



Oregon

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Public Employees Retirement System

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January 29, 2010

TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Deputy Director

SUBJECT: Notice of Rulemaking for Divorce Rules:
459-045-0000, *Authority and Purpose*
459-045-0001, *Definitions*
459-045-0010, *Chapter 238 Tier One/Tier Two Division of Benefits*
459-045-0012, *OPSRP Pension Program Division of Benefits*
459-045-0014, *Individual Account Program (IAP) Division of Benefits*
459-045-0020, *Court Orders*
459-045-0030, *General Administration for Chapter 238 Tier One/Tier Two*
459-045-0032, *General Administration for OPSRP Pension Program*
459-045-0034, *General Administration for Individual Account Program (IAP)*
459-045-0040, *Requesting Information from PERS*
459-045-0050, *Application Requirements for Alternate Payees*
459-045-0060, *General Rules for Calculating Benefits*
459-045-0080, *PERS Notifications*
459-045-0090, *PERS Administrative Fee*

OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Create new rules to address domestic relations orders for members of Chapter 238A OPSRP Pension Program and Individual Account Program (IAP); modify existing rules to reference Chapter 238A and PERS divorce forms; edit for clarity.
- Subject: Domestic Relation Orders.
- Policy Issue: No policy issues have been identified at this time.

BACKGROUND

ORS 238.465 provides for an award to an alternate payee of a portion of the benefits of a PERS member due to annulment, separation, divorce, or a property settlement, pursuant to a court order. By reference, this provision applies to benefits provided under both ORS Chapter 238 and 238A. In 2008, PERS received 1,017 court orders; processed 683 retirement calculations for members/alternate payees; provided 695 divorce related estimates; and split 324 accounts.

PERS reviews all court orders to determine if its provisions can be administered under PERS laws and rules. Many court orders are not clear as to how PERS is to determine the alternate payee award and must be returned for clarification, meaning the member and alternate payee may have to obtain an amended court order. The rules in this division are intended to provide

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direction and clarity so practitioners can more readily develop court orders that can be administered. Further, the Divorce Unit, to simplify processes and provide better service, has created divorce forms to be completed and attached as exhibits to a court order. The forms are designed for the specific programs and provide all the information needed by PERS to administer a final court order. The use of these forms should reduce the need for PERS to reject final court orders as not administrable, thereby reducing the need for members and alternate payees to obtain an amended the order.

The agency's rules in this area had not been updated since the addition of the OPSRP Pension Program and the Individual Account Program (IAP) under Chapter 238A. This rulemaking involves two new rules to address the division of benefits for the OPSRP Pension Program and IAP and two new rules to address the general administration for each program as well. All the other rule modifications were edits for clarity; to eliminate repetitive language; and to add references to the Chapter 238A programs. Substantive changes to the rules are detailed below.

459-045-0000, *Authority and Purpose*

This rule is being repealed as it is redundant.

459-045-0001, *Definitions*

Deleted definitions of terms that were either defined elsewhere in statute or rule, or that were removed from the modified rules. New definitions were added for “Administrable,” “Deduction,” “Married time ratio,” “PERS divorce forms,” and “Reduction.” Section (9) was edited to be more specific to what an alternate payee account is, not when it’s payable. Section (10) was changed to “Award” instead of “Alternate Payee Award” and the wording that says an award may include a separate account was deleted. The definitions were then alphabetized.

459-045-0010, *Chapter 238 Tier One/Tier Two Division of Benefits*

A new section (1) was added with references to PERS divorce forms, and the subsequent sections were renumbered and edited for clarity.

459-045-0012, *OPSRP Pension Program Division of Benefits*

This new rule provides the methods for dividing the benefits of an OPSRP Pension Program member.

459-045-0014, *Individual Account Program (IAP) Division of Benefits*

This new rule provides the methods for dividing the IAP account of a member.

459-045-0020, *Court Orders*

This rule was rewritten to incorporate new terminology, correct statutory references, and clarify the procedure to review court orders in light of the requirement to submit forms with the order.

459-045-0030, *General Administration for Chapter 238 Tier One/Tier Two*

This rule was renamed to be specific to the Tier One/Tier Two program and substantially rewritten in light of its specific application to that program.

459-045-0032, *General Administration for OPSRP Pension Program*

This new rule provides general administration for the OPSRP Pension Program.

459-045-0034, *General Administration for Individual Account Program (IAP)*

This new rule provides general administration for the IAP program.

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459-045-0040, *Requesting Information from PERS*

Sections (1), (2), (3), and (5) were deleted. PERS has not provided estimates to be used in divorce proceedings for several years, but instead provides general or specific information after receiving a member release, alternate payee release, or subpoena.

459-045-0050, *Application Requirements for Alternate Payees*

Section (1) was edited to exclude references to specific forms as forms may change or become obsolete. Sections (2), (3) and (5) were reworded for clarity. Section (4) was deleted as it was redundant. The rule was renamed to better reflect the content of the rule.

459-045-0060, *General Rules for Calculating Benefits*

Section (1) was edited for clarity. Section (2) was deleted as the rewording in section (1) covers it. Section (4) was deleted as it is covered in 459-045-0050. Sections (3) and (5) were deleted as redundant. The rule was renamed because PERS uses actual information, not assumptions, when calculating benefits.

459-045-0080, *PERS Notifications*

Sections (6), (7), (8), and (9) were deleted as redundant or unnecessary.

459-045-0090, *PERS Administrative Fee*

Sections (2) and (3) were deleted as they were essentially procedures for applying the statute. The statute is now referenced in section (1). Section (4) was deleted as it was unnecessary.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on December 22, 2009 at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended, and no public comments have been received to date. The public comment period ends on February 24, 2010 at 5:00 p.m.

LEGAL REVIEW

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

IMPACT

Mandatory: Yes in part. No existing rules provide for the administration of domestic relations orders for the OPSRP Pension Program and Individual Account Program.

Impact: Members, their attorneys, employers, and staff will benefit from clear and consistent rules that address the complexities of the different programs when it comes to administering a domestic relations order.

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

RULEMAKING TIMELINE

October 14, 2009 Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.

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November 1, 2009	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began.
December 22, 2009	Rulemaking hearing held at 2:00 p.m. in Tigard.
January 29, 2010	PERS Board notified that staff began the rulemaking process.
February 24, 2010	Public comment period ends at 5:00 p.m.
March 29, 2010	Staff will propose adopting the permanent rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

NEXT STEPS

The public comment period ends on February 24, 2010 at 5:00 p.m. The rules are scheduled to be brought before the PERS Board for adoption at the March 29, 2010 Board meeting.

- B.1. Attachment 1 – 459-045-0000, *Authority and Purpose*
- B.1. Attachment 2 – 459-045-0001, *Definitions*
- B.1. Attachment 3 – 459-045-0010, *Chapter 238 Tier One/Tier Two Division of Benefits*
- B.1. Attachment 4 – 459-045-0012, *OPSRP Pension Program Division of Benefits*
- B.1. Attachment 5 – 459-045-0014, *Individual Account Program (IAP) Division of Benefits*
- B.1. Attachment 6 – 459-045-0020, *Court Orders*
- B.1. Attachment 7 – 459-045-0030, *General Administration for Chapter 238 Tier One/Tier Two*
- B.1. Attachment 8 – 459-045-0032, *General Administration for OPSRP Pension Program*
- B.1. Attachment 9 – 459-045-0034, *General Administration for Individual Account Program (IAP)*
- B.1. Attachment 10 – 459-045-0040, *Requesting Information from PERS*
- B.1. Attachment 11 – 459-045-0050, *Application Requirements for Alternate Payees*
- B.1. Attachment 12 – 459-045-0060, *General Rules for Calculating Benefits*
- B.1. Attachment 13 – 459-045-0080, *PERS Notifications*
- B.1. Attachment 14 – 459-045-0090, *PERS Administrative Fee*

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 045 – DOMESTIC RELATIONS ORDERS**

1 ***[459-045-0000***

2 ***Authority and Purpose***

3 *(1) In accordance with ORS 238.465(3), the provisions of ORS 238.465 (Oregon Laws*
4 *1993, Chapter 715) shall be administered by the Public Employees Retirement System and*
5 *under the policies and procedures established by the Public Employees Retirement Board. To*
6 *this end, the Board and the staff shall:*

7 *(a) Provide for the administration of a separate account in PERS in the name of an*
8 *alternate payee when so ordered by the court.*

9 *(b) Establish criteria to determine whether or not domestic relations orders, judgments of*
10 *dissolution, divorce decrees, and marital property agreements comply with ORS 238.465.*

11 *(c) Establish definitions and procedures for the effective and efficient administration of*
12 *ORS 238.465.*

13 *(2) The rules of this division are intended to provide a clear and complete description of*
14 *the division of benefits payable under PERS and on how those divided benefits may be paid as*
15 *provided for in ORS 238.465.*

16 *(3) PERS is a defined benefit plan and benefits are attributable to both employee and*
17 *employer contributions.*

18 *(4) The rules contained in division 045 pertain to PERS benefits covered in ORS Chapter*
19 *238, and not to the State's Deferred Compensation plan addressed in ORS Chapter 243.*

20 *Stat. Auth.: ORS 238.465(3) & 238.650*

21 *Stats. Implemented: ORS 238.465]*

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 045 – DOMESTIC RELATIONS ORDERS**

1 **459-045-0001**

2 **Definitions**

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

6 (1) “Administrable” means that the language in a final court order that outlines
7 an alternate payee award can be administered within the provisions of ORS
8 Chapters 238, 238A, and this division.

9 (2) “Alternate payee” means a spouse or former spouse of a PERS member who
10 is awarded a portion of the member’s PERS benefits by a court.

11 (3) “Alternate payee account” means a court-ordered separate account created
12 under ORS 238.465 in the name of an alternate payee.

13 (4) “Alternate payee release” means a written statement that is signed by the
14 alternate payee and received by PERS authorizing the release of information, and
15 directing to whom and where the information is to be sent pertaining to:

16 (a) The alternate payee’s interest in the member’s account(s) or member’s
17 vested interest in the Fund;

18 (b) The alternate payee’s account and benefit information if a separate account
19 has been created in the name of the alternate payee; or

20 (c) Benefit information applicable to either subsection (a) or (b) of this section.

21 (d) Award information contained in any draft or final court order in regard to
22 the alternate payee on record with PERS.

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1 (5) “Award” means the portion of a member’s account(s) or of the member’s
2 benefits under ORS Chapter 238 or 238A awarded to an alternate payee by a final
3 court order.

