



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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June 27, 2008

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
SUBJECT: First Reading of OAR 459-005-0310, *Date of Participation and Transfer of Employee Funds to the Oregon University System (OUS)*

MEETING DATE	06/27/08
AGENDA ITEM	B.5. OUS ORP

OVERVIEW

- Action: None. This is the first reading of the OUS Optional Retirement Plan (ORP) rule.
- Reason: The current rule provision regarding effective date of an election needs to be modified to comply with statute. The issue of whether a request to transfer funds to the OUS ORP requires that all the member's funds be transferred should also be addressed.
- Subject: Effective date of election to participate in the ORP and transfer of employee funds.
- Policy Issue: Should the request of a PERS member to transfer their funds to the ORP be administered as a request to transfer all funds from PERS to the ORP?

BACKGROUND

A PERS member who is employed by OUS may elect to participate in the OUS Optional Retirement Plan (ORP). Generally, if that member is not vested in the PERS Chapter 238 program, their membership terminates and their funds (regular account and variable account, if any) are transferred to the ORP. If that member is vested, they can choose whether to terminate their membership by transferring their funds to the ORP, or become an inactive member and keep their vested benefits.

The 2007 Legislature passed HB 2281, requiring a member who withdraws from one PERS program to withdraw from all PERS programs. That legislation did not specifically address ORP transfers. Under current practice, a member is allowed to retain some of their accounts with PERS (e.g., keep their PERS Chapter 238 member account(s) to fund their vested benefit under those provisions, and transfer only their IAP).

Staff initiated rulemaking to apply the "withdraw from one, withdraw from all" concept to ORP transfers. Working with OUS, staff has developed draft rule modifications that address the issues in this situation from both perspectives. Incidentally, while the rule is open for rulemaking, modifications have been included to comply with the statutory standard for the effective date of an election to participate in the ORP and to clarify other provisions.

POLICY ISSUE

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- *Should the request of a PERS member to transfer their funds to the ORP be administered as a request to transfer all funds from PERS to the ORP?*

Once the member elects to participate in the ORP and transfer their funds from PERS, the effect of the transfer parallels the effect of a withdrawal in terminating PERS membership. Allowing an employee to transfer some of their PERS funds (e.g., member account(s) but not IAP) results in the same type of parallel and multiple memberships HB 2281 sought to eliminate. However, HB 2281 was specific in those statutory sections affected and did not directly address the ORP statute, ORS 243.800.

As a policy matter, therefore, these rule modifications would consider a request to transfer funds to the ORP as a request to transfer all funds unless the member specifically limits the request to a designated account. This parallels a current policy for rollover eligible withdrawal payments. If a member elects to roll over a withdrawal payment but fails to designate the percentage to be rolled, PERS rolls 100% of the payment. Notice of this policy and practice is provided in the Member Account Withdrawal Application Packet. If these provisions are adopted, PERS and OUS would need to coordinate to assure members were aware of this at the time of a transfer request. Such notice may be included on the ORP transfer request form.

Staff recommends that rule modifications be adopted that permit PERS to administer a request to transfer funds to the ORP as a request to transfer all funds to the ORP unless the member specifically limits the request to a designated account.

MODIFICATIONS TO THE RULE SINCE NOTICE

At the May 16, 2008 meeting, staff notified the Board of the initiation of rulemaking and noted that a draft rule would be presented at a later date. On June 11, 2008, these proposed modifications were distributed to the interested parties.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on May 27, 2008 at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. A second public hearing has been scheduled for July 8, 2008 at PERS headquarters in Tigard. The public comment period has been extended and ends July 18, 2008 at 5:00 p.m. To date, no public comment has been received.

LEGAL REVIEW

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

IMPACT

Mandatory: Yes, in part. The current rule provisions regarding effective date of an election are not in compliance with statute. The Board need not adopt modifications regarding the “withdraw from one, withdraw from all” policy issue, but parallel and multiple memberships in PERS and the ORP do present significant administrative problems that can be reduced by facilitating a consistent approach.

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Impact: PERS and OUS will benefit from administrative simplification by avoiding parallel and multiple memberships. Members will be required to make a more clearly defined choice of retirement plans when opting to transfer funds to the ORP.

