

OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM BOARD MEETING

Friday September 30, 2011 1:00 P.M.		PERS 11410 SW 68 th Parkway Tigard, OR	
ITEM		PRESENTER	
A. Administration			
1. 2.	July 29, 2011 Board Meeting Minutes Director's Report a. Forward-Looking Calendar b. OIC Investment Report c. Operating Budget Report d. Quarterly Report of Member Transactions	CLEARY	
B. Administrative Rulemaking			
1. 2. 3. 4.	Adoption of Disability Rules Adoption of Retention of Membership by School Employees Rule (Repeal) Notice of Continuous Service Rule Notice of Public Records Rule	RODEMAN	
C. Action and Discussion Items			
1. 2.	2010 Valuation Results 2010 Actuarial Equivalency Factors	MERCER	
D. Executive Session Pursuant to ORS 192.660(2)(f), (h), and/or ORS 40.225			
1.	Litigation Update	LEGAL COUNSEL	

In compliance with the Americans with Disabilities Act, PERS will provide this document in an alternate format upon request. To request this, contact PERS at 888-320-7377 or TTY 503-603-7766.

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.

James Dalton, Chair * Eva Kripalani * Mike Pittman * Laurie Warner * Pat West
Paul R. Cleary, Executive Director
Level 1 - Public



OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM BOARD MEETING

July 29, 2011
Tigard, Oregon

MINUTES

Board Members:

James Dalton, Chair
Eva Kripalani
Michael Pittman
Laurie Warner
Pat West

Staff:

Donna Allen
Gay Lynn Bath
Josh Binkley
Paul Cleary
David Crosley
Jon DuFrene
Joe DeLillo
Yvette Elledge
Brian Harrington
Debra Hembree
Sue Korn
Jeff Marecic
Zue Matchett
Joe O'Leary
Brenda Pearson
Beth Porter
Steve Rodeman
Susan Sjordal
Jason Stanley
Stephanie Vaughn
Carol Vogel
Emily Walker

Others:

Bruce Adams
Rob Aldisert
Steve Beck
Kathy Black
Molly Butler
Myrnie Daut
Bruce Griswold
Marc Feldesman
Greg Hartman
Jeanine Keller
Keith Kutler
Matt Larrabee
Bob Oleson
Steve Manton
Judy Murray
Victor Nolan
Cora Parker
P. Peg
Megan Phelan
Scott Preppernau
John R. Wish
Deborah Tremblay
Denise Yunker
David Wimmer
Scott Winkles

Chair James Dalton called the meeting to order at 1:00 P.M.

ADMINISTRATION

A.1. BOARD MEETING MINUTES OF MAY 26, 2011

The Board unanimously approved the minutes from the May 26, 2011 Board meeting.

A.2. DIRECTOR'S REPORT

Executive Director Paul Cleary presented the Board's forward-looking calendar noting that the September meeting has been rescheduled to September 30. Cleary reported that meeting will include 2010 valuation results with an update on the unfunded liability and where future employer rates may be headed. Cleary provided the May and June year-to-date Oregon Investment Council (OIC) reports showing regular year-to-date account returns of 7.51% and one-year returns of 22.6% as of June 30, 2011.

Cleary reported the 2009-11 biennial operating budget should close with a positive variance of approximately \$4.4 million or 5.3% of the budget. Cleary noted reductions in the 2011-13 legislatively approved budget will likely limit future positive variances. Cleary provided notice to the Board that requests for proposal will go out for a PERS Retiree Health Insurance Third-Party Administrator and the Retiree Health Care Consultant Agreement. Cleary reported Online Member Services (OMS) will be available to the retirees and inactive members on August 1, 2011. Cleary noted the new Data Verification Process was fully implemented July 1, 2011 and approximately 100 requests have been received. Cleary presented the July 1, 2011 pension role incident report acknowledging the efforts of everyone who stepped up once the

problem was identified to minimize the impacts on retirees. Cleary was pleased to report the August 1 pension roll file transfer has already occurred and no issues have been reported by State Treasury or US Bank.

RULE ADOPTION

B.1. ADOPTION OF OSGP SELF-DIRECTED BROKERAGE OPTION RULES

Deputy Director Steve Rodeman presented proposed new rules and rule modifications for adoption to implement OSGP's new Self-Directed Brokerage Option.

Board Member Laurie Warner moved and Board member Eva Kripalani seconded the motion to adopt the Self-Directed Brokerage Option rules as presented. The motion passed unanimously.

B.2. ADOPTION OF COMBINED AND CONCURRENT SERVICE RULES

Rodeman presented new rules for adoption clarifying retirement eligibility and benefit calculation for members with service as a police officer or firefighter and as other than a police officer or fire fighter (combined service), and repealing redundant rules.

Warner moved and Kripalani seconded the motion to adopt the combined and concurrent service rules as presented. The motion passed unanimously.

B.3. ADOPTION OF SOCIAL SECURITY RULES

Rodeman presented modified Social Security rules for adoption to align with current practices and repeal obsolete provisions.

Warner moved and Board member Pat West seconded the motion to adopt the Social Security rules as presented. The motion passed unanimously.

NOTICE OF RULEMAKING

B.4. NOTICE OF RULEMAKING FOR DISABILITY RULES

Rodeman provide notice of rulemaking to help provide clear and consistent criteria for discontinuing disability payments to members who are transitioning back into the workforce. Rodeman noted these rules impact many people and it is important to receive stakeholder feedback. Rodeman stated a public hearing will be held on August 23 with comments due by September 1. No Board action was required.

Board member Michael Pittman cautioned against creating inflexible standards for cutting off disability benefits upon return to work. Pittman noted the Board has exercised some flexibility in the past in determining disability cases, and does not want to lose this flexibility.

Chair Dalton briefly described the previous one-step employer rate collar as an example of where a rigid standard could have resulted in a non-sensible and inflexible result.

B.5. NOTICE OF RULEMAKING TO REPEAL THE RETENTION OF MEMBERSHIP BY SCHOOL EMPLOYEES RULE

Rodeman provided notice to repeal an existing rule regarding school employees loss of membership that is now unnecessary given the specific statutory loss of membership standard for school employees in ORS 238.095. No Board action is required.

ACTION AND DISCUSSION ITEMS

C.1. CITY CLUB OF PORTLAND PERS STUDY RECOMMENDATIONS

Director Cleary introduced City Club representatives Rob Aldisert, Chairman of the PERS Study Committee, and Kathy Black, principle writer of the City Club report.

Aldisert described the process of the year-long PERS study and the make-up of committee membership. Aldisert and Black provided a brief summary of the Study Committee's recommendations, noting the committee's rationale for advancing each recommendation and their thoughts on where the authority exists to implement the various recommendations.

Greg Hartman, PERS Coalition, commented on the City Club report. Hartman noted most of the recommendations were legislative matters and some have already been reviewed and ruled on in previous court cases. Hartman suggested the Board not go outside its role of administering the system in taking any action on these recommendations.

The Board members commended the Study Committee on their time and effort in researching PERS and preparing the report and associated recommendations. Comments and observations were provided by each Board member.

Chair Dalton asked staff to seek an opinion from DOJ or outside counsel on the Board's potential authority to "decouple" the assumed earnings rate and the annuitization rate used to calculate money match annuities. Dalton encouraged the City Club Committee to continue their public discussion process and to discuss their recommendations with the legislature.

Cleary described the PERS Board's statutory role as policy advisor to the legislature and the associated stakeholder Legislative Advisory Committee (LAC) process. Cleary suggested the City Club Study Committee recommendations be reviewed and discussed by the LAC for feedback to the Board.

C.2. 2010 EXPERIENCE STUDY – INVESTMENT RETURN AND DEMOGRAPHIC ASSUMPTIONS

Matt Larrabee and Scott Preppernau, Mercer, described the actuarial valuation schedule for the biennial employer rate-setting process, noting the current 2010 advisory valuation cycle. They presented the biennial Experience Study that is based on the membership data received from PERS. Mercer also described their long-term investment return information and analysis to help the Board select a long-term investment return assumption to be used in the December 31, 2010 and December 31, 2011 actuarial valuations. Mercer will return to the Board in

September with the 2010 System Valuation results which will provide some advisory employer contributions rates for the 2013-15 biennium. In addition, Mercer will provide the actuarial equivalency factors (AEF's) for adoption that will be used for retirements in the 2012-2013 calendar years.

Following a short break, Chair Dalton asked for separate motions on the various Mercer recommendations.

Eva Kripalani moved and Laurie Warner seconded the motion to approve Mercer's recommendation on the treatment of a negative Rate Guarantee Reserve. Motion carried four to one with Pat West opposed.

Kripalani moved and West seconded to approve the proposed demographic and miscellaneous economic assumptions including those noted in the appendix. Motion carried unanimously.

Chair Dalton asked if there were any comments from the audience before the Board voted on the assumed earnings rate recommendations for the regular and variable accounts (selecting a regular account assumption and then setting the variable account assumption 25 basis points greater than the regular account assumption).

Steve Manton, City of Portland, recommended that PERS maintain the 8 percent investment return assumption for the regular account. He stated this would prevent increased employer costs at a time when employer budgets are very tight and prevent an abnormal increase in retirements.

Greg Hartman, PERS Coalition, stated that unless there is a compelling reason to change, and in his opinion the long-term investment return projections from Mercer and SIS currently do not support a change, he suggested continuing the 8 percent long term investment return assumption.

Scott Winkles, League of Oregon Cities, stated that there is no reason to deviate from the current 8 percent assumption. Winkles stated it would be detrimental to the stability of the system with an increase in retirements and increasing employer rates which would be a challenge for employers in the foreseeable future.

Myrnie Daunt, City of Eugene, suggested that as long as the 8 percent is within the range of reasonable long-term investment return expectations, the Board should maintain stability for employers who are already experiencing financial hardship and not make a change.

The Board members provided comment and discussion on the assumed rate of return, noting that there is no definitive answer from the various investment consultants. Chair Dalton advised employers to make contingency plans in case the fund does not make the projected earnings and will have to be funded through increased employer contributions.

The Board, in a four to one roll call vote, approved maintaining the long-term assumed earnings rate at 8 percent with Dalton opposed, saying he supported a 7.75 percent assumed rate.

Cleary noted that while Oregon is like the majority of public retirement systems in using an 8 percent assumed earnings rate, the Board also uses a number of more conservative funding methods and assumptions relative to pension systems around the nation, including a shorter amortization period, regularly updated mortality tables, fair market value of assets (no asset smoothing), and regularly adjusted employer rates.

C.3. 2011 LEGISLATIVE SESSION ADJOURNMENT REPORT

PPLAD Administrator Joe O'Leary briefly summarized eight bills adopted during the 2011 Legislative session. O'Leary reported the PERS Legislative Implementation Team will meet next week to begin the implementation process. O'Leary provided the timeline and details for the upcoming Legislative sessions.

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

The Board reconvened at 3:50 PM. There being no additional items for discussion, Dalton adjourned the meeting at 3:55 PM.

Respectfully submitted,



Paul R. Cleary
Executive Director



PERS Board Meeting Forward-Looking Calendar

November 18, 2011

Adoption of Public Records Rule
Adoption of Continuous Service Rule
Adoption of Temporary Rules to Implement 2011 Legislation
Employer Reporting
Audit Committee Meeting

Tentative 2012 Board Meeting Dates

Friday, January 27
Thursday, March 22
Friday, May 18
Friday, July 27
Friday, September 28
Friday, November 30

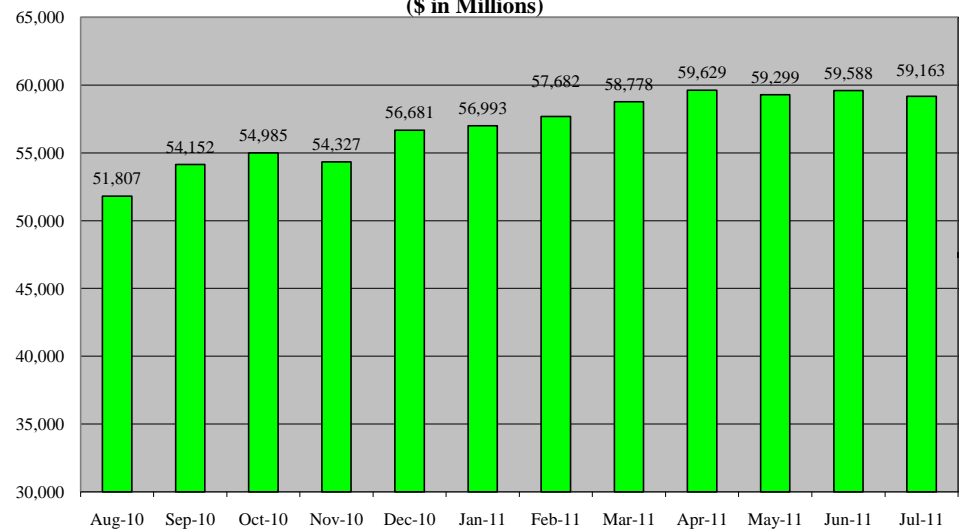


OPERF	Regular Account				Historical Performance (Annual Percentage)					
	Policy ¹	Target ¹	\$ Thousands ²	Actual	Year-To-Date ³	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS
Public Equity	38-48%	43%	\$ 22,372,346	38.4%	3.30	20.61	16.74	2.41	(1.08)	2.86
Private Equity	12-20%	16%	13,374,925	23.0%	13.95	21.40	24.82	4.97	5.61	9.40
Total Equity	54-64%	59%	35,747,271	61.4%						
Opportunity Portfolio			915,384	1.6%	9.95	17.93	23.42	8.65	5.71	
Total Fixed	20-30%	25%	15,270,681	26.2%	5.17	8.23	11.93	10.34	8.12	7.63
Real Estate	8-14%	11%	6,099,835	10.5%	12.35	18.92	8.77	(4.53)	(3.01)	0.84
Alternative Investments	0-8%	5%	200,155	0.3%	N/A					
Cash	0-3%	0%	899	0.0%	0.53	0.85	0.96	1.05	1.82	2.53
TOTAL OPERF Regular Account		100%	\$ 58,234,225	100.0%	7.20	17.41	16.48	4.11	2.06	4.81
OPERF Policy Benchmark					6.60	15.19	15.12	4.40	2.45	4.95
Value Added					0.60	2.22	1.36	(0.29)	(0.39)	(0.14)
TOTAL OPERF Variable Account			\$ 928,815		3.10	19.35	15.89	2.17	(1.83)	0.99

Asset Class Benchmarks:

Russell 3000 Index	3.92	20.94	17.84	3.48	(0.16)	2.89
MSCI ACWI Ex US IMI Net	2.28	18.15	14.37	1.18	(1.60)	3.79
MSCI ACWI IMI Net	2.92	19.21	15.68	2.03	(1.30)	3.11
Russell 3000 Index + 300 bps--Quarter Lagged	20.43	20.89	37.39	7.77	5.02	6.82
Oregon Custom FI Benchmark	3.86	4.27	6.81	6.93	6.56	6.36
NCREIF Property Index--Quarter Lagged	8.14	16.03	2.42	(3.63)	0.41	3.45
91 Day T-Bill	0.08	0.14	0.15	0.36	1.11	1.91

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



¹OIC Policy 4.01.18, as revised April 2011.

²Includes impact of cash overlay management.

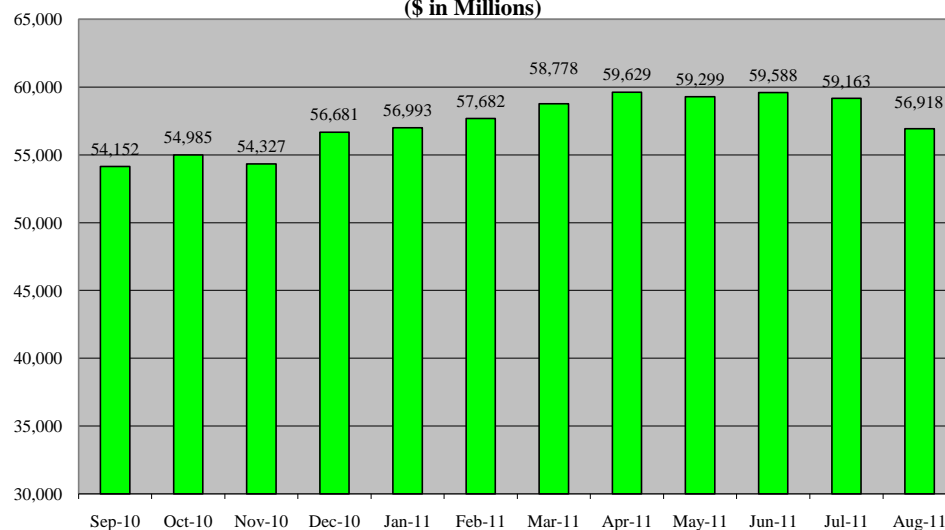
³For mandates beginning after January 1 (or with lagged performance), YTD numbers are "N/A". Performance is reflected in Total OPERF.

OPERF	Regular Account				Historical Performance (Annual Percentage)					
	Policy ¹	Target ¹	\$ Thousands ²	Actual	Year-To-Date ³	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS
Public Equity	38-48%	43%	\$ 20,266,019	36.1%	(5.13)	14.97	9.79	0.17	(3.09)	0.66
Private Equity	12-20%	16%	13,398,684	23.9%	13.95	21.40	24.82	4.97	5.61	9.40
Total Equity	54-64%	59%	33,664,703	60.0%						
Opportunity Portfolio			916,720	1.6%	8.46	15.12	20.18	8.26	5.35	5.34
Total Fixed	20-30%	25%	15,237,193	27.2%	4.58	6.39	10.63	9.92	7.77	7.17
Real Estate	8-14%	11%	6,035,050	10.8%	10.97	17.42	7.02	(4.91)	(3.51)	0.45
Alternative Investments	0-8%	5%	210,528	0.4%	N/A					
Cash	0-3%	0%	2,061	0.0%	0.24	0.49	0.72	0.86	1.63	2.37
TOTAL OPERF Regular Account		100%	\$ 56,066,255	100.0%	3.53	14.74	13.08	3.20	1.13	3.72
OPERF Policy Benchmark					2.84	12.53	11.98	3.42	1.41	3.82
Value Added					0.69	2.21	1.10	(0.22)	(0.28)	(0.10)
TOTAL OPERF Variable Account			\$ 851,859		(4.54)	14.55	9.44	0.22	(3.90)	(0.90)

Asset Class Benchmarks:

Russell 3000 Index	(2.32)	19.30	12.26	0.84	(2.04)	1.14
MSCI ACWI Ex US IMI Net	(6.49)	10.95	7.24	(0.23)	(3.41)	1.38
MSCI ACWI IMI Net	(4.78)	14.36	9.21	0.09	(3.08)	1.01
Russell 3000 Index + 300 bps--Quarter Lagged	20.43	20.89	37.39	7.77	5.02	6.82
Oregon Custom FI Benchmark	3.22	2.28	5.89	6.39	6.08	5.90
NCREIF Property Index--Quarter Lagged	8.14	16.03	2.42	(3.63)	0.41	3.45
91 Day T-Bill	0.10	0.15	0.15	0.32	0.98	1.83

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



¹OIC Policy 4.01.18, as revised April 2011.

²Includes impact of cash overlay management.

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



Oregon

John A. Kitzhaber, M.D., Governor

Item A.2.c.

Public Employees Retirement System

Headquarters:

11410 S.W. 68th Parkway, Tigard, OR

Mailing Address:

P.O. Box 23700

Tigard, OR 97281-3700

(503) 598-7377

TTY (503) 603-7766

www.oregon.gov/pers

September 30, 2011

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

2011-13 BUDGET UPDATE

Operating expenditures for July and August, 2011 were \$2,342,132 and \$4,047,499 respectively.

- To date, through the first two months (8.33%) of the 2011-13 biennium, the Agency has expended a total of \$6,389,631, or 8.19% of PERS' legislatively approved operating budget.
- The current projected positive variance is \$1,411,477, or approximately 1.8% of the operating budget of \$78,010,820. Please note:
 - The operating budget includes statewide reductions of 5.5% in Personal Services and 6.5% in Services and Supplies, as well as the removal of standard inflation (2.4%) for Personal Services.
 - The Agency will be closely reviewing and adjusting projected expenditures on an ongoing basis. An update on projected expenditures will be included in the November 2011 budget report to the Board.

