

# OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM

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[http://arcweb.sos.state.or.us/pages/rules/oars\\_400/oar\\_459/459\\_050.html](http://arcweb.sos.state.or.us/pages/rules/oars_400/oar_459/459_050.html)*

## DIVISION 50 DEFERRED COMPENSATION

### **459-050-0000**

#### **Purpose and Authority**

(1) The Deferred Compensation Program is established within PERS for the administration of deferred compensation plans under ORS 243.401 to 243.507 pursuant to Section 457 and Section 402A of the Internal Revenue Code.

(2) In accordance with ORS 243.435, the Deferred Compensation Program shall be administered by the Public Employees Retirement Board (Board), and under the policies established by the Board. Such policies are limited to all technical and administrative aspects of the program management, but may not include investment policy for and the investment of the Deferred Compensation Fund.

(3) In accordance with ORS 243.421, Oregon Investment Council (OIC) shall establish and maintain an investment program and policies for the state deferred compensation moneys consistent with the requirement of ORS 293.701 to 293.820, and to the extent practicable the needs of the Deferred Compensation Program.

(4) Because the duties and powers of the Board and the OIC with respect to the Deferred Compensation Program are complementary, there is a need for coordination and cooperation between the two agencies.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507

Hist.: PER 2-1995, f. 10-13-95, cert. ef. 11-1-95; PERS 5-2000, f. & cert. ef. 8-11-00; PERS 10-2012, f. & cert. ef. 5-24-12

### **459-050-0001**

#### **Definitions**

The words and phrases used in this Division have the same meaning given them in ORS 243.401 — 243.507 and ORS 293.701 — 293.820. Specific and additional terms are defined as follows unless the context requires otherwise.

(1) “Advisory Committee” means the committee established pursuant to ORS 243.505 and appointed by the Board.

(2) “Alternate Payee” shall have the same meaning as provided in ORS 243.507(9)(a).

(3) “Alternate Payee Account” means a separate account created under ORS 243.507 in the name of an alternate payee pursuant to a court order.

(4) “Alternate Payee’s Award” is the portion of a participant’s Deferred Compensation Account, Designated Roth Account, or a combination of both, awarded to an alternate payee by a court order, and includes the creation of separate account(s) in the fund in the name of the alternate payee.

(5) “Alternate Payee Release” means a written statement signed by the alternate payee and received by the Deferred Compensation Program. An alternate payee release may pertain to any of the matters set forth in subsections (5)(a) through (5)(c) of this rule, may authorize the release of information, and direct the Deferred Compensation Program to send information to a named person at a specified address.

(a) Pertaining to the alternate payee’s interest in the participant’s Deferred Compensation Account and the Designated Roth Account;

(b) Pertaining to the alternate payee’s account(s) and distribution(s) if separate account(s) have been created in the name of the alternate payee; or

(c) Pertaining to award information contained in any draft or final court order in regard to the alternate payee on record with the Deferred Compensation Program.

- (6) "Board" shall have the same meaning as provided in ORS 243.401(1).
- (7) "Committee" shall have the same meaning as provided in section (1) of this rule.
- (8) "Court Order" means a court decree or judgment of dissolution of marriage, separation, or annulment, or the terms of any court order or court approved marital property settlement agreement, incident to any court decree or judgment of dissolution of marriage, separation, or annulment.
- (9) "Deferred Compensation Account" means the participant's individual account in the Deferred Compensation Plan as defined in ORS 243.401(5) that is made up of pre-tax employee contributions and earnings.
- (10) "Deferred Compensation Advisory Committee" shall have the same meaning as provided in section (1) of this rule.
- (11) "Deferred Compensation Contract" shall have the same meaning as provided in ORS 243.401(3).
- (12) "Deferred Compensation Investment Program" shall have the same meaning as provided in ORS 243.401(4).
- (13) "Deferred Compensation Manager" means the person appointed by the Director to serve as the Manager of the Deferred Compensation Program of the Public Employees Retirement System.
- (14) "Deferred Compensation Plan" shall have the same meaning as provided in ORS 243.401(5).
- (15) "Deferred Compensation Program" means a program established by the State of Oregon and administered under policies established by the Public Employees Retirement Board that has as its purposes the deferral of compensation to eligible employees.
- (16) "Designated Roth Account" means a participant's individual account in the Deferred Compensation Program that is made up of Designated Roth Contributions, eligible rollovers and earnings.
- (17) "Designated Roth Contribution" means any elective deferral which would otherwise be excludable from gross income of an employee under section 457(b) of the Internal Revenue Code and the employee designates as not being so excludable under section 402A of the Internal Revenue Code.
- (18) "Disclosure Statement" means the statement, required by ORS 243.450, that describes the probable income and probable safety of money deferred.
- (19) "Domestic Relations Order" means a judgment, decree or court order made pursuant to a state's domestic relations law that creates or recognizes the existence of an alternate payee's right, or assigns to an alternate payee the right, to receive all or a portion of a participant's Deferred Compensation Account, Designated Roth Account, or a combination of both, or benefit payments.
- (20) "Draft Court Order" means an Order as described in section (8) of this rule which contains proposed language for the division of a Deferred Compensation Account, Designated Roth Account, or a combination of both, and has been prepared but not approved or signed by the court or has not been filed with the court clerk.
- (21) "Eligible Employee" shall have the same meaning as ORS 243.401(6) for an employee of the state, or as provided in the plan description of a local government deferred compensation plan, and shall exclude persons who are inmates of any prison or detention facility operated by the state or local government, and persons who are employed by contract with a private sector business.
- (22) "Enrollment Form" means a contract between the eligible employee and the plan sponsor which defines the circumstance, responsibilities and liabilities of both parties relating to the participation of the employee in the Deferred Compensation Program.
- (23) "Estimate" means a projection of distributions prepared by staff. An estimate is not a guarantee or promise of actual distributions that eventually may become due and payable.
- (24) "Final Court Order" means a court order or judgment that has been signed by a judge and shows the stamp of the court clerk or trial court administrator, indicating the order is a certified copy of the original record on file with the court.
- (25) "Fund" shall have the same meaning as provided in ORS 243.401(7).
- (26) "Local Government" shall have the same meaning as provided in ORS 243.401(8).
- (27) "Local Government Deferred Compensation Contract" means a written contract between a local government and an eligible employee of that local government that provides for deferral of income for service currently rendered, as defined in the established policy of the local government.
- (28) "Local Government Deferred Compensation Plan" shall have the same meaning as provided in ORS 243.401(9).
- (29) "Manager" shall have the same meaning as provided in section (13) of this rule.
- (30) "OIC" means the Oregon Investment Council created by ORS 293.706.

(31) "Participant" means a person defined in either ORS 243.401(10) or 243.401(13) participating in one or more deferred compensation plans under ORS 243.401 to 243.507, either through current or past deferrals or compensation.

(32) "Participant's Release" means a written statement signed by a deferred compensation plan participant and received by the Deferred Compensation Program. A participant's release may pertain to any of the matters set forth in subsections (a) through (c) of this section, may authorize the release of information, and direct the Deferred Compensation Program to send information to a named person at a specified address.

(a) Pertaining to the participant's Deferred Compensation Account and Designated Roth Account;

(b) Pertaining to the participant's distribution(s); or

(c) Pertaining to award information contained in any draft or final court order in regard to the participant on record with the Deferred Compensation Program.

(33) "Participating Local Government" shall have the same meaning as provided in ORS 243.401(11).

(34) "Payroll Disbursing Officer" means:

(a) The person authorized by the state to disburse moneys in payment of salaries and wages of employees of a state agency; or

(b) The person authorized by a local government to disburse money in payment of salaries and wages of employees of that local government.

(35) "PERS" shall have the same meaning as provided in ORS 243.401(14).

(36) "Plan Sponsor" means a public employer that establishes an eligible deferred compensation plan as defined in Section 457 of the Internal Revenue Code and which enters into an agreement with PERS to participate in the Deferred Compensation Program.

(37) "Program" shall have the same meaning as provided in section (15) of this rule.

(38) "Public Employees Retirement Board" shall have the same meaning as provided in ORS 243.401(1).

(39) "Public Employer" means the state or a local government as defined in ORS 243.401(8).

(40) "Qualified Domestic Relations Order" or "QDRO" means a domestic relations order that has been reviewed and determined to be qualified by the Deferred Compensation Program Manager.

(41) "Solicitation of Offers from Vendors" means a notice to potential vendors of investment services prepared by the OIC informing the potential vendor of the needs of the Deferred Compensation Investment Program and notice that the OIC will accept offers from qualified vendors to sign a contract with the State of Oregon providing for the vendors' acceptance of deposits under the terms and conditions of the contract.

(42) "Staff" means any employee of the Public Employees Retirement System, who has been appointed in accordance with ORS 238.645.

(43) "State Agency" means every state officer, board, commission, department or other activity of state government.

(44) "State Deferred Compensation Plan" shall have the same meaning as provided in ORS 243.401(12).

(45) "Vendor" means an entity offering investment or other service related to investment of deferred compensation pursuant to a contract with the State of Oregon.

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

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507

Hist.: PER 2-1995, f. 10-13-95, cert. ef. 11-1-95; PERS 5-2000, f. & cert. ef. 8-11-00, Renumbered from 459-050-0010; PERS 13-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-28-02; PERS 9-2002, f. & cert. ef. 6-13-02; PERS 10-2012, f. & cert. ef. 5-24-12

#### **459-050-0005**

##### **Policy and Goals of Deferred Compensation Program**

The Deferred Compensation Program shall be administered to provide the maximum opportunity for eligible employees to participate in a deferred compensation plan which allows participants to defer a portion of their compensation until a time when the participant seeks to withdraw the funds as a supplement to the participant's other retirement and pension benefits. To this end, the Program shall:

(1) Establish and administer an effective and efficient program of administration, either directly, or by contract, that provides for billing service, participant enrollment services, participant accounts, data processing, record keeping and other related services, and which gives due consideration not only to the services provided but also the cost to the participants;

- (2) Provide eligible employees, before their participation in a deferred compensation plan under the Program, with a written disclosure statement that contains, for that plan, all of the relevant information, including the probable income and probable safety of the moneys deferred;
  - (3) Offer general education to participants on how to make personally-based investment choices based on their preferences of the investment options available through the investment program;
  - (4) Permit eligible employees who participate in a deferred compensation plan to make changes, when permitted by law and the deferred compensation investment program, to withdraw the deferred compensation and any earnings on deposit, and, when eligible under a plan, to select and transfer those funds to other accounts or annuity instruments;
  - (5) Identify the expressed desires of the diverse group of eligible employees who are deferring compensation until retirement, consistent with the statutory requirements of the Program and communicate those investment needs to the OIC; and
  - (6) Provide cooperation with and assistance to the OIC and staff of the State Treasurer in structuring, monitoring, and revising an investment program that reasonably meets the needs of eligible employees.
- Stat. Auth: ORS 243.470  
 Stats. Implemented: ORS 243.401 - 243.507  
 Hist.: PER 2-1995, f. 10-13-95, cert. ef. 11-1-95; PERS 5-2000, f. & cert. ef. 8-11-00; PERS 10-2012, f. & cert. ef. 5-24-12

**459-050-0025**

**Deferred Compensation Advisory Committee**

- (1) The seven members of the Deferred Compensation Advisory Committee provided for under ORS 243.505, shall be subject to the following qualifications and limitations:
  - (a) Each member shall be a participant in a deferred compensation plan established under ORS 243.401 to 243.507, and shall have knowledge of the Program.
  - (b) Four members shall be participants in the state deferred compensation plan.
  - (c) Two members shall be participants in a local government deferred compensation plan.
  - (d) One member shall be a retired deferred compensation plan participant.
  - (e) No two members may be employed by the same state agency or local government except that a member who transfers employment to the employer of another member may continue to serve on the Advisory Committee, but only for the balance of the term of appointment of the transferring member.
  - (f) No member may serve more than two consecutive full terms.
  - (g) No member may be an employee of PERS during the term of appointment.
- (2) The Advisory Committee shall study and advise the Board on all aspects of the Program, including but not limited to:
  - (a) The Program fee structure and procedures;
  - (b) State and federal legislative issues relative to the administration of deferred compensation plans;
  - (c) The administration of the catch-up and the financial hardship provisions in Section 457 of the Internal Revenue Code;
  - (d) Ways and means to inform and educate eligible employees about the Program;
  - (e) The expressed desires of eligible employees as to the Program; and
  - (f) The actuarial characteristics of eligible employees.
- (3) Upon the request of the OIC, the Advisory Committee shall study and advise the Board on the following:
  - (a) Investment programs, including options and providers; and
  - (b) Information furnished by the OIC or the State Treasurer concerning the types of available investments, the respective balance of risk and return of each investment, and the administrative costs associated with each investment.
- (4) The Advisory Committee shall meet at least four times during a calendar year.
- (5) A majority of the Advisory Committee shall constitute a quorum for transacting business. However, the Advisory Committee may establish such other procedures for conducting business that it deems necessary.
- (6) Pursuant to the Public Meetings Law, ORS 192.610 to 192.690, the Deferred Compensation Manager shall distribute to the Advisory Committee, and other interested parties, an agenda for a regular meeting a reasonable time prior to the meeting.
- (7) Nominations of candidates for the Advisory Committee shall be made as follows:

- (a) Notice of a position on the Advisory Committee expected to become vacant upon the expiration of a term of appointment shall be published not later than April 15 of each calendar year.
- (b) Persons interested in serving on the Advisory Committee must apply in writing to the Manager not later than May 15 following the publication of a vacancy.
- (c) The Manager shall review the written applications of interested persons for completeness, accuracy, and satisfaction of the minimum requirements of the vacant position on the Advisory Committee.
- (d) A committee consisting of the Manager and four members of PERS executive or managerial staff designated by the PERS Executive Director shall review the acceptable applications and recommend to the Board candidates for appointment to the Advisory Committee that:
  - (A) Reflect a cross section of state agencies, participating local governments, and classification levels;
  - (B) Reflect a mixture of expertise, knowledge, and experience useful to the Advisory Committee;
  - (C) Appear to have a sincere interest in the Program; and
  - (D) Appear to be willing and able to work in a group setting to review and recommend policies governing the Program.
- (e) In the event of a vacancy for an unexpired term, the Manager may select applications from the most recent list of interested persons established under subsection (c) of this section and the applications of other persons as deemed appropriate for consideration. A committee consisting of the Manager and four members of PERS executive or managerial staff designated by the PERS Executive Director shall review the selected applications and recommend to the Board candidates for appointment to the Advisory Committee. The appointment shall be immediately effective for the remainder of the unexpired term. If no candidate is recommended or appointed, the vacancy must be filled under the provisions of subsections (a) through (d) of this section.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.505