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

RULEMAKING TIMELINE

April 15, 2008	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
May 1, 2008	<i>Oregon Bulletin</i> published the Notice.
May 16, 2008	PERS Board notified that staff began the rulemaking process.
May 27, 2008	Rulemaking hearing held at 2:00 p.m. in Tigard.
June 11, 2008	Draft rule and revised notice was emailed to employers, legislators, and interested parties. New public comment period began.
June 27, 2008	First reading of the rules.
July 1, 2008	<i>Oregon Bulletin</i> publishes the updated Notice.
July 8, 2008	Second rulemaking hearing to be held at 2:00 p.m. in Tigard
July 18, 2008	Extended public comment period ends at 5:00 p.m.
July 25, 2008	Staff proposes adopting the permanent rule modifications, including any amendments warranted by public comment or further research.

NEXT STEPS

A rulemaking hearing will be held on July 8, 2008. The rule is scheduled to be brought to the PERS Board's July 25, 2008 meeting for adoption.

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

1 459-005-0310

2 Date of Participation and Transfer of Employee Funds to the Oregon University

3 System Optional Retirement Plan [- OUS]

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

5 (a) “IAP account” means the member’s employee, rollover, and employer

6 accounts in the Individual Account Program, to the extent the member is vested in

7 those accounts under ORS 238A.320.

8 (b) “OPSRP Pension account” means the member’s transferrable interest in the

9 pension program under ORS 243.800(6)(d).

10 (c) “PERS member account” includes a “member account” as defined in ORS

11 238.005, an account established under ORS 238.440, and an account subject to ORS

12 238.095(4).

13 (2)[(1)] The effective date of an election by an administrative or academic employee

14 of the Oregon [State] University System [of Higher Education] (OUS) to participate in

15 [an] the Optional Retirement Plan (ORP) authorized under ORS 243.800 is the first day

16 of the month following a period of six full calendar months of employment in an

17 administrative or academic position.[the employee’s election to participate in the

18 *Optional Retirement Plan.*]

19 (a) Unless otherwise agreed upon, notice of the effective date of [an] the election [to

20 *participate in the Optional Retirement Plan*] will be provided to PERS by [the] OUS

21 within 30 days of the date of the election. [election date.]

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1 (b) If the employee is a member of PERS *[or the Oregon Public Service Retirement*
2 *Plan (OPSRP) Pension Program or Individual Account Program (IAP),]* and **elects** *[is*
3 *eligible]* to transfer **funds from PERS** *[their PERS or OPSRP accounts and]* to the
4 Optional Retirement Plan **pursuant to ORS 243.800(6)**, *[the]* OUS will forward **to**
5 **PERS** a copy of *[that]* **the ORP election form and a written transfer request from the**
6 **employee** at the time of the notification required in subsection (a) of this section.

7 **(3) If an employee who is a member of PERS requests a transfer of funds**
8 **pursuant ORS 243.800(6), PERS will administer the request as a request to transfer**
9 **the employee's PERS member account, OPSRP Pension account, and IAP account**
10 **from PERS to the ORP unless the employee also requests that the transfer be**
11 **limited to a designated account.**

12 **(a) PERS must transfer the funds to the ORP within the 60 day period following**
13 **the later of:**

14 **(A) The effective date of the employee's election to participate in the ORP, or**

15 **(B) The effective date of the transfer.**

16 **(b) The effective date of a transfer is the first of the month in which PERS**
17 **completes reconciliation of the account to be transferred.**

18 **(c) PERS may not transfer funds to the ORP if the member is concurrently**
19 **employed by a participating employer other than an institution of the Oregon**
20 **University System.**

21 *[(2) The date of transfer will be:*

22 *(a) For a member's PERS member account, variable account, or OPSRP Pension*
23 *account, the first working day of the calendar month following the date of the notification*

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1 *by OUS to PERS of the employee's election to participate in an Optional Retirement Plan*
2 *authorized under ORS 243.800.*

3 *(b) For a member's OPSRP IAP account, the actual date of distribution.*

4 *(3) For purposes of sections (1) and (2) of this rule, the date of notification shall be*
5 *the date on which PERS headquarters receives the written notification of the election to*
6 *participate in an Optional Retirement Plan under ORS 243.800.]*

7 *(4) For the purposes of this rule:*

8 *(a) "PERS member account" means the member's regular account in the fund as*
9 *defined in ORS 238.250; and*

10 *(b) "PERS variable account" means the member's account in the Variable Annuity*
11 *Account in the Fund as defined in ORS 238.260.*

12 *(c) "OPSRP pension account" means the member's benefit eligible for withdrawal*
13 *under the provisions of ORS 238A.120; and*

14 *(d) "IAP Account" means the member's account, to the extent the member is vested,*
15 *as set forth under ORS 238A.350].*

16 Stat. Auth: ORS [238A.450](#), 238.650

17 Stats. Implemented: ORS 243.[800](#) [775]