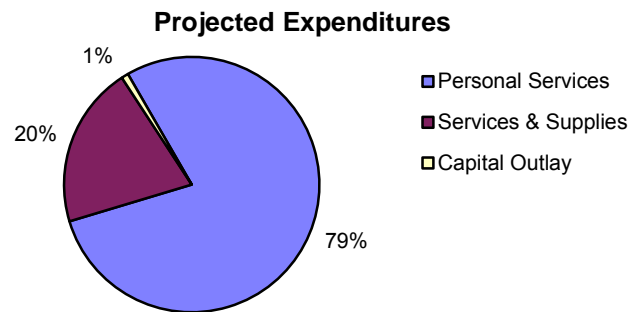
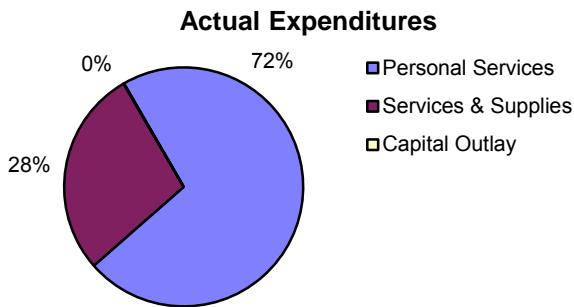
2009 - 11 BUDGET UPDATE

The projected positive variance remains at \$4,432,307, or approximately 5.3% of the 2009-11 operating budget of \$83,261,952. Updates will be included in the November 2011 and January 2012 budget reports to the Board.

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

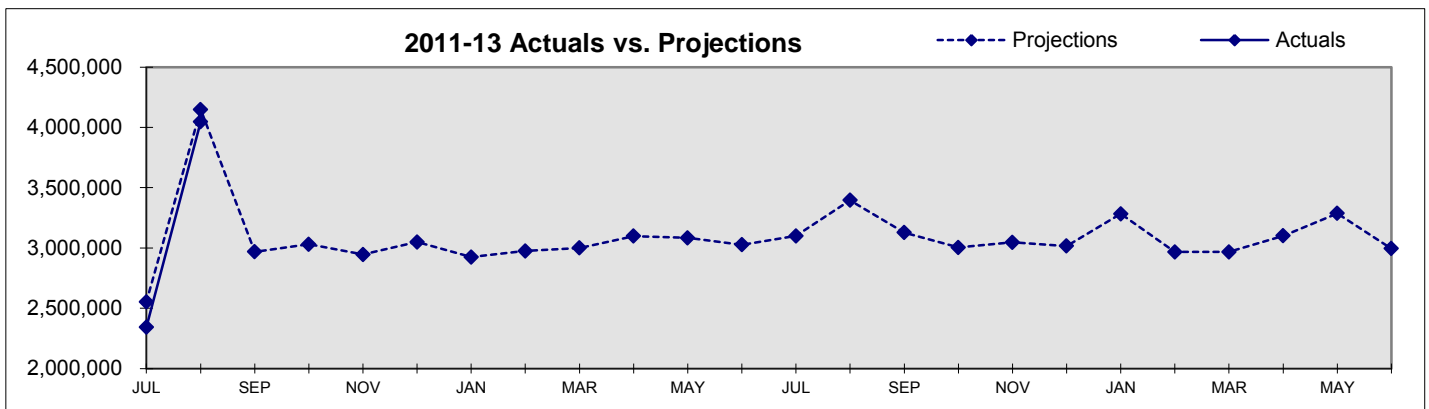
Biennial Summary

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2011-13 LAB	Variance
Personal Services	4,592,524	53,684,712	58,277,236	56,577,463	(1,699,773)
Services & Supplies	1,792,917	15,126,568	16,919,485	20,505,769	3,586,284
Capital Outlay	4,190	1,398,432	1,402,623	927,588	(475,035)
Total	6,389,631	70,209,712	76,599,343	78,010,820	1,411,477



Monthly Summary

Category	Actual Exp.	Projections	Variance	Avg. Monthly Actual Exp.	Avg. Monthly Projected Exp.
Personal Services	2,323,713	2,432,944	109,231	2,296,262	2,410,082
Services & Supplies	1,719,596	1,714,780	(4,816)	896,392	625,896
Capital Outlay	4,190		(4,190)	2,095	27,002
Total	4,047,499	4,147,724	100,224	3,194,749	3,062,981



2009-11 Biennium Summary

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2009-11 LAB	Variance
Personal Services	50,337,611	176,070	50,513,682	52,751,494	2,237,812
Services & Supplies	23,905,815	2,949,000	26,854,815	29,916,870	3,062,055
Capital Outlay	871,549	589,600	1,461,149	593,588	(867,561)
Total	75,114,975	3,714,670	78,829,645	83,261,952	4,432,307



Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

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

September 30, 2011

TO: Members of the PERS Board

FROM: Jim Jost, Metrics Engineer

SUBJECT: Quarterly Report of Member Transactions

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

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

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

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

ESTIMATES BACKLOG

Tier One and Tier Two estimates continued to be in backlog status. A backlog occurs when the number of pending estimates exceeds twice the normal amount of work-in-process. The incoming estimates increased rapidly in the last quarter of 2010 and the first quarter of 2011 and then leveled off in the second quarter of 2011. The backlog increase was due to loss of production from furlough days, staff turnover, and reallocation of staff to focus on RCP testing and to process service retirement purchases. PERS continues to give priority to those members with a service retirement application received and upcoming retirement dates. PERS is currently meeting the needs of this population. Any available resources are being allocated to the remaining estimates based on the estimate request receipt date.

PENDING RETIREMENTS

The number of new 'Retirements' (Tier One, Two, and OPSRP) and 'IAP Retirements' continued to increase into the second quarter of 2011. In addition, the number of completed 'Retirements' has slowed in the second Quarter. Together, these two effects have caused the pending retirement workload, in all categories, to increase. This has caused the IAP retirements to go into backlog status; and Tier One, Tier Two, and OPSRP are very near backlog status. The three main reasons for this outcome are:

- (1) Retirements always increase dramatically in the second quarter because July 1 always has the highest number of retirements compared to all other months of the year due to school district employees who retire after the school year ends (retirements for July 1, 2011 were also 41% higher than July 1, 2010).
- (2) Educational system members and other public employees also retire in higher numbers effective July 1 because the annual cost-of-living adjustment (COLA) is effective July 1 and Tier One/Tier Two members must retire on or before July 1 to receive a COLA in the year they retire;
- (3) Heavy RCP testing and implementation of the final RCP deployment in the second quarter impacted staff productivity.

Staff are working hard and regularly pay out a portion of the finalized retirement applications in 30 to 45 days after retirement, and pay out all within 92 days of the effective retirement date.

The next Quarterly Board Report, reflecting the results from the third calendar quarter of 2011, is scheduled to be presented at the November 2011 Board meeting.

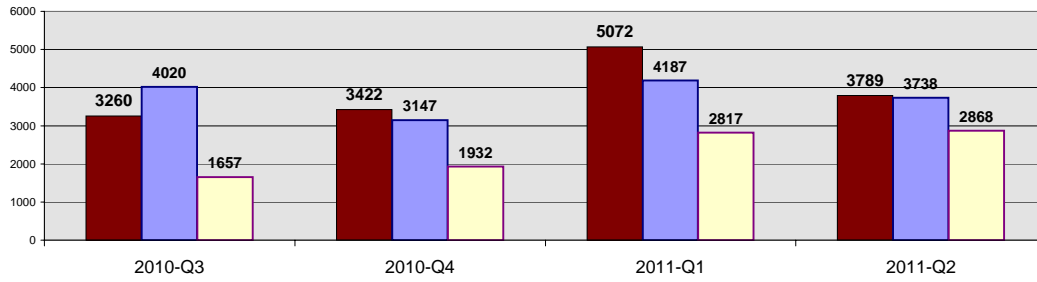
Attachment: Quarterly Report of Member Transactions (Through Second Quarter 2011)

Quarterly Report of Member Transactions

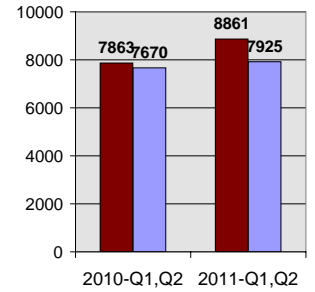
Thru Quarter Q2 2011

Run Date: 9/8/2011

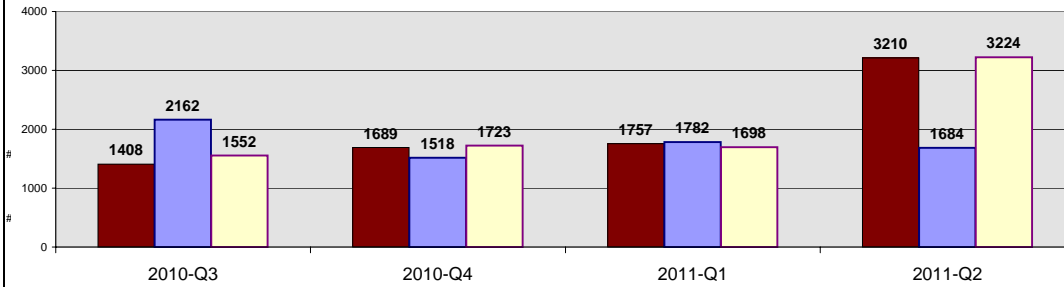
Estimates



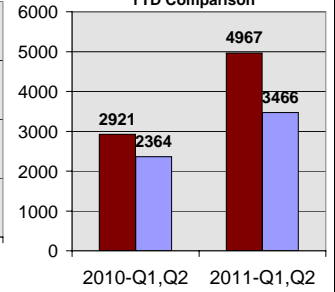
YTD Comparison



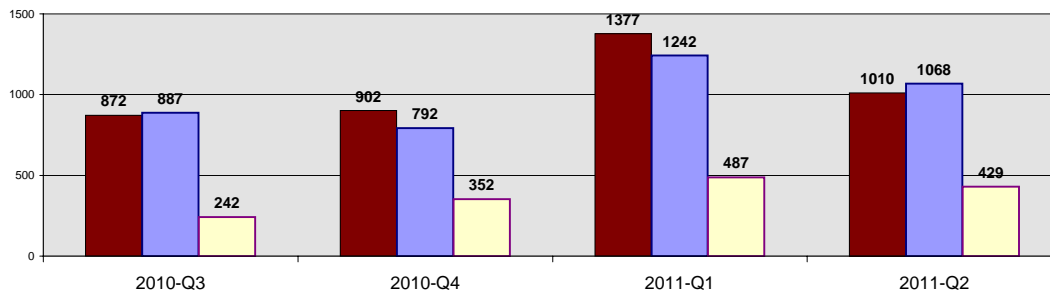
Retirements



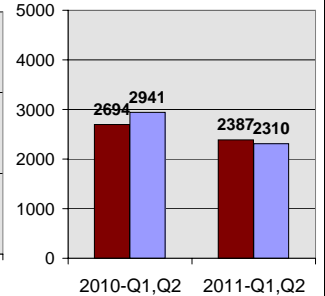
YTD Comparison



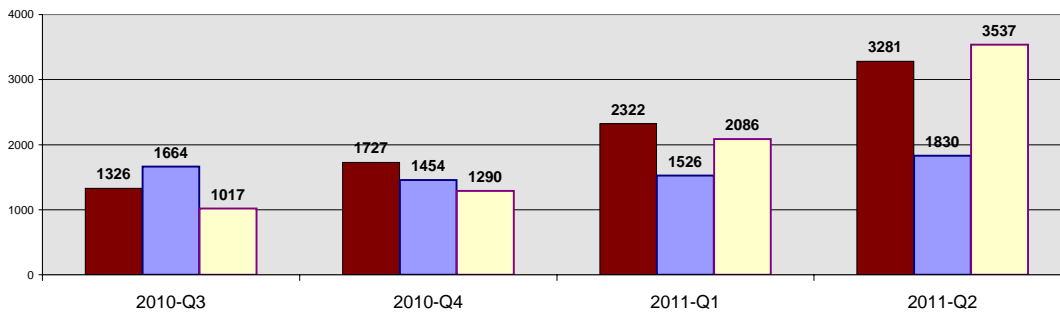
Withdrawals



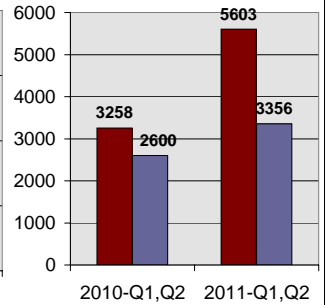
YTD Comparison



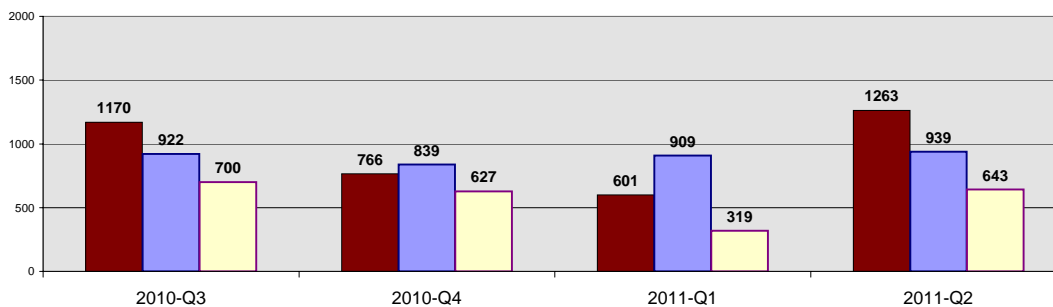
IAP Retirements



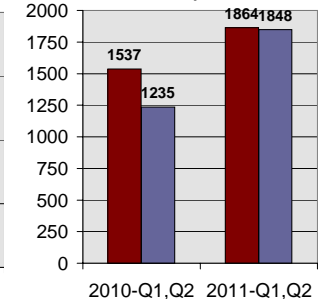
YTD Comparison



IAP Withdrawals



YTD Comparison



■ Incoming
 ■ Completed
 ■ Pending





Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

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

September 30, 2011

TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Deputy Director

SUBJECT: Adoption of Disability Rules:
459-015-0001, *Definitions*
459-015-0005, *Eligibility for Disability Retirement Allowances*
459-015-0020, *Application Required*
459-015-0045, *Return to Work*
459-015-0050, *Periodic Reviews*
459-076-0000, *Purpose (Repeal)*
459-076-0001, *Definitions*
459-076-0005, *Eligibility for Disability Benefits*
459-076-0020, *Application Required*
459-076-0025, *Application Processing -- Independent Examinations and Appeals*
459-076-0050, *Periodic Reviews*
459-076-0055, *Payment of Disability Benefit*

OVERVIEW

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

BACKGROUND

In 2005, PERS adopted changes to its administrative rules governing the disability retirement program for Tier One and Tier Two members, and adopted new rules for the administration of OPSRP Disability Benefits. PERS' Internal Auditors, in Report #2011-03 dated October 12, 2010, reviewed the agency's periodic review and contested case process for the Tier One/Tier Two disability program and recommended further clarifications to the administrative rules. These modifications are in response to that audit finding. Staff is also proposing rule

modifications to the OPSRP Disability rules to align the rules where applicable, and make other improvements.

The audit noted concerns with the interplay between the standards for initially receiving a disability, continuing eligibility on periodic review, and considering whether to discontinue the allowance for those members who return to work but still receive a disability allowance. ORS 238.320 and 238A.235 establish the standard for receiving a disability retirement allowance: the member must be mentally or physically incapacitated for an extended duration (90 days) and unable to perform any work for which qualified. OARs 459-015-0005 and 459-076-0005 elaborate on that standard to clarify that total, not partial, disability is required. ORS 238.340 and 238A.235(3)(a) require the discontinuation of disability benefits for any member determined not to be disabled from the performance of any work for which qualified.

However, statute presents a dichotomy by providing for income offset. ORS 238.330(3) requires that the amount of a Tier One/Tier Two member's monthly disability retirement allowance be reduced when the amount of the disability retirement allowance plus any earned income exceeds the member's monthly salary received at the time of disability retirement. OAR 459-015-0045 elaborates on the return to work provisions depending on whether the member returns to a PERS-participating or a private employer. There is no income offset provision for OPSRP. In OPSRP, any disabled member who returns to work in a qualifying position will have their disability benefit discontinued.

POLICY ISSUES

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

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

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

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

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

So, on the one hand, the ALJs have held to the total, not partial, disability standard. The ability to generate income that is similar never comes into play. On the other hand the court's interpretation is that someone who is partially disabled but fails the income test meets the criteria. To resolve this conflict, the administrative rules should clearly outline the criteria for eligibility for disability retirement.

OAR 459-015-0010 formerly described "Any work for which qualified" to mean a suitable job which the applicant is physically capable of performing and is substantially similar to the former job in compensation, location, and duration. This language was amended in 2005 to the current version to mean, "...a job, not necessarily the last or usual job, which the applicant for a disability retirement allowance: Is physically and psychologically capable of performing; and [h]as, or may obtain with reasonable training the knowledge, skills and abilities, to perform the job."

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

OPTIONS

- 1-1. Total, not partial, disability for initial application and periodic review. If a member is released to modified work, they fail to meet the criteria. Under this option, the member's disability allowance is discontinued if the member is released to any work, even if that work is reduced in time, scope, or skill.
- 1-2. Total, not partial, disability for initial application as outline in Option 1-1. For periodic reviews, however, a member who is released to modified work would not have their disability allowance discontinued unless the disabled member is able to generate income that is "similar in compensation."
- 1-3. Use the same "similar in compensation" standard for both the initial application and periodic review.¹

STAFF RECOMMENDATION

Staff recommends the Board choose option #1-2.

- Reason: Staff recommends Option #2. Total disability is the statutory standard for initial eligibility. Applying this standard is consistent with current practice and contested case rulings by the ALJs. On periodic review, the standard for continued disability should recognize that members who are recovering from a disability transition back to working, rather than change capabilities at once. Using a "similar in compensation" standard upon periodic review allows for this transition and is consistent with the provision for income offset (discussed more fully below). Although applying a different standard upon

¹ Option 1-3 may, however, stray too far from the statutory directive for total disability. As staff does not recommend this option, we did not explore that statutory construction question with legal counsel but would need to do so if this policy option is the one chosen by the board.

periodic review changes the nature and scope of the determination, doing so recognizes the practicalities of real situations.

- 2) *Return to work: For a member who is receiving a disability retirement allowance (Tier One/Tier Two only) and has returned to work, what criteria should PERS apply to discontinue the allowance?*

ORS 238.330(3) establishes what's called the "income offset." Under this statute, the member's disability retirement allowance and their earned income for a month cannot exceed the member's monthly salary at disability. In practice, that earned income is reported to PERS and we reduce the member's disability benefit to that threshold.

So, on the one hand, the standard to receive, and continue to receive, a disability retirement allowance is to be unable to perform any work; on the other hand, the statutes recognize that members may return to part-time employment either as a bridge to recovery or as a supplemental activity. To recognize this interplay, the administrative rules should establish criteria for when this earned income demonstrates that the member has sufficiently recovered from their disability to no longer meet the eligibility standard.

Staff considered what criteria could be used. For example, an OPSRP member who returns to any work is discontinued; but also OPSRP does not have the offset provisions of ORS 238.330(3), so a "cliff event" is consistent within OPSRP's statutory structure. The Tier One/Two program, however, provides for income offset, so that program directly recognizes that total disability at the initial determination will wear away as the member returns to work.

Formerly, OAR 459-015-0045(2) provided that if a person returned to work for six months, the disability retirement allowance is terminated on the seventh month. This provision was found to be too stringent and was removed from the OAR in 2005, but no other standard was adopted.

OPTIONS

- 2-1. Return to work – Total, not partial, disability: If the member works for a non-PERS employer at all, their disability retirement is offset per ORS 238.330 and their disability retirement is discontinued. The 90 day trial period in a qualifying position with a PERS participating employer remains the same.
- 2-2. Return to work – Glidepath-1: Member returns to work for a non-PERS employer at an income level that is not similar to salary to at retirement (but which is still subject to income offset). When earned income exceeds the 80% level for three out of six months, their disability retirement allowance is discontinued.
- 2-3. Return to work – Glidepath-2: Same as Option 2-2, but instead of automatic discontinuance, crossing the threshold triggers a periodic review. The decision whether to discontinue benefits is based on both medical and vocational documentation of whether the member has recovered sufficiently to perform any work for which they are qualified.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #2-3. The proposed modifications to OAR 459-015-0045(1)(d) provide that a member who has not been released to work but whose earned income is now “similar in compensation” to their last month’s income for three calendar months in six consecutive calendar months will be subject to a periodic review. “Similar in compensation” is defined elsewhere as having earned income of at least 80% of that monthly salary, excluding overtime. This criteria provides consistent treatment for members receiving disability retirement who return to work for both PERS participating and private employers and provides for the termination of disability retirement allowances of those members who demonstrate that they are able to perform any work for which they are qualified, based on medical and vocational documentation.

SUMMARY OF MODIFICATIONS TO RULES SINCE NOTICE

459-015-0001, *Definitions* –

(8) The defined term “other income” was changed to “earned income” for consistency with the statute; the definition was then moved to maintain alphabetical order.

