 Act and who is an employee of the employer on the**
15 **effective date of this 2009 Act, and to any retired member who is em-**
16 **ployed by a participating public employer on or after the effective date**
17 **of this 2009 Act.**

18



Oregon

Theodore R. Kulongoski, Governor

C.2. Attachment 2.a.

Public Employees Retirement System

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LC 333 (H/SB #####) Committee Name Here

What the measure does: This concept standardizes disability retirement benefit calculations to eliminate the actuarial reduction for Tier Two members who have not yet reached normal retirement age as defined by ORS 238.435(5), and extends the deadline for the initial disability benefit payment to 15 business days.

Background: Disability retirement calculations involve calculating a benefit as if the member had worked until reaching age 58 (for members who are not Police Officers or Firefighters (P&F)), and then retired for service (ORS 238.320(1)(b)(B)). That is the normal retirement age for Tier One non-P&F members. Non-P&F Tier Two members have a different normal retirement age of 60 (ORS 238.435(5)), while P&F members in both Tier One and Tier Two have the same normal retirement age of 55.

The interplay of this calculation with early retirement eligibility was not addressed when Tier Two was created in 1996. ORS 238.280 directs that anyone who retires early will receive a reduced retirement benefit that is actuarially equivalent to the allowance provided at normal retirement age. Reading the requirement in ORS 238.320 to calculate the disability retirement as if the member worked to age 58 and then retired for service, together with the actuarial reduction for early retirement in ORS 238.280, means Tier Two members who receive a disability retirement benefit have that benefit actuarially reduced, but Tier One members do not. This legislative concept eliminates the actuarial reduction on Tier Two disability benefits for benefits paid after its effective date.

As a separate issue, ORS 238.455(1)(b) provides that disability retirement benefit payments must start within 10 days after the member's application is approved. That narrow window presents some logistical challenges that raise processing and internal control concerns. The concept extends the benefit inception deadline to a more realistic 15 business days.

Solution: After the effective date of this legislative concept, Tier Two members would have their disability retirement allowance calculated without actuarial reduction. In addition, the concept extends the deadline for the Public Employees Retirement Board to mail an estimated disability retirement allowance or benefit within 15 business days of the later of: the date the board approves the member's disability benefit; the date the board receives the member's election of one of the optional forms of disability retirement allowance; or the date the first monthly payment is due.

Contact:

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LC 333
45900-003
10/16/08 (DH/ps)

D R A F T

SUMMARY

Provides that in calculating disability retirement allowance of Tier 2 member of Public Employees Retirement System, member's current service pension is equal to pension to which member would be entitled if member worked continuously until attaining age of 58, without actuarial reduction, or if member has attained age of 58, pension which member would receive if member retired for service, without actuarial reduction.

Provides that Public Employees Retirement Board must mail estimated disability retirement allowance or benefit not more than 15 business days after latest of specified events.

Declares emergency; effective on passage.

A BILL FOR AN ACT

1
2 Relating to disability retirement; creating new provisions; amending ORS
3 238.320 and 238.455; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 238.320 is amended to read:

6 238.320. (1) Whenever an employee who is a member of the **Public Em-**
7 **ployees Retirement** System is found[, *after being examined by one or more*
8 *physicians selected by the board,*] **by the Public Employees Retirement**
9 **Board** to be mentally or physically incapacitated for an extended duration,
10 as determined by medical examination, and thereby unable to perform any
11 work for which qualified, by injury or disease sustained while in actual
12 performance of duty and not intentionally self-inflicted, the member shall
13 receive a disability retirement allowance consisting of:

14 (a) A disability retirement refund annuity based on the contributions, if
15 any, credited to the member account of the member.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (b) A current service pension provided by the contributions of employers
2 equal to:

3 (A) For a police officer or firefighter, the pension to which the member
4 would [*have been*] **be entitled under this chapter** if the member [*had*]
5 worked continuously until attaining the age of 55, or if the member has at-
6 tained the age of 55, the pension which the member would receive [*were the*
7 *member to retire for service, as provided in this chapter*] **under this chapter**
8 **if the member retired for service.**