4 (6) “Court order” means a court decree or judgment of dissolution of marriage,
5 separation, annulment, or marital property settlement agreement, incident to any
6 court decree or judgment of dissolution of marriage, separation, or annulment,
7 which includes the content of any PERS divorce forms attached as exhibits.

8 (7) “Deduction” means an alternate payee’s award is subtracted from the
9 member’s benefit(s) after tax.

10 (8) “Draft court order” means an order for dividing a PERS account(s) or
11 benefits that has been prepared but not approved or signed by the court or filed
12 with the court clerk, which includes the content of any PERS divorce forms attached
13 as exhibits.

14 (9) “Final court order” means a court order that has been signed by a judge
15 and shows the stamp of the court clerk or trial court administrator indicating the
16 order is a certified copy of the original record that is on file with the court.

17 (10) “Joint and survivor annuity” means any retirement annuity option under
18 which a monthly lifetime annuity is payable to a surviving beneficiary of a member.

19 (11) “Married time ratio” means the fraction in which the numerator is the
20 years and months of creditable service time or retirement credit accrued by the
21 member while married to the alternate payee as provided in the court order and the
22 denominator is the member’s total creditable service time or retirement credit
23 accrued by the member at the time of retirement.

1 (12) “Member” means a person described in ORS 238.005(12), 238.500(3), or
2 238A.005(10), who is the current or former spouse of an alternate payee.

3 (13) “Member release” means a written statement that is signed by a member
4 and received by PERS authorizing the release of information, and directing to
5 whom and where information is to be sent pertaining to:

6 (a) The member’s account(s);

7 (b) The member’s interest in the Fund; or

8 (c) Benefit information applicable to either subsection (a) or (b) of this section.

9 (d) Award information contained in any draft or final court order in regard to
10 the member on record with PERS.

11 (14) “PERS divorce forms” means the forms provided by PERS that must be
12 completed to describe a court order’s provisions relating to administration of a
13 member’s benefit that is subject to that order.

14 (15) “Reduction” means an alternate payee’s award is subtracted from the
15 member’s benefit(s) before tax.

16 *[(1) “Board” shall have the same meaning as the Public Employees Retirement*
17 *Board as defined in ORS 238.630.]*

18 *[(2) “PERS” shall have the same meaning as the Public Employees Retirement*
19 *System as defined in ORS 238.600.]*

20 *[(3) “Fund” shall have the same meaning as the Public Employees Retirement Fund*
21 *in ORS 238.660.]*

22 *[(4) “Staff” means the employees of the Public Employees Retirement System as*
23 *provided in ORS 238.645.]*

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1 *[(5) “Member” means a person described in ORS 238.005(12) and 238.500(3), and*
2 *who is the current or former spouse of an alternate payee.]*

3 *[(6) “Alternate payee” means a spouse or former spouse of a PERS member, who is*
4 *awarded a portion of the member’s PERS benefits by a court.]*

5 *[(7) “Member’s PERS account” means:]*

6 *[(a) The member’s individual account in the Fund as defined in ORS 238.250; and]*

7 *[(b) The member’s account in the Variable Annuity Account in the Fund as defined*
8 *in ORS 238.260.]*

9 *[(c) The accounts described in subsections (a) and (b) of section consist of:]*

10 *[(A) Member before-tax contributions paid to PERS under ORS 238.200;]*

11 *[(B) Member after-tax contributions paid to PERS under ORS 238.205; and]*

12 *[(C) Interest and earnings credited to each of the accounts described in paragraphs*
13 *(A) and (B) of this subsection.]*

14 *[(d) Shall apply only to an active or an inactive member, and shall not apply to a*
15 *retired member.]*

16 *[(8) “PERS funds” means the member’s PERS account [as defined in section (7) of*
17 *this rule] and the member’s vested interest in employer contributions paid into the Fund*
18 *in accordance with ORS 238.225, but shall not include:]*

19 *[(a) Employer contributions for police and fire benefit units pursuant to ORS*
20 *238.440.]*

21 *[(b) Employer contributions paid into the Fund that the member is not vested in*
22 *pursuant to ORS 238.265.]*

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1 *[(9) “Alternate Payee Account” means a court-ordered separate account created*
2 *under ORS 238.465 in the name of an alternate payee, and established as of the award*
3 *date stated in the court order. The award date shall be before, or at the time refund,*
4 *death, service or disability retirement benefits become payable to the member or the*
5 *member’s beneficiary.]*

6 *[(10) “Alternate payee’s award” is the portion of a member’s PERS account or of*
7 *the member’s PERS funds awarded to an alternate payee by a court order, and may*
8 *include the creation of a separate account in the Fund in the name of the alternate*
9 *payee.]*

10 *[(11) “Member Release” means a written statement that is signed by a member and*
11 *received by staff authorizing the release of information, and directing to whom and where*
12 *information is to be sent:*

13 *(a) Pertaining to the member’s PERS account;*

14 *(b) Pertaining to the member’s interest in the Fund; or*

15 *(c) Pertaining to benefit information applicable to either subsection (a) or (b) of this*
16 *section.*

17 *(d) Pertaining to award information contained in any draft or final court order in*
18 *regard to the member on record with PERS.]*

19 *[(12) “Alternate Payee Release” means a written statement that is signed by the*
20 *alternate payee and received by staff authorizing the release of information, and*
21 *directing to whom and to where the information is to be sent:*

22 *(a) Pertaining to the alternate payee’s interest in the member’s PERS account or*
23 *member’s vested interest in the Fund;*

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1 *(b) Pertaining to the alternate payee’s account and benefit information if a separate*
2 *account has been created in the name of the alternate payee; or*

3 *(c) Pertaining to benefit information applicable to either subsection (a) or (b) of this*
4 *section.*

5 *(d) Pertaining to award information contained in any draft or final court order in*
6 *regard to the alternate payee on record with PERS.]*

7 *[(13) A “Member Release” and an “Alternate Payee Release” shall include a valid*
8 *subpoena or court order requiring PERS to provide information to someone other than*
9 *the member or the alternate payee.]*

10 *[(14) “Vested” has the same meaning as provided in ORS 239.005(24). Whether or*
11 *not a member is considered to be vested shall be determined solely by ORS 238.265*
12 *regardless of any language that may be contained in any type of court order received by*
13 *PERS.]*

14 *[(15) “Separation from service” means the member separates from PERS covered*
15 *employment due to death, service retirement, disability retirement, or termination of*
16 *employment for which the requirements set forth in ORS 238.265 have been met.]*

17 *[(16) “Service retirement” shall have the same meaning as provided in ORS*
18 *238.300.]*

19 *[(17) “Disability retirement” shall have the same meaning as provided in ORS*
20 *238.320.]*

21 *[(18) “Joint and survivor annuity” shall mean any retirement annuity option under*
22 *which a monthly lifetime annuity is payable to a surviving beneficiary of a member. The*

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1 *current joint and survivor annuities payable under PERS are Options 2, 2A, 3, and 3A*
2 *described in ORS 238.305, and 238.325.]*

3 *[(19) “Integration” shall have the same meaning as provided in ORS 238.035,*
4 *238.680 and 238.690.]*

5 *[(20) “Estimate” means a projection of benefits prepared by staff of a service or*
6 *disability retirement allowance, a death or a refund payment. An estimate is not a*
7 *guarantee or promise of actual benefits that eventually may become due and payable and*
8 *PERS is not bound by any estimates it provides.]*

9 *[(21) “The earliest date the member would be eligible to receive retirement” shall*
10 *have the same meaning as provided in ORS 238.005(6), or 238.280, or the date the*
11 *member is approved for disability retirement prior to reaching earliest service retirement*
12 *eligibility.]*

13 *[(22) “PERS Plan Year” means a calendar year beginning January 1, and ending*
14 *December 31.]*

15 *[(23) “PERS Administrative Fee” means the fee, not to exceed \$300, that shall be*
16 *charged in accordance with ORS 238.465(9) to the member and/or alternate payee for*
17 *actual and reasonable administrative cost incurred by PERS for establishing benefits for*
18 *an alternate payee.]*

19 *[(24) “Fraction of the benefit” used to allocate expenses and costs under ORS*
20 *238.465(9) means the percentage or ratio of a member’s PERS account or member’s*
21 *vested interest in the Fund that is awarded by court decree or order to the alternate*
22 *payee and the member as of the date of divorce, separation or annulment.]*

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1 *[(25) “Court Order” means a court decree or judgment of dissolution of marriage,*
2 *separation, or annulment, or the terms of any court order or court approved marital*
3 *property settlement agreement, incident to any court decree or judgment of dissolution of*
4 *marriage, separation, or annulment.]*

5 *[(26) “Final Court Order” means a court order or judgment that has been signed by*
6 *a judge, and which shows the stamp of the court clerk or trial court administrator*
7 *indicating the order is a certified copy of the original record that is on file with the*
8 *court.]*

9 *[(27) “Draft Court Order” means an order for dividing a PERS account or benefits*
10 *has been prepared but not approved or signed by the court or filed with the court clerk*
11 *that contains proposed language on how PERS benefits are to be divided.]*

12 Stat. Auth.: ORS 238.465[(3) &], 238.650 [& 238A.450](#)

13 Stats. Implemented: ORS 238.465

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 045 – DOMESTIC RELATIONS ORDERS

1 **459-045-0010**

2 **Chapter 238 Tier One / Tier Two Division of Benefits**

3 **(1) A final court order that provides for a division of benefits must use a**
4 **method described in this rule.**

5 **(a) The method must be identified on PERS divorce forms.**

6 **(b) The PERS divorce forms must be attached as exhibits to the court order,**
7 **and incorporated by reference in the court order.**

8 **(2) Award of Alternate Payee Account (Non-Retired Member). If a final court**
9 **order provides an award of an alternate payee account, the court order must**
10 **provide:**

11 **(a) The date of annulment, separation, divorce, or property settlement.**

12 **(A) The separate account will be established as of December 31 of the calendar**
13 **year before this date unless:**

14 **(i) A prior year is provided in the court order, or**

15 **(ii) The date is December 31.**

16 **(b) That a separate account be established in an alternate payee's name.**

17 **(c) The method by which the award is to be calculated. One of the following**
18 **methods must be used:**

19 **(A) A percentage, expressed in whole numbers; or**

20 **(B) A dollar amount.**

21 **(d) Whether an alternate payee is awarded matching employer dollars.**

1 (e) That an alternate payee may elect to receive the award at any time after the
2 member's earliest retirement eligibility.