(20) The definition of “pre-existing condition” was modified for clarification.

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

(3)(b) Was removed and “pre-existing condition” was added to (3)(a)(C) for clarification.

459-015-0045, *Return to Work* –

(1)(b) Removed change from “earned” to “other” for consistency.

(1)(c) The term “wages” was changed to “earned” for consistency.

(1)(d) The phrase, “they shall be deemed to be performing any work for which qualified and their disability retirement allowance will be terminated” was replaced with, “PERS shall initiate a review under the periodic review standard in OAR 459-015-0050” which is consistent with staff’s policy recommendation.

(3)(b) Removed change from “earned” to “other” for consistency.

459-015-0050, *Periodic Reviews* –

(2) New language and ORS citations were added consistent with staff’s policy recommendation.

Similar modifications were made to Division 76 rules for OPSRP disability benefits.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on August 23, 2011, at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended on September 1, 2011 at 5:00 p.m.

On August 31, 2011, PERS received public comment from Nelson Hall of Bennett, Hartman, Morris & Kaplan, LLP, on behalf of the PERS Coalition. A copy of his letter is included as attachment 13 with this memo. PERS' reply to his comments is set forth below.

Other (earned) income is deemed received on the date it was issued by the payer. OAR 459-015-0001, 459-015-0045, 459-076-0001, 459-076-0005. Mr. Hall argues that “[i]ncome should be deemed received by the member on the date it is earned, not the date it is issued or received.” (Emphasis in original.) Mr. Hall uses the case-in-point of an eligible member who receives additional compensation earned while the member was working and argues that the proposed amendments have the probability of disqualifying an otherwise eligible member. Current and past practice, as well as the proposed rule amendments, accommodate this frequent occurrence of final paychecks issued by former employers. Otherwise eligible members are not “disqualified” as a result. No changes were made as a result of this comment.

Use of the term “incapacitation”. OARs 459-015-0001, 459-015-0005, 459-076-0001, 459-076-0005. Mr. Hall objects to the use of the term “incapacitation” to define “total disability” because it “is not itself defined within the administrative rules.” He suggests defining “total disability...as it is in statute as the inability to perform the duties of the employment for which otherwise qualified.” The term “incapacitation” is found in statute. The term “incapacitate” is defined in *Merriam-Webster’s* dictionary as, “to deprive of capacity or natural power: disable.” Further definition in OAR is not necessary. No changes were made as a result of this comment.

Return to work: Similar income for three out of six months. OAR 459-015-0045. Mr. Hall objects to the standard of “a member who is able to generate income that is similar in compensation for three out of six months” as a measure in demonstrating a member’s successful return to work. Staff concurred and modified the proposed rule to state that the “return to work” standard initiate review, rather than result in automatic termination.

Mr. Hall also proposes “that PERS utilize a return to work policy and administrative rules similar to that utilized by the Social Security Administration.” We will take this under advisement for future consideration.

LEGAL REVIEW

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

IMPACT

Mandatory: No.

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

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

RULEMAKING TIMELINE

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

BOARD OPTIONS

The Board may:

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

STAFF RECOMMENDATION

Staff recommends the Board choose Options #1-2 and #2-3.

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

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

B.1. Attachment 1 – 459-015-0001, *Definitions*

B.1. Attachment 2 – 459-015-0005, *Eligibility for Disability Retirement Allowances*

B.1. Attachment 3 – 459-015-0020, *Application Required*

B.1. Attachment 4 – 459-015-0045, *Return to Work*

B.1. Attachment 5 – 459-015-0050, *Periodic Reviews*

B.1. Attachment 6 – 459-076-0000, *Purpose (Repeal)*

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

B.1. Attachment 8 – 459-076-0005, *Eligibility for Disability Benefits*

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

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

B.1. Attachment 11 – 459-076-0050, *Periodic Reviews*

B.1. Attachment 12 – 459-076-0055, *Payment of Disability Benefit*

B.1. Attachment 13 – Nelson Hall Public Comment Letter



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

1 **459-015-0001**

2 **Definitions**

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

6 (1) “Any work for which qualified” means a job, not necessarily the last or usual job,
7 which 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” means a person who satisfies the criteria set forth
12 under 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 at
16 an accredited institution; or

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

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

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

5 ~~[(4)]~~ (5) “Date of disability” means the later of:

6 (a) The ~~[day]~~ date an active member ceased to work because of inability to perform
7 any work for which qualified due to injury or disease;

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

11 ~~[(c)]~~(b) The date an inactive member ~~[was disabled]~~ became unable to perform any
12 work for which qualified ~~[if]~~ provided such ~~[disability]~~ inability occurred within six
13 months ~~[from]~~ after the date of separation from service.

14 ~~[(5)]~~ (6) “~~[Date of termination]~~ Date of separation from service” means ~~[the date a~~
15 ~~member terminates from employment such that an employee/employer relationship no~~
16 ~~longer exists];~~ the later of: the last day worked ~~[(physically on the job),]~~ or the last day of
17 paid leave~~[, or the last day of an official leave of absence, whichever is the later]~~ with a
18 PERS participating employer.

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

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

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

23 (b) Self-employment income from:

24 (A) Services industry;

1 (B) Sales;

2 (C) Assembly or manufacturing;

3 (D) Consulting;

4 (E) Property management;

5 (F) Hobby income; or

6 (G) Book advances.

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

8 (A) Investment income;

9 (B) Rent; and

10 (C) Royalties.

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

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

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

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

18 ~~[(6)]~~ (10) “Extended duration” means a period of not less than 90 consecutive
19 calendar days, unless the disability is expected to result in the death of the disabled
20 member in less than 90 days.

21 ~~[(7)]~~ (11) “Granted service” means that portion of creditable service used solely to
22 calculate a disability retirement allowance under ORS 238.320 that is not performed or
23 earned.

1 *[(8)] (12)* “Independent medical exam” means an exam or exams conducted by a
2 physician chosen by PERS for purposes other than treatment which results in the issuance
3 of a report or reports based on those exams, giving an opinion regarding the claimed injury
4 or disease.

5 *[(9)] (13)* “Material contributing cause” means the efficient, dominant, and proximate
6 cause of the disability, without which the member would not be disabled.

7 *[(10)] (14)* “Monthly salary” means “salary” as defined in ORS 238.005*[(21)(a)]* that
8 is earned in the last full calendar month of employment, and includes employer payments
9 under ORS 238*A.[(205)] 335* [*. This includes a)and* differential wage payments*s* as defined
10 in OAR 459-005-0001.

11 (a) Retroactive payments or payments made due to clerical errors, paid in accordance
12 with ORS 238.005*[(21)(b)(C)]*, are allocated to the period the salary was earned or should
13 have been earned.

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

16 *[(11)] (15)* “Monthly salary received” means the greater of the monthly salary paid for
17 the last full calendar month of:

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

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

21 *[(12)] (16)* “Normal retirement age” means the age at which a member can retire
22 without a reduced benefit as set forth under ORS 238.005 and 238.280.

23 *[(13) “Other income” means income that includes, but is not limited to:*

24 *(a) Salary or wages received as an employee;*

1 *(b) Self-employment income from:*

2 *(A) Services industry;*

3 *(B) Sales;*

4 *(C) Assembly or manufacturing;*

5 *(D) Consulting;*

6 *(E) Property management;*

7 *(F) Hobby income; or*

8 *(G) Book advances.*

9 *(c) “Other income” does not include:*

10 *(A) Investment income;*

11 *(B) Rent; and*

12 *(C) Royalties.*

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

21 *[(15)] (18) “Periodic review” means a review of a member receiving a disability*
22 *retirement allowance to determine whether or not a continued allowance is warranted.*

23 *[(16)] (19) “Physician” means a medical doctor, a doctor of osteopathy, a doctor of*
24 *oral surgery, a chiropractic doctor, a naturopathic doctor, or a doctor of psychology*

1 practicing only within the purview of their license issued by the designated authority of a
2 state.

3 *[(17)]* **(20)** “Pre-existing condition” means a condition that was not sustained in actual
4 performance of duty **in a qualifying position** with *[the] a [current employer]*
5 **participating employer.**

6 *[(18)]* **(21)** “Protected health information” means health information created or
7 received by a health care provider, health plan, or health care clearinghouse, where an
8 individual has a reasonable belief that the information can identify the individual, which
9 relates to:

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

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

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

14 *[(19) “Separation from all service entitling the member to membership in the system”*
15 *means the last day worked (physically on the job), the last day of paid leave, or the last*
16 *day of an official leave of absence, whichever is the later.]*

17 *[(20)]* **(22)** “Similar in compensation” means salary or **other earned** income,
18 excluding overtime, equaling at least 80% of the monthly salary.*[, as defined in section*
19 *(10) of this rule.]*

20 *[(21) “Similar location: A position in the same general area of the applicant’s*
21 *residence or last employment location.]*

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

1 ~~[(22)]~~ (24) “Training or vocational rehabilitation program” means a comprehensive,
2 coordinated program, usually state or federally funded, to train and assist individuals with
3 disabilities in securing gainful employment commensurate with their abilities and
4 capabilities.

5 ~~[(23)]~~ (25) “Vocational evaluation” means an evaluation conducted by a certified
6 vocational consultant, to determine the ability of an applicant to perform any work for
7 which they are qualified.

8 ~~[(24)]~~ (26) “Work related stress” means conditions or disabilities resulting from, but
9 not limited to:

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

21 Stat. Auth.: ORS 238.650

22 Stats. Implemented: ORS 238.320 - 238.345 [~~& 238.435(5)]~~



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

1 **459-015-0005**

2 **Eligibility for Disability Retirement Allowances**

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

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

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

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

14 (3) Eligibility requirements for duty disabilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (a) Creditable service; and

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

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

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

5 (6) Granted service is:

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

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

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

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

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

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

15 Stats. Implemented: ORS 238.320 - 238.345



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

1 **459-015-0020**

2 **Application Required**

3 (1) *[No disability retirement allowance will be paid unless the member files a timely*
4 *and complete application.*

5 (2) Applications must be made on forms *[prescribed]* **provided** by PERS. PERS
6 may require the member to provide any information that PERS considers necessary to
7 determine the applicant’s eligibility for a disability retirement allowance.

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

10 (3) Application *[may]* **must** be made by a member or the member’s authorized
11 representative. A representative must submit to PERS written proof of the
12 representative’s authority; such as, a power of attorney, guardianship or conservatorship
13 appointment.

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

17 (5) When an employee member is disabled due to injury or disease, the member may
18 make application immediately after the last day worked even though the member may be
19 on a paid leave or on an official leave of absence without pay. No application will be
20 accepted that predates the last day the member was actually on the job.

21 (6) An application will be considered filed in a timely manner when received by
22 PERS as follows:

1 (a) For a member who is **totally** disabled due to injury or disease *[and has*
2 *terminated]* **before terminating** employment from all PERS *[covered service]*
3 **qualifying positions and has not withdrawn the amount credited to the account of**
4 **the member in the system**, the member must file an application for a disability
5 retirement allowance within five calendar years of the date of termination. The disabling
6 condition must be continuous from the date of termination to the date the application is
7 filed.

8 (b) For a member who is **totally** disabled due to injury or disease after terminating
9 employment from all PERS *[covered service]* **qualifying positions** and has not
10 withdrawn the amount credited to the account of the member in the system, the member
11 must file an application for a disability retirement allowance within six months **(180**
12 **days)** after the date of *[termination]* **separation from service**.

13 *[(A)]* The disabling condition must be continuous from the date of *[onset]* **disability**
14 to the date *[of]* **the** application **is filed**.

15 *[(B) The separation must be continuous from the date of termination to the date the*
16 *application is filed.]*

17 *[(C) The member must have a minimum of 10 years of employment as calculated*
18 *pursuant to ORS 238.320(6).]*

19 **(c) A member cannot apply for disability retirement before their date of**
20 **disability.**

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

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

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

11 (9) When filing an application for disability retirement allowance, if the applicant
12 wishes to authorize release and disclosure of protected health information, as defined in
13 OAR 459-015-0001(17), the applicant must complete and sign a consent form which
14 specifically authorizes the release and disclosure of such information.

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

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

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

4 Stat. Auth.: ORS *[183.310 - 183.550, 237.171, 237.191, 237.263 & 45 CFR Parts*
5 *160 & 164]* 238.650

6 Stats. Implemented: ORS 238.320 - 238.345

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

1 **459-015-0045**

2 **Return to Work**

3 (1) The Public Employees Retirement Board allows a member who is receiving a
4 disability allowance to return to work as follows:

5 (a) Returning to work in a PERS qualifying position. A member who has not been
6 medically released for any work for which qualified, may return to work in a PERS qualifying
7 position, as defined by OAR 459-010-0003, for a 90-day trial period without losing disability
8 retirement status. While the member is working during this trial period:

9 (A) The [D]disability retirement allowance [benefits] and supplemental benefits will
10 be suspended.

11 (B) Any wages earned during the trial period are excluded from the definition of salary
12 for purposes of computing PERS contributions or determining PERS retirement benefits unless
13 the member continues the employment beyond 90 days. If the member continues beyond the
14 90 days, the period will be considered qualifying as of the first day the member returned to
15 work and retroactive contributions, without interest, are required.

16 (b) Returning to work in a PERS non-qualifying position. A member who has not been
17 medically released for any work for which qualified, may return to work with a PERS
18 participating employer in a position not qualifying for PERS active membership, as defined
19 by OAR 459-010-0003. Unless the member has reached normal retirement age, the monthly
20 disability retirement will be adjusted by any earned income issued during that month which,
21 when added to the disability retirement allowance, exceeds the gross monthly salary earned at
22 the [time] date of [retirement for] disability.

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

3 (6) The Board may require medical examination reports or vocational evaluations for any
4 member receiving a disability retirement allowance who is reemployed.

5 (7) If the member is reemployed under section (1) of this rule and is unable to continue
6 employment due to the disabling injury or disease as confirmed by medical documentation, the
7 member or employer must notify PERS. If medical documentation substantiates that the
8 disability prevents the completion of the trial period, the disability retirement allowance will
9 be reinstated at the end of the 90 day period, or as of the date the member leaves the trial
10 employment, whichever is sooner.

11 (8) A disability retirement allowance shall not be discontinued solely by reason of the
12 retired member entering a training or vocational rehabilitation program as defined in OAR
13 459-015-0001(22).

14 (9) Restoration of member account after return to work. If a member returns to PERS
15 covered employment after the 90-day trial period, or is medically released at any time for any
16 work for which they are qualified, the disability claim will be closed. *[and t]*

17 (a) The member's regular and variable PERS account(s) will be restored to the dollar
18 amount of the account as of the effective date of disability retirement. If a variable account
19 transfer was elected at the time of disability retirement, the amounts transferred from
20 the variable account to the regular account will remain in the regular account.

21 (b) Earnings crediting will resume as of the first of the month following the last
22 month for which a disability retirement allowance was paid.

1 (10) Creditable service. A member does not receive creditable service while drawing [a](#)
2 disability [retirement allowance](#) *[benefits]*. If, however, the member returns to PERS covered
3 employment, their disability claim is closed, and they subsequently retire under a service
4 retirement, service time for the period of disability will be restored as follows:

5 (a) For duty disabilities, creditable service will be granted to the member at no cost to the
6 member.

7 (b) For non-duty disabilities, creditable service may be purchased by the member under
8 the provisions of ORS 238.175.

9 Stat. Auth.: ORS *[238.320, 238.335, 238.330,]* 238.650 *[& 238.715]*

10 Stats. Implemented: ORS 238.175, *[& 238.330]* [238.320 – 238.345 & 238.715](#)

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

1 **459-015-0050**

2 **Periodic Reviews**

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

6 (2) Periodic reviews will be used to determine that continued disability retirement
7 allowances are warranted. In recommending the continuance or discontinuance of a disability
8 retirement allowance, PERS will follow the criteria established under OAR 459-015-0005
9 for the original approved *[disability]* disabling condition or a new medical condition*[,]*.
10 PERS will also consider the Return to Work provisions of ORS 238.330(3), 238.340, and
11 OAR 459-015-0045. *[PERS will follow the criteria established under OAR 459-015-0010.]*

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

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

17 (a) The reviews may be medical or vocational in nature, or both.

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

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

20 (B) Updated physician or specialist reports;

21 (C) Independent medical or vocational examinations; or

1 (D) Employment and wage information, including but not limited to, tax returns or
2 information from the State Employment Department.

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

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

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

12 (i) If the additional information results in a recommendation to approve the application,
13 staff shall resubmit the application to the Director, or the Director’s designee, with the
14 recommendation.

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

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

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

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

1 (6) The Director, or the Director's designee, *[is authorized to]* may approve or deny the
2 continuance of a disability retirement allowance.

3 Stat. Auth.: ORS 238.650

4 Stats. Implemented: ORS 238.320 & 238.335



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

1 **[459-076-0000**

2 ***Purpose***

3 *(1) The Legislative Assembly has established within the Oregon Public Service*
4 *Retirement Plan (OPSRP) Pension Program a program for a disability benefit. The*
5 *disability benefit program is solely intended to provide benefits to those members who*
6 *have not reached normal retirement age as defined in OAR 459-076-0001(11) and who*
7 *are unable to work because they are disabled and cannot perform any work for which*
8 *they are qualified. A disability benefit is not in addition to a service retirement allowance*
9 *and is payable until the member:*

10 *(a) Is no longer disabled; or*

11 *(b) Reaches normal retirement age as defined in OAR 459-076-0001(11); or*

12 *(c) Dies.*

13 *(2) A member who is no longer receiving a disability benefit due to conditions set*
14 *forth under section (1)(a) or (b) and has not applied for a service retirement benefit after*
15 *reaching normal retirement age will be considered an inactive member as defined in ORS*
16 *238A.005(8).*

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

18 *Stats. Implemented: ORS 238A.235]*



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

1 **459-076-0001**

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”[:] means [A] a job, not necessarily the last or
7 usual job, which 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”[:] means [A] a person who satisfies the
12 criteria set forth under 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 Disability Management Specialist
19 (CDMS) by the Certification of Disability Management Specialists Commission; or a
20 Certified Vocational Evaluation Specialist (CVE) or a Certified Work Adjustment
21 Specialist (CWA) by the Commission on Certification of Work Adjustment and
22 Vocational Evaluation Specialists.

1 (3) “Confidential information”[:] **means [I]** information of a personal nature such
2 that disclosure would constitute an unreasonable invasion of privacy as defined by state
3 law.

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

6 ~~[(4)]~~ **(5) “Date of disability”[:] **means [T]****the ~~[day]~~ **date** an active member ceased
7 to work because **of inability to perform any work for which qualified due to [of]**
8 injury or disease.

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

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

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

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

15 **(b) Self-employment income from:**

16 **(A) Services industry;**

17 **(B) Sales;**

18 **(C) Assembly or manufacturing;**

19 **(D) Consulting;**

20 **(E) Property management;**

21 **(F) Hobby income; or**

22 **(G) Book advances.**

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

1 (A) Investment income;

2 (B) Rent; and

3 (C) Royalties.

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

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

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

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

11 *[later of:*

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

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

14 *(c) The last day the member received any salary or paid leave benefits from a*

15 *participating employer, exclusive of the cash pay-off for accrued vacation or*

16 *compensatory time, as long as that payment is made within the 31 days after the member*

17 *separates from PERS covered employment.]*

18 *[(6)] (10) “Extended duration”[:] means [A] a period of not less than 90*

19 *consecutive calendar days unless the disability is expected to result in the death of the*

20 *disabled member in less than 90 days.*

21 *[(7)] (11) “Independent medical exam”[:] means [A]an exam or exams conducted*

22 *by a physician chosen by PERS for purposes other than for treatment which results in the*

1 issuance of a report or reports based on those exams, giving an opinion regarding the
2 claimed injury or disease.

3 ~~[(8)] (12)~~ “Material contributing cause”~~[:]~~ ~~means~~ ~~[T]~~the efficient, dominant, and
4 proximate cause of the disability, without which the member would not be disabled.

5 ~~[(9)] (13)~~ “Monthly salary”~~[:]~~ ~~means~~ ~~[S]~~salary as defined in ORS 238A.005~~[(16)]~~
6 that is earned in the last full calendar month of employment and includes a differential
7 wage payment, as defined in OAR 459-005-0001.~~[:]~~

8 (a) Retroactive payments or payments made due to clerical errors, paid in accordance
9 with ORS 238A.005~~[(16)(b)(E)]~~, are allocated to the period the salary was earned or
10 should have been earned.~~[:]~~

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

13 ~~[(10)] (14)~~ “Monthly salary received” ~~[i]~~~~mean~~s the greater of the salary paid~~[, as~~
14 ~~defined in section (9) of this rule]~~ for the last full calendar month of:

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

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

18 ~~[(11) Normal retirement age: The age at which a member can retire without a~~
19 ~~reduced benefit as set forth under ORS 238A.160.]~~

20 ~~[(12) Other income: Includes, but is not limited to:~~

21 ~~(a) Salary or wages received as an employee;~~

22 ~~(b) Self-employment income from:~~

23 ~~(A) Services industry;~~

1 (B) Sales;

2 (C) Assembly or manufacturing;

3 (D) Consulting;

4 (E) Property management;

5 (F) Hobby income; or

6 (G) Book advances.