9 (B) For a member other than a police officer or firefighter **who estab-**
10 **lished membership in the system before January 1, 1996, as described**
11 **in ORS 238.430 (2),** the pension to which the member would [*have been*] **be**
12 **entitled under this chapter** if the member [*had*] worked continuously until
13 attaining the age of 58, or if the member has attained the age of 58, the
14 pension which the member would receive [*were the member to retire for ser-*
15 *vice, as provided in this chapter*] **under this chapter if the member retired**
16 **for service.**

17 (C) For a member other than a police officer or firefighter who es-
18 tablished membership in the system on or after January 1, 1996, as
19 described in ORS 238.430 (2), and before August 29, 2003, as described
20 in ORS 238A.025 (4), the pension to which the member would be enti-
21 tled under this chapter if the member worked continuously until at-
22 taining the age of 58, without actuarial reduction under ORS 238.280
23 (1), or if the member has attained the age of 58, the pension which the
24 member would receive under this chapter if the member retired for
25 service, without actuarial reduction under ORS 238.280 (1).

26 (c) The same prior service pension the member would have received had
27 the member worked until normal retirement age.

28 (2) As used in subsection (1) of this section, "injury" means bodily injury
29 causing the disability directly and independently of all other causes and ef-
30 fected solely through accidental means.

31 (3) Whenever an employee who is a member of the system and who has

1 been an employee for 10 years or more of an employer participating in the
2 system is found[*after being examined by one or more physicians selected*] by
3 the board[,] to be mentally or physically incapacitated for an extended du-
4 ration, as determined by medical examination, and thereby unable to perform
5 any work for which qualified, from cause other than injury or disease sus-
6 tained while in actual performance of duty or intentionally self-inflicted, the
7 member shall receive a disability retirement allowance as provided in sub-
8 section (1) of this section.

9 (4) Payments under a disability retirement allowance provided for in
10 subsection (1) or (3) of this section for the first 90-day period of incapacity
11 shall be withheld until such 90-day period has elapsed.

12 (5) An inactive member is not eligible for disability benefits referred to
13 in subsection (1) or (3) of this section unless the member applies for such
14 disability benefits within five calendar years after the date of separation
15 from service with a participating public employer if the disability is contin-
16 uous from such separation date or within six months after the date of such
17 separation from service if disability occurs after such separation date.

18 (6) In computing years of employment for the purpose of subsection (3)
19 of this section, the following schedule shall be used: For employment before
20 the employee established membership in the Public Employees Retirement
21 System, a member shall be considered to have been employed for one year
22 for each year of prior service credit allowed, and for any minor fraction of
23 a year of continuous service as certified by the employer for which no prior
24 service credit was granted. After having established membership in the
25 Public Employees Retirement System a member shall be considered to have
26 been employed one year for each 12-month period or major fraction thereof
27 during which time the member received compensation for employment which
28 entitled the member to membership in the system, as evidenced by payroll
29 records. For the purpose of determining a member's eligibility for disability
30 benefits, no leave of absence after a member ceases to work for any partic-
31 ipating employer shall be considered other than accumulated sick leave not

1 in excess of 90 days. The effective date of the disability shall not in any
2 event be determined by the board as prior to the last day for which the dis-
3 abled member performed services for a participating employer. No benefits
4 may be paid for any month in which the member received salary or sick leave
5 benefits from the participating employer.

6 (7) For the purposes of subsections (1) and (3) of this section, a member
7 of the system shall be considered to be mentally or physically incapacitated
8 for an extended duration if the mental or physical incapacity can be expected
9 to result in death or has lasted or can be expected to last for a continuous
10 period of not less than 90 days.