Hist.: PERS 2-1993, f. & cert. ef. 9-23-93; PERS 2-1995, f. 10-13-95, cert. ef. 11-1-95; PERS 5-2000, f. & cert. ef. 8-11-00; PERS 3-2007, f. & cert. ef. 1-23-07

#### **459-050-0030**

##### **Deferred Compensation Administrator**

- (1) The Deferred Compensation Manager (Manager) shall administer the Deferred Compensation Program (Program) established pursuant to ORS 243.401 to 243.507 consistent with the laws and administrative rules applicable thereto and on the best possible basis with relation to both the welfare of eligible employees and the State of Oregon. To this end, the Manager may contract for services necessary to the administration of the Program, either independently or in a joint agreement with the OIC or the Oregon State Treasurer.
- (2) The Manager shall prepare and maintain standard forms necessary to the administration of the Program.
- (3) The Manager shall provide forms and procedures for promptly communicating participating employee requests for deferral of compensation to the appropriate public officers.
- (4) The Manager shall provide forms and procedures for promptly communicating employees' requests for types of investment or deposit of funds to the investments record keeper for each investment option selected.
- (5) The Manager shall provide for settlement agreement with employees participating in the deferred compensation program that provides for distributions to those employees or their designated beneficiaries, upon conditions which are consistent with maintaining the tax exempt status of the Program.
- (6) The Manager shall approve or deny all applications for a financial hardship distribution as provided in OAR 459-050-0150.
- (7) The Manager shall select members of the Financial Hardship Committee established under OAR 459-050-0040.
- (8) The Manager shall obtain disclosure statements concerning the probable safety and probable return of investment of deferred compensation funds for distribution to participants. These disclosure statements shall be given to all employees expressing interest in participating in the deferred compensation program or in changing investments under the Program and shall include, at a minimum:
  - (a) The probable income and probable safety of the monies deferred, based upon the historical performance of the investment option; and

- (b) The fees and costs associated with each investment option or plan, including related administrative costs, insofar as the information is known.
- (9) The Manager shall provide with the disclosure statements a general comparison of investments under the Program, using standard units of comparison, and the following disclaimer:  
“Statements about the relative risk and returns of investment options do not represent predictions of how the investments will perform in the future, but rather provide only a general description of the current investment and how it has performed in the past. The disclosure statement and other information provided by the state is not intended to provide individualized investment counseling, but only general information. Employees who participate in the Deferred Compensation Program will be entitled only to the funds that are lawfully credited to their Deferred Compensation and Designated Roth Accounts when those funds are distributed. Participants assume the risk that, at time of such distribution, the deferred compensation investments related to their Deferred Compensation and Designated Roth Accounts may have decreased in value or become valueless.”
- (10) The Manager shall undertake a continuing agenda of educating participants regarding the goals and objectives of the Program. As part of this education, the Manager shall prepare and distribute to eligible employees a written general description of available investment options, including their expected relative risks and returns. This document shall also include a general description of disclosure statements and their purpose in assisting employees in evaluating deferred compensation investments.
- (11) The Manager shall assure that there are regular audits of the Program, consistent with generally accepted accounting principles.
- (12) The Manager shall monitor the performance of all deferred compensation investment options offered to eligible employees under the Program.
- (13) The Manager shall obtain information concerning pending legislation and such advice as appears necessary to comply with state and federal laws, and administrative rules or regulations applicable to the administration of the Program.
- (14) Unless excused by the Director of the Public Employees Retirement System, the Manager shall attend all meetings of the Board and of the Advisory Committee. The Manager shall supply the Board and the Advisory Committee with such information and assistance as they may request.
- (15) The Manager shall prepare an annual report to the Board and the Advisory Committee concerning:
- (a) The effectiveness of and any substantial problems with the administration of the Program, including but not limited to the method of accepting deposits from the payroll disbursing officer, preparing disclosure forms, making investments and deposits of funds as consistent with the request of participants as possible, maintaining accounts and records of deposits and the costs and fees associated with the administration of individual plans, communications with and education of participants, participant elections of investment options and changes in their elections, participants’ elections of payment method upon withdrawal from service or retirement, and problems with participants’ creditors;
  - (b) The status of state and federal legislation and laws that may affect the program or require action by the Board;
  - (c) The performance of all deferred compensation investment options; and
  - (d) The results of the latest reported audit(s) of the deferred compensation plan(s), and the Deferred Compensation Program.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507

Hist.: PERS 2-1995, f. 10-13-95, cert. ef. 11-1-95; PERS 5-2000, f. & cert. ef. 8-11-00; PERS 10-2012, f. & cert. ef. 5-24-12

#### **459-050-0035**

##### **Assistance to the Oregon Investment Council and the State Treasurer**

The Board, acting through its Deferred Compensation Manager may provide information, assistance, and guidance to the Oregon Investment Council (OIC) and the State Treasurer as they may request, not limited to the following:

- (1) The Manager may provide the OIC and the staff of the State Treasurer with the Board's findings of the expressed desires of participants and other eligible employees related to investment options.

- (2) The Manager may provide the OIC or the staff of the State Treasurer with such demographic information as they may reasonably request concerning those employees who are participants in the Deferred Compensation Program.
- (3) The Manager may provide the OIC or the staff of the State Treasurer with such assistance as they may reasonably request regarding preparation of specifications for solicitations of offers from vendors of investments for deferred compensation.
- (4) The Manager may provide the OIC or the staff of the State Treasurer with such assistance as they may reasonably request in evaluating responses to the solicitation of offers.
- (5) The Manager in any case may provide the OIC or the staff of the State Treasurer with an opinion concerning how the services offered by responding vendors may affect the administration of the Deferred Compensation Program.
- (6) Subject to Board approval, the Manager may enter into an intergovernmental agreement pursuant to ORS Chapter 190 to provide administrative services to local governments of the state with respect to other deferred compensation plan(s) under ORS 243.474 to 243.478.  
Stat. Auth: ORS 243.470  
Stats. Implemented: ORS 243.401 - ORS 243.507  
Hist.: PERS 2-1995, f. 10-13-95, cert. ef. 11-1-95; PERS 5-2000, f. & cert. ef. 8-11-00

**459-050-0037**

**Trading Restrictions**

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

- (1) Definitions. For the purposes of this rule:
  - (a) "Investment Option" means an investment alternative made available under ORS 243.421.
  - (b) "Trade" means a purchase or redemption in an investment option for the purpose of moving monies between investment options.
- (2) Restrictions.
  - (a) The following restrictions apply to all participants:
    - (A) A participant may not make a trade that exceeds \$100,000.
    - (B) A purchase that is attributable to a trade may not be redeemed from the International Stock Option for a period of 30 days following the date of the trade.
    - (C) No trade may move monies directly from the Stable Value Option to the Short-Term Fixed Income Option, the Intermediate Bond Option, or the Self-Directed Brokerage Option.
  - (b) Trades to the Self-Directed Brokerage Option are subject to subsection (a) of this section and the limitations established in OAR 459-050-0120.
- (3) The Deferred Compensation Manager, if necessary to comply with trading restrictions imposed by a participating mutual fund or the Securities and Exchange Commission, may establish additional temporary trading restrictions.
- (4) The Deferred Compensation Manager, in the event of extraordinary market conditions, may temporarily suspend any or all trading restrictions established by this rule.
- (5) Any action taken by the Deferred Compensation Manager under sections (3) or (4) of this rule must be presented to the Board at its next scheduled meeting. The Board may take action as authorized by ORS 243.401 to 243.507. If the Board does not act, the action(s) taken by the Deferred Compensation Manager shall expire on the first business day following the date of the meeting.
- (6) The provisions of this rule are not applicable to trades attributable to the operation of an automatic account rebalancing function offered by the Program.
- (7) The trading restrictions provided in this rule are not exclusive. The Board may establish additional restrictions or sanctions as authorized by ORS 243.401 to 243.507.

Stat. Auth.: ORS 243.470  
Stats. Implemented: ORS 243.401 - 243.507

Hist.: PERS 4-2007, f. 1-23-07, cert. ef. 5-1-07; PERS 17-2008, f. & cert. ef. 11-26-08; PERS 6-2011, f. & cert. ef. 8-4-11

#### **459-050-0040**

##### **Unforeseeable Emergency Withdrawal Appeals Committee**

(1) Purpose. The Unforeseeable Emergency Withdrawal Appeals Committee (the Committee) shall evaluate appeals denied by the Deferred Compensation Manager or designee authorized to take action on the Manager's behalf for the distribution of deferred compensation on the basis of claims of unforeseeable emergency in compliance with the Internal Revenue Code, Section 457, 26 USC 457, and the provisions of OAR 459-050-0150. The Committee shall formally approve or deny each appeal based on the merits of the appeal.

(2) Committee composition. The Committee shall consist of not fewer than three persons.

(a) One person shall be a PERS staff member from the Deferred Compensation Program.

(b) Two persons shall be PERS staff members from other than the Deferred Compensation Program.

(3) Committee meetings. The Committee shall meet upon the call of the Manager of the Deferred Compensation Program no later than 14 calendar days following receipt of an appeal. The Committee may meet by phone or in person. The Committee shall evaluate the participant's written request, emergency withdrawal application, financial information, and all related documentation submitted for compliance with 26 USC 457 and the provisions of OAR 459-050-0150.

(4) Appeal approval. If an appeal is approved, the Committee authorizes the Manager to release the funds within 30 calendar days of approval.

(5) Appeal denial. Within seven calendar days of the Committee's denial, the requestor may request an informal conference with the Deferred Compensation Manager or designee authorized to take action on the Manager's behalf.

(6) Request for review. The requester may submit a request for review of the Committee's determination to the Director of PERS and must do so within 30 calendar days of the Committee's denial. The request must be in writing and include:

(a) A description of the staff action or determination for which review is requested;

(b) A short statement of the manner in which the action is alleged to be in error;

(c) A statement of facts that are the basis of the request;

(d) Reference to applicable statutes, rules or court decisions upon which the person relies;

(e) A statement of the relief the request seeks; and

(f) A request for review.

(7) Director's determination. Within 30 calendar days of receiving a request for review, the Director shall issue a written determination either approving or denying the unforeseeable emergency withdrawal.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507

Hist.: PERS 2-1995, f. 10-13-95, cert. ef. 11-1-95; PERS 5-2000, f. & cert. ef. 8-11-00; PERS 28-2004, f. & cert. ef. 11-23-04; PERS 5-2008, f. & cert. ef. 4-2-08

#### **459-050-0050**

##### **Eligibility and Enrollment**

The purpose of this rule is to establish eligibility criteria and the process for an eligible employee to enroll in the Deferred Compensation Plan established in accordance with section 457 of the Internal Revenue Code and ORS chapter 243.

(1) Eligible employee. Eligible employee shall have the same meaning as in OAR 459-050-0001, and as defined by section 457 of the Internal Revenue Code.

(2) Application for enrollment. Subject to the requirements of subsections (a) through (c) of this section, an eligible employee may enroll to participate in the Deferred Compensation Program by entering into a written agreement as specified herein with the plan sponsor. The written agreement must specify that a portion of the eligible employee's future compensation will be reduced each month, the amount of the reduction, and that the amount of the reduction will be contributed to account(s) established for the employee in the Deferred Compensation Plan.



(a) An eligible employee may enter into an agreement to participate in the plan on or before the first day of employment or anytime while employed; provided, however, that the requirements of subsection (b) of this section must be satisfied.

(b) In order for an eligible employee to be enrolled, the following forms provided by the Deferred Compensation Program must be properly completed and filed with the Deferred Compensation Program:

(A) An Enrollment Form, as defined in OAR 459-050-0001, and which is also an eligible employee's written acknowledgement that the employee understands the terms of the Enrollment Form and is an eligible employee's election of investment option preferences; and

(B) A Designation of Beneficiary form, as provided in OAR 459-050-0060.

(c) If the forms are incomplete, do not comply with plan provisions in any manner whatsoever, or the Plan is unable to process the application, then staff will notify the eligible employee within 30 calendar days from the date the enrollment forms are received with the reasons the Deferred Compensation Program cannot accept the enrollment as submitted.

(3) Deferral effective date. The Deferred Compensation Program must receive an application for enrollment and be able to determine that the application is complete and may be processed no later than the 25th day of any calendar month for salary reduction of future earnings to begin from compensation paid for services performed during the calendar month following receipt of enrollment.

(4) Investment option preference(s). All or any portion of a participant's account may be, but is not be required to be, invested by the plan sponsor in the investment options designated by the participant. The plan sponsor shall have absolute and uncontrolled discretion with respect to the option or options in which the account shall be invested.

(5) Disclosure statement. Before the deferral of any part of an eligible employee's salary, the employee shall be provided information about the investment options including, but not limited to, the probable income and safety of the moneys deferred. Statements about the relative risk and returns of investment options do not represent predictions of how the investments will perform in the future, but rather provide only a general description of the current investment and how it has performed in the past. The Deferred Compensation Program does not provide investment advice, fund analysis or research. Investment options are not guaranteed nor FDIC insured.

(6) Deferral amount. A participant's salary shall be reduced each pay period in an amount or percentage specified by the participant for the purpose of contribution to the participant's account(s) in the Deferred Compensation Program. The amount of the salary reduction may not be less than the minimum per month established by the plan sponsor and may not exceed the maximum applicable allowable contribution to a Deferred Compensation Plan as defined in section 457(b)(2) of the Internal Revenue Code.

(a) A new participant who enrolls after the first pay period in a calendar year may elect to defer the maximum allowable contribution for the year from future compensation for the remainder of the year.

(b) The participant's maximum deferral limit is determined without regard to amounts rolled over from an eligible retirement plan to the participant's Deferred Compensation account.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507

Hist.: PERS 9-2002, f. & cert. ef. 6-13-02; PERS 10-2012, f. & cert. ef. 5-24-12

#### **459-050-0060**

##### **OSGP Designation of Beneficiary**

The purpose of this rule is to establish the criteria and process that must be used to designate a beneficiary. The provisions in this rule apply to participants, a participant's surviving beneficiaries, alternate payees and an alternate payee's surviving beneficiaries.

(1) Definitions. The following definitions apply for the purpose of this rule:

(a) "Administrator" means the person appointed by a probate court to handle the distribution of property of someone who has died without a will, or with a will that fails to name someone to carry out this task.