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

8 (A) Investment income;

9 (B) Rent; and

10 (C) Royalties.]

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

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

17 [(14)] (16) "Periodic review"[:] **means** [A] **a** review of a member receiving a
18 disability benefit to determine whether or not a continued benefit is warranted.

19 **(17) "Physician" means a medical doctor, a doctor of osteopathy, a doctor of**
20 **oral surgery, a chiropractic doctor, a naturopathic doctor, or a doctor of psychology**
21 **practicing only within the purview of their license issued by the designated**
22 **authority of a state.**

1 *[(15) Performance of duty: Mental or physical incapacitation arising out of and in*
2 *the course of duty and is not intentionally self-inflicted. The injury or disease must be*
3 *initially caused, aggravated or accelerated to cause incapacitation by the performance of*
4 *the member's duties in the employment of a participating public employer. The job must*
5 *be the material contributing cause of the injury or disease. Performance of duty includes*
6 *whatever an employee may be directed, required or reasonably expected to do in*
7 *connection with his or her employment, and not solely the duties peculiar to his or her*
8 *position.]*

9 *[(16)] (18) “Pre-existing condition”[:] means [A] a condition that was not sustained*
10 *in actual performance of duty in a qualifying position with [the] a [current employer]*
11 *participating employer.*

12 *[(17)] (19) “Protected health information”[:] means [H]hhealth information created*
13 *or received by a health care provider, health plan, or health care clearinghouse, where an*
14 *individual has a reasonable belief that the information can identify the individual, which*
15 *relates to:*

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

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

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

20 *[(18) Qualifying position: One or more positions with a participating employer, in a*
21 *participating class, which requires performance of 600 or more hours in a calendar*
22 *year.]*

1 *[(19) Separation from all service: The date a member terminates from employment*
2 *such that an employee/employer relationship no longer exists; the last day worked*
3 *(physically on the job), the last day of paid leave, or the last day of an official leave of*
4 *absence, whichever is the later.]*

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

7 *[(21) Similar location: A position in the same general area of the applicant's*
8 *residence or last employment location.]*

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

11 *[(22)] (21) “Vocational evaluation”[::] means [A]an evaluation conducted by a*
12 *certified vocational consultant, to determine the ability of an applicant to perform any*
13 *work for which they are qualified.*

14 *[(23)] (22) “Work related stress”[::] means [C]conditions or disabilities resulting*
15 *from, but not limited to:*

- 16 (a) Change of employment duties;
- 17 (b) Conflicts with supervisors;
- 18 (c) Actual or perceived threat of loss of a job, demotion, or disciplinary action;
- 19 (d) Relationships with supervisors, coworkers, or the public;
- 20 (e) Specific or general job dissatisfaction;
- 21 (f) Work load pressures;
- 22 (g) Subjective perceptions of employment conditions or environment;
- 23 (h) Loss of job or demotion for whatever reason;

1 (i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;

2 (j) Objective or subjective stresses of employment; or

3 (k) Personnel decisions.

4 Stat. Auth.: ORS 238A.450

5 Stats. Implemented: ORS 238A.235

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

1 **459-076-0005**

2 **Eligibility for Disability Benefits**

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

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

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

19 (4) Eligibility requirements for duty disabilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **459-076-0020**

2 **Application Required**

3 (1) *[No disability benefit will be paid unless the member files a timely and complete*
4 *application with PERS.] Application must be made on forms provided by PERS.*

5 PERS may require the member to provide any information that PERS considers
6 necessary to determine the member’s eligibility for a disability benefit.

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

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

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

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

18 *[(a)] (b)* An inactive member who was totally disabled *[disabled]* due to injury or
19 disease while the applicant was an active member and *[is not separated from]* has not
20 terminated membership, must file an application for a disability benefit within five
21 calendar years of the *[last day worked; even though the member may continue on a paid*
22 *leave or on an official leave of absence without pay]* date of separation from service.

1 The disabling condition must have arisen while the applicant was an active member and
2 be continuous from the date the member last worked to the date the application is filed[;].

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

4 *[(b) Members who become disabled due to injury or disease after the date of*
5 *separation from all service entitling the member to active membership in the system, are*
6 *not eligible for a disability benefit under ORS Chapter 238A.]*

7 *[(2) Applications will be made on forms prescribed by PERS. PERS may require the*
8 *member to provide any information that PERS considers necessary to determine the*
9 *applicant's eligibility for a disability benefit.]*

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

14 *[(4) A member may make application immediately after the last day worked even*
15 *though the member is on a paid leave or on an official leave of absence without pay. No*
16 *application will be accepted that predates the last day the member was actually on the*
17 *job.]*

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

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

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

9 (8) When filing an application for disability benefit, if the applicant wishes to
10 authorize release and disclosure of protected health information [*as defined in OAR 459-*
11 *015-0001(17),*] the applicant must complete and sign a consent form which specifically
12 authorizes the release and disclosure of such information.

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

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

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

23 Stat. Auth.: ORS 238A.450 [*& 45 CFR Parts 160 & 164*]

1 Stats. Implemented: ORS 238A.235

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

1 **459-076-0025**

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

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

7 (a) For independent medical exams, PERS will inform the applicant in writing and
8 postmarked not less than *[ten]* **10** days *[prior to]* **before** a scheduled examination, of the
9 identity of the physician(s) selected to examine applicant, together with location, date and
10 time.

11 (b) For vocational evaluations, the vocational consultant or locator service shall
12 inform the applicant of the location, date and time of the scheduled examination.

13 (c) If the applicant fails to meet the scheduled appointment or fails to reschedule the
14 examination within five days of notification, PERS will not reschedule an examination at
15 PERS' expense unless the applicant can demonstrate good cause for having failed to meet
16 the scheduled appointment or reschedule the appointment as required.

17 (d) Good cause includes, but is not limited to:

18 (A) Physical or mental incapacitation preventing the member from meeting or
19 rescheduling the examination;

20 (B) Failure of PERS or the vocational consultant or locator service to send the
21 member notice as described above; or

22 (C) A death in the member's immediate family.

1 (e) Good cause does not include:

2 (A) A member’s refusal to attend the scheduled appointment;

3 (B) A member’s failure to meet the appointment with no reason provided; or

4 (C) A member’s failure to make appropriate transportation arrangements.

5 (2) When PERS requires an applicant to travel to be examined by a physician,
6 vocational consultant, or other professional, PERS will reimburse the applicant’s
7 reasonable transportation costs based on the least costly alternative and on availability.
8 Travel by private vehicle will be compensated at the rate applicable to travel by
9 unrepresented state employees on state business. Transportation by taxi, bus, rail, or other
10 public carrier will be paid only upon presentation of receipts from the providers. Lodging
11 and subsistence will be allowed only when a stop-over is necessary and will be paid at the
12 rate applicable to unrepresented state employees traveling on state business.
13 Reimbursements will be reduced by the amount of any penalty assessed PERS because of
14 a member’s failure to meet a scheduled appointment.

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

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

21 (b) If the disability application is approved:

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

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

4 (4) The Director, or the Director’s designee, is hereby authorized to approve or deny
5 a disability benefit application. Upon receipt and review of all necessary documentation,
6 staff will present applicant’s claim to the Director, or the Director’s designee, with a
7 recommendation to approve or to deny a disability benefit. The Director, or the Director’s
8 designee, may accept or reject the staff’s recommendation, or refer the application back
9 to staff for further documentation and review.

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

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

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

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

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

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

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

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

11 ~~[(7)]~~ **(8)** PERS will notify the most recent employer of the approval or the denial of
12 an application for a disability benefit, a request for review of the Director's
13 determination, and the Director's final action. Such notification will not contain any
14 confidential information as defined in OAR 459-076-0001(3).

15 Stat. Auth.: ORS ~~[183.310 - 183.550 &]~~ 238A.450

16 Stats. Implemented: ORS 238A.235

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

1 **459-076-0050**

2 **Periodic Reviews**

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

6 (2) Periodic reviews will be used to determine that continued disability benefits are
7 warranted. In recommending the continuance or discontinuance of a disability benefit,
8 **PERS will follow the criteria established under OAR 459-076-0005** for the original
9 approved *[disability]* **disabling condition** or a new medical condition^{[, PERS will follow}
10 *the criteria established under OAR 459-015-0010]*. **If a member receiving a disability**
11 **benefit becomes employed, the member’s disability benefit will be terminated as**
12 **provided in OAR 459-076-0005.**

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

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

19 (a) The reviews may be medical or vocational in nature, or both;

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

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

22 (B) Updated physician or specialist reports;

1 (C) Independent medical or vocational examinations; or

2 (D) Employment and wage information, including but not limited to, tax returns or
3 information from the State Employment Department.

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

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

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

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

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

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

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

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

6 *[(6) In recommending the continuance or discontinuance of a disability benefit,*
7 *PERS shall follow the criteria established under OAR 459-076-0010.]*

8 *[(7)]* (6) The Director, or Director’s designee, *[is hereby authorized to]* may
9 approve or deny the continuance of a disability benefit.

10 Stat. Auth.: ORS 238A.450

11 Stats. Implemented: ORS 238A[8].235



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

1 **459-076-0055**

2 **Payment of Disability Benefit**

3 (1) *[The payment of a]* **A** disability benefit **accrues from the effective date of**
4 **disability benefit.** *[will commence on the later of:]*

5 *[(a) The first of the calendar month in which the member files an complete*
6 *application for disability benefits with PERS; or]*

7 *[(b) The first of the month following the first full calendar month after final payment*
8 *by the employer of any wages or paid leave benefits to the member, excluding any cash*
9 *payoff of accrued vacation or compensatory time.]*

10 *[(c)]* **(2)** Notwithstanding *[subsections (a) and (b) of this]* section **(1) of this rule,**
11 **disability payments may not begin until a period of extended duration following the**
12 **date of disability has been completed.** *[, no payment shall be made prior to the end of*
13 *the period of 90 consecutive days beginning with the date of disability as defined in OAR*
14 *459-015-0001(4); and*

15 *[(d) A disability benefit will be retroactive to the effective date of disability benefit,*
16 *as defined in OAR 459-076-0001(5).]*

17 **(2)]** **(3)** If PERS cannot calculate the actual disability benefit payment, an estimated
18 payment will be made until PERS receives all the necessary information needed to
19 calculate the actual benefit payment. *[The payment will be made retroactive to the*
20 *effective date of disability if the benefits become due before the ninety consecutive day*
21 *period of incapacitation has elapsed.]*

1 (a) If the estimated payment results in an underpayment of \$10 or more a month, the
2 member will receive interest under the provisions of OAR 459-007-0015.

3 (b) If the estimated payment results in an overpayment of any amount, the
4 overpayments may be recovered by decreasing the monthly benefit amount until the
5 difference between the amount the member received and the amount the member should
6 have received is recovered.

7 ~~[(3)]~~ (4) If *[In the event]* a member applying for a disability benefit dies *[prior to]*
8 before the Director's approval of the application[:

9 *(a) T] the application will be considered cancelled effective on the date of the*
10 *member's death.*

11 *[(b) The member will be considered as dying prior to retirement.*

12 *(c) If the member was vested and married at the time of death, the spouse of the*
13 *deceased member will be eligible for an OPSRP death benefit as set forth in ORS*
14 *238A.230.*

15 *(d) The amounts in the member's Individual Account Program (IAP) account(s), to*
16 *the extent the member is vested in those accounts, will also be paid in a lump sum to the*
17 *beneficiary or beneficiaries designated by the member for the purposes of the IAP.]*

18 *[(4)]* (5) *[In the event a member applying for a disability benefit dies after the*
19 *Director's approval of the application, the member will be considered as dying prior to*
20 *retirement. If a married member is vested, the member's spouse will be eligible for an*
21 *OPSRP death benefit as set forth in ORS 238A.230.]* If a member receiving disability
22 payments dies before retiring, the disability benefit will cease the first of the month
23 following the member's date of death.

1 *[(5) For the period during which a member is receiving a disability benefit,*
2 *retirement credit, as well as hours of service toward vesting, will be credited to the*
3 *member if:*

4 *(a) The member accrued 10 years or more of retirement credit under the OPSRP*
5 *pension Program prior to becoming disabled; or*

6 *(b) The member became disabled by reason of injury or disease sustained while in*
7 *the performance of duty.]*

8 Stat. Auth.: ORS 238^A.450

9 Stats. Implemented: ORS *[238A.230 &]* 238A.235



BENNETT, HARTMAN, MORRIS & KAPLAN, LLP
ATTORNEYS AT LAW

GREGORY A. HARTMAN
MICHAEL J. MORRIS
HENRY J. KAPLANS
NELSON R. HALL
THOMAS K. DOYLE♦
ARUNA A. MASIH♦
HEIDI K. BROWN
SHARON MAYNARD
CHRISTINE N. MOORE

210 SW Morrison St., Suite 500
Portland, Oregon 97204-3149
(503) 227-4600
FAX (503) 248-6800

www.bennetthartman.com

ROBERT A. BENNETT
(RETIRED)
LINDA J. LARKIN*
GENE MECHANIC*§
MARGARET S. OLNEY♦
* OF COUNSEL
♦ ALSO MEMBER
WASHINGTON BAR
§ ALSO MEMBER
NEW YORK BAR
△ ALSO MEMBER
FLORIDA BAR

August 31, 2011

VIA FAX: 503-598-1218

E-MAIL: daniel.rivas@state.or.us

and Regular Mail

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

Dear Mr. Rodeman:

The following comments are submitted on behalf of the PERS Coalition pursuant to your notice of July 29, 2011. Please include these comments in the public record, and modify the proposed amendments consistent with the following comments.

OAR 459.015-0001(17)(d)
Other Income - "Received"

OAR 459-015-0045(1)(b)
OAR 459-015-0045(1)(c)
OAR 459-015-0045(2)(b)
Other Income - "Issued"

OAR 459-076-0001(8)(a)(b)
"is paid no salary"
"does not receive"

OAR 459-076-0001(14)(d)
"received"
"issued"

OAR 459-076-0005(7)
"receives other income"
"issuance of other income"

For the following reasons, the proposed rule amendments should not be adopted. Income should be deemed received by the member on the date it is

Steven P. Rodeman, Deputy Director
Public Employees Retirement System
Re: Proposed Amendments
August 31, 2011
Page 2 of 4

earned, not on the date it is issued or received. In light of the fact that a member is not eligible for PERS disability retirement allowance in any month in which the member has been paid salary or compensation, and in light of the fact that disability is based on a member's inability to work, the proposed amendments have the unintended consequence of disqualifying an otherwise eligible member. What happens when a properly eligible member "receives" compensation that was "issued" after the member has already been determined to be eligible? For example, a member is disabled, stops working, stops earning salary or compensation, and during the application process or even after the member has been determined by PERS staff to be totally disabled, the former employer "issues" payment of compensation earned while the member was not disabled and was working. The "issuance" of compensation previously earned but "received" by the member after disability onset should not disqualify the member from the otherwise entitlement to disability benefits for the month in which the previously earned compensation is "received". The disabled member is no less disabled in the month that the formerly earned compensation is received. Mere receipt of compensation previously earned before onset of disability should not disqualify the member from disability allowance in the month in which the compensation is received.

Income should be deemed received in the month in which the compensation or other income was actually earned. The proposed amendments

Steven P. Rodeman, Deputy Director
Public Employees Retirement System
Re: Proposed Amendments
August 31, 2011
Page 3 of 4

have the distinct probability of disqualifying an otherwise eligible member from receipt of disability allowance merely because formerly earned compensation was "received" after the onset of disability.

1. OAR 459-015-0001(24)
"incapacitation"

OAR 459-015-0005(3)(a)(A)
OAR 459-076-0001(20)
"mental or physical incapacitation"

OAR 459-076-0005(4)(a)(A)
"mental or physical incapacitation"

The proposed amendments should not be adopted. The proposed definition includes a term ("incapacitation") that is not itself defined within the administrative rules. The proposed amendment attempts to use an undefined term to define a term. It would be more consistent and transparent if the term "total disability" is simply defined as it is in statute as the inability to perform the duties of the employment for which otherwise qualified. In other words, the term "incapacitation" adds confusion and uncertainty to the concept of "total disability" which is already defined by statute.

2. OAR 459-015-0045(1)(d)
"three out of six months"

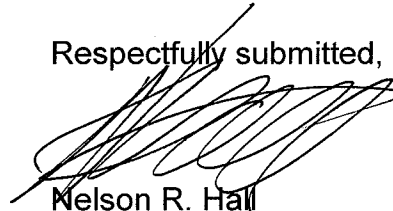
Three out of six months should not be the definition or criteria for "similar income". The purpose of the rule and criteria is to encourage, allow return to work efforts without jeopardizing eligibility if the return to work efforts are not

Steven P. Rodeman, Deputy Director
Public Employees Retirement System
Re: Proposed Amendments
August 31, 2011
Page 4 of 4

successful. The question is correctly framed in terms of what measure of success demonstrates one's ability to earn. Three out of six months has the very real risk of a false assessment of success. What happens when a disabled member, one who is eligible and receiving benefits, attempts to return to work and works for one month, then cannot work for months 2 and 3, works for months 4 and 5, but cannot work month 6 or thereafter. Under the proposed criteria, by virtue of having worked 3 out of 6 months, the person would be deemed capable of earning similar income and thus disqualified for continued disability retirement allowance. A person's true ability to demonstrate earning capacity is not reflected in 3 out of 6 months but rather over a consistent number of months.

It is proposed that PERS utilize a return to work policy and administrative rules similar to that utilized by the Social Security Administration.

Respectfully submitted,



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

NRH/db



Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

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

September 30, 2011

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
SUBJECT: Repeal of Retention of Membership by School Employees Rule
459-010-0205, *Retention of Membership by School Employees*

OVERVIEW

- Action: Repeal Retention of Membership by School Employees rule.
- Reason: The rule is unnecessary given the specific loss of membership standard for school employees in ORS 238.095.
- Policy Issue: No policy issues have been identified at this time.

BACKGROUND

Under ORS 238.095, school district employees who are not vested and inactive for a period of five consecutive years may continue membership in the system if they meet two criteria. First, after completing a school year, the member must be inactive for the next following five school years. Secondly, the member must either be reemployed by a school district in a qualifying position at the beginning of the sixth school year, or reach earliest service retirement age before the beginning of the sixth school year. These criteria are specified in nearly identical language in both this statute and in OAR 459-010-0205. This rulemaking is to repeal the OAR as it is unnecessary, given the specificity in the statute.

SUMMARY OF MODIFICATIONS TO RULE SINCE NOTICE

No modifications have been made since notice at the July 2011 Board Meeting.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on August 23, 2011 at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended on September 1, 2011, at 5:00 p.m. No public comment was received.

LEGAL REVIEW

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

IMPACT

Mandatory: No.

Impact: Members, employers, stakeholders, and staff will benefit from removing the unneeded rule that only restates statute.

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

RULEMAKING TIMELINE

June 15, 2011	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
July 1, 2011	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began.
July 29, 2011	PERS Board notified that staff began the rulemaking process.
August 23, 2011	Rulemaking hearing held at 2:00 p.m. in Tigard.
September 1, 2011	Public comment period ended at 5:00 p.m.
September 30, 2011	Board may repeal the rule.

BOARD OPTIONS

The Board may:

1. Pass a motion to “repeal OAR 459-010-0205, as presented.”
2. Direct staff to make other changes to the rule or explore other options.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: The rule is unnecessary given the specific loss of membership standard for school employees in ORS 238.095.

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

B.2. Attachment 1 – 459-010-0205, *Retention of Membership by School Employees*

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

1 ***[459-010-0205***

2 ***Retention of Membership by School Employees***

3 *Any school employee who completes a school year, who is then absent the next five*
4 *school years, but returns to school employment at the beginning of the sixth school year,*
5 *or reaches early voluntary retirement age prior to the beginning of the sixth school year,*
6 *shall be deemed to have retained membership in the Public Employees Retirement*
7 *System, provided, however, that this preservation of membership is contingent upon the*
8 *confirmation of this rule by the 49th Legislative Assembly.*

9 *Stat. Auth.: ORS 238.650*

10 *Stats. Implemented:]*





Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR

Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
(503) 598-7377
TTY (503) 603-7766
www.oregon.gov/pers

September 30, 2011

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

OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Repeal an obsolete rule.
- Policy Issue: No policy issues have been identified at this time.