3 (3) Award of Payment from Member's Monthly Benefit (Non-Retired Member).

4 If a final court order awards an alternate payee a reduction or deduction amount
5 from the monthly service or disability retirement benefit that shall be paid in the
6 future to the member, the court order must provide:

7 (a) The date of annulment, separation, divorce, or property settlement.

8 (b) Whether the award is a reduction or deduction from the member's benefit.

9 If the award is a reduction, the court order must provide whether the alternate
10 payee is eligible to elect a separate benefit option at any time after the member
11 reaches earliest retirement eligibility.

12 (c) The method by which the monthly award is to be calculated. One of the
13 following methods must be used:

14 (A) A percentage, expressed in whole numbers only; or

15 (B) A dollar amount; or

16 (C) A percentage of the married time ratio. The court order must provide:

17 (i) The percentage, expressed in whole numbers; and

18 (ii) The years and months of creditable service time accrued by the member
19 while married to the alternate payee.

20 (d) If there is a specific end date or dollar amount limit to the award, and what
21 that date or limit is.

22 (e) Whether the award applies to service retirement benefits, disability
23 retirement benefits, or withdrawal benefits.

1 (f) Whether the member is restricted from withdrawing as a member under
2 ORS 238.265.

3 (g) Whether the member must select a specific benefit payment option at
4 retirement.

5 (h) Whether the member is required to designate the alternate payee as a
6 beneficiary:

7 (A) Before retirement.

8 (B) At retirement.

9 (i) Whether an alternate payee award continues after the death of:

10 (A) The member.

11 (B) The alternate payee.

12 (3) Award of Monthly Benefit (Retired Member). If a final court order awards
13 an alternate payee an amount payable from a retired member's monthly service or
14 disability retirement benefit, the court order must provide:

15 (a) The date of annulment, separation, divorce, or property settlement.

16 (b) Whether an alternate payee award is a reduction or deduction from the
17 member's monthly benefit.

18 (c) The method by which the monthly award is to be calculated. One of the
19 following methods must be used:

20 (A) A percentage, expressed in whole numbers; or

21 (B) A dollar amount.

22 (d) If there is a specific end date or dollar amount limit to the award, and what
23 that date or limit is.

1 (e) Whether the member may or must change their beneficiary designation. If
2 the member's beneficiary designation is changed, the member's monthly benefit
3 must be recalculated.

4 (f) Whether a member who elected Option 2A or 3A under ORS 238.305(1) is
5 allowed to receive the Option 1 benefit under ORS 238.305(6).

6 (g) Whether an alternate payee award continues after the death of:

7 (A) The member.

8 (B) The alternate payee.

9 *[The purpose of this rule is to describe methods for determining an alternate payee's*
10 *award from a member's PERS account and PERS Funds, which are administrable by*
11 *PERS.]*

12 *[(1) Pre Retirement Division Method: A final court order or judgment which*
13 *establishes a separate account in the Fund in the name of the alternate payee at the time*
14 *of the award.]*

15 *[(a) The court order must be received by the Divorce Decree Unit at the PERS*
16 *Portland Headquarters office prior to the issue date of any payment to, or on behalf of a*
17 *member, of a service or disability retirement, refund, or death benefit.]*

18 *[(b) The Pre Retirement Division Method shall not be used if a court order allows*
19 *any option for a member to subsequently buy out the alternate payee's interest in the*
20 *member's PERS funds.]*

21 *[(c) The court order must include a specific percentage or dollar amount, either*
22 *directly or pursuant to a formula resulting in a percentage or dollar amount to be*
23 *awarded to the alternate payee.]*

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1 *[(d) The court order must direct PERS to transfer the amount of the award from the*
2 *member's account and to deposit it in a separate account in the Fund in the name of the*
3 *alternate payee as of a court provided date.]*

4 *[(e) The court order shall specify a date between January 1, and through December*
5 *31, on which to base the transfer of the alternate payee's award from the member's PERS*
6 *account. If a court order directs PERS to transfer a certain percentage to the alternate*
7 *payee, it shall be converted into a dollar amount. The converted dollar amount or the*
8 *dollar amount stated in the court order that is awarded to the alternate payee shall be*
9 *applied against the last audited PERS member account balance on record as of the end*
10 *of the plan year (December 31) on or immediately preceding the award date specified in*
11 *the court order and then it shall be deposited into a separate account in the name of the*
12 *alternate payee.]*

13 *[(f) If a date is not given in a court order on which PERS is to base the transfer of an*
14 *alternate payee's award from a member's PERS member account then PERS shall use the*
15 *date the court order was signed by the court and base the transfer as of the end of the*
16 *plan year (December 31) immediately preceding the date the order was signed by the*
17 *court. If the date the order was signed by the court is December 31 then the last audited*
18 *account balance as of December 31 of the plan year in which the order was signed shall*
19 *be used.]*

20 *[(g) A percentage award that is due an alternate payee shall be applied against the*
21 *member's individual account, and in the Variable Annuity Account in the Fund. Specific*
22 *dollar amounts awarded to an alternate payee shall be applied against the member's*

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1 *individual account, and in the Variable Annuity Account in the Fund on a pro-rata*
2 *basis.]*

3 *[(h) Once the value of the alternate payee's award is established, the portion of the*
4 *award that is attributable to the member's account in the Variable Annuity Account in the*
5 *Fund shall be transferred to the separate account established in the name of the alternate*
6 *payee, which shall earn a regular or fixed interest rate as established by the Board, from*
7 *the transfer date to the date benefits are effective for the alternate payee.]*

8 *[(i) Interest on a separate alternate payee account after the division and transfer*
9 *takes place shall be credited in accordance with OAR chapter 459, division 007.]*

10 *[(j) Under the Pre Retirement Division Method an alternate payee would be eligible*
11 *for benefits based on the member's eligibility for benefits regardless of whether or not the*
12 *member elects to begin receiving benefits.]*

13 *[(2) At Time of Payment Division Method: a court order that awards an alternate*
14 *payee a portion of future benefits that become due and payable by PERS to a member,*
15 *expressed as a percentage:]*

16 *[(a) The court order awards an alternate payee a percentage of the total PERS funds*
17 *that were accrued during the marriage.]*

18 *[(b) The award is computed using either formula (A) which uses years and months,*
19 *or formula (B), which uses member contributions and interest credited to the member's*
20 *PERS account. Each of these formulas is then multiplied by a subsequent percentage as*
21 *described in sub-paragraph (C). Any court order that PERS receives that utilizes the*
22 *ratio method must spell out in full the formula that is to be used for determining the*
23 *alternate payee's award.]*

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1 *[(A) The numerator is the creditable service time accrued as an active member*
2 *during the marriage, (MCS). The denominator is the total of the member's total*
3 *creditable service, (TCS) as defined in ORS 238.005(5), at the time benefits become due*
4 *and payable to either the member or the alternate payee, expressed as the equation:]*

5 *[MCS = Ratio of benefits accrued during the marriage.*

6 *TCS]*

7 *[(i) Example: Assume a member had 12 years and 3 months of creditable service*
8 *accrued during the marriage, the numerator would equal 147 months.]*

9 *[(ii) Assume further that the member has 25 years and 8 months of total creditable*
10 *service as of the date the member and/or alternate payee applies for payment, then the*
11 *denominator would equal 308 months.]*

12 *[(iii) 147 divided by 308 equals 47.7273 percent.]*

13 *[(B) The numerator is the amount of the contributions and the interest credited to the*
14 *member's PERS account during the marriage, (married account = MA). The denominator*
15 *is the total of the member's PERS account (total account as determined by PERS = TA) at*
16 *the time benefits become due and payable to either the member or the alternate payee,*
17 *expressed as the equation:]*

18 *[MA = Ratio of benefits accrued during the marriage.*

19 *TA]*

20 *[(i) Example: Assume a member has a PERS member account of \$23,511.82 as of*
21 *the end of the plan year (December 31) immediately preceding the date of marriage then*
22 *the numerator would equal \$23,511.82.]*

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1 *[(ii) Assume further that the total member PERS account as of the end of the plan*
2 *year (December 31) immediately preceding the date of divorce or date an alternate payee*
3 *elects to begin receiving payment, equals \$45,650.33. The denominator then would equal*
4 *\$45,650.33.]*

5 *[(iii) \$23,511.82 divided by \$45,650.33 equals 51.5042 percent.]*

6 *[(C) Court orders may direct that the ratio in either paragraphs (A) or (B) of this*
7 *subsection be multiplied by another percentage and the result equals the alternate*
8 *payee's award, expressed as the equation:]*

9 *[(i) Ratio from paragraphs (A) or (B) multiplied by (C) of this subsection equals*
10 *amount of alternate payee's award.]*

11 *[(ii) 147 months divided by 308 months equals 47.7273 percent multiplied by court*
12 *awarded percentage of 50 percent equals 23.8637 percent due the alternate payee when*
13 *benefits become payable.]*

14 *[(c) The alternate payee's award is not computed until the member or member's*
15 *beneficiaries elect to receive funds due to refund, service or disability retirement, or*
16 *death.]*

17 *[(3) A court order that uses the Division Methods described in Sections (1) and (2)*
18 *of this rule may include language that would allow:]*

19 *[(a) An alternate payee to elect to receive his or her award in the form of retirement*
20 *payment option on or after the member's earliest eligibility for service retirement*
21 *benefits, regardless of whether or not the member actually retires, and/or the member or*
22 *the member's beneficiaries elects to begin receiving benefits.]*

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1 *[(b) An alternate payee to elect to have a separate account established in the Fund*
2 *in the name of the alternate payee.]*

3 *[(c) If an alternate payee elects to have a separate account established in the fund in*
4 *his or her name regular or fixed interest shall be credited and posted up until the*
5 *alternate payee elects to receive his or her award in accordance with OAR chapter 459,*
6 *division 007.]*

7 *[(d) When an alternate payee exercises the election under paragraph (2)(d)(A) or*
8 *(B) of this rule pursuant to a court order that utilizes the formula described in paragraph*
9 *(2)(b)(A) of this rule, the total creditable service that shall be used for the denominator*
10 *shall be based as if a member who is active had terminated as of the date payments are*
11 *effective for the alternate payee. If a member is inactive and has already terminated on*
12 *some other date prior to the alternate payee's election, then the inactive member's total*
13 *actual creditable service time shall be used as the denominator.]*