(b) "Conservator" means the person who has been appointed by a court to manage the property and financial affairs of an incapacitated person.

(c) "Executor" means the person named in a will to handle the property of someone who has died. The executor must collect and manage the property, pay debts and taxes, and distribute the remaining assets as specified in the will. In addition, the executor handles any probate court. Executors are also called personal representatives.

(d) “Personal Representative” means the person named in a will to handle the property of someone who has died. Personal representatives are also called executors.

(2) Designation of Beneficiary. When a participant in the Deferred Compensation Program dies, the benefit of the participant’s account shall be paid to the beneficiaries designated by the participant. For purposes of this rule, a participant may designate any of the following as a primary or contingent beneficiary:

(a) Any natural person(s);

(b) The personal representative or executor of the estate of the participant;

(c) A charity or other non-profit organization; or

(d) A trust that is valid under Oregon state law.

(A) If a living trust is designated, the trust must be legally in existence before the participant makes the designation.

(B) If a designated trust fails to satisfy the requirements in OAR 459-050-0300(1)(c)(B), payment to the trust shall be made as provided in OAR 459-050-0300(11).

(3) Surviving beneficiary or alternate payee. Any surviving beneficiary designated under section (2) of this rule or an alternate payee may designate a beneficiary in the same manner as a participant.

(4) Power of attorney. The agent shall submit a copy of the Power of Attorney document with the filing of the designation of beneficiary form. The Deferred Compensation Program may, but is not required to, accept a beneficiary designation made by an agent or attorney-in-fact appointed under a Power of Attorney document. If the Deferred Compensation Program is satisfied that a Power of Attorney document is valid, has not been revoked, and empowers the agent or attorney-in-fact to designate a beneficiary, the program shall accept a beneficiary designation made by the agent or attorney-in-fact appointed under the Power of Attorney document.

(5) Conservator. The Deferred Compensation Program shall accept a beneficiary designation made by a conservator for the participant provided that the conservator submit a certified copy of the letters of conservatorship or other court order appointing a conservator with the designation of beneficiary form.

(6) Effective date of designation of beneficiary. A designation of beneficiary is not effective until a properly completed designation on a form supplied by the Deferred Compensation Program is filed with the Deferred Compensation Program. In the event a designation of beneficiary is incomplete staff will provide notification within 30 days explaining why the form is incomplete.

(7) Revocation of designation of beneficiary. A participant, alternate payee or surviving beneficiary may revoke any and all previous beneficiary designations by filing a new designation on a properly completed form supplied by the Deferred Compensation Program. This designation must be in accordance with section (2) of this rule.

(8) Dissolution of marriage. A participant’s designation of beneficiary may be revoked or nullified by a decree of divorce, decree of annulment, or other similar circumstance effective upon the entry of a judgment that revokes the designation of the beneficiary.

(9) No Designated Beneficiary. If the designated primary and contingent beneficiaries on file with the Deferred Compensation Program have predeceased the deceased participant, surviving beneficiary, or alternate payee who made the designation, or if the program is otherwise unable to administer the designation, the Deferred Compensation Program shall distribute the benefit of the deceased’s account to the executor, personal representative, or administrator of the deceased’s estate.

(a) If the program is unable to locate the designated beneficiaries or the executor, personal representative, or administrator of the estate by December 31 of the calendar year following the participant’s death, the amount in the deceased’s account on that date shall be credited to the Deferred Compensation Fund. The amount credited may be used for the payment of administrative expenses of the Deferred Compensation Program.

(b) If the designated beneficiaries or the executor, personal representative, or administrator of the estate is later located or other future successful claim is filed, payment will be made in an amount not to exceed the balance in the deceased’s account credited to the Deferred Compensation Fund in subsection (a) of this section.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507

Hist.: PERS 6-2002, f. & cert. ef. 5-24-02; PERS 6-2006, f. & cert. ef. 4-5-06; PERS 10-2012, f. & cert. ef. 5-24-12

#### **459-050-0065**

##### **Beneficiary Predeceases or Disclaims Benefit**

**Purpose.** The purpose of this rule is to establish the criteria and process that must be used if a beneficiary predeceases the participant, alternate payee, or surviving beneficiary who made the designation as provided in OAR 459-050-0060, or a beneficiary disclaims a death benefit.

(1) **Beneficiary predeceases or disclaims benefit.** If one or more designated beneficiaries predecease the participant, alternate payee, or surviving beneficiary who made the designation as provided in OAR 459-050-0060, or if a designated beneficiary files a disclaimer as provided in section (2) of this rule, the beneficiary's interest in the respective account will be distributed to any remaining surviving beneficiaries or contingent beneficiaries in proportion to each remaining beneficiary's interest as defined by the deceased participant's, alternate payee's, or surviving beneficiary's most recent designation of beneficiary on file with the Deferred Compensation Program.

(2) **Disclaiming beneficiary payment.** If the Deferred Compensation Program receives written evidence to its satisfaction that a designated beneficiary has made a legally valid disclaimer, the benefit will be distributed as though the beneficiary died before the deceased participant, alternate payee, or surviving beneficiary. A disclaimer will be deemed valid if it complies with Oregon law and is an irrevocable and unqualified refusal by a beneficiary to accept any payment from the Deferred Compensation Program. However, a disclaimer is not effective until staff has received and reviewed it, and determined that the following conditions are satisfied:

- (a) The disclaimer must be executed before the beneficiary accepts or uses any death benefit payment;
- (b) The disclaimer must be in writing and signed by the disclaiming beneficiary;
- (c) The disclaimer must state an irrevocable and unqualified refusal to accept the benefit;
- (d) The disclaimer must have been filed with the Deferred Compensation Program administrator within nine months after the date of death of the participant, alternate payee, or surviving beneficiary or the date the disclaiming beneficiary attains 21 years of age, whichever is later; and
- (e) The disclaimer must provide for or allow the benefit to pass without any direction from the disclaiming beneficiary.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - ORS 243.507

Hist.: PERS 12-2002, f. & cert. ef.7-17-02

#### **459-050-0070**

##### **Catch-Up Programs**

The purpose of this rule is to establish the criteria and process to allow an eligible employee to contribute additional amounts, in excess of the regular applicable maximum allowable contributions, to the eligible employee's account.

(1) Except as provided in subsections (a) and (b) of this section, for purposes of this rule, "normal retirement age" shall be the normal retirement age established in the plan sponsor's retirement plan.

(a) "Normal retirement age" for members of the Public Employees Retirement System shall be as provided in ORS 238.005, 238.280(3), 238A.160, or 238.535.

(b) If an eligible employee continues to work beyond normal retirement age, "normal retirement age" shall be that date or age designated by the eligible employee but may not be later than 70-1/2 years of age.

(2) 50-Plus Catch-Up Program. Pursuant to the conditions of this rule, eligible employees who are 50 years of age and older may elect to contribute an additional amount under section 414(v) of the Internal Revenue Code in excess of the maximum regular contribution allowed.

(a) Conditions for enrollment: An eligible employee must be 50 years of age or older on December 31 of the calendar year in which the eligible employee begins to participate in the 50-Plus Catch-Up Program.

(A) An eligible employee may participate in the 50-Plus Catch-Up Program during years either before or after participation in the 3-Year Catch-Up Program, but may not participate in both programs during the same calendar year.

(B) An eligible employee may participate in the 50-Plus Catch-Up Program during the calendar year containing the employee's retirement date.

(b) Application for enrollment. An eligible employee choosing to participate must enroll by entering into a written agreement with the plan sponsor. The written agreement must specify the amount of the additional annual deferral, including whether any portion of the additional deferral should be a Designated Roth

Contribution, and that the additional deferral will be divided equally by the available months for the calendar year, and that the amount is in addition to the eligible employee's regular maximum deferral.

(A) An eligible employee may enter into a written agreement to participate in the 50-Plus Catch-Up Program on or before the first day of employment or anytime while employed.

(B) A properly completed 50-Plus Catch-Up Program enrollment form provided by the Deferred Compensation Program must be filed with and approved by the Deferred Compensation Program.

(C) If the form is incomplete or does not comply with 50-Plus Catch-Up Program conditions of enrollment, then the Deferred Compensation Program will notify the eligible employee within 30 calendar days from the date the enrollment form is received of the reasons the enrollment cannot be accepted.

(c) 50-Plus Catch-Up Program deferral effective date. 50-Plus Catch-Up Program contributions may be deferred for any calendar month by salary reduction only if an agreement providing for the deferral has been entered into before the first day of the month in which the compensation is paid or made available.

(d) Additional deferral amounts. The additional deferral may be an amount elected by an eligible employee, but may not exceed the maximum additional deferral amount allowed under section 414(v) of the Internal Revenue Code, 26 USC 414(v). An eligible employee may change the amount of additional contributions deferred within the maximum additional deferral amount allowed. Changes may be made at any time on forms or by other approved methods prescribed by the Deferred Compensation Program. Additional contributions may be deferred for any calendar month by salary reduction only if an agreement providing for the deferral has been entered into before the first day of the month in which the compensation is paid or made available.

(e) Cancellation of Participation in the 50-Plus Catch-Up Program. An eligible employee may cancel participation in the 50-Plus Catch-Up Program at any time on forms or by other approved methods prescribed by the Deferred Compensation Program. The cancellation will be effective for any calendar month only if an agreement providing for the cancellation has been entered into before the first day of the month in which the compensation is paid or made available. An eligible employee who has cancelled participation may later re-apply to begin participation in the 50-Plus Catch-Up Program.

(3) 3-Year Catch-Up Program. An eligible employee may elect to contribute an additional amount under section 457 of the Internal Revenue Code, in excess of the maximum regular contribution allowed, for one or more of the three consecutive calendar years of employment before attaining normal retirement age, if in previous years the eligible employee did not contribute the maximum regular contribution amount.

(a) Conditions for enrollment. The earliest date to begin participation in the 3-Year Catch-Up Program is in the three calendar years immediately preceding the year in which an eligible employee reaches normal retirement age.

(A) Contributions over the maximum allowable regular contribution limit are permitted only to the extent of the unused portions of the maximum allowable regular contribution for previous calendar years during which the eligible employee contributed less than the maximum allowable regular contribution or did not make contributions to the Deferred Compensation Program.

(B) Calendar years during which contributions were made under the 50-Plus Catch-Up Program may not be included in the calculation to determine the maximum allowable contribution under the 3-Year Catch-Up Program.

(C) An eligible employee may not participate in the 3-Year Catch-Up Program and the 50-Plus Catch-Up Program during the same calendar year.

(D) An eligible employee must designate a proposed retirement date upon application. The designated proposed retirement date shall be used for the purpose of determining the catch-up period only. The catch-up period so determined may not include the year of the designated proposed retirement date. An eligible employee who retires during the catch-up period may contribute the maximum allowable amount for the year of the employee's retirement.

(E) Pursuant to section 457(b) of the Internal Revenue Code, an eligible employee who is 70-1/2 years of age or older may not participate in the 3-Year Catch-Up Program.

(F) An eligible employee may participate only once in the 3-Year Catch-Up Program, regardless of whether participation in the 3-Year Catch-Up Program is for less than three calendar years or whether the eligible employee participates in an eligible plan after retirement.

(b) Application for enrollment. An eligible employee may participate in the 3-Year Catch-Up Program by entering into a written agreement with the plan sponsor. The written agreement must specify the eligible employee's designated proposed retirement date, the month in which to begin the 3-Year Catch-Up

Program contributions and the number of years the eligible employee plans to participate in the 3-Year Catch-Up Program.

(A) An eligible employee may enter into a written agreement to participate in the 3-Year Catch-Up Program at any time while employed.

(B) A properly completed 3-Year Catch-Up Program enrollment form provided by the Deferred Compensation Program must be filed with and approved by the Deferred Compensation Program. Wage or salary information must be submitted for previous calendar years during which an eligible employee either did not participate in the Deferred Compensation Program or did not contribute the maximum regular contribution amount. An eligible employee must submit:

(i) Legible copies of W-2 Wage and Tax Statement forms for each relevant calendar or tax year; or

(ii) Legible copies of final pay stubs showing gross and taxable salary for each relevant calendar year.

(C) If the application for enrollment is incomplete, if wage or salary information is incomplete or illegible, or if the application does not comply with the 3-Year Catch-Up Program conditions of enrollment, then the Deferred Compensation Program will notify the eligible employee within 30 calendar days from the date the enrollment documents are received of the reasons the Deferred Compensation Program cannot accept the enrollment.

(c) 3-Year Catch-Up Program deferral effective date. 3-Year Catch-Up Program contributions may be deferred for any calendar month by salary reduction only if an agreement providing for the deferral has been entered into before the first day of the month in which the compensation is paid or made available.

(d) Additional Deferral Amount. After receipt of a properly completed 3-Year Catch-Up Program enrollment form and required wage or salary information, the Deferred Compensation Program will notify the eligible employee of the maximum amount of additional contributions that may be deferred.

(A) The amount of the 3-Year Catch-Up Program salary reduction may not be less than the minimum additional contribution amount established by the plan sponsor and may not exceed the maximum allowable contribution under section 457(b)(3) of the Internal Revenue Code.

(B) An eligible employee may change the amount of additional contributions deferred within the minimum and maximum additional deferral amounts allowed. Changes may be made at any time on forms or by other approved methods prescribed by the Deferred Compensation Program and will be effective for any calendar month only if an agreement providing for the deferral has been entered into before the first day of the month in which the compensation is paid or made available.

(e) Cancellation of Participation in the 3-Year Catch-Up Program. An eligible employee may cancel participation in the 3-Year Catch-Up Program at any time on forms or by other approved methods prescribed by the Deferred Compensation Program. The cancellation will be effective for any calendar month only if an agreement providing for the cancellation has been entered into before the first day of the month in which the compensation is paid or made available. An election to cancel participation is irrevocable.

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

Stat. Auth.: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507

Hist.: PERS 12-2002, f. & cert. ef. 7-17-02; PERS 28-2004, f. & cert. ef. 11-23-04; PERS 20-2005, f. 11-1-05, cert. ef. 11-4-05; PERS 3-2007, f. & cert. ef. 1-23-07; PERS 10-2012, f. & cert. ef. 5-24-12

#### **459-050-0072**

##### **Military Leave Catch-up**

The purpose of this rule is to establish the criteria and procedures to comply with the Uniformed Services Employment and Reemployment Rights Act (USERRA) as codified in 38 USC 4301-433, and with 23 USC 414(u) and 457 for an eligible employee who has been absent from employment because of military service and who has elected to catch up contributions to the Deferred Compensation Program that would have been permitted had the eligible employee remained in employment with the participating employer during the qualifying period of military service.