BACKGROUND

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

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

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on October 25, 2011 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on October 28, 2011 at 5:00 p.m.

LEGAL REVIEW

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

IMPACT

Mandatory: No.

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

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

RULEMAKING TIMELINE

August 15, 2011	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
September 1, 2011	<i>Oregon Bulletin</i> publishes the Notice. Notice is mailed to legislators, employers and interested parties. Public comment period begins.
September 30, 2011	PERS Board notified that staff began the rulemaking process.
October 25, 2011	Rulemaking hearing to be held at 2:00 p.m. in Tigard.
October 28, 2011	Public comment period ends at 5:00 p.m.
November 18, 2011	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 October 25, 2011 at PERS Headquarters in Tigard. The public comment period ends on October 28, 2011. The rule is scheduled to be brought before the PERS Board for adoption at the November 18, 2011 Board meeting.

B.3. Attachment 1 – 459-010-0005, *Continuous Service*

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

1 **[459-010-0005**

2 ***Continuous Service***

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

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

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

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

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

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

5 *Stat. Auth.: ORS 237*

6 *Stats. Implemented:]*



Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

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

September 30, 2011

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

OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Amend the agency's Public Records rules to incorporate the judgments in *PERS v. Oregonian Publishing Company LLC* and *PERS v. Multimedia Holdings Corporation, dba Statesman Journal and Statesman Journal Media*.
- Policy Issue: No policy issues have been identified at this time.

BACKGROUND

Last year, the Oregon Attorney General issued Public Records Orders (PROs) in response to requests by both The Oregonian and Statesman Journal newspapers for public records about individually identified PERS benefit recipients. Those PROs directed the agency to provide the requested records. As provided in the applicable public records statutes, PERS retained outside legal counsel to have those PROs reviewed in the Marion County Circuit Court, filing two actions: *PERS v. Oregonian Publishing Company LLC* and *PERS v. Multimedia Holdings Corporation, dba Statesman Journal and Statesman Journal Media*. Those actions have now concluded with the entry of a stipulated judgment for each case that defines the information to be provided in response to those requests. This rulemaking has been initiated to conform the agency's rules on providing member public records with those court judgments.

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

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

- a) The method used to calculate the member's retirement allowance (Money Match, Full Formula, Formula Plus Annuity);
- b) The member's "final salary";

- c) The plan under which the benefit is being paid (Tier One/Two, OPSRP, or disability);
- d) The member's retirement date; and
- e) The member's years of service.

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

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

This outcome resolves many important issues for this agency:

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

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on October 25, 2011, at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on October 28, 2011 at 5:00 p.m.

LEGAL REVIEW

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

IMPACT

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

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

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

RULEMAKING TIMELINE

- | | |
|--------------------|--|
| September 15, 2011 | Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State. Notice was sent to legislators. |
| September 30, 2011 | PERS Board notified that staff began the rulemaking process. |

Notice – Confidentiality of Member Records Rule

09/30/11

Page 3 of 3

October 1, 2011	<i>Oregon Bulletin</i> publishes the Notice. Notice is mailed to employers and interested parties. Public comment period begins.
October 25, 2011	Rulemaking hearing to be held at 2:00 p.m. in Tigard.
October 28, 2011	Public comment period ends at 5:00 p.m.
November 18, 2011	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 October 25, 2011 at PERS Headquarters in Tigard. The public comment period ends on October 28, 2011. The rule is scheduled to be brought before the PERS Board for adoption at the November 18, 2011 Board meeting.

B.4. Attachment 1 – 459-060-0020, *Confidentiality of Member Records*

B.4. Attachment 2 – 459-060-0030, *Disclosure of Records Without Consent* (for information only)



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

459-060-0020

Confidentiality of Member[’s] Records

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (i) Salary information;

14 (ii) Employment history; or

15 (iii) Contribution history.

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

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

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

3 Stat. Auth.: ORS 192.502 & 238.650

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



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

1 **459-060-0030**

2 **Disclosure of Records Without Consent**

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

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

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

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

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





Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

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

September 30, 2011

TO: Members of the PERS Board

FROM: Debra Hembree, Interim Actuarial Services Manager

SUBJECT: 2010 Valuation System-wide Results

On September 30, 2011, Mercer actuaries Matthew Larrabee and Scott Preppernau will present system-wide results from the 2010 Valuation for the Tier One/Tier Two and Oregon Public Service Retirement Plan (OPSRP) pension programs. Mercer's presentation is attached.

Although the 2010 Valuation will not be used to set employer contribution rates, it will reflect the impact of 2010 investment performance and employer payroll changes on system funding and future employer rates. The next rate change is expected to be July 1, 2013, based on the December 31, 2011 Valuation.

Attachment



DECEMBER 31, 2010 ACTUARIAL VALUATION OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM

SEPTEMBER 30, 2011

Executive Summary

- System-wide funded status increased from 76% at December 2009 to 78% at December 2010 when side accounts are excluded from assets. Funded status including side accounts increased from 86% to 87%
- The actuarial shortfall between assets (excluding side accounts) and liabilities decreased from \$13.6 billion to \$13.3 billion. Including side accounts, the shortfall decreased from \$8.1 billion to \$7.7 billion.
- In the year-end 2010 valuation, advisory base employer contribution rates are 3.6% of payroll above rates currently in effect. Much of the increase is due to the rate collar spreading rate increases to restore funded status across multiple periods.
- Investment returns through the end of August of +3.5% are below assumption. A 50th percentile investment return for the rest the year would lead to a lower funded status, larger actuarial shortfall and higher employer contribution rates at the December 2011 rate setting valuation.
- Due to the combined effects of participation and healthcare cost inflation, the funded status for the RHIPA retiree medical program for state employees decreased to 17%.

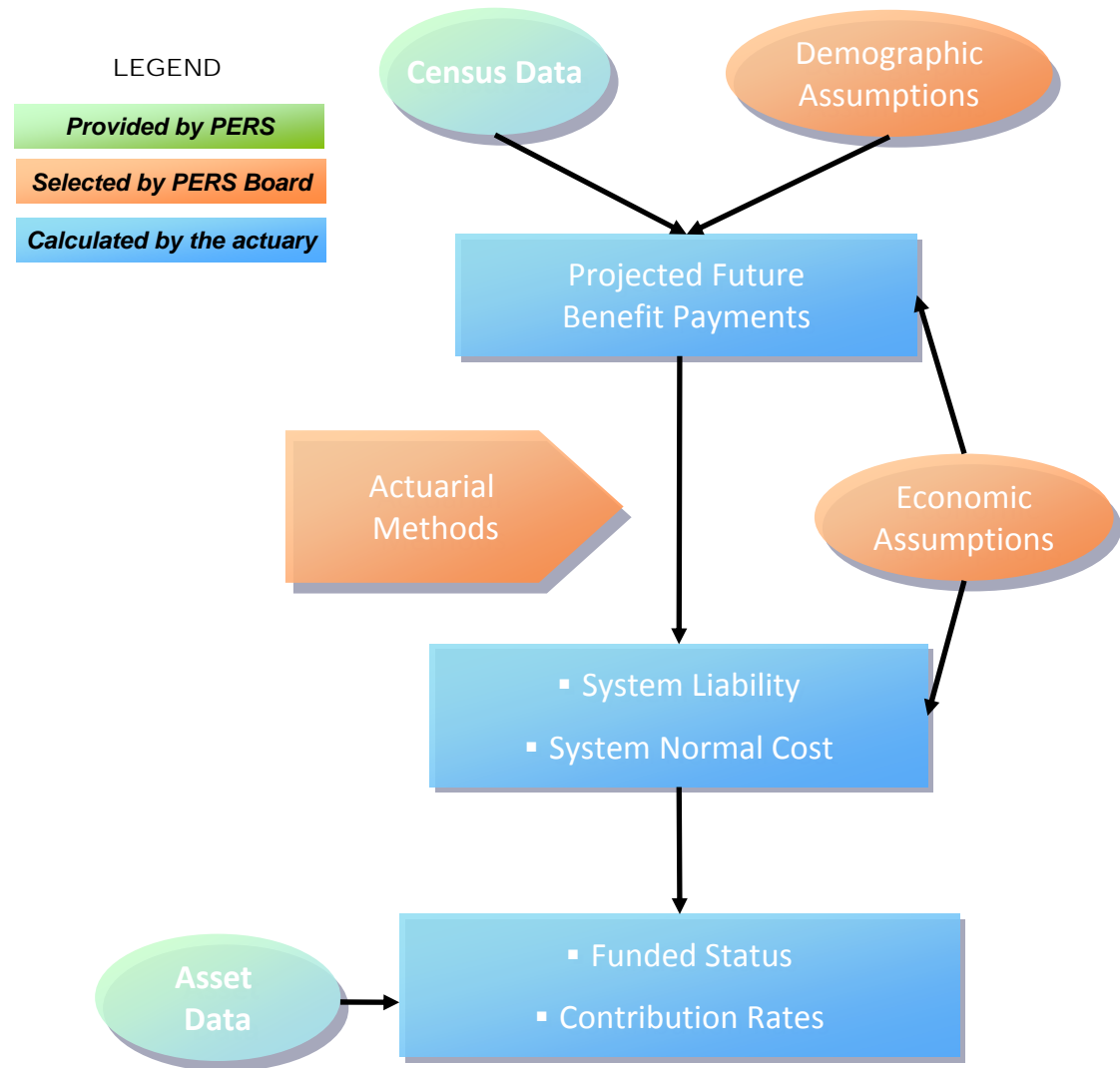
Please note that this presentation cannot be relied upon on its own to meet financial reporting requirements under GASB. The formal actuarial valuation report issued subsequent to this meeting will contain the final results and supporting documentation to allow employer reliance under the applicable professional standards.

Introduction

Valuation Process and Timeline

PERS Board Actuarial Schedule

- May: Actuarial methods and economic assumptions
- July: Demographic assumptions and investment return
- **September: System-wide 12/31/2010 funding results and advisory contribution rates and 2012-2013 actuarial equivalency factors**
- November: Distribution of employer-specific advisory 2013-2015 contribution rates



Key Findings

Overview of System-Wide December 31, 2010 Valuation Results

- Funded status improved during 2010, but is still well below 2007 levels

Tier 1/Tier 2/OPSRP Combined Funded Status as of December 31				
	2007	2008	2009	2010
Excluding side accounts	98%	71%	76%	78%
Including side accounts	112%	80%	86%	87%

- Unfunded accrued liability (UAL) excluding side accounts as of 12/31/2010 is \$13.3 billion; including side accounts it is \$7.7 billion
- Year-to-date 2011 investment return through Aug 31 was +3.5% for regular accounts
- Employer contribution rates are set biennially based on results of “odd year” actuarial valuations
 - This 12/31/2010 valuation is strictly advisory and does not set rates
 - The 12/31/2011 valuation will set rates for the 2013-2015 biennium

Key Findings

Overview of System-Wide December 31, 2010 Valuation Results

- Rates are calculated to amortize shortfalls over a fixed period as a level percent of payroll if all assumptions are met. The methodology includes a rate collar to spread large rate changes over multiple periods.
- Rates shown below do not include Individual Account Program (IAP) contributions or debt service payments on pension obligation bonds.

System-Wide Tier 1/Tier 2/OPSRP Plus Retiree Health Care Contribution Rates

	2009-2011	Collared 2011-2013	Advisory Collared 2013-2015	Advisory Uncollared 2013-2015
Base rates (before effect of side account offsets)	12.4%	16.3%	19.9%	20.3%
Net rates (reflect side account rate offsets)	5.2%	10.8%	14.2%	14.6%

- Unlike base rates, net rates are affected by side account rate offset levels. Changes in side account rate offset levels are closely linked to investment performance during each biennium compared to the investment return assumption.

Key Findings

Projection to Year-End 2011 Excluding Side Accounts

Percentile	2011 Asset Return	Projection to 12/31/2011			Change from 2011-13 Collared Base Rate
		Funded Status (Excluding Side Accounts)	UAL Excluding Side Accounts (billions)	Advisory Uncollared Base Rate	
5 th	-7.8%	66%	\$21.0	26.3%	10.0%
10 th	-4.7%	68%	\$19.6	25.2%	8.9%
25 th	0.5%	72%	\$17.3	23.4%	7.1%
50th	6.2%	76%	\$14.6	21.5%	5.2%
75 th	11.9%	80%	\$12.1	19.6%	3.3%
90 th	17.1%	83%	\$10.1	18.1%	1.8%
95 th	20.1%	85%	\$9.0	17.2%	0.9%
Values at 12/31/2010:		78%	\$13.3	20.3%	

Assumptions and methods underlying the projection are described in the appendix. Actual experience will vary from projection.

- Since returns through August are below assumption, the majority of return scenarios modeled show a 2011 total return below 8%
- All modeled scenarios have a forecast rate increase when compared to the current rates

Key Findings

Average Base Contribution Rates Including Retiree Health Care (Excluding IAP)

- While system-wide advisory base rates increased by 3.6% of payroll, the increase varied from rate pool to rate pool
 - The State and Local Government Rate Pool (SLGRP), which is 79% funded excluding side accounts, has lower rates and a lower increase than the School District rate pool, which is 75% funded

Average Base Employer Rates	SLGRP	School Districts	OPSRP	System-wide
2011-2013 Base Rates	15.8%	19.5%	14.7%	16.3%
2013-2015 Advisory Base Rates	19.2%	23.8%	18.2%	19.9%
Base Rate Increase	3.4%	4.3%	3.5%	3.6%

- Changes in base rates vary significantly by individual employer and to a lesser extent by rate pool

Key Findings

Average Net Contribution Rates Including Retiree Health Care (Excluding IAP)

- Increases in advisory net rates are very similar to the increases in the advisory base rates
 - This indicates that based on 2010 investment experience side account rate offset levels are forecast to remain relatively constant
 - Poor investment performance in 2011 could lead to lower side account rate offsets and net rate increases in excess of base rate increases

Average Net Employer Rates ¹	SLGRP	School Districts	OPSRP	System-wide
2011-2013 Net Rates	10.8%	11.7%	9.2%	10.8%
2013-2015 Advisory Net Rates	14.2%	15.8%	12.5%	14.2%
Net Rate Increase	3.4%	4.1%	3.3%	3.4%

- Changes in net rates vary significantly by individual employer and to a lesser extent by rate pool

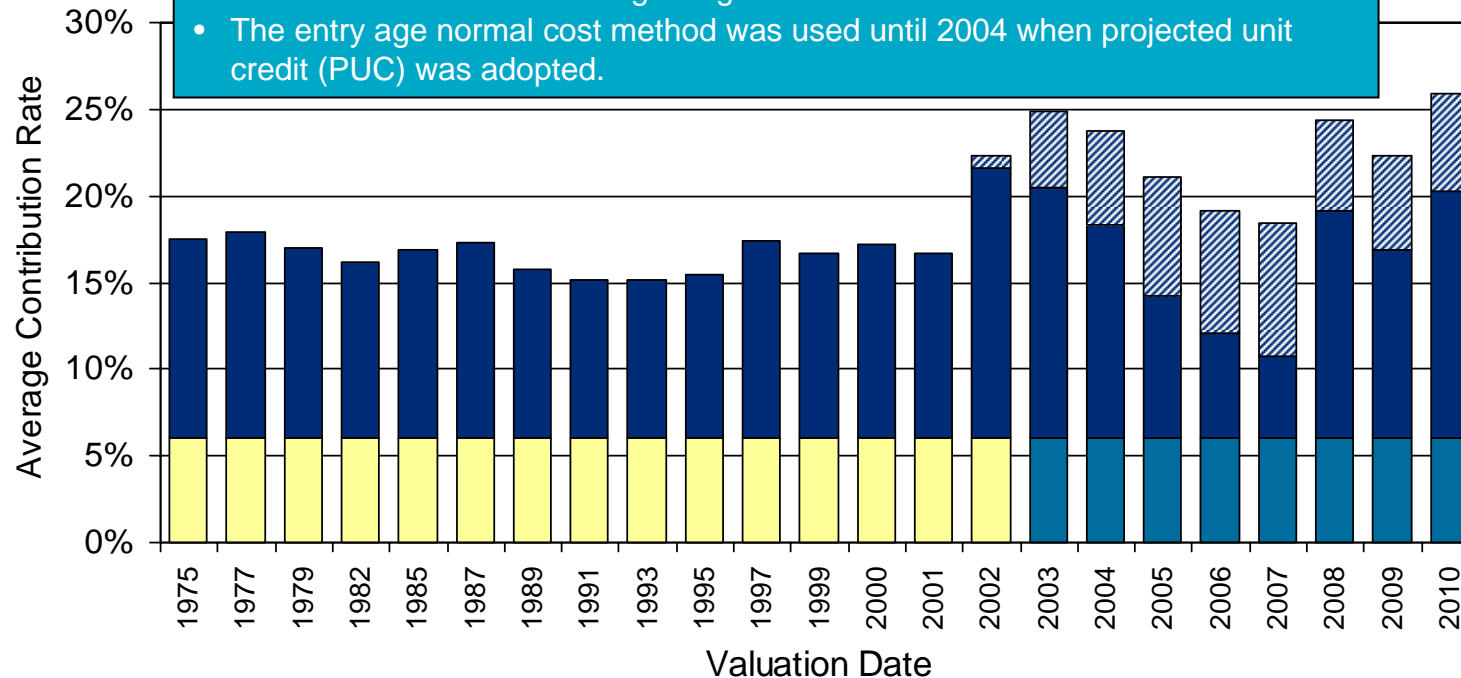
¹ In this exhibit, 2011-2013 and 2013-2015 base rates are adjusted by two factors to calculate estimated system-wide net rates. Adjustments are for side accounts and pre-SLGRP liabilities/(surpluses) and are assumed not to be limited when an individual employer reaches a 0% contribution rate.

Key Findings

Historical Perspective on Valuation Rates (Including IAP)

When comparing historical valuation rates, please note that there have been a number of changes including:

- Money Match benefits were not valued until 1997.
- A smoothed value of assets was used from 2000 through 2003.
- PERS reform was valued beginning in 2001.
- The entry age normal cost method was used until 2004 when projected unit credit (PUC) was adopted.



Member 6% Contribution
 IAP 6% Contribution
 Adjusted Employer Contribution
 Average Adjustment*

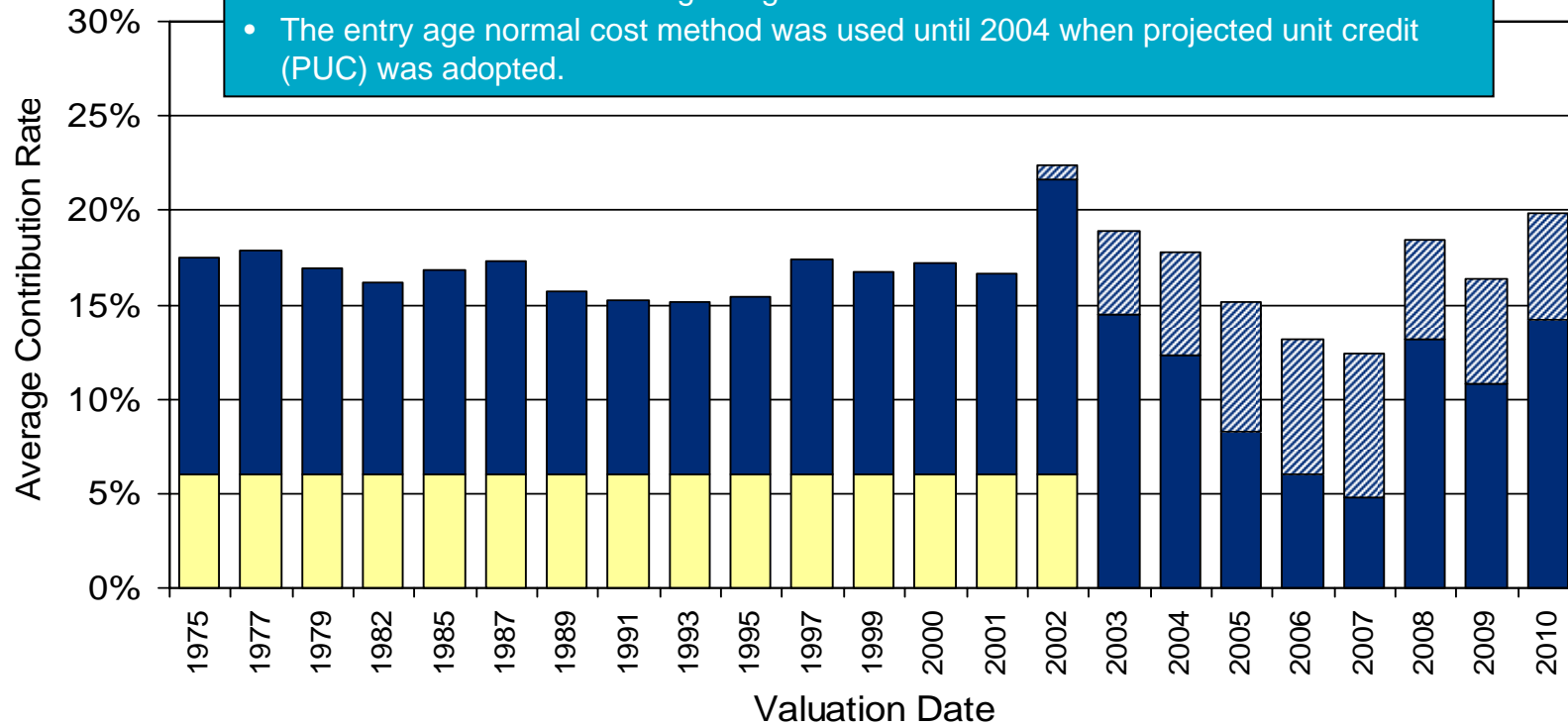
* Adjustments to individual employer contribution rates are made for side accounts and pre-SLGRP liabilities or surpluses

Key Findings

Historical Perspective on Valuation Rates (Excluding IAP)

When comparing historical valuation rates, please note that there have been a number of changes including:

- Money Match benefits were not valued until 1997.
- A smoothed value of assets was used from 2000 through 2003.
- PERS reform was valued beginning in 2001.
- The entry age normal cost method was used until 2004 when projected unit credit (PUC) was adopted.