14 *[(e) When an alternate payee exercises the election under paragraph (2)(d)(A) or*
15 *(B) of this rule pursuant to a court order that utilizes the formula described in paragraph*
16 *(2)(b)(B) of this rule, the denominator that shall be used for an active or an inactive*
17 *member shall be the total member's PERS account as of December 31 of the year prior to*
18 *the date payments are effective for the alternate payee. If a member is retiring at the*
19 *same time an alternate payee is exercising an election under paragraph (2)(c)(A) of this*
20 *rule, then the actual total member PERS account shall be used as the denominator.]*

21 *[(4) The Payment Division Deduction Method: This method can be used in regard to*
22 *a member prior to retirement, or in regard to a member who has retired and has started*
23 *receiving payment. A court order provides an award, which is stated as a flat or set*

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1 *dollar amount, or as a percentage, either directly or pursuant to a formula, that is to be*
2 *paid to an alternate payee from the service or disability retirement benefit that shall be*
3 *paid in the future to a member, or that is presently being paid by PERS to a retired*
4 *member.]*

5 *[(a) The flat or set dollar amount or percentage that is awarded to the alternate*
6 *payee shall be deducted out of the retired member's gross monthly benefit.]*

7 *[(b) Under this method an alternate payee's award shall not be based on the*
8 *alternate payee's age or life expectancy.]*

9 *[(c) A court order may direct that a member select a specific payment option and*
10 *designate the alternate payee as the primary beneficiary, if the member has not retired as*
11 *of the date PERS receives a final court order. If a court order provides for this type of an*
12 *award, payment to the member at the time the member retires shall be based on the age*
13 *difference between the member and the alternate payee. The alternate payee award shall*
14 *then be deducted from the member's gross monthly benefit, at the time the member*
15 *retires.]*

16 *[(d) If a member has retired and has been receiving payment for more than the time*
17 *period allowed in ORS 238.305(1) PERS shall not allow a change of payment option*
18 *from what was originally selected by the member, regardless of any direction to the*
19 *contrary that may be contained in a court order.]*

20 *[(e) If a member has retired and been receiving payment for more than the period*
21 *allowed in ORS 238.305(1) PERS shall only allow a change in the beneficiary*
22 *designation if the option originally selected by the member allows for a change of*

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1 *beneficiary, regardless of any direction to the contrary that may be contained in a court*
2 *order.]*

3 *[(f) An alternate payee cannot convert their award to their own separate payment*
4 *option independent from the member's.]*

5 *[(g) PERS shall continue to send a separate check in the name of the alternate payee*
6 *for as long as there is a benefit being paid by PERS to a member or a member's*
7 *beneficiary.]*

8 *[(5) A division of benefits must be in accordance with one of the methods described*
9 *in this rule.]*

10 *[(6) For the purposes of this rule, benefits paid by PERS to a member are:]*

11 *[(a) "Retirement benefits" means benefits payable on retirement under PERS law for*
12 *service or disability.]*

13 *[(b) "Refund" means a refund of a member's PERS account, and includes payment*
14 *made due to loss of membership under ORS 238.095.]*

15 *[(c) "Death benefits" means benefits that are payable to a beneficiary pursuant to*
16 *ORS 238.390 and 238.395.]*

17 Stat. Auth.: ORS 238.465~~[(3)]~~ & 238.650

18 Stats. Implemented: ORS 238.465

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 045 – DOMESTIC RELATIONS ORDERS

1 459-045-0012

2 OPSRP Pension Program Division of Benefits

3 (1) A final court order that provides for a division of pension benefits or
4 disability benefits must use a method described in this rule.

5 (a) The method must be identified on PERS divorce forms.

6 (b) The PERS divorce forms must be attached as exhibits to the court order, and
7 incorporated by reference in the court order.

8 (2) Award of Pension Benefits (Non-Retired Member). If a final court order
9 awards an alternate payee a reduction or deduction amount from the monthly
10 pension benefit that shall be paid in the future to the member, a court order must
11 provide:

12 (a) The date of annulment, separation, divorce, or property settlement.

13 (b) Whether the award is a reduction or deduction from the member's monthly
14 pension. If the award is a reduction, the court order must provide whether the
15 alternate payee is eligible to elect a separate benefit option at any time after the
16 member reaches earliest retirement eligibility.

17 (c) The method by which the monthly award is to be calculated. One of the
18 following methods must be used:

19 (A) A percentage, expressed in whole numbers only; or

20 (B) A dollar amount; or

21 (C) A percentage of the married time ratio. If this method is used, the court
22 order must provide:

1 (i) The percentage, expressed in whole numbers; and

2 (ii) The years and months of retirement credit accrued by the member while

3 married to the alternate payee.

4 (d) If there is a specific end date or dollar amount limit to the award, and what

5 that date or limit is.

6 (e) Whether the member must select a specific benefit payment option at

7 retirement.

8 (f) Whether the member must designate the alternate payee as beneficiary.

9 (g) Whether the alternate payee and any minor children are awarded a

10 percentage of any pre-retirement death benefit pursuant to ORS 238A.230.

11 (h) Whether the alternate payee award continues or ends after the member

12 retires if:

13 (A) The member dies before the alternate payee and the member's beneficiary is

14 not the alternate payee.

15 (B) If the alternate payee dies before the member.

16 (3) Award of Pension Benefits (Retired Member). If a final court order awards

17 an alternate payee an amount to be paid from a retired member's monthly pension,

18 the court order must provide:

19 (a) The date of annulment, separation, divorce, or property settlement.

20 (b) Whether the award is a reduction or deduction from the member's monthly

21 pension.

22 (c) The method by which the monthly award is to be calculated. One of the

23 following methods must be used:

24 (A) A percentage, expressed in whole numbers only; or

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1 (B) A dollar amount.

2 (d) If there is a specific end date or dollar amount limit to the award, and what
3 that date or limit is.

4 (e) Whether the member may or must change their beneficiary designation. If the
5 member's beneficiary is changed, the member's pension must be recalculated.

6 (f) Whether a member, who elected to receive their pension under ORS
7 238A.190(1)(b) or (d), is allowed to receive the higher pension benefit under ORS
8 238A.190(2)(b).

9 (g) Whether the alternate payee will be the sole beneficiary or any remaining
10 share not awarded to the alternate payee shall be paid to the member's secondary
11 beneficiary if the member dies before the alternate payee and the alternate payee was
12 the member's beneficiary.

13 (h) Whether an alternate payee award continues or ends if:

14 (A) The member dies before the alternate payee and the member's beneficiary is
15 not the alternate payee.

16 (B) The alternate payee dies before the member.

17 (4) Award of Disability Benefits. If a final court order awards an alternate payee
18 an amount to be paid from the monthly disability benefit that is being paid or may be
19 paid in the future to the member, the court order must provide:

20 (a) The date of annulment, separation, divorce, or property settlement.

21 (b) Whether the award is a reduction or deduction from the member's monthly
22 disability benefit.

23 (c) A percentage, expressed in whole numbers only, of the member's monthly
24 disability benefit that is awarded to the alternate payee.

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1 [Stat. Auth.: ORS 238.465, 238.650 & 238A.450](#)

2 [Stats. Implemented: ORS 238.465](#)

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 045 – DOMESTIC RELATIONS ORDERS

1 459-045-0014

2 Individual Account Program (IAP) Division of Benefits

3 (1) A final court order that provides for a division of benefits must use a
4 method described in this rule.

5 (a) The method must be identified on PERS divorce forms.

6 (b) The PERS divorce forms must be attached as exhibits to the court order,
7 and incorporated by reference in the court order.

8 (2) Award of IAP Alternate Payee Account (Non-Retired Member). If a final
9 court order provides an award of an alternate payee account to be established from
10 the account balance of a member, the court order must provide:

11 (a) The date of annulment, separation, divorce, or property settlement.

12 (A) The separate account will be established from the member's account
13 balance as of December 31 of the calendar year before this date unless:

14 (i) A prior year is provided in the court order; or

15 (ii) The date is December 31.

16 (B) If the date in subsection (a) of this section is other than December 31,
17 contributions made during that calendar year will not be included in the calculation
18 of the alternate payee's award.

19 (b) That the separate account be established in an alternate payee's name.

20 (c) The method by which the award is to be calculated. One of the following
21 methods must be used:

22 (i) A percentage, expressed in whole numbers, or

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1 (ii) A dollar amount.

2 (d) Whether the member may change their pre-retirement beneficiary

3 designation, if the alternate payee was named as beneficiary.

4 (3) Award of IAP Alternate Payee Account (Retired Member). If a final court
5 order provides an award of an alternate payee account to be established from the
6 remaining account balance of a retired member receiving installment payments, to
7 be effective on the date that PERS establishes the alternate payee account, the court
8 order must provide:

9 (a) The date of annulment, separation, divorce, or property settlement.

10 (b) That a separate account be established in an alternate payee's name.

11 (A) The effective date of the alternate payee account shall be as soon as
12 administratively feasible after PERS receives and approves a final court order as
13 administrable.

14 (B) The alternate payee will be notified when the account has been established.

15 (C) The alternate payee account shall be distributed in a lump sum payment.

16 (D) Any installment payments paid to the member before the alternate payee
17 account is established will not be included in the award.

18 (c) The award as a percentage, expressed in whole numbers.

19 (d) Whether the member may or must change their beneficiary designation.