(1) Definitions. For purposes of this rule:

(a) "Military service" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes:

(A) Active duty;

(B) Active duty for training;

- (C) Initial active duty for training;
  - (D) Inactive duty training;
  - (E) Full-time National Guard duty;
  - (F) A period for which an individual is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any of the above types of duty; or
  - (G) A period for which an individual is absent from employment for the purpose of performing funeral honors duty as authorized by 10 USC 12503 or 32 USC 115.
- (b) "Uniformed services," means the Army, Navy, Air force, Marine Corps, Coast Guard, Army National Guard, the Air National Guard, Commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency.
- (2) Eligibility for enrollment: An eligible employee shall be entitled make Military Catch-Up contributions if:
- (a) The eligible employee leaves employment to perform military service and returns to employment with the same participating employer after other than dishonorable discharge from the uniformed services and within the time limits specified in USERRA.
  - (b) The eligible employee's cumulative length of absence from employment with the participating employer for military service does not exceed the limits set forth in USERRA.
  - (c) The eligible employee meets all other eligibility requirements under USERRA.
  - (d) Submits a timely and complete application.
- (3) Application for enrollment: An eligible employee who meets the eligibility criteria for enrollment may apply to catch-up deferred compensation contributions that would have been permitted had the eligible employee remained in employment with the participating employer during the period of military service as provided by USERRA.
- (a) Upon reemployment following qualifying military service, an eligible employee may enter into a written agreement to participate in the Military Leave Catch-Up Program to defer an amount annually in addition to the eligible employee's maximum deferral amount.
  - (b) In order for an eligible employee to be enrolled, a properly completed Military Leave Catch-Up Contributions enrollment form provided by the Deferred Compensation Program must be filed with and accepted by the Deferred Compensation Program.
  - (c) If the application for enrollment is incomplete, if documentation is missing or information is not legible, or if the application does not comply with the Military Leave Catch-Up Program eligibility for enrollment in section 2 above, then staff will notify the eligible employee within 30 calendar days from the date the enrollment documents are received with the reasons the Deferred Compensation Plan cannot accept the enrollment.
  - (d) After receipt of the properly completed enrollment form and required information, Deferred Compensation Program staff will notify an eligible employee of the amount of maximum additional contributions that may be deferred.
- (4) Military Leave Catch-Up Contributions. The additional military leave catch-up contributions shall not exceed the 26 USC 457 maximum annual allowable contributions that would have been permitted had the eligible employee remained in employment with the participating employer during the period of military service. The military leave catch-up contributions are in addition to the maximum allowable contribution limit.
- (a) The maximum allowable military leave catch-up contribution for any calendar year during military service is available only to the extent of unused portions of the maximum allowable contribution for the calendar years during which the eligible employee contributed less than the maximum amount allowable.
  - (b) Salary for military leave catch-up purposes shall be based on the compensation the eligible employee would have received had the eligible employee remained actively employed during the period of military service, including any increases that would have been awarded the eligible employee based on longevity of employment or seniority of position.
  - (c) Military Leave Catch-Up Contributions are to be made through payroll deductions.
  - (d) Eligible employees may change the amount of additional contributions deferred not to exceed the maximum amounts allowable.
  - (e) Eligible employees may cancel Military Leave Catch-Up Contributions at any time.
  - (f) Military Leave Catch-up Contributions may be made for a period that begins on the date of reemployment and whose length is the lesser of:

(A) Three times the period of qualified military service; or

(B) Five years.

(5) IRC code limitations. Eligibility for and limitations to the maximum amount of Military Leave Catch-Up contributions shall be made in accordance with the requirements under USERRA, 38 USC 4301-4333 and 26 USC 414(u)(2) and 457.

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

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507

Hist.: PERS 28-2004, f. & cert. ef. 11-23-04

#### **459-050-0075**

##### **Distributions During Employment**

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

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

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

(b) The total balance of the participant's account(s) within the Deferred Compensation Program do(es) not exceed the limitations in the Internal Revenue Code Section (IRC) 457(e)(9)(A), which is \$5,000;

(c) Participant has not made any contributions to the Deferred Compensation Program in the two-year period before the date of distribution; and

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

(2) Unforeseeable emergency withdrawal. An unforeseeable emergency withdrawal is an in-service distribution made to a participant due to an unforeseeable emergency. This withdrawal may be made before the date a participant has a severance of employment and as defined in OAR 459-050-0150. A participant must apply for an unforeseeable emergency withdrawal using forms provided by, or other methods approved by, the Deferred Compensation Program as provided for in OAR 459-050-0150(4).

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

(4) Trustee-to-Trustee Transfers. A Trustee-to-Trustee Transfer for the purpose of purchasing permissive service credit as described in Code Section 415(n) or a Trustee-to-Trustee Transfer that meets the requirements of 26 CFR 1.457.10(b)(4) may be made while a participant is still employed, except no Designated Roth Account balance may be transferred for the purpose of purchasing permissive service credit as described in Code Section 415(n).

(5) Funds available for in-service distribution. Funds contributed to the Deferred Compensation Program, and earnings on those contributions may be distributed in a de minimis distribution or unforeseeable emergency withdrawal. Any funds directly transferred or rolled over to the Deferred Compensation Program from any plan other than an IRC 457 deferred compensation plan may not be distributed for a de minimis distribution or an unforeseeable emergency withdrawal.

(6) Prohibitions on elective deferrals after an in-service distribution. A participant who receives a de minimis distribution, an unforeseeable emergency withdrawal, or a military distribution may not make elective deferrals and employee contributions to the Deferred Compensation Program for a period of six consecutive months from the date of distribution.

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

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507

Hist.: PERS 13-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-28-02; PERS 9-2002, f. & cert. ef. 6-13-

02; PERS 1-2009, f. & cert. ef. 2-12-09; PERS 2-2011, f. & cert. ef. 6-1-11; PERS 10-2012, f. & cert. ef. 5-24-12

#### **459-050-0076**

##### **In-Plan Roth Conversion**

(1) Definitions. For purposes of this rule:

(a) "Distributee" means:

(A) A Deferred Compensation Plan participant who has a severance of employment;

(B) A Deferred Compensation Plan participant who is approved for a de minimis distribution under OAR 459-050-0075(1);

(C) The surviving spouse of a deceased participant; or

(D) The spouse or former spouse who is the alternate payee under a domestic relations order that satisfies the requirements of ORS 243.507.

(E) The non-spouse beneficiary of a deceased participant who is a designated beneficiary under Code Section 402(c)(11).

(b) "In-Plan Roth Conversion" means the payment of an eligible rollover distribution by the Deferred Compensation Program directly from the Deferred Compensation Account to the Designated Roth Account as instructed by the Distributee and in compliance with Code Section 402A(c)(4) and meets the otherwise applicable rollover requirements of Code Section 457(e)(16).

(2) Limitations.

(a) If a Distributee elects an In-Plan Roth Conversion, the Distributee may not roll the money back to the Deferred Compensation Account at a later date.

(b) Once completed, all balances from any In-Plan Roth Conversion shall be accounted for individually and separately within the Designated Roth Account.

(3) 402(f) Notice and Election Procedure.

(a) The Deferred Compensation Program staff shall provide each Distributee with a written explanation of the direct rollover rules for any eligible distribution, as required by Code Section 402(f).

(b) An In-Plan Roth Conversion election shall be in writing and must be signed by the Distributee or by his or her authorized representative pursuant to a valid power of attorney. The election must be on forms furnished by the Deferred Compensation Program.

Stat. Auth.: ORS 243.470

Stats. Implemented: ORS 243.462

Hist.: PERS 10-2012, f. & cert. ef. 5-24-12

#### **459-050-0077**

##### **Loan Program**

(1) Definitions. For purposes of this rule:

(a) "Cure period" is that time from when a default occurs until the end of the quarter following the quarter in which the default occurred.

(b) "Deferred Compensation Account" means the account described in OAR 459-050-0001, but does not include any amount in the Self-Directed Brokerage Option.

(c) "Designated Roth Account" means the account described in OAR 459-050-0001, but does not include any amount in the Self-Directed Brokerage Option.

(d) "Loan balance" means the outstanding principal and accrued interest due on the loan.

(e) "Participant Loan" means a loan that affects the Deferred Compensation Account, Designated Roth Account, or a combination of both, of a participant.

(f) "Promissory note" means the agreement of loan terms between the Program and a participant.

(g) "Third Party Administrator (TPA)" means the entity providing record keeping and administrative services to the Program.

(2) Eligibility for loan. Participants who are currently employed by a Plan Sponsor that has agreed to participate in a Participant Loan program are eligible for a Participant Loan. Retired participants, participants separated from employment, designated beneficiaries, and alternate payees are not eligible.

(3) Application for loan: A participant must apply for a loan and meet the requirements set forth in this rule.



- (a) Once a loan is approved, a participant must execute a promissory note in the form prescribed by the Program.
- (b) If a participant is deceased before the disbursement of the proceeds of a loan, the participant's loan application shall be void as of the date of death.
- (4) Loan Types:
- (a) General purpose loan — a loan not taken for the purpose of acquiring a principal residence. General purpose loans must be repaid over a non-renewable repayment period of up to five years.
- (b) Residential loan — a loan made for the purpose of acquiring a principal residence, which is, or within a reasonable time shall be, the principal residence of the participant. Residential loans must be repaid over a non-renewable repayment period of up to 15 years. A refinancing does not qualify as a residential loan. However, a loan from the Program that will be used to repay a loan from a third party will qualify as a residential loan if the loan would qualify as a residential loan without regard to the loan from the third party.
- (5) Interest Rate: The rate of interest for a loan shall be fixed at one percent (1%) above the prime interest rate as published by the Wall Street Journal on the last business day of the month before the month in which the loan is requested.
- (6) Loan Fees: A loan fee of \$50.00 shall be assessed when the loan is approved. The fee shall be deducted from a participant's deferred compensation account on a pro-rata basis from existing investments.
- (7) Loan Limitations:
- (a) The maximum loan amount is the lesser of:
- (A) \$50,000; or
- (B) One-half of the combined value of the participant's Deferred Compensation Account and the Designated Roth Account on the date the loan is made.
- (b) The minimum loan amount is \$1,000.
- (c) A participant may only have one outstanding loan.
- (d) A participant who has received a loan may not apply for another loan until 12 months from the date the previous loan was paid in full.
- (8) Source of Loan: The loan amount will be deducted from a participant's Deferred Compensation Account, Designated Roth Account, or a combination of both.
- (a) Loan amounts will be deducted first from the Deferred Compensation Account.
- (b) Loan amounts will be deducted pro-rata from existing investments in a participant's account(s).
- (c) A participant may not transfer a loan to or from another retirement or deferred compensation plan.
- (9) Repayment Terms: The loan amount will be amortized over the repayment period of the loan with interest compounded daily to calculate a level payment for the duration of the loan.
- (a) Loan payments must be made by payroll deduction. To receive a loan from the Program a participant must enter into a payroll deduction agreement. For the purposes of this rule, a promissory note or other document that includes the payroll deduction amount and is signed by a participant as a requirement to obtain a loan may be a payroll deduction agreement. Except as provided in this rule, a participant may not submit a loan payment directly to the Program or the Third Party Administrator.
- (b) A participant is responsible for loan repayment even if the employer fails to deduct or submit payments as directed under the payroll deduction agreement. To avoid defaulting on a loan by reason of the employer's failure to deduct or submit a payment a participant may submit a loan payment by sending a money order or certified check to the Third Party Administrator.
- (c) A participant may repay the loan balance in a single payment at any time before the date the final loan payment is due.
- (d) Partial payment of a scheduled payment and partial prepayment or advance payment of future payments may not be permitted.
- (e) Loan payments will be allocated in a participant's account(s) in the same manner as the participant's current contribution allocation. If, for any reason, the allocation is not known, the payment will be allocated to the Short-Term Fixed Income Option.
- (f) Any overpayment will be refunded to the participant.
- (10) Leave of Absence. Terms of outstanding loans are not subject to revision except as provided in this section.
- (a) Loan payments may be suspended up to one year during an authorized leave of absence if a participant's pay from the employer does not at least equal the payment amount.

- (A) Interest on a loan continues to accrue during a leave of absence.
- (B) A participant must immediately resume payments by payroll deduction upon return to work.
- (C) The loan balance will be re-amortized upon the participant's return to work to be repaid within the remaining loan repayment period.
- (D) Loan payments may be revised to extend the remaining loan repayment period to the maximum period allowed in the event the loan originally had a term shorter than the maximum period allowed under section (4) of this rule.
- (E) If a participant is on a leave of absence that exceeds one year, the loan shall be in default unless repayment begins one year from the participant's last date worked or the date the final payment is due under the promissory note, whichever is earlier.

(b) Military Leave. Loan payments for participants on military leave may be suspended for the period of military service.

(A) A leave of absence for military service longer than one year will not cause a loan to be in default.

(B) Loan payments by payroll deduction must resume upon the participant's return to work.

(C) The original repayment period of a loan will be extended for the period of military service or to the maximum repayment period allowed for that type of loan, whichever is greater.

(D) Interest on a loan continues to accrue during a leave of absence for military service. If the interest rate on the loan is greater than 6%, then under the provisions of the Servicemembers Civil Relief Act of 2003, the rate shall be reduced to 6% during the period of military service.

(E) The loan balance will be re-amortized upon the participant's return to work to be repaid within the remaining loan repayment period as determined under paragraph (C) of this subsection.

(c) A participant on an authorized leave of absence or military leave may submit loan payments by sending a money order or certified check to the Third Party Administrator.

#### (11) Tax Reporting.

(a) The loan balance of a general purpose loan will be reported as a taxable distribution to the participant on the earlier of the last day of the loan repayment period, as adjusted under paragraphs (10)(a)(D) or (10)(b)(C) of this rule, if applicable, or if the loan is in default, the last day of the cure period.

(b) The loan balance of a residential loan will be reported as a taxable distribution to the participant on the earlier of the last day of the loan repayment period, as adjusted under paragraphs (10)(a)(D) or (10)(b)(C) of this rule, if applicable, or if the loan is in default, the last day of the cure period.

(c) If a participant dies before the loan balance being repaid, and the participant's beneficiary does not repay the loan balance in a single payment within 90 days of the participant's death, the loan balance will be reported as a taxable distribution to the estate of the participant.