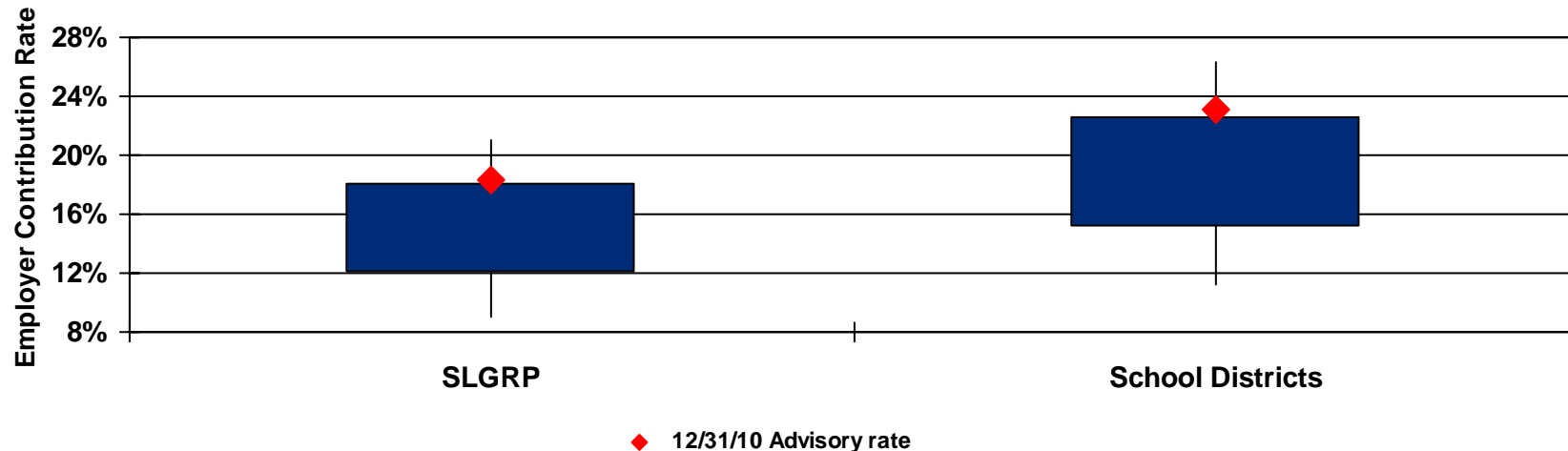
Member 6% Contribution
 Adjusted Employer Contribution
 Average Adjustment*

* Adjustments to individual employer contribution rates are made for side accounts and pre-SLGRP liabilities or surpluses

Key Findings

Collar Limits for Base Rates Effective 2013-2015 (Excluding Retiree Health Care and IAP)

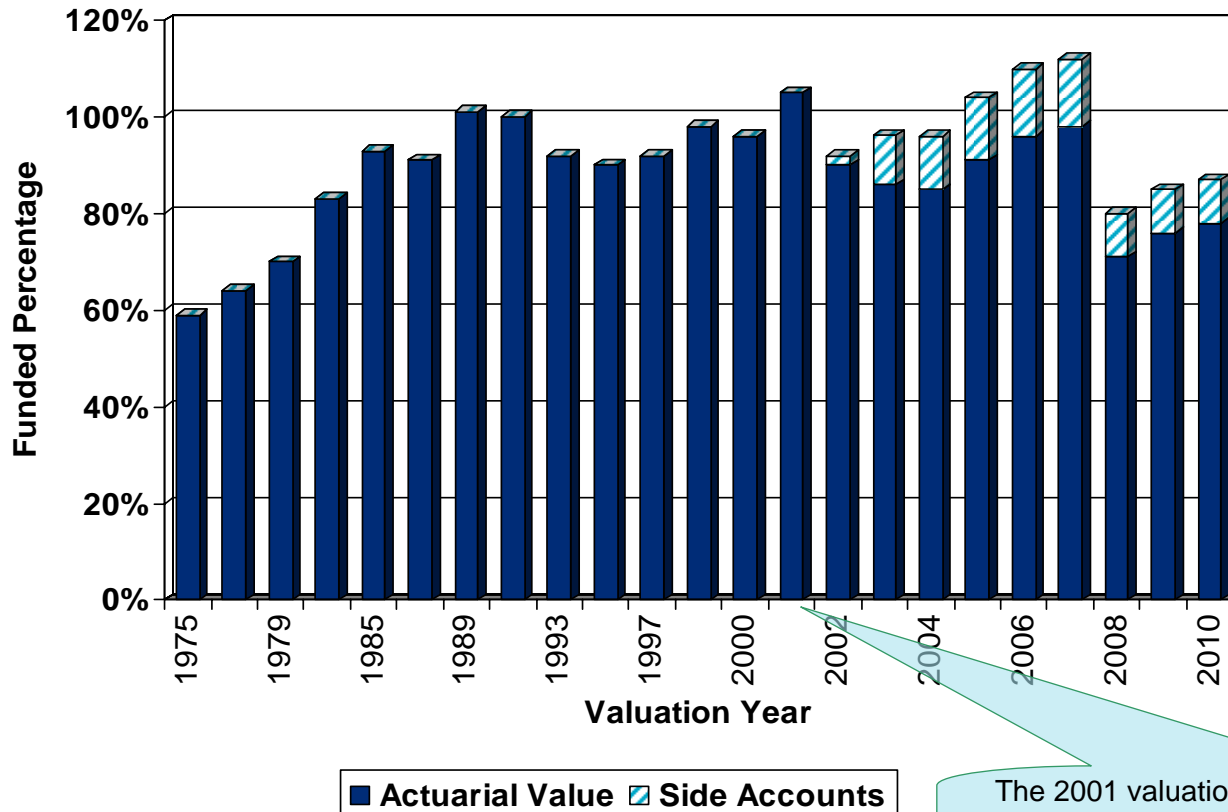
July 1, 2013 Collar Limits



- A rate collar limits rate changes from period to period. Rates currently in effect set the collar for the 2013-2015 period.
- The blue boxes show the width of the collar if funded status is at least 80%. The width of the double collar in effect if funded status is 70% or lower is shown by the line above the box.
- Collars are set on a rate pool by rate pool basis.
- UAL rates are charged on all payroll (for example, the Tier 1/Tier 2 UAL rate is charged on both Tier 1/Tier 2 payroll and OPSRP payroll).

Key Findings

Tier 1/Tier 2/OPSRP Historical Funded Status



When comparing historical Funded status, please note that there have been a number of changes including:

- Money Match benefits were not valued until 1997.
- A smoothed value of assets was used from 2000 through 2003.
- PERS reform was valued beginning in 2001.
- The entry age normal cost method was used until 2004 when projected unit credit (PUC) was adopted.

The 2001 valuation was revised to include the impact of PERS reform legislation enacted in 2003. Prior to the revision, the funded percentage was 88%.

12/31/2010 TIER 1/TIER 2 & OPSRP
VALUATION
OREGON PUBLIC EMPLOYEES
RETIREMENT SYSTEM

12/31/2010 Tier 1/Tier 2 & OPSRP Valuation Assets

- Valuation assets used to set Tier 1/Tier 2 & OPSRP contribution rates exclude:
 - The Contingency and Tier 1 Rate Guarantee Reserves,
 - Side accounts,
 - Pre-SLGRP liabilities and surpluses, and
 - IAP and Retiree Health Care (RHIA, RHIPA) assets

<i>(amounts in millions)</i>	Tier 1/ Tier 2	OPSRP	Side Accounts	Contingency Reserve	Rate Guarantee Reserve
Assets as of January 1, 2010	43,251	445	5,490	653	(442)
Contributions & side account transfers	838	147	(559)	0	0
Benefit payments & expenses	(3,093)	(8)	(0)	0	0
Investment income	4,996	75	648	81	243
Assets as of December 31, 2010	45,992	659	5,579	734	(199)
Negative RGR adjustment	(199)	0	0	0	199
Pre-SLGRP liabilities/(surplus)	(448)	0	0	0	0
Valuation assets	45,345	659	5,579	734	0

12/31/2010 Tier 1/Tier 2 & OPSRP Valuation

Normal Cost Rate

- The average normal cost rate decreased 3 basis points since the last valuation
- Active members projected to retire under the Money Match formula have a 0% normal cost rate. As a result, Tier 1 general service members have the lowest normal cost rate.
- Normal cost rates are expected to rise over time as the OPSRP tier's average age and service increase and as long-service Tier 1 actives retire under the Money Match formula and are replaced by new OPSRP members.

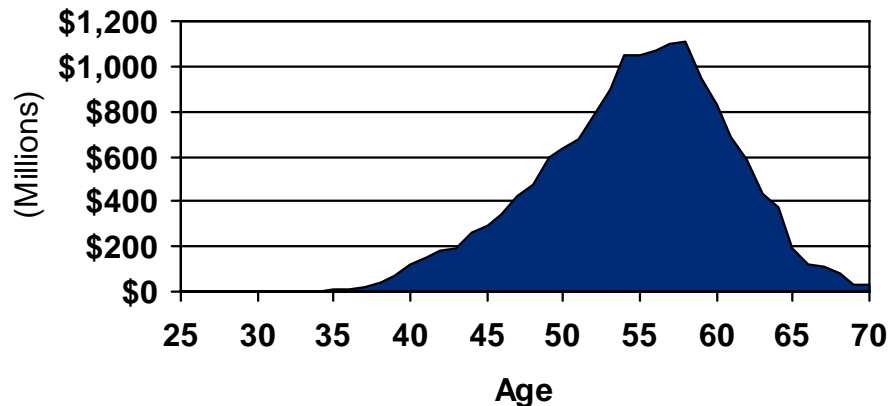
	Valuation		
	12/31/2008	12/31/2009	12/31/2010
T-1, General	5.02%	5.81%	5.73%
T-1, P&F	14.61%	15.79%	14.84%
T-1, Average	6.12%	6.98%	6.81%
T-2, General	9.52%	9.95%	10.32%
T-2, P&F	14.03%	14.67%	14.81%
T-2, Average	10.13%	10.60%	10.95%
OPSRP, General	5.90%	6.13%	6.08%
OPSRP, P&F	8.61%	8.84%	8.82%
OPSRP, Average	6.16%	6.40%	6.35%
System Average	7.44%	7.96%	7.93%

12/31/2010 Tier 1/Tier 2 & OPSRP Valuation

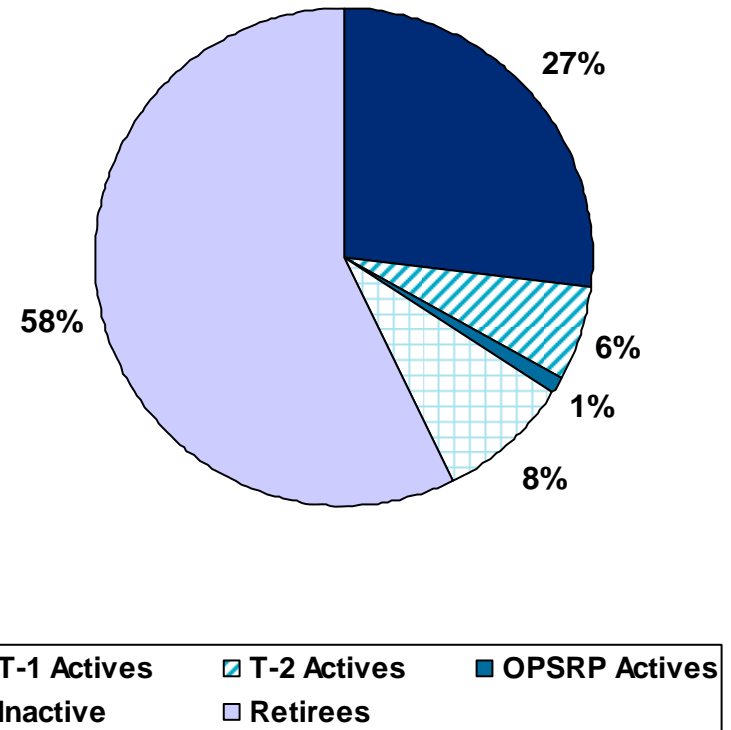
Actuarial Accrued Liabilities

- While Tier 1 members represent the predominant portion of the active member liability, 66% of the system's total accrued liability is for members who are no longer working in covered employment
- Over 54% of the Tier 1 active member liability is for members over age 55, and approximately 80% of the Tier 1 active member liability is for members over age 50

Distribution of Tier 1 Active Liability



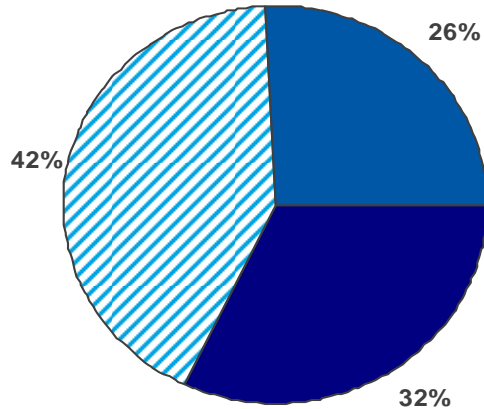
Actuarial Accrued Liability by Member Category



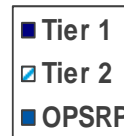
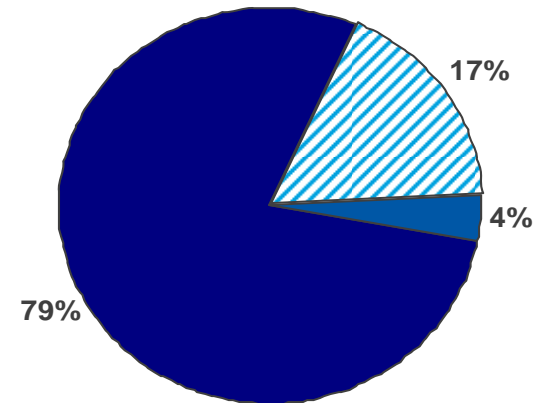
12/31/2010 Tier 1/Tier 2 & OPSRP Valuation

Active Member Liabilities

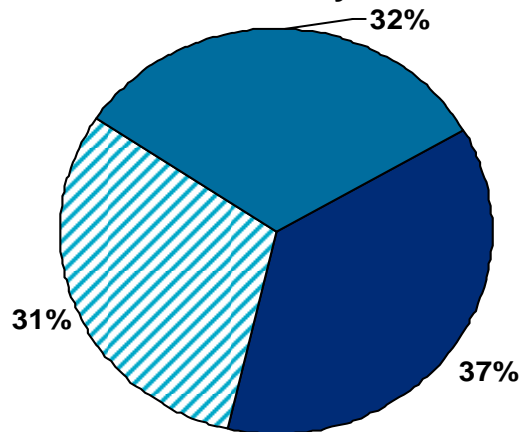
Normal Cost



Actuarial Accrued Liability



Valuation Payroll



- While Tier 1 represents 79% of the accrued liability for active members, it is only 37% of the payroll and 32% of the normal cost
- Tier 2 represents 17% of the accrued liability, 31% of the payroll and 42% of the normal cost
- OPSRP represents 32% of the payroll and 26% of the normal cost, but only 4% of the active member liability

12/31/2010 Tier 1/Tier 2 & OPSRP Valuation

Funded Status Measures

- **Unfunded Accrued Liability (UAL) Excluding Side Accounts**
 - The UAL excluding side accounts is used to calculate the employer contribution rates for the SLGRP and School District pools and for independent employers
 - The side accounts are treated as prepaid contributions for the individual employers who have made supplemental contributions
- **Unfunded Accrued Liability (UAL) Including Side Accounts**
 - The UAL including side accounts is used to report the funded status of the system as a whole in financial reporting documents
 - Side accounts are held within the PERS Trust and are available to pay PERS benefits
- **Employer Net Obligation**
 - The employer net obligation is the UAL including side accounts but adjusted for the outstanding principal on pension obligation bonds (POBs)
 - This measure is not used by PERS, but can be used in a broader financial context to understand the outstanding obligations related to PERS

12/31/2010 Tier 1/Tier 2 & OPSRP Valuation Unfunded Accrued Liability (UAL)

<i>(amounts in millions)</i>	12/31/2009 Valuation	12/31/2010 Valuation
	System-Wide ¹	System-Wide ¹
Accrued Liability	\$56,811	\$59,330
Assets	\$43,239	\$46,004
UAL Excluding Side Accounts	\$13,572	\$13,325
Side Accounts	\$5,490	\$5,579
UAL Including Side Accounts	\$8,081	\$7,746
POBs	\$6,109	\$6,000
Employer Net Obligations	\$14,191	\$13,746

The ratio of Side Accounts to outstanding Pension Obligation Bonds (POBs) went from 0.90 to 0.93 between 12/31/2009 and 12/31/2010

¹ System-wide results include Multnomah Fire District #10

12/31/2010 Tier 1/Tier 2 & OPSRP Valuation Unfunded Accrued Liability (UAL)

<i>(amounts in millions)</i>	12/31/2009 Valuation	12/31/2010 Valuation
	System-Wide ¹	System-Wide ¹
Payroll (T1/T2 + OPSRP)	\$8,512	\$8,750
UAL Excluding Side Accounts	\$13,572	\$13,325
UAL Excluding Side Accounts as % of Payroll	159%	152%
UAL Including Side Accounts	\$8,081	\$7,746
UAL Including Side Accounts as % of Payroll	95%	89%
UAL Including Side Accounts Adjusted for POBs	\$14,191	\$13,746
Employer Net Obligations as % of Payroll	167%	157%

¹ System-wide results include Multnomah Fire District #10

12/31/2010 Tier 1/Tier 2 & OPSRP Valuation 2013-2015 Advisory Contribution Rates (Excluding Retiree Health Care and IAP)

	SLGRP	School Districts	OPSRP	System-Wide
Tier 1/Tier 2/OPSRP				
Normal Cost	8.96%	7.72%	6.35%	7.93%
T1/T2 UAL	9.40%	15.35%	11.16%	11.16%
OPSRP UAL	0.10%	0.10%	0.10%	0.10%
Base Rate, Excluding Retiree Health Care & IAP	18.46%	23.17%	17.61%	19.19%
Adjustments¹				
Side Accounts	(4.34%)	(8.02%)	(5.25%)	(5.25%)
Pre-SLGRP Liabs	(0.74%)	N/A	(0.42%)	(0.42%)
Average Adjustment	(5.08%)	(8.02%)	(5.67%)	(5.67%)
Net Rate, Excluding Retiree Health Care & IAP¹	13.38%	15.15%	11.94%	13.52%

¹ For this exhibit, adjustments are assumed not to be limited due to an individual employer reaching a 0.00% contribution rate.