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

21 Stats. Implemented: ORS 238.465

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 045 – DOMESTIC RELATIONS ORDERS

1 **459-045-0020**

2 **Court Orders**

3 **(1) A final court order must be received by PERS and approved as**
4 **administrable before an alternate payee award can be established.**

5 **(a) PERS shall provide a written response as to whether a final court order is**
6 **administrable to the member, the alternate payee, and their attorneys.**

7 **(b) Award information shall be provided to attorneys or other representatives**
8 **of a member or an alternate payee only if a member release or an alternate payee**
9 **release has been received by PERS.**

10 **(2) In the absence of a final court order, a restraining order or stay must be**
11 **filed with PERS to prevent the distribution of any funds to a member.**

12 **(3) PERS shall establish an alternate payee award as soon as administratively**
13 **feasible on a prospective basis only. Court orders that purport to award retroactive**
14 **benefits or benefits to be paid before the final court order was received by PERS**
15 **cannot be administered.**

16 **(4) If a final court order is received by PERS after a member has withdrawn**
17 **from PERS under ORS 238.265, 238.545, 238A.120 or 238A.375, the final court**
18 **order will be rejected as unadministrable since the member would no longer have a**
19 **benefit to be paid that could be awarded.**

20 *[(1) A final court order or judgment must clearly specify the amount awarded to an*
21 *alternate payee from the member's account and the member's PERS funds, and the*

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1 *language must be administrable under ORS Chapter 238 and OAR Chapter 459, Division*
2 *045.]*

3 *[(2) If a court order is unclear or silent as to whether or not an alternate payee is*
4 *entitled to all portions of the member's PERS funds, PERS shall not approve the court*
5 *order until a court order is received that gives complete detail on what comprises the*
6 *alternate payee's award. PERS shall not include as part of the alternate payee's award*
7 *those benefits an alternate payee is not eligible for as described in OAR 459-045-*
8 *0030(3), (5), (6), (7), (8), (9), (10), (11), regardless of whether or not a court order does*
9 *or does not award them.]*

10 *[(3) A court order shall also address any award an alternate payee is to receive*
11 *from a member's voluntary purchase of service credits, and/or additional service credits*
12 *allowed by law due to a member's retirement for disability.]*

13 *[(4) In the absence of a final court order, a restraining order or stay must be filed*
14 *with PERS, in order to prevent the distribution of any funds to a member,*
15 *notwithstanding ORS 238.455. A subsequent court order shall be required in order to*
16 *allow future distributions.]*

17 *[(5) PERS shall not divide a member's PERS account, or make a payment to or on*
18 *behalf of an alternate payee upon receipt of a draft court order by PERS, until PERS*
19 *Divorce Decree Unit has received a subsequent:*

20 *(a) Certified copy of a final court order, that specifies what PERS is to do in regard*
21 *to an alternate payee award. All certified copies must be subsequently reviewed and*
22 *approved by staff as administrable pursuant to ORS 238.005 to ORS 238.715, and OAR*
23 *Chapter 459, Division 045, before PERS will make a payment to anyone. Staff shall*

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1 *provide a written response as soon as practicable, on whether or not a final court order*
2 *can be administered by PERS to both the member and the alternate payee, as well as to*
3 *their attorneys. Case-specific award information shall be provided to attorneys or other*
4 *representatives of a member or an alternate payee only if a member release or an*
5 *alternate payee release has been received by PERS, as described in 459-045-0005(11)*
6 *and (12).*

7 *(b) A written and notarized confirmation signed by both the member and the*
8 *alternate payee, stating that divorce actions have been dropped and that no final decree*
9 *or court order will be forth-coming, if no restraining order is previously on file with*
10 *PERS.*

11 *(c) If PERS does not receive a final court order within 12 months from the date a*
12 *draft court order was received by PERS, then PERS shall consider that no award was*
13 *made to an alternate payee from the member's PERS funds. There shall be no further*
14 *obligation or responsibility on PERS to correspond or communicate with any person*
15 *other than the member and no payment shall be distributed to anyone other than the*
16 *member or the member's beneficiary(s).]*

17 *[(6) If a court order states that another court order shall follow, a certified copy of*
18 *the subsequent court order must be received and approved by staff before any payment*
19 *shall be made pursuant to the court order.]*

20 *[(7) PERS upon request, may review draft court orders that contain language on*
21 *how to divide a member's PERS account or the member's PERS funds, that the member is*
22 *or may become entitled to. Staff shall provide a written response as soon as practicable*

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1 *to both the member and the alternate payee on whether or not a draft court order can be*
2 *administered by PERS, as well as to their attorneys.]*

3 *[(8) Final court orders must be received by the PERS Divorce Decree Unit, either by*
4 *mail, or delivered in person, before PERS will commence paying benefits to or on behalf*
5 *of an alternate payee. PERS at its discretion may accept a legible photocopy of a final*
6 *court order, either by mail or in person, as long as PERS can confirm it was filed with*
7 *the court.]*

8 *[(9) All court orders, whether draft or final, that are received by PERS are*
9 *microfilmed and the document that was received is discarded. PERS staff cannot modify,*
10 *return, or sign and return, any document that is received by PERS.]*

11 *[(10) PERS at its discretion may accept or reject any court order, or accept or reject*
12 *any portion thereof, in regard to a specific member. PERS shall provide a written*
13 *response as soon as practicable, of any rejection to both the member and the alternate*
14 *payee, as well as to their attorneys.]*

15 *[(11) A court approved modification may be required in order for PERS to comply*
16 *with the parties' intent and in order to administer according to PERS retirement law.]*

17 *[(12) If PERS has already generated benefit checks for the first of the month*
18 *following the date the final court order was received by PERS, then PERS shall:*

19 *(a) Pay benefits to the member, notwithstanding the court order.*

20 *(b) Make payment of future benefits to an alternate payee as soon as*
21 *administratively feasible.]*

22 *[(13) If a final court order is received by the PERS Divorce Decree Unit after a*
23 *service or disability retirement benefit has been generated, the benefit payment shall be*

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1 *deemed by PERS as received by the member. PERS shall establish an alternate payee's*
2 *award on a prospective basis only and shall not pay retroactive benefits of any kind.]*

3 *[(14) If a final court order is received by PERS after a member has received a*
4 *refund of his or her member PERS account no funds shall be distributed to an alternate*
5 *payee by PERS, and PERS shall not invoice the member for any funds that may have*
6 *been awarded to the alternate payee.]*

7 Stat. Auth: ORS 238.465[(3) &] ; 238.650 & [238A.450](#)

8 Stats. Implemented: ORS 238.465

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 045 – DOMESTIC RELATIONS ORDERS

1 459-045-0030

2 General Administration for Chapter 238 Tier One / Tier Two

3 (1) Alternate payee account.

4 (a) A percentage award will be applied against the member's regular account
5 and if applicable, Variable Annuity Account. A dollar award will be applied
6 proportionately against the member's regular account and if applicable, Variable
7 Annuity Account.

8 (A) Once the amount of an alternate payee's award is determined, funds will be
9 transferred to an alternate payee account.

10 (B) An alternate payee may not participate in the Variable Annuity Account
11 program.

12 (C) Earnings and losses on the alternate payee's account will be based on
13 regular account earning rates in accordance with OAR chapter 459, division 007
14 after the transfer.

15 (b) At the time of the alternate payee's death, if the provisions of ORS 238.395
16 are met by the member, the alternate payee's beneficiary will receive matching
17 employer dollars regardless of whether a final court order awarded matching
18 employer dollars.

19 (c) An alternate payee is not entitled to matching employer dollars if the
20 alternate payee elects to receive their award in the form of a withdrawal, regardless
21 of whether a final court order awarded matching employer dollars.

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1 (d) At retirement, an alternate payee may elect one of the following options, as
2 described in ORS 238.305:

3 (A) Refund Annuity.

4 (B) Option 1.

5 (C) Option 4 (15 Year Certain).

6 (D) Lump-sum Option 1.

7 (E) Total lump-sum option.

8 (e) An alternate payee has 60 days from the date of their first actual payment to
9 change their retirement option, except that the designation of beneficiary under the
10 Refund Annuity or Option 4 (15 Year Certain) may be changed at any time before
11 an alternate payee's death.

12 (f) An alternate payee whose total benefit is less than \$200 per month under
13 Option 1 shall receive a one time lump-sum payment as provided under ORS
14 238.315.

15 (2) If a retired member changes their beneficiary designation pursuant to a
16 final court order, the member's monthly benefit must be recalculated.

17 (a) The benefit recalculation shall be effective the first of the month after the
18 month in which PERS receives a written request from the member to change their
19 beneficiary.

20 (b) The request must provide the full name, a copy of proof of birth, and the
21 relationship of the new beneficiary to the member.

1 (3) If a final court order provides that a retired member may elect to receive the
2 Option 1 benefit pursuant to ORS 238.305(6), in order to make that election the
3 member must submit a written request to PERS.

4 (4) A member is released from any retirement option restriction:

5 (a) If the alternate payee award is a reduction, and

6 (b) The alternate payee is eligible to elect a separate benefit option at any time
7 after the member's earliest retirement eligibility and elects to do so.

8 (5)(a) PERS shall provide to the alternate payee a written summary of the
9 information used in calculating the alternate payee's retirement allowance or
10 benefit. An alternate payee may dispute the accuracy of the information used in
11 making the calculation of the retirement allowance or benefit by filing a written
12 notice by the later of:

13 (A) The 30th day after the date on which the calculation and information is
14 provided to the alternate payee; or

15 (B) The 30th day after the issue date of the first actual payment of a retirement
16 allowance or benefit to the alternate payee.

17 (b) Upon receiving a notice described above, PERS shall determine the
18 accuracy of the disputed information and make a written decision either affirming
19 the accuracy of the original information and calculation or changing the calculation
20 using corrected information. PERS shall provide the alternate payee a copy of the
21 decision and a written explanation of any applicable statutes and rules. The
22 alternate payee is entitled to request judicial review of the decision as provided in
23 ORS 183.484.

1 (c) The filing of a notice under this section extends the time allowed for election
2 of an optional form of retirement allowance or benefit until the 30th day after the
3 conclusion of the dispute proceeding and any judicial review if the proceeding or
4 review results in a change in the calculation of the retirement allowance or benefit.

5 (d) This section does not affect any authority of PERS, on its own initiative, to
6 correct an incorrect calculation of any retirement allowance or benefit.