(d) If a participant is eligible to receive a distribution under the Program, the reporting of a loan balance as a taxable distribution under this section will cancel the loan at the time the taxable distribution is reported. A canceled loan is a distribution and is no longer outstanding in a participant's account.

(e) If a participant is not eligible to receive a distribution under the Program, a loan balance reported as a taxable distribution under this section will be a deemed distribution for tax reporting purposes. A loan deemed distributed may not be canceled until the loan balance is repaid or the participant becomes eligible to receive a distribution. The loan balance will remain outstanding in the participant's account and will continue to accrue interest until repaid or canceled.

#### (12) Default.

(a) A loan is in default if a payment is not paid as scheduled or under any of the provisions set forth in this rule, the promissory note, or any related loan agreement.

(b) A loan is in default if the participant separates from employment with the plan sponsor that administers the loan payment payroll deductions.

(c) If a participant with a loan in default resumes loan payments by payroll deduction before the end of the cure period, the default will be cured. The participant must pay any missed payments and accrued interest before the end of the loan repayment period.

(d) Except as provided in subsection (c) of this section, if the participant does not cure a default by repaying the loan balance before the end of the cure period, the loan balance will be reported as a taxable distribution to the participant as provided in section (11) of this rule.

Stat. Auth.: ORS 243.470

Stats. Implemented: ORS 243.401 – 243.507

Hist.: PERS 4-2007, f. 1-23-07, cert. ef. 5-1-07; PERS 8-2007, f. & cert. ef. 7-26-07; PERS 6-2011, f. & cert. ef. 8-4-11; PERS 10-2012, f. & cert. ef. 5-24-12

#### **459-050-0080**

##### **Distribution of Funds After a Severance of Employment**

The purpose of this rule is to establish the criteria and process for obtaining a distribution of deferred compensation funds after a participant's severance of employment as defined herein. Distribution under the Deferred Compensation Program shall be made in accordance with any minimum distribution or other limitations required by Internal Revenue Code (IRC) section 401(a)(9), 26 U.S.C. 401(a)(9) and related regulations.

(1) Definitions. The following definitions apply for the purpose of this rule:

(a) "Commencement date" means the month and year that a participant will begin receiving a distribution(s) from the Deferred Compensation Program, whether by operation of the participant's election or under the terms of the plan. The commencement date is not the date that the necessary funds are liquidated for distribution.

(b) "Date of distribution" means the date funds are distributed to the participant, alternate payee, beneficiary, or other recipient in accordance with the plan, regardless of the mechanism by which those funds are distributed.

(c) "Intention to return to work" means a written or oral, formal or informal agreement has been made with the plan sponsor to return to work on a full time, part time or temporary basis at the time the severance is effective. If a participant returns to work with the plan sponsor within 30 calendar days of severance, then a rebuttable presumption exists that the participant intended to return to work as of the date of severance.

(d) "Liquidation date" means the date the Deferred Compensation Program designates for liquidation of funds. Generally, the liquidation date will not be earlier than the 25th day of the calendar month preceding the commencement date. The Deferred Compensation Program may determine the liquidation date based on normal business practices. The Deferred Compensation Program is not liable to a participant for failure to liquidate an investment on a specified date.

(e) "Liquidation of funds" means the conversion of the necessary funds from the investments in the Deferred Compensation Program into cash for payment under a specified manner of distribution.

(f) "Manner of distribution" means the manner elected by the participant, alternate payee, or beneficiary in accordance with the terms of the plan, in which a distribution is to be paid out of the Deferred Compensation Program.

(g) "Required beginning date" means April 1 of the calendar year following the later of:

(A) The calendar year in which the participant reaches 70-1/2 years of age; or

(B) The calendar year in which the participant retires.

(h) "Severance of Employment" means a participant has ceased rendering services as an employee or an independent contractor of a plan sponsor for a minimum of 30 consecutive days, including services as a temporary employee, and has no intention to return to work for the plan sponsor.

(2) Manner of distribution. Subject to the provisions of sections (3) through (5) set out below, a participant, surviving beneficiary, or alternate payee may elect a manner of distribution, designate one or more beneficiaries, and change beneficiaries at any time. The total amount distributed may not exceed the total account value. The following manners of distribution are available:

(a) Total distribution of the account value in a lump sum. A lump-sum distribution is not eligible for direct deposit;

(b) Single distribution of a portion of the account value in a lump sum. This form of lump-sum distribution is not eligible for direct deposit. Funds not distributed shall continue to receive earnings or losses based on the performance of investment option(s) in which funds are held;

(c) Systematic withdrawal distribution for a specific number of years, which may be paid annually, semiannually, quarterly or monthly. Any funds remaining after each periodic payment shall continue to receive earnings or losses based on the performance of investment option(s) in which the funds are held. The remaining number of periodic distributions may not change. However, the amount of distributions shall be adjusted depending on the earnings or losses experienced;

(d) Periodic specified dollar amount distribution. This distribution may be paid annually, semiannually, quarterly or monthly, and may be paid in specific dollar amounts in \$5 increments. Any funds remaining after each periodic payment shall continue to receive earnings or losses based on the performance of

investment option(s) in which the funds are held. The amount of each periodic distribution will remain the same throughout the withdrawal period. However, the withdrawal period may vary depending on the earnings or losses experienced;

(e) Required minimum distribution, which will provide an annual distribution of the minimum amount required in IRC section 401(a)(9), 26 U.S.C. 401(a)(9). This manner of distribution is available only to those who defer distribution to age 70-1/2 years of age (no later than April of the year following the year reaching 70-1/2 years of age) or a participant who continues to work and severs employment after 70-1/2 years of age. Funds not distributed shall continue to receive earnings or losses based on the performance of investment option(s) in which funds are held; or

(f) Mandatory single lump-sum distribution of an account balance of less than \$1,000. This distribution shall be made to any participant or alternate payee with an account balance of less than \$1,000 within one year of the participant's severance of employment.

(3) Application Requirements. Application shall be made on forms provided by, or other methods approved by, the Deferred Compensation Program. No distribution may be paid unless a timely and complete application is filed with the Deferred Compensation Program as follows:

(a) An application for distribution or to change the manner of distribution will be considered filed in a timely manner if it is received in writing or other method approved by the Deferred Compensation Program at least 30 days before the requested commencement date. The commencement date may be no earlier than the second calendar month following the month of severance of employment.

(b) An application for distribution or to change the manner of distribution may be made by a participant, surviving beneficiary, or alternate payee or the authorized representative of a participant, surviving beneficiary or alternate payee. A valid document appointing an authorized representative such as a power of attorney, guardianship or conservatorship appointment, must be submitted to the Deferred Compensation Program. The Deferred Compensation Program retains the discretion to determine whether the document is valid for purposes of this rule.

(c) Except in the case of a qualified distribution as defined in section 402A(d)(2) of the Internal Revenue Code, the participant, surviving beneficiary, or alternate payee must file a tax-withholding certificate with the Deferred Compensation Program at least 30 days before the requested commencement date. If the certificate is not filed, the Deferred Compensation Program shall withhold state income taxes based on a marital status of single and no dependents and federal income taxes based on a marital status of married and 3 dependents, or other federally mandated tax withholding requirements. A new certificate may be filed at any time, and will be applied to distributions paid on and after the first calendar month following the date received or as soon as reasonably possible.

(d) When direct deposit is permitted under the Deferred Compensation Program, a request for periodic distributions to be transmitted to a financial institution for direct deposit must be made using a Deferred Compensation Program Automatic Deposit Agreement.

(e) Distribution of deferred compensation funds will occur no later than five days following the date funds necessary for a specified payment were liquidated. Liquidation of funds will be done on a pro-rata basis determined by the investment allocation of an account at the time the funds are liquidated or from the Stable Value account, at the participant's election. The election must be filed before the participant begins receiving distributions. If the participant elects distribution from the Stable Value account and there are insufficient funds in that account on the date of each distribution (whether monthly, quarterly, semi-annually, or annually), the distribution will be done on the pro-rata basis described above regardless of the participant's election.

(4) Denial of distribution election. The Deferred Compensation Program may deny any distribution election if that denial is required to maintain the status of the Deferred Compensation Program under the Internal Revenue Code and regulations adopted pursuant to the Internal Revenue Code and ORS Chapter 243.

(5) Changing the manner of distribution. A participant, surviving beneficiary or alternate payee may change or discontinue the manner of distribution only as follows and subject to the requirements of section (3) above:

(a) Manners of distribution under sections (2)(c), (2)(d) and (2)(e) of this rule may be changed at any time upon application as required under section (3) of this rule.

(b) Distributions under sections (2)(c) and (2)(d) of this rule may be discontinued upon written notification or by other methods approved by the Deferred Compensation Program. The participant, surviving beneficiary, or alternate payee must submit an application, as required in section (3) of this rule, to restart distributions and elect a manner of distribution for the remaining account.

(c) Subject to the requirements of this rule, a participant, surviving beneficiary or alternate payee who has commenced receiving a required minimum distribution may apply under the requirements of section (3) of this rule:

(A) For one or more additional distributions in a lump sum not to exceed the total value of the account; and  
(B) To change the manner of distribution so long as future distributions will be continuous and equal to or greater than the minimum distribution required.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507, OL 2007 Ch. 54

Hist.: PERS 5-2000, f. & cert. ef. 8-11-00; PERS 13-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-28-02; PERS 9-2002, f. & cert. ef. 6-13-02; PERS 28-2004, f. & cert. ef. 11-23-04; PERS 20-2007, f. & cert. ef. 11-23-07; PERS 10-2012, f. & cert. ef. 5-24-12

#### **459-050-0090**

##### **Direct Rollover and Trustee-to-Trustee Transfer**

The purpose of this rule is to establish the criteria and processes for Direct Rollovers between the Deferred Compensation Program and an Eligible Retirement Plan and Trustee-to-Trustee Transfers between the Deferred Compensation Program and either a defined benefit governmental plan or a deferred compensation plan described in Code Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(1) Definitions. The following definitions apply for the purpose of this rule:

(a) "Code" means the Internal Revenue Code of 1986, as amended.

(b) "Direct Rollover" means:

(A) The payment of an eligible rollover distribution by the Deferred Compensation Program to an Eligible Retirement Plan specified by the Distributee; or

(B) The payment of an eligible rollover distribution by an Eligible Retirement Plan to the Deferred Compensation Program.

(c) "Distributee" means an individual who has requested a distribution under one of the following criteria:

(A) A Deferred Compensation Program participant who has a severance of employment;

(B) A Deferred Compensation Program participant who is approved for a de minimis distribution under OAR 459-050-0075(1);

(C) The surviving spouse of a deceased participant;

(D) The spouse or former spouse who is the alternate payee under a domestic relations order that satisfies the requirements of ORS 243.507 and OAR 459-050-0200 to 459-050-0250; or

(E) The non-spouse beneficiary of a deceased participant who is a designated beneficiary under Code Section 402(c)(11).

(F) A plan participant who has requested a Trustee-to-Trustee Transfer for the purpose of purchasing permissive service credit as described in Code Section 415(n).

(d) "Distributing Plan" means an Eligible Retirement Plan that is designated to distribute a direct rollover or send a Trustee-to-Trustee Transfer to another eligible plan (recipient plan).

(e) "Eligible Retirement Plan" means any one of the following:

(A) An individual retirement account or annuity described in Code Section 408(a) or (b), including a Roth IRA as described in Code Section 408(A);

(B) An annuity plan described in Code Section 403(a);

(C) An annuity contract described in Code Section 403(b);

(D) A qualified trust described in Code Section 401(a);

(E) An eligible deferred compensation plan described in Code Section 457(b), which may include a qualified Roth contribution program defined in Code Section 402A, and that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; or

(F) A plan described in Code Section 401(k).

(f) "Eligible Rollover Distribution" means any distribution of all or any portion of a person's account in an Eligible Retirement Plan. An Eligible Rollover Distribution may not include:

(A) A distribution that is one of a series of substantially equal periodic payments made no less frequently than annually for the life (or life expectancy) of the Distributee or the joint lives (or life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of 10 years or more;

- (B) A distribution that is a required or minimum distribution under Code Section 401(a)(9);
- (C) An amount that is distributed due to an unforeseen emergency under OAR 459-050-0075(2).
- (g) “Recipient Plan” means an Eligible Retirement Plan that is designated by a Distributee to receive a Direct Rollover or Trustee-to-Trustee Transfer.
- (h) “Trustee-to-Trustee Transfer” means a transfer either:
  - (A) By the Deferred Compensation Program to:
    - (i) A governmental defined benefit plan (within the meaning of Code Section 414(d)) for the purchase of permissive service credit as described in Code Section 415(n); or
    - (ii) A deferred compensation plan described in Code Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.
  - (B) To the Deferred Compensation Program from a deferred compensation plan described in Code Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.
- (2) Direct rollover to an Eligible Retirement Plan. The Direct Rollover of an Eligible Rollover Distribution by the Deferred Compensation Program to an Eligible Retirement Plan shall be interpreted and administered in accordance with Code Section 457(d)(1)(C), 402A(c)(3) and all applicable regulations. A Distributee may elect to have an Eligible Rollover Distribution paid by the Deferred Compensation Program directly to an Eligible Retirement Plan specified by the Distributee.
  - (a) The Deferred Compensation Program staff shall provide each Distributee with a written explanation of the direct rollover rules for an eligible distribution, as required by the Code.
  - (b) A Distributee’s right to elect a Direct Rollover is subject to the following limitations:
    - (A) A Distributee may elect to have an Eligible Rollover Distribution paid as a Direct Rollover to only one Eligible Retirement Plan.
    - (B) A Distributee may elect to have part of an Eligible Rollover Distribution be paid directly to the Distributee, and to have part of the distribution paid as a Direct Rollover only if the Distributee elects to have at least \$500 transferred to the Eligible Retirement Plan.
    - (C) A Distributee of the Designated Roth Account may elect to have a Direct Rollover only to a Roth IRA as described in Code Section 408A or another qualified Roth contribution program as described in Code Section 402A.
  - (c) A Direct Rollover election shall be in writing and must be signed by the Distributee or by his or her authorized representative pursuant to a valid power of attorney. The Direct Rollover election may be on forms furnished by the Deferred Compensation Program, or on forms submitted by the Recipient Plan which must include:
    - (A) The Distributee’s full name;
    - (B) The Distributee’s social security number;
    - (C) The Distributee’s account number with the Recipient Plan, if available;
    - (D) The name and complete mailing address of the Recipient Plan; and
    - (E) If the Distributee is a non-spouse beneficiary of the member, the title of the recipient IRA account.
  - (d) The Distributee is responsible for determining that the Recipient Plan’s administrator will accept the Direct Rollover for the benefit of the Distributee. Any taxes or penalties that are the result of the Distributee’s failure to ascertain that the recipient plan will accept the direct rollover shall be the sole liability of the Distributee.
- (3) Trustee-to-Trustee Transfer to another deferred compensation plan or governmental defined benefit plan.
  - (a) A Trustee-to-Trustee Transfer request shall be in writing and must be signed by the Distributee or by his or her authorized representative pursuant to a valid power of attorney. The Trustee-to-Trustee Transfer request may be on forms furnished by the Deferred Compensation Program, or on forms submitted by the Recipient Plan which must include:
    - (A) The Distributee’s full name;
    - (B) The Distributee’s social security number;
    - (C) The Distributee’s account number with the Recipient Plan, if available;
    - (D) The name and complete mailing address of the Recipient Plan; and
    - (E) If the transfer is for the purpose of purchasing service credit under a governmental defined benefit plan, the exact amount to be transferred.