12/31/2010 RETIREE HEALTH CARE
VALUATION
OREGON PUBLIC EMPLOYEES
RETIREMENT SYSTEM

12/31/2010 Retiree Health Care Valuation

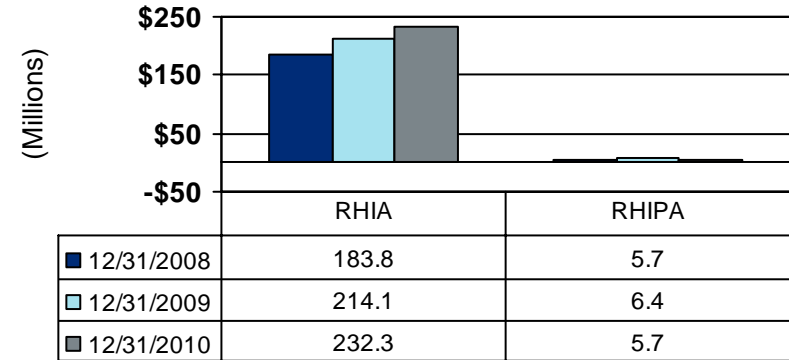
Overview

- RHIA provides \$60 per month subsidy toward healthcare premiums for Tier 1/Tier 2 retirees who are eligible for Medicare. OPSRP retirees are not eligible for the RHIA subsidy.
- RHIPA provides Tier 1/Tier 2 State employees who retire prior to age 65 with an alternative to PEBB coverage until they reach Medicare eligibility. OPSRP retirees are not eligible for the RHIPA subsidy.
- These benefits are funded through 401(h) accounts within the PERS trust, but the funds are, by law, kept separate from the pension funds. Consequently, side accounts cannot be used to make RHIA or RHIPA contributions.
- RHIA and RHIPA are not as well-funded as the pension plan.
 - To address that, in July 2009 the Board shortened the amortization period to 10 years to more rapidly improve funded status of those programs.
 - Contribution rates effective July 2011 first reflect this accelerated amortization.
- Contribution rates for RHIA and RHIPA increased effective 2011-2013 due to investment losses and the change from a 20-year amortization period to a 10-year period. They will increase again effective 2013-2015 due to the increase in past and assumed future rates of participation.

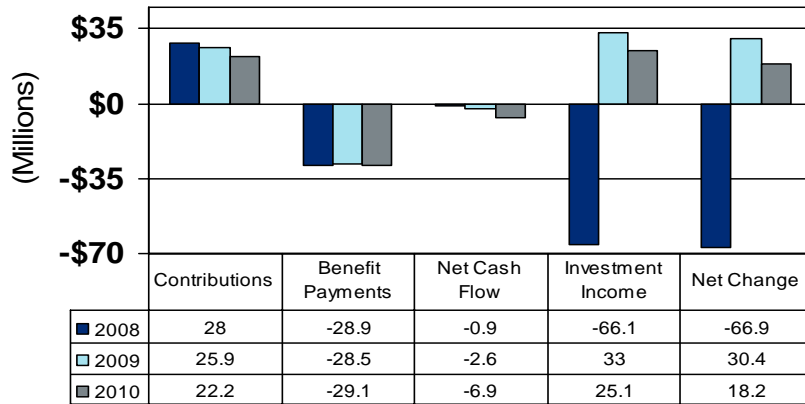
12/31/2010 Retiree Health Care Valuation Assets

- During the two year period illustrated, the cumulative net change in retiree health care assets was a \$49 million (or 26%) increase
- For both programs, benefit payments have exceeded contributions
 - For RHIPA, benefit payments increased significantly in 2010, leading to a decline in total assets despite investment gains.

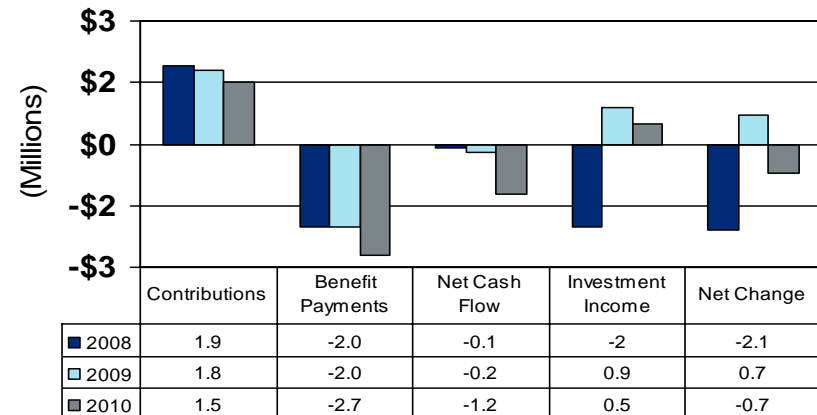
Retiree Health Care Assets



Changes in RHIA Plan Assets



Changes in RHIPA Plan Assets



12/31/2010 Retiree Health Care Valuation

Normal Cost

	RHIA		RHIPA	
	12/31/2009	12/31/2010	12/31/2009	12/31/2010
Normal Cost	\$5.5	\$6.0	\$0.8	\$1.2
Normal Cost Payroll	\$6,123	\$5,930	\$1,705	\$1,603
Normal Cost Rate	0.09%	0.10%	0.05%	0.07%

- Normal cost rates for RHIA and RHIPA have increased since 12/31/2009
- These rates remain very sensitive to the participation assumption
 - In addition, RHIPA rates are sensitive to the effects of current and assumed future healthcare cost inflation

12/31/2010 Retiree Health Care Valuation Unfunded Accrued Liability

Funded status lags significantly behind the funded status of Tier 1/Tier 2 and OPSRP.

<i>(amounts in millions)</i>	RHIA		RHIPA	
	12/31/2009	12/31/2010	12/31/2009	12/31/2010
Accrued Liability	\$511	\$547	\$25	\$34
Assets	\$214	\$232	\$ 6	\$ 6
UAL	\$297	\$315	\$18	\$28
Funded Percentage	42%	42%	26%	17%
Combined Valuation Payroll	\$8,512	\$8,750	\$2,372	\$2,380
UAL Rate	0.50%	0.56%	0.11%	0.17%

Amounts In Millions

RHIPA assets at the end of 2010 were only between two and three times the size of 2010 RHIPA benefit payments

Next Steps

- Full system-wide valuation report will be published prior to the next meeting
- At the meeting, we will present listings of individual employer advisory rates
- PERS staff will deliver individual employer reports via e-mail

Important Notices

Mercer has prepared this presentation exclusively for the Oregon PERS Board to present the system-wide results of a valuation of the Oregon Public Employees Retirement System as of December 31, 2010, and to provide advisory information on system-wide employer contribution rates for the period beginning July 1, 2013. This presentation may not be used or relied upon by any other party or for any other purpose; Mercer is not responsible for the consequences of any unauthorized use.

Decisions about benefit changes, granting new benefits, investment policy, funding policy, benefit security and/or benefit-related issues should not be made on the basis of this presentation, but only after careful consideration of alternative economic, financial, demographic and societal factors, including financial scenarios that assume future sustained investment losses.

A valuation report is only a snapshot of a Plan's estimated financial condition at a particular point in time; it does not predict the Plan's future financial condition or its ability to pay benefits in the future and does not provide any guarantee of future financial soundness of the Plan. Over time, a plan's total cost will depend on a number of factors, including the amount of benefits the plan pays, the number of people paid benefits, the period of time over which benefits are paid, plan expenses and the amount earned on any assets invested to pay benefits. These amounts and other variables are uncertain and unknowable at the valuation date.

Because modeling all aspects of a situation is not possible or practical, we may use summary information, estimates, or simplifications of calculations to facilitate the modeling of future events in an efficient and cost-effective manner. We may also exclude factors or data that are immaterial in our judgment. Use of such simplifying techniques does not, in our judgment, affect the reasonableness of valuation results for the plan.

The Oregon Investment Council (OIC) is solely responsible for selecting the plan's investment policies, asset allocations and individual investments. Mercer's actuaries have not provided any investment advice to the OIC.

To prepare this report, various *actuarial assumptions*, as described in the Appendix, are used in a forward looking financial and demographic model to present a single scenario from a wide range of possibilities; the results based on that single scenario are included in the valuation. The future is uncertain and the plan's actual experience will differ from those assumptions; these differences may be significant or material because these results are very sensitive to the assumptions made and, in some cases, to the interaction between the assumptions.

Important Notices

Different assumptions or scenarios within the range of possibilities may also be reasonable and results based on those assumptions would be different. As a result of the uncertainty inherent in a forward looking projection over a very long period of time, no one projection is uniquely “correct” and many alternative projections of the future could also be regarded as reasonable. Two different actuaries could, quite reasonably, arrive at different results based on the same data and different views of the future. A “sensitivity analysis” shows the degree to which results would be different if you substitute alternative assumptions within the range of possibilities for those utilized in this report. We have not been engaged to perform such a sensitivity analysis and thus the results of such an analysis are not included in this report. At PERS’ request, Mercer is available to perform such a sensitivity analysis.

Actuarial assumptions may also be changed from one valuation to the next because of changes in mandated requirements, plan experience, changes in expectations about the future and other factors. A change in assumptions is not an indication that prior assumptions were unreasonable when made.

The calculation of actuarial liabilities for valuation purposes is based on a current estimate of future benefit payments. The calculation includes a computation of the “present value” of those estimated future benefit payments using an assumed discount rate; the higher the discount rate assumption, the lower the estimated liability will be. For purposes of estimating the liabilities (future and accrued) in this report, you selected an assumption based on the expected long term rate of return on plan investments. Using a lower discount rate assumption, such as a rate based on long-term bond yields, could substantially increase the estimated present value of future and accrued liabilities.

Because valuations are a snapshot in time and are based on estimates and assumptions that are not precise and will differ from actual experience, contribution calculations are inherently imprecise. There is no uniquely “correct” level of contributions for the coming plan year.

Valuations do not affect the ultimate cost of the Plan, only the timing of contributions into the Plan. Plan funding occurs over time. Contributions not made this year, for whatever reason, including errors, remain the responsibility of the Plan sponsor and can be made in later years. If the contribution levels over a period of years are lower or higher than necessary, it is normal and expected practice for adjustments to be made to future contribution levels to take account of this with a view to funding the plan over time.

Data, computer coding and mathematical errors are possible in the preparation of a valuation involving complex computer programming and thousands of calculations and data inputs. Errors in a valuation discovered after its preparation may be corrected by amendment to the valuation or in a subsequent year’s valuation.

Important Notices

Assumptions used are based on the last experience study, as adopted by the Board on July 29, 2011. The Board is responsible for selecting the plan's funding policy, actuarial valuation methods, asset valuation methods, and assumptions. The policies, methods and assumptions used in this valuation are those that have been so prescribed and are described in the Appendix. Oregon PERS is solely responsible for communicating to Mercer any changes required thereto.

To prepare this report Mercer has used and relied on financial data and participant data supplied by the Oregon Public Employees Retirement System and summarized in the Appendix. Oregon PERS is responsible for ensuring that such participant data provides an accurate description of all persons who are participants under the terms of the plan or otherwise entitled to benefits as of December 31, 2010, that is sufficiently comprehensive and accurate for the purposes of this report. Although Mercer has reviewed the data in accordance with Actuarial Standards of Practice No. 23, Mercer has not verified or audited any of the data or information provided.

Mercer has also used and relied on the provisions described in Oregon Revised Statutes Sections 238 and 238A and legislative amendments supplied by the Oregon Public Employees Retirement System, as summarized in the prior valuation report as of December 31, 2009. We have assumed for the purposes of this valuation that copies of all relevant documents, including legislative amendments, have been provided to Mercer, along with a written summary of any other substantive commitments. The Oregon Public Employees Retirement System is solely responsible for the validity, accuracy and comprehensiveness of this information. If any data or plan provisions supplied are not accurate and complete, the valuation results may differ significantly from the results that would be obtained with accurate and complete information; this may require a later revision of this report. Moreover, plan documents may be susceptible to different interpretations, each of which could be reasonable, and that the different interpretations could lead to different valuation results.

We understand that the market values of private equity and some real estate investments are reported on a 3-month lag. We have made no adjustment to the reported market value of assets to account for this lag. A very brief discussion of this issue is provided in the Executive Summary of the prior valuation report as of December 31, 2009.

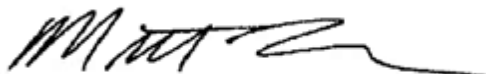
Oregon PERS should notify Mercer promptly after receipt of this report if it disagrees with anything contained in the report or is aware of any information that would affect the results of the report that has not been communicated to Mercer or incorporated therein. The report will be deemed final and acceptable to Oregon PERS unless it promptly provides such notice to Mercer.

Important Notices

Professional Qualifications

We are available to answer any questions on the material in this report or to provide explanations or further details as appropriate. The undersigned credentialed actuaries meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained in this report. The actuarial certification of healthcare cost assumptions related to the RHIPA program is covered in the 2010 Experience Study report, and is incorporated herein by reference. We are not aware of any direct or material indirect financial interest or relationship, including investments or other services that could create a conflict of interest, that would impair the objectivity of our work.

We are available to answer any questions on the material contained in the report, or to provide explanations or further details as may be appropriate.



September 30, 2011

Matthew R. Larrabee, FSA, EA, MAAA
Enrolled Actuary No. 11-6154

Date



September 30, 2011

Scott D. Preppernau, FSA, EA, MAAA
Enrolled Actuary No. 11-7360

Date

Mercer (US), Inc.
111 SW Columbia Street, Suite 500
Portland, OR 97201-5839
503 273 5900

The information contained in this document 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.

APPENDIX

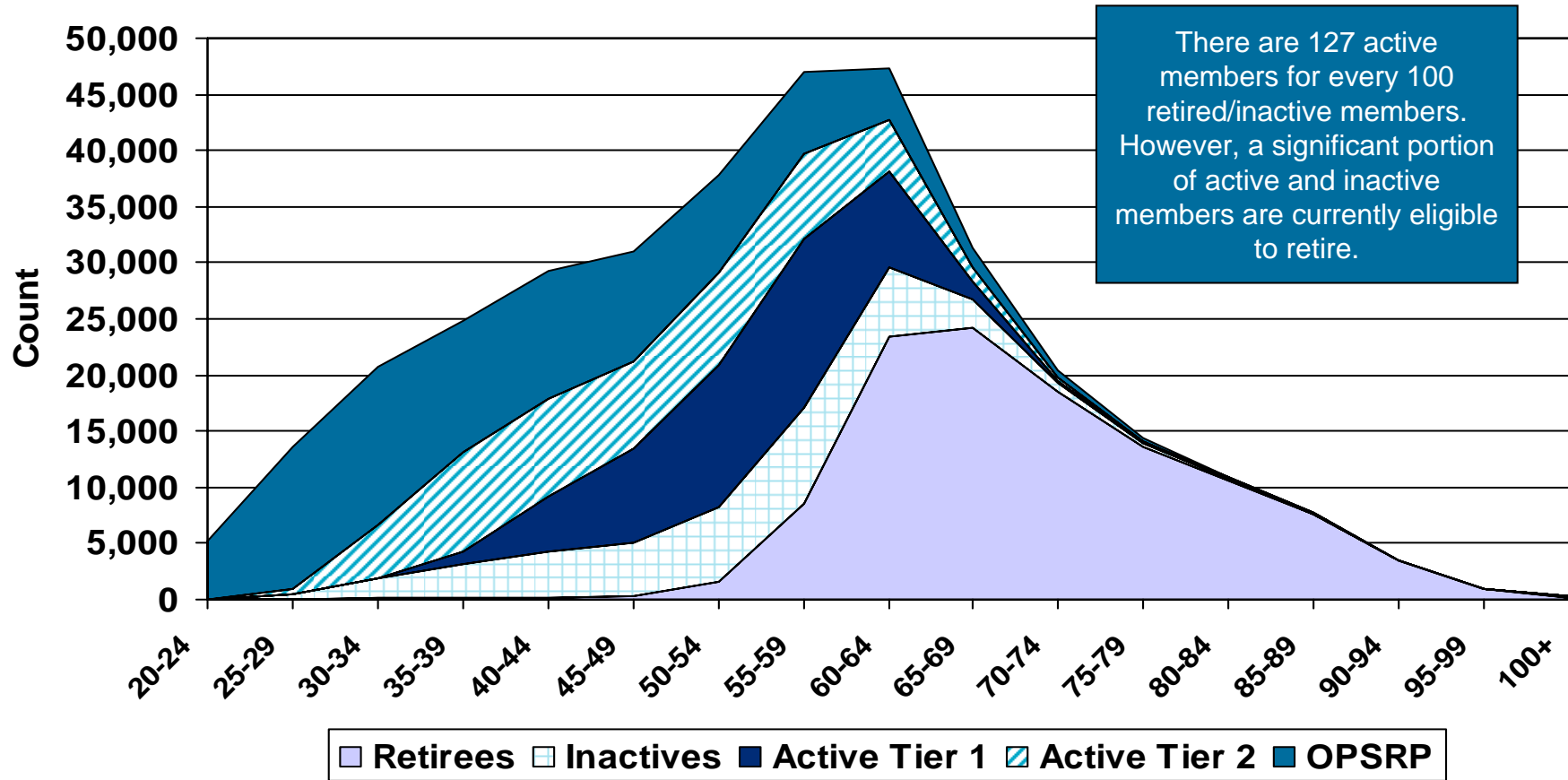
Appendix

Data Exhibits

	December 31				
	2010				2009
	Tier 1	Tier 2	OPSRP	Total	Total
Active Members					
Count	52,786	52,389	88,394	193,569	178,606
Average age	53.6	47.1	41.1	46.1	46.2
Average total service	20.7	10.2	3.6	10.1	10.3
Average valuation payroll	\$ 61,392	\$ 51,340	\$ 31,900	\$ 45,204	\$ 47,659
Dormant Members¹					
Count	21,266	15,630	2,457	39,353	39,317
Average age	56.0	49.4	45.9	52.7	52.1
Average monthly deferred benefit	\$ 2,110	\$ 626	\$ 214	\$ 1,402	\$ 1,235
Retired Members and Beneficiaries¹					
Count	109,836	3,513	115	113,464	110,724
Average age	70.8	64.7	\$ 65.0	70.6	70.4
Average monthly benefit	\$ 2,249	\$ 637	\$ 353	\$ 2,198	\$ 2,127
Total members	183,888	71,532	90,966	346,386	328,647

1. Dormant and Retiree counts are shown by lives within the system. In other words, a member is counted once for purposes of this exhibit, regardless of their service history for different rate pools. This contrasts with the method used to count inactive participants in some of the later exhibits of this report.

Age Distribution



Appendix

Actuarial Basis

Data

We have based our calculation of the liabilities on the data supplied by the Oregon Public Employees Retirement System and summarized in the data exhibits on the preceding slides.

Assets as of December 31, 2010, were based on values provided by Oregon PERS reflecting the Board's earnings crediting decisions for 2010. Assets and year-to-date returns as of August 31, 2011 as published by the Oregon Investment Council (OIC) were used as the basis for projecting December 31, 2011 assets, where applicable. Year-to-date 2011 returns as of that date on regular accounts are 3.53%.

Methods / Policies

Actuarial Cost Method: Projected Unit Credit, as described in the December 31, 2009, Actuarial Valuation ("2009 Valuation Report") for the Oregon Public Employees Retirement System.

UAL Amortization: The UAL for Tier 1/Tier 2, OPSRP, and Retiree Health Care as of December 31, 2007 are amortized as a level percentage of combined valuation payroll over a closed period. For the Tier 1/Tier 2 UAL, this period is 20 years; for OPSRP, it is 16 years; for Retiree Health Care, it is 10 years. Gains and losses between subsequent odd-year valuations are amortized as a level percentage of combined valuation payroll over the amortization period (20 years for Tier/Tier 1, 16 years for OPSRP, 10 years for Retiree Health Care) from the odd-year valuation in which they are first recognized.

The amortization of the UAL using the current amortization method results in an initial payment less than the "interest only" payment on the UAL. Payments less than the interest only amount will result in the UAL increasing for an initial period of time.

Appendix

Actuarial Basis

Methods / Policies (cont'd)

Contribution rate stabilization method: Contribution rates for a rate pool (e.g. Tier 1/Tier 2 SLGRP, Tier 1/Tier 2 School Districts, OPSRP) are confined to a collar based on the prior contribution rate (prior to application of side accounts, pre-SLGRP liabilities, and 6 percent Independent Employer minimum). The new contribution rate will generally not increase or decrease from the prior contribution rate by more than the greater of 3 percentage points or 20 percent of the prior contribution rate. If the funded percentage excluding side accounts drops below 70% or increases above 130%, the size of the collar doubles. If the funded percentage excluding side accounts is between 70% and 80% or between 120% and 130%, the size of the rate collar is increased on a graded scale. The “sliding scale” implementation of the double rate collar was approved by the Board in January 2010 and was effective with the 2009 Valuation.

Expenses: OPSRP administration expenses are assumed to be equal to \$6.6M and are added to the OPSRP normal cost.

Actuarial Value of Assets: Equal to Market Value of Assets excluding Contingency and Tier 1 Rate Guarantee Reserves. The Tier 1 Rate Guarantee Reserve is not excluded from assets if it is negative (i.e. in deficit status).

Assumptions

Assumptions for valuation calculations are as described in the 2010 Experience Study.