7 *[(1) An alternate payee's award is payable to the alternate payee if the member*
8 *would be eligible to receive benefits upon separation from service. The member is not*
9 *required to be separated from service.]*

10 *[(2) A court order may restrict an alternate payee's award to be payable only when*
11 *the member applies for and receives benefits.]*

12 *[(3) Unless prohibited by court order, an alternate payee who requests a withdrawal*
13 *shall receive an additional 50 percent of the alternate payee award as of the effective*
14 *date of withdrawal if:*

15 *(a) The alternate payee's effective date of withdrawal is on or after July 1, 2004, and*
16 *before June 30, 2006; and*

17 *(b) As of the alternate payee's effective date of withdrawal, the member has met the*
18 *requirements of OAR 459-010-0055(4), or would meet them except that the member has*
19 *not withdrawn that portion of the member account that may be withdrawn.]*

20 *[(4) Under no circumstance may an alternate payee withdraw less than the entire*
21 *alternate payee award.]*

22 *[(5) The alternate payee may revoke the request for withdrawal if PERS receives a*
23 *written request to revoke before the date of distribution.]*

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1 *[(6) The separate account in the name of the alternate payee shall be credited with*
2 *earnings in accordance with OAR chapter 459, division 007 to the earlier of:*

3 *(a) The date of distribution of the separate account; or*

4 *(b) The date a non-vested member ceases to be a member as provided in ORS*
5 *238.095(2).]*

6 *[(7) An alternate payee who is awarded a separate account in the Fund in the*
7 *alternate payee's own name shall not be allowed to participate in the Variable Annuity*
8 *Account in the Fund, as described in ORS 238.260, regardless of whether the member*
9 *participated in the Variable Annuity Account in the Fund. Once a separate account is*
10 *established for the alternate payee, those funds shall no longer receive variable annuity*
11 *account earnings.]*

12 *[(8) At the time of the division and establishment of the alternate payee accord, the*
13 *alternate payee account shall be administered under Tier One pursuant to ORS 238.250*
14 *and 238.255 if:*

15 *(a) The member established membership in PERS or performed any period of service*
16 *for a participating public employer that is credited to the six month period of employment*
17 *required of an employee under ORS 238.015 before January 1, 1996; or*

18 *(b) The member ceased to be a member of PERS under the provisions of ORS*
19 *238.095 or 238.105, but restored part or all of the forfeited creditable service from*
20 *before January 1, 1996, under the provisions of ORS 238.115 or 238.105, after January*
21 *1, 1996.].*

22 *[(9) At the time of the division and establishment of the alternate payee account, the*
23 *alternate payee account shall be administered under Tier Two pursuant to ORS 238.250*

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1 *and 238.435, if the provisions of section (8)(a) and (b) of this rule are not applicable to*
2 *the member.]*

3 *[(10) The provisions of this rule do not apply to judge members under ORS 238.500*
4 *to 238.585.]*

5 *[(11) The provisions of this rule do not apply to the benefits provided by the Oregon*
6 *Public Service Retirement Plan Pension Program under ORS Chapter 238A.]*

7 *[(12) An alternate payee who elects to begin receiving an award pursuant to a court*
8 *order that uses the Division Methods described in OAR 459-045-0010(1) and (2), may*
9 *select any retirement payment option available to the member, other than a joint and*
10 *survivor annuity, but only if a court order allows the alternate payee to make any*
11 *elections. The retirement payment to an alternate payee must be:*

12 *(a) Contingent on the member's eligibility for retirement benefits, regardless of*
13 *whether the member actually retires;*

14 *(b) Separate and independent from the member's payment date and payment option;*
15 *and*

16 *(c) Actuarially computed based on the age and life expectancy of the alternate*
17 *payee.]*

18 *[(13) The alternate payee's may elect to convert the Refund Annuity Option as*
19 *described in ORS 238.300 to one of the following optional forms:*

20 *(a) Option 1, as described in ORS 238.305(1);*

21 *(b) Option 4, as described in ORS 238.305(1); or*

22 *(c) The lump-sum payment option, as described in ORS 238.305(2)(a) and (b) and*
23 *238.305(3).]*

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1 *[(14) Alternate payees are provided 60 days from the date of their first payment to*
2 *change the option or designation of beneficiary, except that the designation of*
3 *beneficiary under the Refund Annuity Option or Option 4 may be changed by the*
4 *alternate payee at any time before the alternate payee's death.]*

5 *[(15) An alternate payee whose total award is less than \$200 per month under*
6 *Option 1, defined in ORS 238.305(1), shall receive in lieu of any and all allowances or*
7 *other benefits or form of payment described in section (13) of this rule, a one time lump-*
8 *sum payment equal to the actuarial value as of the effective date of the alternate payee's*
9 *retirement, as is the case for a member under ORS 238.315.]*

10 *[(16)(a) PERS shall provide to the alternate payee a written summary of the*
11 *information used in making a retirement computation. An alternate payee may dispute*
12 *the accuracy of the factual information used by PERS in making the computation of the*
13 *retirement allowance or benefit by filing a written notice of dispute with PERS not later*
14 *than the later of:*

15 *(A) The 30th day after the date on which the computation and information is*
16 *provided to the alternate payee under this section; or*

17 *(B) The 30th day after the date on which the retirement allowance or benefit to*
18 *which the alternate payee is entitled first becomes payable.*

19 *(b) The filing of a notice of dispute under this section extends the time allowed for*
20 *election of an optional form of retirement allowance or benefit until the 30th day after the*
21 *conclusion of the dispute proceeding or review results in a change in the computation of*
22 *the retirement allowance or benefit.*

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1 (c) Upon receiving a notice of dispute under this section, PERS shall determine the
2 accuracy of the disputed information and make a written decision either affirming the
3 accuracy of the information and computation based thereon or changing the computation
4 using corrected information. PERS shall provide to the member a copy of the decision
5 and a written explanation of any applicable statutes and rules.

6 (d) This section does not affect any authority of PERS, on its own initiative, to
7 correct an incorrect computation of any retirement allowance or benefit.]

8 [(17) An alternate payee may not receive any cost of living increase under ORS
9 238.360, or special ad-hoc increase that may be granted by the Legislature under
10 238.365 or 238.385, or any other type of increase that may be granted to PERS retirees
11 until benefits are first paid by PERS to or on behalf of the member.]

12 [(18) An alternate payee is not entitled to health insurance benefits under ORS
13 238.410, 238.415, and 238.420 regardless of whether a court order awards these benefits
14 to an alternate payee.]

15 [(19) An alternate payee is not entitled to any benefits derived from the optional
16 purchase of police officer and fire fighter unit benefits under 238.440 regardless of
17 whether a court order awards these benefits to an alternate payee.]

18 [(20) If an alternate payee begins receiving a payment before the member, the
19 alternate payee is not entitled to any further increases in retirement credit that the
20 member may earn or become entitled to before the member's actual retirement due to
21 continued employment, earnings, or other benefits earned as a member participating in
22 PERS.]

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1 *[(21) Alternate payee court awards made after a member has retired under ORS*
2 *238.300 or 238.320 must be paid as deductions from the retired member's retirement*
3 *allowance or lump-sum benefit or from the member's beneficiary's retirement allowance*
4 *or lump sum payment. No alternate payee account shall be established.]*

5 *[(22) A court order may require a member who retired under ORS 238.300 or*
6 *238.320 to change the designated beneficiary outside the time frame allowed under ORS*
7 *238.305(5) or 238.325(2). The retirement allowance shall be adjusted based on the new*
8 *beneficiary's age to ensure the value of the benefits is not greater than the allowance the*
9 *member is otherwise eligible to receive.]*

10 *[(23) Members who retire for disability under ORS 238.320 or 238.325 are*
11 *considered retired members and all the provisions of sections (12) through (21) of this*
12 *rule apply to the alternate payee.]*

13 *[(24) Death benefits payable from an alternate payee account are as follows:*

14 *(a) If an alternate payee dies before payout or retirement, the alternate payee award*
15 *is payable to the alternate payee's designated beneficiary or estate as provided by ORS*
16 *238.390 and 238.395. No employer death benefits are payable under ORS 238.395 unless*
17 *the member would have been eligible for employer death benefits had the member died*
18 *on the same date as the alternate payee.*

19 *(b) If an alternate payee has begun receiving retirement benefits or dies after the*
20 *first payment is due, the benefits due the designated beneficiary or estate, if any, shall be*
21 *based on the option selected by the alternate payee.*

22 *(c) If an alternate payee dies after applying for a monthly retirement benefit but*
23 *before the first of the month following the effective retirement date, the account shall be*

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1 *treated as if the alternate payee died before retirement and benefits shall be paid under*
2 *subsection (a) above.*

3 *(d) If the alternate payee is awarded a percentage of a benefit, as long as the award*
4 *is payable the award shall continue to be paid to the alternate payee's designated*
5 *beneficiary, unless the court decree specifies otherwise.]*

6 *[(25) If the member predeceases the alternate payee, the benefits payable to the*
7 *alternate payee are as follows:*

8 *(a) The alternate payee who has a separate account becomes eligible to withdraw*
9 *his or her account in the form of a death benefit under ORS 238.390 and 238.395 (if*
10 *eligible). If the alternate payee elects a death benefit under ORS 238.390 and 238.395 (if*
11 *eligible), the death benefit shall be in lieu of any withdrawal, service or disability*
12 *retirement or any other benefit. If the alternate payee does not elect a death benefit, the*
13 *alternate payee shall be eligible to withdraw the separate account, or to leave the*
14 *account in the Fund and elect to draw benefits under one of the optional retirement*
15 *choices described in section (13) of this rule, any time on or after the date the member*
16 *would have reached earliest retirement age.*

17 *(b) If the alternate payee is awarded a percentage of a benefit, as long as the award*
18 *is payable the award shall be paid according to the decree of divorce or separation or*
19 *annulment unless the court decree provides for no alternate payee death benefits from the*
20 *member's account.]*

21 *[(26) Benefit payments to either the member or the alternate payee, or to both*
22 *simultaneously, that exceed the allowable limits set forth in Section 415 of the Internal*
23 *Revenue Code (IRC) shall be deducted from the benefit payment(s) to the member or the*

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1 *alternate payee, or both. Unless a final court order specifies the allocation of the*
2 *deduction for benefits that exceed the limits in IRC Section 415, PERS shall pro rate the*
3 *amount that exceed those limits in the same proportions that benefits were awarded to the*
4 *member and the alternate payee as specified in a final court order.]*

5 *[(27) Distributions of benefits under OAR chapter 459, division 045 must not*
6 *jeopardize the status of the programs as being part of a tax-qualified governmental plan.]*

7 Stat. Auth.: ORS 238.465 & 238.650

8 Stats. Implemented: ORS 238.450, 238.465[, *OL 2007 Ch. 53*]

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 045 – DOMESTIC RELATIONS ORDERS

1 459-045-0032

2 General Administration for OPSRP Pension Program

3 (1) If a retired member changes their beneficiary designation pursuant to a
4 final court order, the member’s monthly benefit must be recalculated.

5 (a) The benefit recalculation shall be effective the first of the month after the
6 month in which PERS receives a written request from the member to change their
7 beneficiary.

8 (b) The request must provide the full name, a copy of proof of birth, and the
9 relationship of the new beneficiary to the member.

10 (2) If a final court order provides that a retired member may elect to receive the
11 higher benefit pursuant to ORS 238A.190(2), in order to make that election the
12 member must submit a written request to PERS.

13 (3) A member is released from any retirement option restriction:

14 (a) If the alternate payee award is a reduction, and

15 (b) The alternate payee is eligible to elect a separate benefit option at any time
16 after the member’s earliest retirement eligibility and elects to do so on or before the
17 member’s effective retirement date.

18 (4) An alternate payee award of a member’s disability benefit must end when
19 the member is no longer eligible for a disability benefit pursuant to ORS
20 238A.235(4).