(b) The Distributee is responsible for determining that the Recipient Plan's administrator will accept the Trustee-to-Trustee Transfer for the benefit of the participant. Any taxes or penalties that are the result of the Distributee's failure to ascertain that the Recipient Plan will accept the Trustee-to-Trustee Transfer shall be the sole liability of the Distributee.

(4) Direct Rollover from an Eligible Retirement Plan. The Deferred Compensation Program may accept rollover contributions from participants and direct rollovers of distributions from an eligible retirement plan on behalf of a participant. This section shall be interpreted and administered in accordance with Code Section 402(c) and all applicable regulations.

(a) The Deferred Compensation Program may accept both pre-tax and after-tax rollover money. However, the only after-tax money eligible for rollover into the Deferred Compensation Program is money from another qualified Roth contribution program as described in Code Section 402A.

(b) A Direct Rollover from an Eligible Retirement Plan must be an Eligible Rollover Distribution. It is the participant's responsibility to determine that the assets qualify for rollover treatment. Any taxes or penalties that are the result of the participant's failure to ascertain that the distributing plan assets qualify for a direct rollover to a deferred compensation plan described in Code Section 457(b), shall be the sole liability of the participant.

(c) Subject to the requirements of subsections (4)(c)(A) and (B) below, Eligible Rollover Distribution(s) shall be credited to the participant's Deferred Compensation Account or Designated Roth Account established pursuant to the Enrollment Form on file with the Deferred Compensation Program and shall be subject to all the terms and provisions of the Enrollment Form. Account assets received from the Distributing Plan will be invested by the Deferred Compensation Program record keeper in accordance with the terms and conditions of the Deferred Compensation Program according to the asset allocation the participant has established for monthly contributions unless instructed otherwise in writing on forms provided by the Deferred Compensation Program.

(A) Assets from an Eligible Retirement Plan other than a deferred compensation plan described in Code Section 457(b) will be segregated into a separate account established by the Deferred Compensation Program for tax purposes only, but not for investment purposes. For investment purposes, the participant's assets are treated as a single account. If a participant changes the allocation of existing assets among investment options within the plan, the transfer or reallocation shall apply to and will occur in all accounts automatically.

(B) Assets directly rolled over to the Deferred Compensation Program may be subject to the 10 percent penalty on early withdrawal to the extent that the funds directly rolled over are attributable to rollovers from a qualified plan, a 403(b) annuity, or an individual retirement account.

(5) Trustee-to-Trustee Transfer from another deferred compensation plan. The Deferred Compensation Program may accept Trustee-to-Trustee Transfers from other eligible deferred compensation plans described in Code Section 457(b), which may include a qualified Roth contribution program defined in Code Section 402A. Assets transferred from an eligible deferred compensation plan will be aggregated with the participant's accumulated Deferred Compensation Program account(s).

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507

Hist.: PERS 2-2002(Temp), f. & cert. ef. 1-11-02 thru 6-28-02; PERS 9-2002, f. & cert. ef. 6-13-02; PERS 5-2007(Temp), f. & cert. ef. 2-16-07 thru 8-14-07; PERS 9-2007, f. & cert. ef. 7-26-07; PERS 8-2008(Temp), f. & cert. ef. 5-21-08 thru 11-10-08; PERS 11-2008, f. & cert. ef. 7-31-08; PERS 2-2011, f. & cert. ef. 6-1-11; PERS 10-2012, f. & cert. ef. 5-24-12

#### **459-050-0120**

##### **Self-Directed Brokerage Option**

(1) For purposes of this rule:

(a) "Core Investment Option" means an investment alternative made available under ORS 243.421, but does not include the Self-Directed Brokerage Option.

(b) "Self-Directed Brokerage Option" means an investment alternative made available under ORS 243.421 that permits a participant to establish a brokerage account and participate in investment products other than core investment options.

(c) "Trade" has the same meaning as in OAR 459-050-0037.

(2) A participant may initiate participation in the Self-Directed Brokerage Option only by a trade from core investment options.

(a) The participant's combined Deferred Compensation and Designated Roth Accounts balance must be at least \$20,000 on the date of the trade.

(b) The amount of the trade may not exceed 50 percent of the participant's combined Deferred Compensation and Designated Roth Accounts balance on the date of the trade.

(3) A participant in the Self-Directed Brokerage Option may not:

(a) Contribute to the Self-Directed Brokerage Option by any means other than a trade from a core investment option.

(b) Make a trade from a core investment option to the Self-Directed Brokerage Option if:

(A) The participant's balance in the Self-Directed Brokerage Option exceeds the balance in the participant's core investment options on the date of the trade; or

(B) The trade would cause the participant's balance in the Self-Directed Brokerage Option to exceed the participant's balance in the core investment options on the date of the trade.

(4) The Self-Directed Brokerage Option may not be included in any automatic account rebalancing function offered by the Program.

(5) Notwithstanding OAR 459-050-0080, funds in the Self-Directed Brokerage Option are not available for distribution.

(a) Funds in the Self-Directed Brokerage Option must be traded to a core investment option to be available for distribution under OAR 459-050-0080.

(b) A participant, beneficiary, or alternate payee subject to Required Minimum Distributions, as described in OAR 459-050-0300, must maintain a balance in the core investment options that will accommodate the timely distribution of the required amount.

(c) A participant, beneficiary, or alternate payee who fails to comply with subsection (b) of this section is solely responsible for any tax, penalty, or cost imposed by reason of a delayed or partial required minimum distribution.

(6) The Deferred Compensation Manager, if necessary to comply with restrictions imposed by a participating mutual fund, a contracted broker, or the Securities and Exchange Commission, may establish additional temporary restrictions for the Self-Directed Brokerage Option.

(7) Any action taken by the Deferred Compensation Manager under section (6) of this rule must be presented to the Board at its next scheduled meeting. The Board may take action as authorized by ORS 243.401 to 243.507. If the Board does not act, the action(s) taken by the Deferred Compensation Manager shall expire on the first business day following the date of the meeting.

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

Stat. Auth.: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507

Hist.: PERS 6-2011, f. & cert. ef. 8-4-11; PERS 10-2012, f. & cert. ef. 5-24-12

#### **459-050-0150**

##### **Unforeseeable Emergency Withdrawal**

The purpose of this rule is to establish the criteria and process for a participant to obtain a distribution of deferred compensation funds before separation from employment due to an unforeseeable emergency.

(1) Definitions. For purposes of this rule:

(a) "Deferred Compensation Account" means the account described in OAR 459-050-0001, but does not include any amount in the Self-Directed Brokerage Option.

(b) "Designated Roth Account" means the account described in OAR 459-050-0001, but does not include any amount in the Self-Directed Brokerage Option.

(c) "Emergency withdrawal" means a payment to the participant from the participant's Deferred Compensation Account, Designated Roth Account, or a combination of both, in an amount directly related to and reasonably necessary to satisfy a financial obligation attributable to an unforeseeable emergency.

(d) "Unforeseeable emergency" or "Unforeseen emergency" means a severe financial hardship to a participant resulting from a sudden and unexpected illness or accident of the participant or of a dependent of the participant as defined in 26 CFR 1.152-1, a loss of the participant's property due to casualty or other similar extraordinary and unforeseeable circumstance beyond the control of the participant.



- (2) Eligibility for emergency withdrawals. Only a participant who established a deferred compensation account as an eligible employee and has not terminated from employment with their plan sponsor may apply to receive an unforeseeable emergency withdrawal. An alternate payee of a participant may not be eligible to receive an emergency withdrawal.
- (3) A participant must, if eligible, apply for a loan under the provisions of OAR 459-050-0077 before application for an unforeseen emergency withdrawal unless, as determined by the Deferred Compensation Manager, the participant would suffer additional financial hardship by complying with the loan application requirement.
- (4) Source of emergency withdrawals. The amount of an emergency withdrawal will be deducted first from the participant's Deferred Compensation Account unless otherwise indicated by the participant on the emergency withdrawal application.
- (5) Circumstances that do not constitute an unforeseeable emergency. An emergency withdrawal may not be approved for any reason other than an unforeseeable emergency. Circumstances that do not constitute an unforeseeable emergency include, but are not limited to:
- (a) Participant or dependent school expenses;
  - (b) The purchase of a home or costs associated with a voluntary relocation of housing;
  - (c) The reduction of personal credit liabilities not associated with an unforeseeable emergency;
  - (d) Expenses associated with a legal separation or the dissolution of a marriage;
  - (e) Expenses associated with medical procedures that are elective or not medically required;
  - (f) Expenses associated with establishing or managing a personal business;
  - (g) Recreational expenses;
  - (h) Travel expenses not associated with an unforeseeable emergency; and
  - (i) Usual and customary tax obligations.
- (6) Limitations on amount of emergency withdrawal. The amount of an emergency withdrawal may not exceed the combined balance of the participant's Deferred Compensation Account and Designated Roth Account. The maximum amount that may be approved as an emergency withdrawal shall be limited to what is reasonably needed to satisfy the immediate financial obligation related to the unforeseeable emergency, including taxes anticipated on the distribution. The amount of the emergency withdrawal shall be limited to the extent that the financial obligation can or may be satisfied by:
- (a) Reimbursement or compensation by insurance or otherwise;
  - (b) Liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe unforeseeable emergency; or
  - (c) Cessation of participant contributions to the Deferred Compensation Program.
- (7) Application for an emergency withdrawal. A participant must submit a completed emergency withdrawal application and financial information and related documentation sufficient to satisfy the provisions of this rule. The emergency withdrawal application may be returned if incomplete or if insufficient financial information or related documentation is submitted.
- (a) The application form may be obtained from the Deferred Compensation Program or the third party administrator (TPA) retained to administer a portion of the Deferred Compensation Program.
  - (b) The completed application, financial information, and related documentation shall be submitted by use of the United State Postal Service or by private express carrier as defined in ORS 293.660(2) for initial review.
- (8) Cancellation of future contributions. Contributions by a participant to the Deferred Compensation Program shall immediately be cancelled upon receipt of an application for an emergency withdrawal from the participant.
- (a) A participant who receives approval for an emergency withdrawal shall be prohibited from making elective deferrals and contributions to the Deferred Compensation Program for a period of six consecutive months from the date of distribution.
  - (b) A participant who receives a denial for an emergency withdrawal may enroll to make elective deferrals and contributions to the Deferred Compensation Program at any time.
- (9) Approval or denial notification. The Deferred Compensation Manager or an authorized designee shall approve or deny a request for an emergency withdrawal within three working days after receipt of an accepted application. The participant will be notified by mail within 10 days after a decision is made.

(10) Release of payment upon approval of an emergency withdrawal. The Deferred Compensation Manager or an authorized designee shall determine the method of payment. The Deferred Compensation Program shall immediately notify the TPA to release the requested funds.

(11) A participant may appeal a denial of an emergency withdrawal to the Unforeseeable Emergency Withdrawal Appeals Committee as provided in OAR 459-050-0040. The appeal shall be in writing and must include:

- (a) A request for review by the Unforeseeable Emergency Withdrawal Appeals Committee;
- (b) A short statement of the facts that are the basis of the appeal; and
- (c) Any additional information or documentation to support the request for an emergency withdrawal.

(12) Number of emergency withdrawal requests. The number of times a participant may apply for an emergency withdrawal is unlimited and is unaffected by previous applications.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507

Hist.: PERS 5-2000, f. & cert. ef. 8-11-00; PERS 28-2004, f. & cert. ef. 11-23-04; PERS 3-2007, f. & cert. ef. 1-23-07; PERS 6-2011, f. & cert. ef. 8-4-11; PERS 10-2012, f. & cert. ef. 5-24-12

#### **459-050-0200**

##### **Court Orders**

The purpose of this rule is to describe the procedures for the administration of a court order and the requirements for a court order to be approved as a Qualified Domestic Relations Order.

(1) Legal requirements. A final court order or judgment must clearly specify the amount awarded to an alternate payee from the participant's Deferred Compensation Account, Designated Roth Account, or a combination of both, and the language must be administrable under ORS Chapter 243.507 and OAR chapter 459, Division 50. Subject to the requirements of the Internal Revenue Code and Oregon law, including these administrative rules, the Deferred Compensation Program will segregate an alternate payee's award from a participant's account once it has determined that the court order meets the requirements of a Qualified Domestic Relations Order (QDRO).

(2) Requirements of a QDRO. The Deferred Compensation Program may approve a court order as a Qualified Domestic Relations Order (QDRO), if the following conditions are satisfied:

- (a) The Deferred Compensation Program office has received the QDRO;
- (b) The QDRO includes a specific percentage or dollar amount to be awarded to the alternate payee from the participant's account; and
- (c) The QDRO directs the Deferred Compensation Program to segregate the participant's account or otherwise assign the amount of the award from the participant's account, and deposit the award amount in a separate account in the name of the alternate payee as of a date specified in the order.

(3) Final court order. A final court order is required. The Deferred Compensation Program may not divide a participant's account(s) or make a payment to or on behalf of an alternate payee upon receipt of a draft court order. The Deferred Compensation Program will divide the account(s) so long as the other requirements under the Internal Revenue Code and Oregon law including these rules have been met, upon subsequent receipt of a certified copy of a final court order that specifies the action(s) required by the Deferred Compensation Program concerning the alternate payee's award.

