



Oregon

Kate Brown, Governor

Public Employees Retirement System

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November 20, 2015

TO: Members of the PERS Board

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

SUBJECT: Adoption of Retirement Benefits Rules:
OAR 459-013-0060, *Payment of Retirement Benefits*
OAR 459-013-0310, *Payment of Increased Benefits under ORS 238.372 to 238.384*

OVERVIEW

- Action: Adopt modifications to the Retirement Benefits rules.
- Reason: Clarify treatment of partial year residency for tax remedy qualification, and add information regarding the timing of electronic funds transfer (EFT) payments.
- Policy Issue: No policy issues were identified.

BACKGROUND

ORS 238.372 prohibits PERS from paying “tax remedy” increases under SB 656 (Chapter 796, Oregon Laws 1991) or HB 3349 (Chapter 569, Oregon Laws 1995) if the benefit payments are not subject to Oregon personal income tax because the recipient is not an Oregon resident (as provided in ORS 316.127(9)). ORS 238.378 requires PERS and the Department of Revenue (DOR) to share information necessary to determine whether a member’s benefit is subject to Oregon income tax. OAR 459-013-0310 explains how PERS uses the information provided by DOR, and residency status information provided by the recipient, to make residency status determinations.

One scenario the current administrative rule did not address is how to determine residency when a person files a partial year return (40P) for the tax year in which they submit a residency status form to PERS. The proposed rule modification in new paragraph (2)(a)(G) clarifies that, if a person filed a 40P according to DOR data query information and that person also submitted a residency status certification between January 1 and December 15 for the same calendar year, PERS will base residency on the recipient’s form, since the form requires the recipient to certify under penalty of perjury that they are an Oregon resident for income tax purposes.

The modifications to OAR 459-013-0060 are housekeeping edits to conform the administrative rule to current business practice. In section (1), a new subsection was added to clarify that when the first day of the month falls on a weekend or a PERS holiday, retirement benefits processed through electronic funds transfer must be issued no later than the previous business day. A new section (3) was added stating the only exception applies for retirement benefits payable on January 1, which must always be paid in the month of January to avoid exceeding 12 monthly payments in a year.

SUMMARY OF MODIFICATIONS TO RULES SINCE NOTICE

Since the last board meeting, a new proposed section (4) has been added to OAR 459-013-0310 to clarify that PERS will reverse a tax remedy benefit increase and seek repayment if fraud is discovered. Lastly, we removed the language in OAR 459-013-0310 regarding receipt of certifications between December 16 and December 31.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held October 27, 2015, at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended November 2, 2015, at 5:00 p.m. No public comment was received.

LEGAL REVIEW

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

IMPACT

Mandatory: No.

Impact: Clarifies administration for recipients who file 40Ps, and clarifies the administration of retirement benefit payments on certain calendar dates.

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

RULEMAKING TIMELINE

September 15, 2015	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
September 25, 2015	PERS Board notified that staff began the rulemaking process.
October 1, 2015	<i>Oregon Bulletin</i> published the Notice. Notice sent to employers, legislators, and interested parties. Public comment period began.
October 27, 2015	Rulemaking hearing held at 2:00 p.m. at PERS in Tigard.
November 2, 2015	Public comment period ended at 5:00 p.m.
November 20, 2015	Board may adopt the permanent rule modifications.

BOARD OPTIONS

The Board may:

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

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

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- Reason: Clarify treatment of partial year residency for tax remedy qualification, and add information regarding the timing of electronic funds transfer (EFT) payments.

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

B.6. Attachment 1 - OAR 459-013-0060, *Payment of Retirement Benefits*

B.6. Attachment 2 - OAR 459-013-0310, *Payment of Increased Benefits under ORS 238.372 to 238.384*