Provisions

Provisions valued are as detailed in the 2009 Valuation Report.

Arken and Robinson Litigation

We have made no adjustment to these valuation results to reflect any interpretation of Judge Kantor's rulings in the *Arken and Robinson* cases.





Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

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

September 30, 2011

TO: Members of the PERS Board

FROM: Debra Hembree, Interim Actuarial Services Manager

SUBJECT: 2010 Actuarial Equivalency Factors

ORS 238.607 requires that the PERS Board adopt actuarial equivalency factor (AEF) tables every two years for use in computing member benefit payments. On September 30, 2011, Mercer actuaries Matthew Larrabee and Scott Preppernau will present an analysis of the AEF tables that will be used to calculate retirement and other benefits effective January 1, 2012, through December 31, 2013.

The new AEF tables reflect Mercer's finding in the 2010 Experience Study that PERS member longevity is increasing. By taking this increased longevity into account, the new AEF tables will reduce Money Match benefits by a small margin. Information regarding this reduction of benefits will be provided by Mercer and posted to the PERS website on September 30, 2011.

Mercer's report on the new AEF tables will be provided to the Board prior to the meeting.



Matthew R. Larrabee, FSA, EA, MAAA
Principal

111 SW Columbia Street, Suite 500
Portland, OR 97201-5839
+1 503 273 5976 Fax +1 503 273 5999
matt.larrabee@mercer.com
www.mercer.com

Ms. Debra Hembree
Interim Manager
Actuarial Analysis Section
Oregon PERS
PO Box 23700
Tigard, OR 97281-3700

September 29, 2011

Subject: Request Number: 2011-007
2010 Mortality Assumption Change Impact

Dear Debra:

As requested, we have calculated the impact of the 2010 mortality tables adopted by the Board on July 29, 2011 for the December 31, 2010 and 2011 valuations on Money Match factors. These estimates are based on the weightings of the five different mortality tables that we intend to propose to the Board for adoption at their September meeting. For members retiring after December 31, 2011, the new factors will reduce Money Match benefits by approximately 0.6 percent requiring a member to retire about one month later to receive the same initial benefit amount. Pension Plus Annuity benefits will also be reduced by approximately 0.3 percent, and Full Formula benefits will not be affected. The actuarial equivalence factors for optional forms, however, will also be affected. The impact will vary, but generally should be much smaller than the impact on Money Match conversion factors.

Our Understanding

We understand that the mortality tables adopted in the 2010 experience study for the 2010 and 2011 actuarial valuations are required to be the basis for all actuarial equivalence factors for retirements in 2012 and 2013. Since there are multiple mortality tables used in the actuarial valuation, these mortality tables must be blended into a single mortality table for determining Option 1 actuarial equivalence factors. The blending of the mortality tables and all other actuarial equivalence factors will be adopted by the Board at its September meeting.

Data, Methods, Assumptions and Provisions

Option 1 factors were calculated based on an interest rate of 8.0 percent and the following mortality tables and weights.

Group	Mortality Table (RP 2000 Generational, Combined Active/Healthy Annuitant)	Weight
School District Male	White collar, set back 18 months, male	10%
Other General Service Male	Blend 25% blue collar, set back 12 months, male	25%
Police & Fire Male	Blend 33% blue collar, no set back, male	10%
School District Female	White collar set back 24 months, female	25%
Other Female	White collar, no set back, female	30%

Page 2
 September 29, 2011
 Ms. Debra Hembree
 Oregon PERS

Monthly Money Match benefits were calculated based on a Member account balance of \$100,000 multiplied by two for the employer match and multiplied by the Option 1 factor divided by 1000. When a member retires, this monthly benefit amount would be adjusted either under the provisions of HB 3349 or SB 656. The calculations shown in this letter do not include this adjustment.

Analysis and Conclusions

The table below compares the Option 1 factors at 5 different retirement ages that have been in effect for the last two years to the Option 1 factors that will be effective for the next two years. Option 1 factors are used to convert member account balances to monthly annuities under the Money Match benefit formula. Monthly benefits are shown in the table assuming the member account balance at retirement equals \$100,000. Please note that the benefit amounts shown do not include any adjustment for HB 3349 or SB 656. These adjustments will vary depending on the service of the member.

Age	Option 1 Factor			Monthly Money Match Benefit Per \$100,000 Member Account Balance		
	2010-11	2012-13	Percentage Change	2010-11	2012-13	Dollar Change
50	7.07	7.04	-0.4%	\$1,414	\$1,408	-\$6
55	7.38	7.35	-0.4%	\$1,476	\$1,470	-\$6
60	7.85	7.80	-0.6%	\$1,570	\$1,560	-\$10
65	8.53	8.46	-0.8%	\$1,706	\$1,692	-\$14
70	9.51	9.42	-0.9%	\$1,902	\$1,884	-\$18

The impact of the change in factors ranges from a 0.4 percent reduction in Money Match benefits for retirements at age 50 to a 0.9 percent reduction for retirements at age 70. In dollar terms, the impact ranges from a reduction of \$6 per month at age 50 to a reduction of \$18 per month at age 70, both assuming a member account balance at retirement of \$100,000.

A member planning to retire on January 1, 2012 could elect to delay retirement until the benefit calculated using the new factors was at least as large as the benefit calculated using the old factors as of January 1, 2012. The table below shows the difference in the initial monthly benefit between retiring under the old factors effective January 1, 2012 and retiring under the new factors 0, 1, 2, and 3 months later. All calculations assume the member's account balance on January 1, 2012 is \$100,000 and is credited with earnings each month at an annual rate of 8.0 percent.

Page 3
September 29, 2011
Ms. Debra Hembree
Oregon PERS

Age on 1/1/2012	Difference in Monthly Money Match Benefit Compared to January 1, 2012 Retirement Under Old Factors Per \$100,000 Member Account Balance on January 1, 2012			
	+0 Months	+1 Month	+2 Months	+3 Months
50	-\$6	\$5	\$14	\$25
55	-\$6	\$5	\$15	\$27
60	-\$10	\$2	\$14	\$26
65	-\$14	-\$1	\$14	\$27
70	-\$18	-\$2	\$14	\$31

The combination of crediting earnings on the account balance and adjusting the Option 1 factor for a later retirement date results in larger initial monthly benefits after a 1 to 2 month delay in retirement date compared to the benefit that would have been calculated using the 2010-11 factors.

This letter has been prepared exclusively for Oregon PERS to estimate the financial impact to members retiring under the Money Match option as a result of applying new actuarial equivalence factors effective January 1, 2012. The material in this letter may not be used or relied upon for any other purpose; Mercer is not responsible for the consequences of any such unauthorized use.

This analysis is based on our understanding of the request and the data, methods, and assumptions described above. Differences in the data, methods, assumptions and interpretations of the plan provisions may produce different results.

The undersigned credentialed actuary meets the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained in this letter. If you have any questions about this material or need any additional information, please let us know.

Sincerely,



Matthew R. Larrabee, FSA, EA, MAAA
Principal

AYY/MRL/sdp/mrl:ksb:gjw

Copy:
Paul Cleary, Scott Preppernau, Chris Jasperson

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.

g:\wp\retire\2011\opersulsvr\qst\m2011-007 - 2010 mort asmp ch.doc



Matthew R. Larrabee, FSA, EA, MAAA

Principal

111 SW Columbia Street, Suite 500
Portland, OR 97201-5839
+1 503 273 5976 Fax +1 503 273 5999
matt.larrabee@mercer.com
www.mercer.com

Ms. Debra Hembree
Interim Manager
Actuarial Analysis Section
Oregon PERS
PO Box 23700
Tigard, OR 97281-3700

September 29, 2011

Subject: Subject: Actuarial Equivalency Factors Proposed Effective January 1, 2012

Dear Debra:

On July 29, 2011, the Board adopted actuarial assumptions and methods to be used in the December 31, 2010, and December 31, 2011, actuarial valuations. The adopted assumptions include an update to the valuation mortality tables. This letter provides new actuarial equivalency factors for ORS Chapter 238 and ORS Chapter 238A proposed to be effective January 1, 2012, reflecting the change in mortality assumptions adopted by the Board.

The mortality tables for healthy members and beneficiaries are "generational", meaning there are different rates for members who have different years of birth, with lower mortality for members who have later years of birth. This means that, even if the mortality assumption for the actuarial valuation does not change in the future, it will be necessary to update these tables periodically since the factor tables used by PERS in administering the program are based on ages rather than years of birth.

We understand it is the Board's intention to review and update the factors every two years, to coincide with the experience study. Therefore, these factors are proposed to be effective for determination dates during 2012 and 2013.

Weighting Factors to Develop Unisex Mortality Basis

In the December 31, 2010, valuation, there are five separate mortality tables that apply to healthy retirees based on gender and membership classification, two tables that apply to disabled retirees, and two tables that apply to beneficiaries. For determining actuarial equivalency factors, a single blended mortality basis is used for Tier 1, Tier 2, and OPSRP. For most factors that use a mortality basis, separate blended tables are developed for healthy members, beneficiaries and disabled members.

The blended mortality tables are developed by weighting each separate mortality table by the percentage of liabilities attributed to each gender/classification group for all active and dormant members. Unless indicated otherwise, the mortality tables and weightings shown below are used in the development of all actuarial equivalency factors:

Page 2
 September 29, 2011
 Ms. Debra Hembree
 Oregon PERS

Healthy Mortality Weighting Factors

Gender/Classification Group	Mortality Table	Weighting Factor
General Service Males	RP-2000 Male Generational, Blend 75% White Collar 25% Blue Collar, set back 12 months	25%
Police & Fire Males	RP-2000 Male Generational, Blend 67% White Collar 33% Blue Collar	10%
School District Males	RP-2000 Male Generational, White Collar, set back 18 months	10%
General Service/Police & Fire Females	RP-2000 Female Generational, White Collar	30%
School District Females	RP-2000 Female Generational, White Collar, set back 24 months	25%

Disabled Mortality Weighting Factors

Gender/Classification Group	Mortality Table	Weighting Factor
Males	RP-2000 Male Static, Combined Active/Healthy Annuitant, set forward 60 months, minimum of 2.25%	45%
Females	RP-2000 Female Static, Combined Active/Healthy Annuitant, set forward 48 months, minimum of 2.25%	55%

Beneficiary Mortality Weighting Factors

Gender/Classification Group	Mortality Table	Weighting Factor
Males	RP-2000 Male Generational, Blend 75% White Collar 25% Blue Collar, set back 12 months	55%
Females	RP-2000 Female Generational, White Collar	45%

Actuarial Equivalency Factor Tables

There are many actuarial equivalency factor tables provided as part of this letter. The following chart summarizes the tables provided, and indicates which tables apply to healthy and disabled

members, as well as to Tier 1/Tier 2 and OPSRP. Descriptions of the tables and the assumptions used are detailed in the remainder of this letter. **Note that these tables should not be combined or altered to produce other factors. Each table contains a description of how the table should be used in calculations. If you are unsure of how to use the tables or require additional tables for other purposes, such as converting from a single life annuity to a 15-year certain and life benefit, please let us know and we will provide the appropriate factors.**

Actuarial Equivalency Factor Table	Tier 1/Tier 2		OPSRP	
	Healthy	Disabled	Healthy	Disabled
Early Retirement Reduction Factors	Table 1	N/A	Table 1	N/A
Refund Annuity Conversion Factors (Option 0)	Table 2a	Table 2b	N/A	N/A
Non-Refund Life Annuity Conversion Factors (Option 1)	Table 3a	Table 3b	N/A	N/A
15-Year Certain and Life Annuity Conversion Factors (Option 4)	Table 4a	Table 4b	N/A	N/A
Option 4 death benefit (conversion of remaining benefit to a lump sum)	Table 5	Table 5	N/A	N/A
Joint & Survivor Conversion Factors	Tables 6a, 7a, 8a, 9a	Tables 6b, 7b, 8b, 9b	Tables 6a, 7a, 8a, 9a	Tables 6b, 7b, 8b, 9b
Police & Fire Unit purchases	Tables 10-12	Tables 10-12	N/A	N/A
Full Cost factors for purchasing service	Tables 13a, 14-16, 17a	Tables 13b, 14-16, 17b	N/A	N/A
Lump Sum Cash Out Factors	N/A	N/A	Tables 18-21	Not provided
Spouse Death Benefit Conversion Factors	N/A	N/A	Tables 22-23	Tables 22-23
OPSRP QDRO Factors	N/A	N/A	Tables 26-27	Tables 26-27

Table 1: Early Retirement Reduction Factors

Members may elect to receive a reduced retirement benefit prior to their Normal Retirement Date if they qualify for early retirement. The reduction for early retirement does not apply to Money Match benefits as the reduction is included in the factors used to convert the account balance to an annuity. Normal and Early Retirement Dates vary by Tier and member classification as follows:

Classification	Normal Retirement Date	Early Retirement Date
Tier 1 General Service	Earlier of age 58 or 30 years of service	Age 55
Tier 2 General Service	Earlier of age 60 or 30 years of service	Age 55
OPSRP General Service	Earlier of age 65 or age 58 and 30 years of service	Age 55
Tier 1/Tier 2 Police & Fire	Earlier of age 55 or age 50 and 25 years of service or 30 years of service	Age 50
OPSRP Police & Fire	Earlier of age 60 or age 53 and 25 years of service	Age 50

For the Actuarial Equivalency Factors effective January 1, 2007, the Board adopted simplified factors using the same methodology for both Tier 1/Tier 2 benefits and OPSRP benefits. The simplified Early Retirement Factors (ERFs) reduce the monthly benefit by 8 percent each year for the first 5 years prior to Normal Retirement Age with an additional 5 percent reduction for each year beyond 5 years. For example, the ERF for an OPSRP member with a Normal Retirement Age of 65 who retires at age 57 is 45 percent (100 percent minus 5 years at 8 percent minus 3 years at 5 percent). We are not recommending a change from the prior factors at this time. These simplified factors should be periodically reviewed to ensure that the reductions continue to provide benefits that are actuarially equivalent as mortality rates improve.

Tables 2-4: Annuity Conversion Factors for Tier 1/Tier 2

Actuarial equivalency factors are used to convert member account balances to one of three annuity amounts: refund annuity, non-refund (single life) annuity, or a 15-year certain & life annuity. These factors do not include the value of the COLA, and therefore should not be used for any purpose other than converting member accounts to these benefit forms.

Table 5: Tier 1/Tier 2 Option 4 Death Benefit

For a retired member with an Option 4 benefit who dies before 180 payments have been made, these factors are used to convert the remainder of the 180 payments to a lump sum payable to the beneficiary. Because these factors are based on interest only, with no mortality, there has been no change from the prior factors.

Tables 6-9: Conversion to Joint & Survivor Forms

Members have the option of electing an optional form of benefit that provides a survivor benefit equal to 50 percent or 100 percent of the member's benefit. The actuarial equivalency factors are used to ensure that the optional form of benefit has the same value as the single life annuity (Option 1). Tables 6a, 7a, 8a, and 9a are to be used for healthy retired members. Factors are provided for retirees between the ages of 45 and 75 with beneficiaries between the ages of 0 and 110. If a member/beneficiary age combination falls outside of this range, please contact us so that we can provide the correct conversion factor.

Page 5
September 29, 2011
Ms. Debra Hembree
Oregon PERS

Tables 6b, 7b, 8b, and 9b are to be used for disabled retired members. Factors are provided for retirees between the ages of 20 and 70 with beneficiaries between the ages of 0 and 110. If a member/beneficiary age combination falls outside of this range, please contact us so that we can provide the correct conversion factor.

These tables are structured by age difference between retiree and beneficiary, as in our response to RN 2007-028 dated August 29, 2007. If you would like the tables in a different format, please let us know.

Tables 10-12: Tier 1/Tier 2 Police & Fire Additional Units

Tier 1/Tier 2 Police & Fire members have the option of purchasing "units" which provide an additional benefit at retirement. Because the police and fire additional unit factors are based on interest, with no mortality, there have been no changes to these factors.

Tables 13-17: Tier 1/Tier 2 Full Cost Factors for Purchasing Service

Tier 1/Tier 2 members have the option of purchasing certain periods of service by contributing the "full cost" of the increased benefit. The methodology for full cost purchases has been determined by the prior actuary and has not been reviewed as part of updating these factors. We have relied on our understanding of PERS' administrative practices for the methodology used in these calculations. We updated the Factor 1 and Factor 5 tables to reflect the updated mortality assumptions. Because Factors 2, 3 and 4 are based on interest only, with no mortality, there have been no changes to these factors.

Tables 18-21: OPSRP Lump Sum Distributions

Members or beneficiaries may receive a lump sum distribution from OPSRP in certain situations. Separate lump sum factors are to be used for members who have not yet met the Early Retirement criteria and members who are at or beyond their Earliest Retirement Date. To calculate the lump sum for a member who has not yet met the Early Retirement criteria, the normal retirement benefit is multiplied by the appropriate factor from Table 18 or 19. Different tables are required for General Service and Police & Fire due to differing Normal Retirement Ages for General Service and Police & Fire members.

To calculate the lump sum for a member who is at or beyond their Earliest Retirement Date, the early retirement benefit (equal to the normal retirement benefit times the early retirement reduction factor from Table 1) is multiplied by the appropriate factor from Table 20. To calculate the death benefit lump sum for a beneficiary, the death benefit must first be calculated and then multiplied by the factor from Table 21.

As discussed with PERS in 2006, we have not provided lump sum factor tables for disabled members who could potentially be eligible for a lump sum distribution at retirement age. We believe it is very unlikely that a disability retirement benefit will meet the requirements for a lump

Page 6
September 29, 2011
Ms. Debra Hembree
Oregon PERS

sum distribution. In the event that a disability retirement benefit is less than \$200 per month, please contact us and we will provide the appropriate factor.

The statute indicates that the cash out for a vested terminated member does not include the value of the COLA. However, statute does not specify if the lump sum cash out factors for small benefits at retirement eligibility should include the value of the COLA. In keeping with our understanding of prior administrative practice by PERS, the lump sum factors provided do not include the value of the COLA. Please let us know if these factors should include the value of the COLA.

Tables 22-23: OPSRP Death Benefit

Upon the death of a vested non-retired OPSRP member, a benefit is payable to the member's spouse. The benefit is a life annuity for the spouse that is actuarially equivalent to 50 percent of the benefit the member would have received if the member had retired on the date of the member's death, or if not eligible for retirement, had terminated employment on the date of death and retired as of the earliest retirement date.

Table 22 is used to convert the monthly benefit that would have been payable to the member to a monthly benefit payable to the spouse as of the date at which the member would have commenced receipt of the benefit. Table 23 is used to convert the spouse benefit so determined to a different commencement age. This is necessary since the spouse is not required to commence benefits at the date utilized in Table 22.

Since the statutes are not clear, we asked for guidance from PERS in 2006 as to whether separate tables should be provided for calculating the death benefit for a member who was receiving the temporary disability benefit prior to normal retirement age. We understand that the same tables for reducing the benefit for early retirement and converting the member's benefit to a spouse's benefit should apply to both healthy and disabled members. If PERS' administrative interpretation differs from that understanding, please contact us and we will provide a separate table for disabled members.

Tables 26-27: OPSRP QDROs - Immediate

The appropriate use of these tables is described in our response to RN 2007-024 dated January 4, 2008, regarding OPSRP Benefit Separation Methodology. Tables 26 and 27 are based on member mortality or beneficiary mortality, respectively, and have thus been updated to reflect the change in mortality rates.

Page 7
September 29, 2011
Ms. Debra Hembree
Oregon PERS

Data, Methods, Plan Provisions and Assumptions

The assumptions used in developing the actuarial equivalency factors are the same as those in the December 31, 2010 Experience Study, as approved by the Board July 29, 2011, including an interest assumption of 8 percent per year. All factors, unless otherwise noted, include the value of an assumed 2 percent annual COLA.

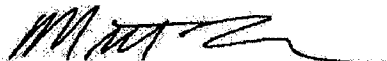
We updated the existing actuarial equivalency factor tables as described in this letter, relying on our understanding of prior PERS administrative practices to indicate the appropriate statutory interpretations and procedures for certain calculations.

Our analysis and conclusions are based on our understanding of the request and the data, methods and assumptions described above. Differences in the data, methods, assumptions and interpretations of the plan provisions may produce different results.

Mercer is not a law firm and cannot provide legal advice. You may wish to have any interpretations of statutes reviewed by your legal counsel.

If you have any questions about our response or need any additional information, please let us know.

Sincerely,


Matthew R. Larrabee, FSA, EA, MAAA
Principal

AYY/MRL/sdp/mrl/ba:ksb:gjw
Enclosures

Copy:
Scott Preppernau

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.

g:\wp\retire\2011\opersulcom\aeaf factors' eff 1-1-12.doc