(a) All certified copies must be subsequently reviewed and approved by staff as administrable pursuant to ORS 243.507, and OAR chapter 459, division 050, before the Deferred Compensation Program shall disburse funds from an account to which a QDRO applies or an order is currently under review for determination of QDRO status.

(b) Staff shall provide a written explanation to the participant and the alternate payee(s) as soon as practicable setting out the Deferred Compensation Program's determination whether a final court order can be administered by the Deferred Compensation Program as a QDRO.

(c) Case-specific award information shall be provided to attorneys or other representatives of a participant or an alternate payee only if a participant release or an alternate payee release has been received by the Deferred Compensation Program, as described in OAR 459-050-0001.

(4) The Deferred Compensation Program may, in its discretion, accept or reject any court order, or any portion thereof. The Deferred Compensation Program shall provide a written explanation of any rejection as soon as practicable to the participant and the alternate payee, as well as to their attorneys if a release, as defined in OAR 459-050-0001, has been filed with the Deferred Compensation Program.

(5) The Deferred Compensation Program may require a court-approved modification to enable the Deferred Compensation Program to comply with the order and the parties' intent, and so that the Deferred Compensation Program may administer the court order according to applicable Oregon and federal law. For example, if the Deferred Compensation Program determines that a court order is unclear or silent with regard to the alternate payee's right to all or a portion of the participant's Deferred Compensation account, the Deferred Compensation Program may not approve the court order until a court order is received that clearly states what comprises the alternate payee's award.

(6) The court order must not require the Deferred Compensation Program to:

- (a) Provide any type or form of distribution or any option not otherwise provided under the plan; and
- (b) Monitor any designations of beneficiary(s) for compliance with the designation of beneficiary requirements in the court order.

(7) An original or certified copy of a final court order must be received by the Deferred Compensation Program, by mail or delivered in person, before the Deferred Compensation Program shall commence paying benefits to or on behalf of an alternate payee. The Deferred Compensation Program in its discretion may accept a legible photocopy of a final court order, either by mail or delivered in person, as long as the Deferred Compensation Program can confirm it was filed with the court. If the Deferred Compensation Program cannot confirm that the order was filed with the court, the Deferred Compensation Program shall, within a reasonable time thereafter, notify the party who submitted the order that an original or certified copy of the final court order is required.

(8) In the absence of a final court order, a restraining order, injunction, or stay must be filed with the Deferred Compensation Program in order to prevent the distribution of any funds to a participant. Except as may otherwise be allowed by law, a subsequent court order shall be required in order to allow future distributions.

(9) If a final court order states that another court order shall follow, a certified copy of the subsequent court order must be received and approved by staff before any payment shall be made pursuant to the court order.

(10) Discontinuation of domestic action. A confirmation signed and notarized by both the participant and the alternate payee is received by the Deferred Compensation Program, stating that all divorce or other domestic actions have been dismissed or abandoned, and that no final decree or court order shall be forthcoming. If no restraining order, injunction, or stay is on file with the Deferred Compensation Program, there shall be no further obligation or responsibility on the Deferred Compensation Program to correspond or communicate with any person other than the participant and no distribution may be made to anyone other than the participant or the participant's beneficiary(s).

(11) Draft court orders. If the Deferred Compensation Program does not receive a final court order within 12 months after the date the Deferred Compensation Program received the draft court order, the Deferred Compensation Program shall consider that no award was made to an alternate payee from the participant's Deferred Compensation account. There shall be no further obligation or responsibility on the part of the Deferred Compensation Program to correspond or communicate with any person other than the participant and no payment shall be distributed to anyone other than the participant or the participant's beneficiary(s).

(12) Review of draft court orders. Upon request, the Deferred Compensation Program may review draft court orders that contain language pertaining to the division of a participant's deferred compensation account. Staff shall provide a written response as soon as practicable to the submitting party and shall send a copy of the response to the other persons named in the draft court order if mailing addresses are provided.

(13) The Deferred Compensation Program is not responsible for the safekeeping or return of any court orders, whether draft or final, that are received. The Deferred Compensation Program staff may not modify, return, or sign and return, any documents that are received by the Deferred Compensation Program.

(14) Prospective award. If the Deferred Compensation Program has already generated distribution checks to the participant for the first of the month following the date the final court order was received and the court order meets the requirements of this rule, Oregon law, and the Internal Revenue Code, the Deferred Compensation Program shall:

- (a) Pay distribution to the participant, notwithstanding the court order. The distribution payment shall be deemed by the Deferred Compensation Program as received by the participant.
- (b) Establish an alternate payee's award on a prospective basis only and may not pay retroactive distributions of any kind. Payment of future distributions to an alternate payee shall be made as soon as administratively feasible.

(15) If a final court order is received after a participant has received a distribution of his or her full account balance, the Deferred Compensation Program may not invoice the participant for any funds that may have been awarded to the alternate payee.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507

Hist.: PERS 13-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-28-02; PERS 9-2002, f. & cert. ef. 6-13-02; PERS 10-2012, f. & cert. ef. 5-24-12

#### **459-050-0210**

##### **Segregation of a Participant Account**

The purpose of this rule is to describe the process and criteria the Deferred Compensation Program shall use to segregate an alternate payee's award from a participant's account(s), and how the alternate payee's account is maintained once established.

(1) Qualified Domestic Relations Order. Once the Manager or a designated employee has determined that a domestic relations order or another court order is a Qualified Domestic Relations Order as defined under the Internal Revenue Code and Oregon law and in accordance with OAR 459-050-0200, the plan participant's account(s) in the Deferred Compensation Program shall be divided and separate account(s) established in the name of the alternate payee as required under the Qualified Domestic Relations Order (QDRO).

(2) Effective date of segregation. The QDRO may specify a date between January 1 and December 31, on which to calculate the award and segregate the alternate payee's award from the participant's account(s) in the Deferred Compensation Program. If a date is not specified in a QDRO, the Deferred Compensation Program shall use the date that the QDRO was signed by the court on which to calculate and segregate the alternate payee's award from a participant's account(s).

(3) Segregation of Participant Account. If a QDRO directs or otherwise requires the Deferred Compensation Program to segregate the participant's account based on a certain percentage awarded to the alternate payee, the percentage shall be converted into a dollar amount. The converted dollar amount or the dollar amount stated in the QDRO that is awarded to the alternate payee shall be deposited into a separate account in the name of the alternate payee.

(4) Investment of funds. Except as otherwise limited by Oregon statute or administrative rule, the alternate payee shall have the same rights and privileges as a participant concerning the investment of funds under the deferred compensation plan.

(5) Fees. The alternate payee's segregated account shall bear all fees and expenses related to the alternate payee's segregated account as though the alternate payee were a participant.

(6) Designation of beneficiary(s). Subject to the terms and conditions of the Deferred Compensation Plan, the alternate payee shall designate a beneficiary(s) as provided for in OAR 459-050-0060. The designated beneficiary(s) shall receive the alternate payee's account if:

(a) The alternate payee dies before distributions from the account began or were required to begin; or

(b) The alternate payee dies and was receiving a distribution that allowed the alternate payee to designate a designation of beneficiary(s) in which case the beneficiary(s) shall receive the balance of the account.

(7) The participant or alternate payee is responsible for the filing and maintenance of all designations of beneficiary(s) as may be required pursuant to a court order. Benefits shall be paid only to the designated beneficiary(s) on file with the Deferred Compensation Program.

(8) Except as may otherwise be required under applicable Oregon law, a divorce may not revoke a beneficiary designation on file with the Deferred Compensation Program that names the former spouse as the participant's or alternate payee's beneficiary. After a divorce, a participant or an alternate payee is responsible for filing any beneficiary designation changes with the Deferred Compensation Program if a change of beneficiary is desired.

(9) Mailing address. An alternate payee shall notify the Deferred Compensation Program of their current mailing address by sending it in writing to the Deferred Compensation Program office whenever a change in mailing address occurs. Such notification is deemed filed when it is received by the Deferred Compensation Program and is effective upon filing.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507

Hist.: PERS 13-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-28-02; PERS 9-2002, f. & cert. ef. 6-13-02; PERS 10-2012, f. & cert. ef. 5-24-12

#### **459-050-0220**

##### **Distribution of an Alternate Payee Account**

(1) Commencement date of distribution. Subject to other requirements set forth in this division of administrative rules, a distribution to an alternate payee may commence earlier than the date an employee would be eligible to receive payments under the plan if and to the extent expressly provided for in the terms of any judgment of annulment or dissolution of marriage or of separation, or the terms of any court order or court-approved property settlement agreement incident to any judgment of annulment or dissolution of marriage or of separation.

(2) Distribution options. Subject to the rules and regulations pertaining to required minimum distributions, the alternate payee may elect to receive payment in any manner available to the participant under the Deferred Compensation Plan and OAR 459-050-0080, without regard to the form of payment elected by the participant.

(3) Application. The alternate payee must file an application for distribution, or request to change a distribution option with the Deferred Compensation Program at least 30 days before the requested date of the change or the distribution commencement date.

(4) Life expectancy factor. The life expectancy of the alternate payee shall be used anytime the form of payment elected by the alternate payee is based on a life expectancy factor.

(5) Tax liability. If the alternate payee is a spouse or former spouse, the alternate payee shall be solely responsible for the total amount of state and federal taxes at the time of distribution of an alternate payee's account effective January 1, 2002. If an alternate payee is someone other than the spouse or former spouse of the participant, the participant shall be solely responsible for the total amount of state and federal taxes at time of distribution of their alternate payee's account.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507, OL 2007 Ch. 54

Hist.: PERS 13-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-28-02 ; PERS 9-2002, f. & cert. ef. 6-13-02; PERS 20-2007, f. & cert. ef. 11-23-07

#### **459-050-0230**

##### **Release of Information**

(1) Written release. Unless otherwise required by the Oregon Public Records Law in ORS Chapter 192, the Deferred Compensation Program must receive a signed participant's release, as defined in OAR 459-050-0001, from the participant or the alternate payee before the Deferred Compensation Program may provide information pertaining to the participant's or alternate payee's account(s), beneficiary designations, distributions, or award information contained in any draft or final court order on record to any person other than the parties to the court order. A written authorization to release information is valid indefinitely, unless a specific end date is provided in the written statement.

(2) Subpoena. Unless otherwise required by the Oregon Public Records Law in ORS Chapter 192, a subpoena for information available from the Deferred Compensation Program must be made out to the State of Oregon, Deferred Compensation Program. The Deferred Compensation Program reserves the right to object to any subpoena on the grounds that the subpoena fails to provide a reasonable time for preparation and travel, is otherwise unreasonable or oppressive, or that service was improper, in addition to any other basis legally available. To facilitate prompt processing, copies of subpoenas should be served at the Deferred Compensation Program office. Faxed subpoenas are not acceptable.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507

Hist.: PERS 4-2002, f. & cert. ef. 3-26-02; PERS 11-2003, f. & cert. ef. 8-4-03; PERS 10-2012, f. & cert. ef. 5-24-12

#### **459-050-0240**

##### **Deferred Compensation Program Notifications**

(1) Notification responsibility. The Deferred Compensation Program is a separate entity from other public employer retirement plans and deferred compensation plans, and notification to other plans does not

constitute notice to the Deferred Compensation Program. Similarly, the Deferred Compensation Program is not responsible for notifying other plans of changes in participant or alternate payee information, such as changes in address, the receipt of an application for distribution, or the death of a Deferred Compensation Program participant or an alternate payee.

(2) Receipt of a final court order. Deferred Compensation Program shall send written notification acknowledging receipt of a final court order to the submitting party and shall send a copy of the acknowledgment to the other persons named in the court order if mailing addresses are provided.

(3) Tax reporting. The Deferred Compensation Program shall issue the applicable tax reporting forms directly to the recipient of any funds that are issued by the Deferred Compensation Program pursuant to a final court order for domestic relations purposes, and in a manner consistent with the Internal Revenue Code and Oregon law.

(4) Quarterly statements. All alternate payees who are awarded a separate account in the Deferred Compensation Program shall be sent a quarterly statement on their account. Such statement will be sent to their last known address.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - ORS 243.507

Hist.: PERS 13-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-28-02; PERS 9-2002, f. & cert. ef. 6-13-02

#### **459-050-0250**

##### **Fee for Administration of a Court Order**

(1) Fee charged to participant and alternate payee. If the Deferred Compensation Program is required by a court order to segregate a participant's account and create a separate account for an alternate payee(s), the Deferred Compensation Program shall charge the participant and the alternate payee actual and reasonable administrative expenses and related costs incurred by the Deferred Compensation Program in obtaining data and making calculations.

(2) Fee calculation. The Deferred Compensation Program, when collecting administrative expenses and related costs, shall allocate those expenses and costs between the participant and the alternate payee on a pro-rata basis, based on the fraction of the account received by the participant or alternate payee. The Deferred Compensation Program may not charge the participant and alternate payee more than a combined total of \$300.00 for administrative expenses and related costs incurred in obtaining data or making calculations.

(3) Collection of fee. The fee shall be deducted out of the participant's and alternate payee's account(s) after the accounts have been separated per court order.

(4) The fee that shall be charged for dividing the participant's account may not be contingent on the number of days it takes for the Deferred Compensation Program to complete its review of any type of court order that is received by the Deferred Compensation Program.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507

Hist.: PERS 4-2002, f. & cert. ef. 3-26-02; PERS 10-2012, f. & cert. ef. 5-24-12

#### **459-050-0300**

##### **Required Minimum Distribution Requirements**

(1) Definitions. The following definitions apply for the purposes of this rule:

(a) "Designated Beneficiary" means:

(A) A natural person designated as a beneficiary by the participant, alternate payee, or surviving beneficiary as provided in OAR 459-050-0060; or

(B) If a trust is designated as a beneficiary, the individual beneficiaries of the trust will be treated as designated beneficiaries if the trust satisfies the requirements in section (2) of this rule and applicable Treasury Regulations, including but not limited to Proposed Treasury Regulation Section 1.401(a)(9)-1, Q&A-D-5.

(C) If the beneficiary is not a person or a trust satisfying these requirements, the participant, alternate payee, or surviving beneficiary will be deemed to have no designated beneficiary only for purposes of required minimum distributions under IRC 409(a)(9), and distribution shall be made in accordance with section (11) of this rule.

(b) "Life Expectancy" means the length of time a person of a given age is expected to live as set forth in Treasury Regulation Section 1.72-9. Required minimum distributions shall be calculated so as to satisfy the requirements of Section 401(a)(9) using the life expectancy tables provided in Treasury regulations. Life expectancies may not be recalculated after the initial determination, except as otherwise required under Oregon or federal law.