11 **SECTION 2.** ORS 238.455 is amended to read:

12 238.455. (1)(a) Whenever a member of the **Public Employees Retirement**
13 **System** is retired for service and is entitled to receive a retirement allowance
14 or benefit that is payable monthly, and the Public Employees Retirement
15 Board is unable to calculate the amount of the monthly payment in time to
16 allow mailing of the monthly payment to the member within 62 days of the
17 date the first monthly payment is due, the board shall calculate an estimated
18 amount for the monthly payment based on the information then available to
19 the board and shall mail that payment to the member within 62 days of the
20 date the first monthly payment is due.

21 (b) Whenever a member of the system is retired for disability and is en-
22 titled to receive a retirement allowance or benefit that is payable monthly,
23 and the board is unable to calculate the amount of the monthly payment in
24 time to allow mailing of the monthly payment to the member within [10] 15
25 **business** days of either the date the board approves the member's application
26 or the date that the first monthly payment is due, whichever is later, the
27 board shall calculate an estimated amount for the monthly payment based
28 on the information then available to the board and shall mail that payment
29 to the member within [10] 15 **business** days of the date the board approves
30 the member's disability benefit, the date the board receives the member's
31 election of one of the optional forms of disability retirement allowance or

1 the date the first monthly payment is due, whichever is later.

2 (2) The board shall continue to mail estimated payments under subsection
3 (1) of this section until such time as the correct amount of the monthly
4 payment is determined.

5 (3) The board shall notify the member receiving an estimated payment
6 under subsection (1) of this section that the payment is an estimated payment
7 only. The board shall further notify the member of the provisions of sub-
8 section (4) of this section.

9 (4) If the board determines that any estimated payment made to the
10 member under subsection (1) of this section resulted in payment to the
11 member of an amount other than the correct amount due the member as a
12 retirement allowance or benefit, the board shall immediately so notify the
13 member. Thereafter, the board may increase or decrease the monthly payment
14 to the member until such time as the total difference between the amount
15 or amounts the member received and the amount or amounts the member
16 should have received is accounted for. Thereafter the member shall receive
17 the monthly payment as finally calculated by the board.

18 (5) If the estimated payment made to the member under subsection (1) of
19 this section results in an underpayment to the member of \$10 or more a
20 month, the board shall pay interest on the balance of such underpayment at
21 a rate established by rule of the board until such time as the underpayment
22 is paid to the member pursuant to subsection (4) of this section.

23 (6) No member shall have any right to any allowance or other benefit
24 other than that provided for in this chapter and ORS chapter 238A based on
25 the board's estimate under this section or based on any other estimate made
26 by the board for any other purpose under this chapter and ORS chapter 238A.

27 **SECTION 3. (1)(a) The amendments to ORS 238.320 by section 1 of**
28 **this 2009 Act apply to all members of the Public Employees Retirement**
29 **System who are retired for disability under ORS 238.320, whether be-**
30 **fore, on or after the effective date of this 2009 Act.**

31 (b) As soon as possible after the effective date of this 2009 Act, the

1 **Public Employees Retirement Board shall recompute the disability re-^{3. Attachment 2.a.}**
2 **irement allowance of any member who was retired for disability be-**
3 **fore the effective date of this 2009 Act, who is receiving a disability**
4 **retirement allowance on the effective date of this 2009 Act, and who**
5 **would receive an increased disability retirement allowance under ORS**
6 **238.320 as amended by section 1 of this 2009 Act. The recomputed dis-**
7 **ability retirement allowance is effective for the next full month after**
8 **the effective date of this 2009 Act, payable the first day of the month**
9 **thereafter.**

10 **(2) The amendments to ORS 238.455 by section 2 of this 2009 Act**
11 **apply only to members of the Public Employees Retirement System**
12 **whose application for disability retirement is first received by the**
13 **Public Employees Retirement Board on or after the effective date of**
14 **this 2009 Act.**

15 **SECTION 4. This 2009 Act being necessary for the immediate pres-**
16 **ervation of the public peace, health and safety, an emergency is de-**
17 **clared to exist, and this 2009 Act takes effect on its passage.**

18