1 (5) An alternate payee award of a pre-retirement death benefit is payable only
2 if, at the time of the member's death, a benefit would be otherwise payable under
3 ORS 238A.230(1).

4 (6)(a) PERS shall provide to the alternate payee a written summary of the
5 information used in calculating the alternate payee's pension or benefit. An
6 alternate payee may dispute the accuracy of the information used in making the
7 calculation by filing a written notice with PERS by the later of:

8 (A) The 30th day after the date on which the calculation and information is
9 provided to the alternate payee under this section; or

10 (B) The 30th day after the issue date of the first actual payment of a pension or
11 benefit to the alternate payee.

12 (b) Upon receiving a notice as described above, PERS shall determine the
13 accuracy of the disputed information and make a written decision either affirming
14 the accuracy of the original information and calculation or changing the calculation
15 using corrected information. PERS shall provide the alternate payee a copy of the
16 decision and a written explanation of any applicable statutes and rules. The
17 alternate payee is entitled to request judicial review of the decision as provided in
18 ORS 183.484.

19 (c) This section does not affect any authority of PERS, on its own initiative, to
20 correct an incorrect computation of any retirement allowance or benefit.

21 Stat. Auth.: ORS 238.465 & ORS 238A.450

22 Stats. Implemented: ORS 238.450, 238.465, 238A.450

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 045 – DOMESTIC RELATIONS ORDERS

1 459-045-0034

2 General Administration for Individual Account Program (IAP)

3 (1) A percentage award will be applied against the member's account(s) to the
4 extent the member is vested in the account(s). A dollar amount will be applied on a
5 pro-rata basis against the member's account(s) to the extent the member is vested in
6 the account(s).

7 (2) An alternate payee account shall be credited with earnings and losses in
8 accordance with OAR chapter 459, division 007.

9 (3)(a) At the time of distribution to the alternate payee, PERS shall provide the
10 alternate payee a written summary of the information used in making the
11 calculation for the distribution of benefits. An alternate payee may dispute the
12 accuracy of the information used in making the calculation of the distribution of
13 benefits by filing a written notice with PERS by the later of:

14 (A) The 30th day after the date on which the information and calculation is
15 provided to the alternate payee under this section; or

16 (B) The 30th day after the issue date of the first distribution of benefits to the
17 alternate payee.

18 (b) Upon receiving a notice as described above, PERS shall determine the
19 accuracy of the disputed information and make a written decision either affirming
20 the accuracy of the original information and calculation or changing the calculation
21 using corrected information. PERS shall provide the alternate payee with a copy of
22 the decision and a written explanation of any applicable statutes and rules. The

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1 alternate payee is entitled to request judicial review of the decision as provided in
2 ORS 183.484.

3 (c) This section does not affect any authority of PERS, on its own initiative, to
4 correct an incorrect calculation of any benefit.

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

6 Stats. Implemented: ORS 238.465 & 238A.450

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 045 – DOMESTIC RELATIONS ORDERS

1 **459-045-0040**

2 **Requesting Information *[for Dividing]* from PERS *[Benefits]***

3 **(1) PERS may not provide member information or alternate payee information**
4 **to anyone other than the member or alternate payee, including representatives of**
5 **the member or alternate payee, unless PERS receives:**

6 **(a) A member release.**

7 **(b) An alternate payee release.**

8 **(c) A judicial order, subpoena, or administrative order pursuant to OAR 459-**
9 **060-0030.**

10 **(2) A subpoena must be made out to the Oregon Public Employees Retirement**
11 **System and served at PERS Tigard Headquarters. Faxed subpoenas will not be**
12 **accepted. PERS reserves the right to object to any subpoena for reasons that include**
13 **but are not limited to:**

14 **(a) The subpoena fails to provide a reasonable time for preparation and travel.**

15 **(b) The subpoena is otherwise unreasonable or oppressive.**

16 **(c) That service was improper.**

17 **(3) An alternate payee with a final court order that has been received and**
18 **approved as administrable by PERS may submit a written request for an estimate**
19 **under the provisions of OAR 459-005-0250(1).**

20 *[(1) PERS shall provide estimates for divorce purposes only upon written request*
21 *and receipt of a member release. The estimates may be generated by computer or by*
22 *hand depending on what staff deems most appropriate.]*

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1 *[(2) An estimate is not a guarantee or a promise of actual benefits that eventually*
2 *may become due and payable, and PERS shall not be bound by any estimates it*
3 *provides.]*

4 *[(3) PERS shall not prepare or provide present value studies.]*

5 *[(4) PERS may provide estimates of future payments due an alternate payee that*
6 *were awarded to an alternate payee in a final court order only if PERS has received a*
7 *written request and a signed release from the alternate payee.]*

8 *[(5) Any and all faxed documents or information requests that are sent to PERS shall*
9 *be followed up by sending a hard copy to PERS, before PERS will provide or send out*
10 *any information.]*

11 *[(6) In the event a subpoena is necessary for domestic relations purposes, it must be*
12 *made out to the Oregon Public Employees Retirement System. PERS reserves the right to*
13 *object to any subpoena on the ground that the subpoena fails to provide a reasonable*
14 *time for preparation and travel, is otherwise unreasonable or oppressive, or that service*
15 *was improper. Faxed subpoenas are not acceptable even if they are followed up with a*
16 *hard copy. To facilitate prompt processing, copies of subpoenas should be served at the*
17 *PERS Headquarters office.]*

18 *[(7) PERS must receive a written release from the member or the alternate payee to*
19 *provide any person including a representative of the member or the alternate payee, any*
20 *information except as provided for in OAR 459-045-0020(5)(a) and (8).]*

21 Stat. Auth: ORS 238.465 *[(3) &]* , ORS 238.650, & ORS 238A.450

22 Stats. Implemented: ORS 238.465

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 045 – DOMESTIC RELATIONS ORDERS

1 459-045-0050

2 **[Filing] Application** Requirements for Alternate Payees

3 **(1) An alternate payee must apply for benefits on PERS forms.**

4 **(2) An application for benefits must be accompanied by a final court order that**
5 **is administrable by PERS, unless an administrable final court order is already on**
6 **file with PERS.**

7 **(3)(a) An alternate payee’s effective retirement date is the later of:**

8 **(A) The first day of the calendar month specified on the alternate payee’s**
9 **retirement application; or**

10 **(B) The first day of the calendar month following the date an application was**
11 **received by PERS.**

12 **(b) If a final court order allows the alternate payee to commence benefits under**
13 **ORS 238.465(2)(a), the effective retirement date can be no earlier than the first of**
14 **the month following the month in which the member reaches earliest retirement**
15 **eligibility.**

16 **(4) A request to cancel an application for benefits must be:**

17 **(a) In writing;**

18 **(b) Signed by the alternate payee; and**

19 **(c) Received by PERS no later than the day before the issue date of the first**
20 **payment.**

21 **(5) An alternate payee may not apply for alternate payee benefits due to his or**
22 **her own disability.**

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2 **(6) Alternate payees must keep PERS informed of their current mailing address**
3 **at all times. A change of mailing address must be submitted to PERS in writing and**
4 **signed by the alternate payee.**

5 *[(1) An alternate payee is required to file for payments from PERS on PERS*
6 *approved forms. Key forms that must be received before PERS can establish payments for*
7 *an alternate payee are:*

8 *(a) An Alternate Payee Retirement Application form, completed and signed before a*
9 *notary, and*

10 *(b) An Acknowledgment of Receipt of Federal Tax Information on Service*
11 *Retirements form, completed and signed, and*

12 *(c) A Retirement Benefit Distribution Election form, or*

13 *(d) An Account Balance Refund Request Packet completed and signed before a*
14 *notary.*

15 *(e) Verification of age of the alternate payee.*

16 *(f) Verification of age of the member if required for computation of benefits.*

17 *(g) A Notice of Divorce Decree Administrative Fee form, completed and signed, and*

18 *(h) An Alternate Payee Election Request and/or Option Release form.]*

19 *[(2) A request for payments must be accompanied by acceptable court documents if*
20 *not already on file with PERS. If an order already on file states another type of order was*
21 *to follow, a certified copy of the other court order must be received by PERS. An*
22 *alternate payee account shall not be established nor shall any payments be made to an*
23 *alternate payee until PERS has accepted and approved all supporting court documents.]*

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1 *[(3) An alternate payee's retirement payments shall be effective the first of the month*
2 *in which the alternate payee wants payments to start as indicated on the Alternate Payee*
3 *Retirement Application form, or the first of the month in which the member reaches*
4 *earliest service retirement age eligibility, whichever is later. The alternate payee cannot*
5 *elect a retirement date earlier than the first of the month in which the alternate payee*
6 *retirement application was received by PERS.]*

7 *[(4) If there is a delay in processing, payments that are due the alternate payee shall*
8 *be retroactive to the effective retirement date of the alternate payee. All retirement dates*
9 *for alternate payees and members shall be on the first of a month.]*

10 *[(5) Alternate payees must keep PERS aware of their current mailing address at all*
11 *times by sending it in writing to PERS whenever a change in mailing address occurs.]*

12 Stat. Auth.: ORS 238.465 *[(3) &]* ; ORS 238.650, [& ORS 238A.450](#)

13 Stats. Implemented: ORS 238.465

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 045 – DOMESTIC RELATIONS ORDERS

1 459-045-0060

2 General *[Assumptions]* Rules for *[Computing]* Calculating Benefits

3 (1) If an alternate payee award is a reduction and the alternate payee elects to
4 begin receiving their benefit before the member retires, the calculation of the
5 alternate payee benefit:

6 (a) Must use creditable service or retirement credit accrued by the member as
7 of the alternate payee's effective retirement date.

8 (b) May not include any potential increase attributable to unused sick leave
9 under ORS 238.350 or voluntary purchases of retirement credit.

10 (2) Benefit payments to either the member or the alternate payee, or to both
11 simultaneously, that exceed the allowable limits set forth in Section 415 of the
12 Internal Revenue Code (IRC) shall be deducted from the benefit payment(s) to the
13 member or the alternate payee, or both. Unless a final court order specifies the
14 allocation of the deduction for benefits that exceed the limits in IRC Section 415,
15 PERS shall pro rate the amount that exceeded those limits in the same proportions
16 that benefits were awarded to the member and the alternate payee as specified in a
17 final court order.

18 (3) If PERS determines that an alternate payee has received benefits in excess of
19 the amount to which the alternate payee is entitled, PERS shall recover any
20 overpayment in accordance with ORS 238.715.