(c) "Required Beginning Date" means April 1 of the calendar year following the later of:

(A) The calendar year in which the participant reaches 70-1/2 years of age; or

(B) The calendar year in which the participant retires.

(d) "Required Commencement Date" means the date that the deferred compensation plan must begin to distribute all or part of an account to a surviving beneficiary.

(2) A trust as beneficiary. If a trust is designated as a beneficiary, the individual beneficiaries of the trust will be treated as designated beneficiaries as defined in paragraph (1)(c)(B) if by December 31 of the calendar year following the death of a person who designated a trust as beneficiary, the trust satisfies the following conditions:

(a) The trust must be irrevocable, or become irrevocable by its terms at the time of the person's death;

(b) The trust's beneficiaries must be natural persons who are identifiable from the trust instrument; and

(c) One of the following must be provided to the Deferred Compensation Program:

(A) A list of all beneficiaries of the trust, including contingent beneficiaries, along with a description of the portion to which they are entitled and any conditions on their entitlement, all corrected certifications of trust amendments, and a copy of the trust instrument if requested by the Deferred Compensation Program; or

(B) A copy of the trust instrument and copies of any amendments after they are adopted.

(3) Applicable law. Distributions under the Deferred Compensation Program shall be made in accordance with Internal Revenue Code (IRC) Section 401(a)(9), Treasury regulations, Internal Revenue Service rulings and other interpretations issued, including Proposed Treasury Regulation Section 1.401(a)(9)-2. IRC Section 401(a)(9) overrides the provisions of this rule and any other statute or rule pertaining to the required minimum distribution requirements and any manners of distributions, if they are found to be inconsistent with IRC Section 401(a)(9).

(a) If a participant, alternate payee, or surviving beneficiary has not begun distribution or elected a minimum distribution by the beginning date or commencement date required in this rule and IRC Section 401(a)(9), the Deferred Compensation Program shall begin distribution of the minimum amount required as provided under OAR 459-050-0080(2)(e) or, if required, the entire account. Distribution under this subsection is subject to the provisions of OAR 459-050-0120(5).

(b) The required minimum distribution amount may never exceed the entire account balance on the date of distribution.

(4) Minimum distribution requirements for participants. Distributions must begin no later than the participant's required beginning date.

(a) The participant's entire account balance shall be distributed over the participant's life expectancy or over a period not extending beyond the participant's life expectancy without regard to the designated beneficiary's age unless the designated beneficiary is a spouse who is more than 10 years younger than the participant.

(b) If the designated beneficiary is a spouse and is more than 10 years younger than the participant, the entire account balance shall be distributed over the joint lives of the participant and the designated beneficiary.

(c) The participant's entire account(s) balance in the Deferred Compensation Program shall be distributed first from the Deferred Compensation Account unless the participant indicates otherwise.

(5) Minimum distribution requirements for alternate payees. The minimum distribution requirements applicable to an alternate payee are determined by whether a Qualified Domestic Relations Order (QDRO) allocates a separate account to the alternate payee or provides that a portion of a participant's benefit is to be paid to the alternate payee.

(a) If a separate account is established in the name of the alternate payee under OAR 459-050-0210, required minimum distributions to the alternate payee must begin no later than the participant's required beginning date. The alternate payee's entire account balance shall be distributed over the alternate payee's life expectancy or over a period not extending beyond the alternate payee's life expectancy.

(b) If no separate account is established in the name of the alternate payee and the alternate payee is paid a portion of a participant's benefit, the alternate payee's portion of the benefit shall be aggregated with the amount distributed to the participant and will be treated, for purposes of meeting the minimum distribution requirement, as if it had been distributed to the participant.

(6) Manners of distribution available to surviving designated beneficiaries. A surviving designated beneficiary may choose a manner of distribution and apply for a distribution as provided for in OAR 459-050-0080. If the distribution to a participant or alternate payee has begun in accordance with section 401(a)(9)(A)(ii) and the participant dies before the entire account has been distributed or after distributions are required to begin under section (4) of this rule, distributions to the surviving designated beneficiary must be made at least as rapidly as under the manner of distribution used before the participant's or alternate payee's death.

(7)(a) Distributions treated as having begun. Distributions from an individual account are not treated as having begun to a participant in accordance with section 401(a)(9)(A)(ii) until the participant's required minimum distribution beginning date, without regard to whether distributions from an individual account have been made before the required beginning date.

(b) If distribution has been made before the required beginning date in the form of an irrevocable annuity, the distributions are treated as having begun if a participant dies after the annuity starting date but before the required beginning date. The annuity starting date will be deemed the required minimum distribution beginning date.

(8) Required commencement date for a surviving designated beneficiary. If a participant dies before distributions are required to begin or are treated as having begun, the entire account balance must be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death, unless the beneficiary makes the following distribution election in the manner prescribed by the Deferred Compensation Plan:

(a) Distributions must begin no later than December 31 of the calendar year following the year of the participant's or alternate payee's death; and

(b) Distribution of payments over the designated beneficiary's lifetime or over a period not exceeding the designated beneficiary's life expectancy.

(A) The beneficiary's life expectancy is calculated using the age of the beneficiary in the year following the year of the participant's death, reduced by one for each subsequent year.

(B) If the participant has more than one designated beneficiary as of December 31 of the calendar year following the year of the participant's death and the account has not been divided into separate accounts for each beneficiary, the beneficiary with the shortest life expectancy is treated as the designated beneficiary.

(9) Required commencement date for a spousal beneficiary. If distributions have not begun before the participant's death and if the sole designated beneficiary is the participant's surviving spouse, distributions to the surviving spouse must commence on or before the later of the dates set forth in subsections (a) and (b) below:

(a) December 31 of the calendar year immediately following the calendar year in which the participant died; or

(b) December 31 of the calendar year in which the participant would have attained 70-1/2 years of age.

(c) The distribution period during the surviving spouse's life is the spouse's single life expectancy.

(10)(a) Required commencement date for a surviving spouse's beneficiary. If the surviving spouse dies after the participant's death but before distributions to the spouse have begun, any death benefits payable to the surviving spouse's beneficiary will be applied as if the surviving spouse were the participant. The date of death of the surviving spouse will be substituted for the date of death of the participant.

(b) A death benefit payable to the surviving spouse of the deceased participant's surviving spouse shall be distributed as provided in section (8) of this rule. The provisions of section (9) of this rule do not apply to a death benefit payable to a surviving spouse of the deceased participant's surviving spouse.

(11)(a) Required commencement date if no designated beneficiary: If a participant dies before the required beginning date with no designated beneficiary as defined in paragraph (1)(c)(C) of this rule, the total account balance must be distributed as provided for in OAR 459-050-0060, by December 31 of the calendar year containing the fifth anniversary of the participant's or alternate payee's death.

(b) If a participant dies after the required beginning date with no designated beneficiary as defined in paragraph (1)(c)(C) of this rule, the applicable distribution period must not be longer than the participant's life expectancy.



(12) Determining the designated beneficiary. The designated beneficiary will be determined based on the beneficiary(s) designated as of December 31 of the calendar year following the calendar year of the participant's, alternate payee's, or surviving beneficiary's death.

(a) A participant may change beneficiaries after his or her required beginning date.

(b) A beneficiary may be changed after a participant's death, such as by one or more beneficiaries disclaiming benefits.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507

Hist.: PERS 6-2002, f. & cert. ef. 5-24-02; PERS 6-2011, f. & cert. ef. 8-4-11; PERS 10-2012, f. & cert. ef. 5-24-12

#### **459-050-0310**

##### **Power of Attorney**

(1) Definitions. The following definitions apply for the purposes of this rule:

(a) "Power of Attorney Document" means a written document expressly granting legal authority to another named individual(s) or agent(s) to act on behalf of and to manage some or all financial matters in the name of the individual creating the power of attorney under the terms and conditions set forth in the document.

(b) "Attorney-in-Fact" means one or more named individuals appointed by another individual in a Power of Attorney Document to act on his or her behalf under the terms and conditions set forth in the Power of Attorney Document.

(c) "Alternate Attorney-in-Fact" means a named individual appointed to serve as an Attorney-in-Fact, under certain terms and conditions set forth in the Power of Attorney Document, in the event another individual also appointed as Attorney-in-Fact is unable or unwilling to perform as Attorney-in-Fact in the first instance.

(d) "Substitute Attorney-in-Fact" means a named individual appointed by an Attorney-in-Fact under authority contained in the Power of Attorney Document to serve in place of the Attorney-in-Fact.

(e) "Agent" means a person or entity entrusted with another's business and acting under a power of attorney.

(f) "Principal" means the person who expressly grants, in writing, certain powers of attorney to another individual. For purposes of the Deferred Compensation Program a principal may be:

(A) A Deferred Compensation Plan participant;

(B) The beneficiary of a deceased Deferred Compensation Plan participant; or

(C) The alternate payee under a domestic relations order that satisfies the requirements of ORS 243.507 and OAR 459-050-0200 to 459-050-0250.

(2) Designation of Power of Attorney. No person may act as an Attorney-in-Fact, or an agent by a power of attorney, for a participant, alternate payee, or beneficiary with respect to Deferred Compensation Program matters unless the Power of Attorney Document appointing such person(s) or agent(s) meets the following requirements:

(a) The Power of Attorney Document shall be in written form in a format approved by the Deferred Compensation Program. The Power of Attorney Document shall contain express language:

(A) Granting the principal's power of attorney with respect to the principal's financial matters generally to a named individual(s) or agent(s); or

(B) Granting the principal's power of attorney with respect to the principal's Deferred Compensation account to a named individual(s) or agents(s).

(b) A principal may designate more than one Attorney-in-Fact in the Power of Attorney Document. If more than one individual is appointed Attorney-in-Fact, the document shall stipulate whether the individuals may act separately, or whether and how they must act collectively.

(c) A principal may designate an Alternate Attorney-in-Fact in the Power of Attorney Document. The individual(s) who is to serve as Alternate Attorney-in-Fact must be expressly named in the document and the circumstances under which the Alternate Attorney-in-Fact may act must be expressly stated. The Deferred Compensation Program may rely upon an affidavit submitted by an Alternate Attorney-in-Fact as conclusive proof of the existence of the circumstance that authorizes the Alternate Attorney-in-Fact to act.

(d) Every document granting a power of attorney must contain:

(A) The principal's notarized signature subject to the following requirements:

(i) Notary information must appear on the same page as the principal's signature; or

(ii) Notary information must clearly be an integral part of the document granting power of attorney.

(B) The signature and address of the Attorney-in-Fact and the Alternate Attorney-in-Fact, if any, or an agent. The requirement of this paragraph will also be satisfied if the power of attorney document is accompanied by an example signature and address of the Attorney-in-Fact, and any Alternate Attorney-in-Fact, or an agent, as a separate attachment.

(e) A photocopy of a complete Power of Attorney Document may be filed with the Deferred Compensation Program, if the document and applicable notary information are clearly legible. The Deferred Compensation Program may accept original documents, and shall not be responsible for the safekeeping or return of any original document.

(3) Effective Date of Power of Attorney. A document that grants or revokes a power of attorney will be effective as to Deferred Compensation Program matters upon receipt by the Deferred Compensation Program, if the document satisfies the requirements set forth in this rule.

(a) If the document does not satisfy the requirements of this rule, Deferred Compensation Program staff will attempt to notify the principal or Attorney-in-Fact within 30 calendar days after receipt of a document that grants or revokes a power of attorney. If staff fails to notify the principal or Attorney-in-Fact that the document does not meet such requirements within the period of time set forth in this section, the document shall nevertheless be inoperative as to Deferred Compensation Program matters.

(4) Revocation of Power of Attorney. A Power of Attorney Document filed with the Deferred Compensation Program shall be revoked upon the occurrence of the earliest of the following events:

(a) A written revocation is filed with the Deferred Compensation Program containing the notarized signature of the principal. The notary information must be on the same page as the signature of the principal or must clearly be a part of the document. A photocopy of the revocation of a power of attorney may be filed with the Deferred Compensation Program if the notary information is clearly legible; or

(b) A Power of Attorney Document that satisfies the requirements of this rule is filed with the Deferred Compensation Program which bears a date that is later than any Power of Attorney Document previously filed with the Deferred Compensation Program; or

(c) The death of the principal.

(5) Permissible Actions Under A Power of Attorney. After receipt by the Deferred Compensation Program of a Power of Attorney Document satisfying the requirements set forth in section (2) of this rule, both the principal and the principal's designated Attorney-in-Fact may execute any document required by the Deferred Compensation Program or perform any Deferred Compensation Program related business that falls within the scope of the powers granted by the principal in the Power of Attorney Document.

(a) Unless otherwise limited in a Power of Attorney Document, the document shall be construed as granting the power:

(A) To designate beneficiaries;

(B) To select manners of distribution;

(C) To choose investment preferences; and

(D) To enroll or discontinue enrollment.

(b) If the power to appoint a substitute Attorney-in-Fact exists under a Power of Attorney Document and is exercised by an Attorney-in-Fact, such appointment must be evidenced by a written document submitted to Deferred Compensation Program containing:

(A) The notarized signature of the Attorney-in-Fact, which notary information must appear on the same page as the Attorney-in-Fact's signature or notary information must clearly be a part of the document granting power of attorney;

(B) Words expressly delegating all, or a portion of, the powers held by the Attorney-in-Fact under the Power of Attorney Document to a named individual as the Substitute Attorney-in-Fact; and

(C) The signature and address of the Substitute Attorney-in-Fact.

(c) A Power of Attorney Document submitted to the Deferred Compensation Program that satisfies the requirements of section (2) of this rule shall be conclusive evidence of the intent of the principal to grant a power of attorney in accordance with the express provisions of the submitted Power of Attorney Document.

(A) If the Deferred Compensation Program is required to rely upon a submitted Power of Attorney Document until it is revoked as provided in section (4) of this rule, the Deferred Compensation Program shall not be held liable for actions taken by the Deferred Compensation Program at the request of the designated Attorney-in-Fact, or Substitute Attorney-in-Fact, if applicable, under such unrevoked Power of Attorney Document.

(B) In the event that the Deferred Compensation Program relies upon a submitted Power of Attorney Document after the death of the principal and prior to the Deferred Compensation Program receiving notice of the principal's death, the Deferred Compensation Program shall have no liability for action taken by it at the request of the Attorney-in-Fact or Substitute Attorney-in-Fact after the principal's death and before the Deferred Compensation Program has been notified of the principal's death.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - ORS 243.507

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