

## Optional Retirement Plan Employer Rate Correction

### Introduction:

OUS staff, working with the Office of the Attorney General, the Public Employees Retirement System (PERS), and PERS' consulting actuary, has determined a series of steps to correct temporarily reduced employer contribution amounts for participants of the Optional Retirement Plan (ORP). This report outlines the issues that created a decrease in ORP employer contribution rates and the process for correcting under-contributions to ORP participants' accounts.

### Measure 29 PERS Rate Relief

In September 2003, Oregon voters passed Measure 29, permitting the State of Oregon to issue general obligation bonds in the amount of \$2 billion, which had the effect of reducing the state's PERS retirement costs by 6.60 percent of subject members' salary. In advice based on the plain language of ORS 243.800(9)<sup>1</sup>, the Attorney General's office advised the OUS that the state's PERS employer rate reduction was also applicable to ORP participants' employer contributions. In November 2003, OUS accordingly reduced ORP participants' contributions to 3.71 percent and 4.27 percent, respectively, for Tier One and Tier Two ORP participants, using rates developed for the ORP by PERS' actuary.

Subsequent discussions with the Attorney General's office have recently yielded revised advice that permits restoration of ORP participants' employer contributions reduced by the Measure 29 pension bond deposit to PERS. The OUS may retroactively increase the current employer contribution amount by the fully amortized value of the proceeds of the bond sale, which PERS' actuary certifies is 6.60 percent of salary.

OUS established the November 2003 ORP rates through reliance on existing rules and statute, as well as advice from the office of the Attorney General. Under-contributions, to the extent that they occurred, were based on a plain language reading of the Oregon law and rules, and were not breaches of compliance with the Plan document. Therefore, counsel retained by the OUS with the firm of Miller Nash LLP has advised OUS that self-correction may be used to reset and restore contributions, to the amounts required, without using formal IRS procedure or filings.

### OAR 459-005-0320 Repealed

The second impact on ORP employer contribution rates occurred in January 2004, when PERS repealed OAR 459-005-0320. The rule had required OUS to use separate, actuarially-determined employer contribution rates for Tier One and Tier Two ORP participants. Since repeal of the rule, the OUS is not required to establish separate Tier

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<sup>1</sup> ORS 243.800(9) The State Board of Higher Education shall contribute monthly to the optional retirement plan authorized under this section the percentage of salary of each employee participating in the plan equal to the percentage of salary that would otherwise have been contributed as an employer contribution on behalf of the employee to the Public Employees Retirement System if the employee had not elected to participate in the optional retirement plan.

One and Tier Two employer contribution rates. Instead, a blended Tier One/Tier Two rate will be contributed for both Tier One and Tier Two ORP participants effective January 1, 2004, to more closely comply with the direction of ORS 243.800(9).

Correction Process:

Correcting under-contributions to ORP accounts requires a series of actions to adjust rates for the Measure 29 rate relief and repeal of OAR 459-005-0320.

Action Plan:

1. Staff will calculate dollar amounts for each ORP participant sufficient to add 6.60 percent of salary to each ORP employer contribution account for November 2003, December 2003, January 2004, February 2004, and March 2004. These under-contribution amounts for the amortized pension bond rate reduction will be deposited as a lump sum contribution to ORP accounts in April 2004.
2. Staff will calculate dollar amounts for each Tier One and Tier Two ORP participant sufficient to adjust employer contributions from tiered rates to the blended Tier One/Tier Two rate. For Tier One ORP participants, the employer contribution will increase from 3.71 percent to 4.71 percent of salary, a total of 1.00 percent; for Tier Two ORP participants, the employer contribution will increase from 4.27 percent to 4.71 percent of salary, a total of 0.44 percent. Under-contributed amounts based on the adoption of the higher, blended employer contribution rate in January, February, and March 2004 will be deposited to ORP employer contribution accounts as a lump sum contribution in April 2004.
3. The ORP employer contribution rate will be reset to 11.31 percent, effective April 2004, for Tier One and Tier Two ORP participants. This revised rate incorporates the corrections for both the Measure 29 pension bond rate reduction and for the repeal of OAR 459-005-0320.
4. Consultants and ORP investment companies will calculate lost earnings, using employer census and wage data provided by OUS staff. "Lost earnings" deposited to ORP participants' accounts is the dollar amount attributable to investment earnings and losses on under-contributed amounts from November 2003 through March 2004. Lost earnings amounts will be deposited to ORP employer contribution accounts upon completion of all calculations.

Conclusion:

The blended PERS employer contribution rate for ORP participants, plus an addition equal to the Measure 29 pension bond deposit rate reduction, yields the employer contribution rate required by ORS 243.800(9). Adopting this rate structure and adding lost earnings to under-contributions during the applicable periods meets the responsibilities of the Plan and the Oregon State Board of Higher Education.