21 (4) Payment of benefits under this division must not jeopardize the status of the
22 programs as a tax-qualified governmental plan.

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1 *[(1) If a final court order allows an alternate payee to elect to begin receiving*
2 *payment based on the member's earliest eligibility for retirement benefits, the alternate*
3 *payee's payments shall be computed in accordance with the following assumptions*
4 *regardless of whether or not the member separates from service and retires:*

5 *(a) If the formula in the court order refers to the date of retirement total creditable*
6 *service, the date that shall be used shall be the date the alternate payee elects to begin*
7 *receiving benefits. All PERS retirement effective dates are the first of each calendar*
8 *month.*

9 *(b) For calculation purposes, any final average salary computations shall be based*
10 *on the three high calendar year salaries of the member prior to the date of the alternate*
11 *payee's retirement election, if the member has not separated from the service of all*
12 *participating PERS employers.*

13 *(c) For calculation purposes, any final salary computations shall be based on the*
14 *greater of the average salary per calendar year paid by a public employer to an*
15 *employee who is an active member of the system for the three calendar years the member*
16 *was paid the highest salary, or the total salary paid by a public employer to an active*
17 *member of the system in the last 36 calendar months of active membership before the*
18 *effective date of retirement for the member, provided the member has actually separated*
19 *from all PERS covered employment and has filed for retirement benefits.*

20 *(d) Alternate payees shall receive no credit for accumulated unused sick leave hours*
21 *belonging to the member or for any voluntary purchases a member may have available to*
22 *them if the member is not retiring at the same time the alternate payee elects to begin*

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1 *receiving payment, as these additional retirement credits can only be computed at the*
2 *time a member actually retires.]*

3 *[(2) If a court order allows an alternate payee to elect to begin receiving payment*
4 *on or after the member's earliest eligibility for retirement benefits, PERS shall allocate*
5 *the cost and the increase resulting from a purchase between an alternate payee and a*
6 *member only if specific language regarding the division of any voluntary purchases that*
7 *may be available to the member is contained in the final court order and only if:*

8 *(a) The effective date of payments is the same for both the alternate payee and the*
9 *member, and*

10 *(b) The final court order is explicit in its direction on how PERS is to allocate the*
11 *cost of any purchase and increased payment resulting from a purchase between the*
12 *alternate payee and the member.*

13 *(c) If the final court order submitted to PERS does not contain specific language on*
14 *how PERS is to allocate the cost of any purchase and the increased benefit payment as a*
15 *result of either a single or multiple purchase between the member and the alternate*
16 *payee, PERS shall not allocate, or pro-rate, the cost of any purchase or purchases, or the*
17 *resulting increase in benefit payment between the member and the alternate payee. In the*
18 *absence of any language to the contrary in regard to purchases, the full cost and amount*
19 *that is due in regard to a purchase shall be billed solely to the member and the full*
20 *increase in any benefit payment resulting from a single or multiple purchase shall be*
21 *paid entirely to the member by PERS.]*

22 *[(3) An alternate payee who is allowed to select his or her own form of payment*
23 *option may elect to change from the initial option that was chosen to another form of*

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1 *payment option described in OAR 459-045-0030(8), if the election to change options is*
2 *made in writing and received by PERS within 60 days from the issue date of the first*
3 *payment made under the initial option that was selected by the alternate payee.]*

4 *[(4) The alternate payee may not cancel the election to receive benefits once the first*
5 *payment has been generated.]*

6 *[(5) The alternate payee may not apply for benefits due to his or her own disability.]*

7 *[(6) If PERS determines that the payment being made to an alternate payee is in*
8 *excess of the amount the alternate payee is entitled to PERS shall recover any*
9 *overpayment in accordance with ORS 238.715, as is the case for any excess payment that*
10 *is made to a member.]*

11 Stat. Auth.: ORS 238.465 *[(3) &]*, ORS 238 .650, [& ORS 238A.450](#)

12 Stats. Implemented: ORS 238 .465

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 045 – DOMESTIC RELATIONS ORDERS**

1 **459-045-0080**

2 **PERS Notifications**

3 (1) PERS is *[a]* separate *[entity]* from other public employer retirement plans and
4 deferred compensation plans and notification to other plans does not constitute notice to
5 PERS. *[Similarly,]* PERS is not responsible for notifying other plans of member or
6 alternate payee changes in address, changes in eligibility, *[or that an]* application for
7 *[retirement or refund]* benefits *[have been received]*, or *[that a PERS member or an*
8 *alternate payee has died]* death.

9 (2) PERS shall send a written notification acknowledging receipt of a final court
10 order to the submitting party. *[and]* PERS shall send a copy of the acknowledgment to
11 the other persons named in the court order only if those persons' mailing addresses are
12 provided to PERS [if mailing addresses are provided].

13 (3) *[PERS shall notify an alternate payee of his or her eligibility for payments [when*
14 *a member terminates all PERS covered employment before retiring or upon the death of*
15 *a member prior to retirement. It is the alternate payee's responsibility to contact PERS in*
16 *order to begin receiving payment on or after the date the member has reached earliest*
17 *retirement age.]* PERS will notify an alternate payee of an event described in ORS
18 238.465(2)(a)(B), unless the alternate payee has already commenced receiving
19 alternate payee benefits.

20 (4) PERS shall issue the applicable tax reporting forms directly to the recipient of
21 any funds that are issued by PERS pursuant to a final court order *[for domestic relations*
22 *purposes]*.

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1 (5) PERS shall notify the member, *[and /]* or the alternate payee, or both of any
2 *[reduction in]* benefit payments *[payable to the member and/or the alternate payee]* that
3 are reduced *[is made]* by PERS pursuant to Section 415 of the Internal Revenue Code
4 *[as provided in OAR 459-045-0030(15)]*.

5 *[(6) PERS shall process deductions from alternate payee payments for federal and*
6 *state taxes and other support obligations provided for in ORS 238.445.]*

7 *[(7) PERS shall allocate a member's after tax contributions (member cost) between*
8 *the member and the alternate payee in accordance with IRC Section 72(m)(10) in the*
9 *same proportion that benefits are divided between the member and the alternate payee as*
10 *specified in the final court order.]*

11 *[(8) All alternate payees who are awarded a separate account in the Fund in their*
12 *own name shall receive an annual statement on their account until they have received a*
13 *refund payment or started receiving retirement or death benefit payments. PERS shall*
14 *make a reasonable attempt to send the alternate payee an annual statement of account by*
15 *May 31, for the prior calendar year's activity.]*

16 *[(9) Alternate payees who are awarded payments other than by separate account*
17 *may request information about their award by sending their request in writing to PERS.*
18 *Staff shall make a reasonable attempt to provide written information about the award*
19 *within 90 days of receiving the written request.]*

20 Stat. Auth.: ORS 238.465 *[(3) &]*, ORS 238.650, & ORS 238A.450

21 Stats. Implemented: ORS 238.465

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 045 – DOMESTIC RELATIONS ORDERS**

1 **459-045-0090**

2 **PERS Administrative Fee**

3 *[(1)]* The Board has determined that actual and reasonable administrative expenses
4 incurred by PERS for obtaining data and making calculations to administer an alternate
5 payee award will always exceed \$300.00. At the time of benefit payment, PERS shall
6 allocate the administrative fee under the provisions of ORS 238.465(9). *[when PERS*
7 *establishes a separate alternate payee account[under the Pre Retirement Division*
8 *method or the At The Time of Payment Division method, or when establishing payment*
9 *for an alternate payee or a member pursuant to a court order that uses the At The Time*
10 *of Payment Division method]. Therefore, PERS shall charge an administrative fee of*
11 *\$300.00 for the costs related to establishing a separate account in the Fund in the name*
12 *of the alternate payee, or for establishing payment for an alternate payee or a member*
13 *pursuant to a court order that uses the Pre Retirement Division or At The Time of*
14 *Payment Division methods].*

15 *[(2) If a court order awards a separate account to an alternate payee [pursuant to*
16 *the [Pre Retirement Division Method, then PERS shall allocate expenses and costs under*
17 *the provisions of ORS 238.465(9), and OAR 459-045-0001(23) and (24)].*

18 *[(3) If a final court order uses the At The Time Of Payment Division method for*
19 *determining an alternate payee's award, PERS shall allocate the fraction of the benefit*
20 *awarded to the member and the alternate payee under the provisions of ORS 238.465(9),*
21 *and OAR 459-045-0001(23). The fraction of the administrative fee that is owed by the*

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1 *alternate payee and the member shall be calculated at the time the alternate payee elects*
2 *to have a separate account established, or elects to begin receiving a monthly payment.*

3 *(a) If the At The Time Of Payment Division Method used the years and months*
4 *formula described in OAR 459-045-0010(2)(b)(A) then the numerator shall be the*
5 *creditable service time accrued by the member during the marriage, and the denominator*
6 *shall be the total creditable service accrued by the member at the time benefits become*
7 *due and payable to either the member or the alternate payee. To determine the fee owed*
8 *by the alternate payee, this fraction shall then be multiplied by the percentage awarded*
9 *to the alternate payee under the final court order, as described in OAR 459-045-*
10 *0010(2)(b)(C). The remainder of the \$300 administrative fee shall be allocated to the*
11 *member. Amounts owed by the parties for the administrative fee shall be deducted from*
12 *the respective parties' benefits when those benefits become payable.*

13 *(b) If the At the Time of Payment Division method used the member contributions*
14 *and interest formula described in OAR 459-045-0010(2)(b)(B) then the numerator shall*
15 *be the contributions and interest that accrued during the marriage, and the denominator*
16 *shall be the contributions and interest in the member account balance as of December 31*
17 *immediately prior to the alternate payee election date, or the actual member account*
18 *balance if the member elects to receive benefits at the same time as the alternate payee.*
19 *To determine the percentage of the fee owed by the alternate payee, this fraction shall*
20 *then be multiplied by the percentage awarded to the alternate payee under the final court*
21 *order, as described in OAR 459-045-0010(2)(b)(C). The remainder of the \$300*
22 *administrative fee shall be allocated to the member. Amounts owed by the parties for the*

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1 *administrative fee shall be deducted from the respective parties' benefits when those*
2 *benefits become payable.]*

3 *[(4) The fee that shall be charged for dividing a PERS member's account or benefits*
4 *shall not be contingent on the number of days it takes for PERS to complete its review of*
5 *any type of court order that is received by PERS.]*

6 Stat. Auth.: ORS 238.465[(9) &], ORS 238.650, & [ORS 238A.450](#)

7 Stats. Implemented: ORS 238.465