

FPDR Administrative Rules

Section 5.4 – Retirement Benefits

5.4.01 – DEFINITIONS

“Accrued Benefit.” The term “Accrued Benefit” shall mean the amount of FPDR pension benefits a Member has earned under the Plan, generally based on the Member’s Years of Service and Final Pay and the 2.8 percent accrual rate. An Accrued Benefit is only calculated for a Member who has completed the service requirement for vesting under Chapter 5 of the City Charter.

“Actuarial Equivalent.” The term “Actuarial Equivalent” shall mean the adjustment necessary to convert a Member’s FPDR pension benefit into different payment forms or payment periods so that the total value of the Member’s benefit (and the cost to FPDR to provide the benefit) remains equal regardless of the form of benefit or commencement date the Member may elect.

“Alternate Payee.” The term “Alternate Payee” shall mean any spouse, former spouse, legally recognized domestic partner, former legally recognized domestic partner, child or other dependent of a Member who is recognized by a Domestic Relations Order as having a right to receive all or a portion of a Member’s retirement benefits.

“Annuity.” The term “Annuity” shall mean a contract or promise that provides an income for a specified period of time such as a certain number of years or a lifetime.

- A Joint and Survivor Annuity is the form of a Member’s FPDR retirement benefit in which benefit payments continue after the Member’s death to the Member’s Surviving Spouse or, ~~if none,~~ the Member’s Dependent Minor Children. The amount of benefit that continues to the beneficiary of an FPDR Two Member is 25%, 50%, 75% or 100% of the benefit the Member was receiving before death, depending on the Member’s irrevocable election at retirement, and of an FPDR One Member as shown in the Survivor Annuity Table in Charter Section 5-118. Death benefits payable to a Surviving Spouse are paid for the Surviving Spouse’s life. Death benefits payable to a Dependent Minor Child are payable until the date the child reaches 18 or marries, whichever occurs first.
- A Single Life Annuity is the form of benefit payment that provides a monthly income which is paid for the life of one person, the Alternate Payee.

“Beneficiary.” The term “Beneficiary” shall mean a person, other than a Member, who receives benefits under this program.

“Base Pay.” The term “Base Pay” shall mean the pay of the FPDR Two or FPDR Three Member’s position in the Bureau of Fire or Police, including premium pay but excluding overtime and payments for unused vacation, sick or other leave. When a Member is paid overtime for part of his or her regular work schedule as required by Fair Labor Standards Act

provisions, the straight-time portion of the overtime hours in the Member's regular work schedule shall be included in Base Pay.

"Claim." The term "Claim" means, for the purposes of this section of the Administrative Rules, a dispute by a Member or Beneficiary of a decision by the FPDR staff with regard to a retirement or death benefit under Chapter 5 of the City Charter. A Claim may also be filed by an authorized representative of the Member or Beneficiary who is the claimant.

"Claimant." The term "Claimant" means, for the purposes of this section of the Administrative Rules, a Member or Beneficiary with a Claim or an authorized representative of the Member or Beneficiary with a Claim.

"Discovery." The term "Discovery" means Claim documents, including chart notes, medical records, medical and vocational reports, correspondence between the Member and the Fund, recorded statement of the Member and any witness, and correspondence related to the Member's Claim(s) to and from the Office of Administrative Hearings. Discovery does not include Claim documents that are 1) materials protected under the lawyer-client privilege as defined in Oregon Rules of Evidence 40.225 Rule 503; 2) attorney work products; and 3) material reflecting the mental impressions, case values or merits, plans or thought processes of the Member, Member's attorney or Member's representative or the Fund, Fund's attorney or Fund's representative.

"Domestic Relations Order." A "Domestic Relations Order," or "DRO," is any judgment, decree or order (including approval of a property settlement agreement) which is made pursuant to a state domestic relations law (including a community property law) and which relates to the payment of marital property rights to an Alternate Payee and which has been entered by a court of competent jurisdiction and has been accepted by the Director. A DRO may divide a Member's FPDR retirement benefits using one of two different approaches:

- A "separate interest" DRO takes a portion of the financial value of the Member's retirement benefit as of a particular division date and assigns it to the Alternate Payee as a separate legal interest, with the Alternate Payee's portion of the benefit being paid to the Alternate Payee based on the Alternate Payee's life expectancy. In all cases, the financial value of benefits divided under a separate interest DRO is determined using the Plan's definition of Actuarial Equivalent. ~~This is the most common type of DRO and generally applies where the DRO is entered prior to the date the Member's benefits are in pay status.~~
- A "shared interest" DRO is a division of the Member's annuity payment in a specific amount or percentage between the Member and the Alternate Payee. The Member's benefit is "shared" with the Alternate Payee; no legal separate interest is created for the Alternate Payee. The sum of total monthly benefits paid to both the Member and the Alternate Payee under a shared interest DRO is equal to the sum of monthly benefits that would have been paid to the Member in the absence of the DRO. ~~If the Alternate Payee predeceases the Member, then the Alternate Payee's share of the monthly benefit reverts prospectively to the Member.~~ If the Member dies before the Alternate Payee, the Alternate Payee could be treated as a Surviving Spouse in the event the Member has a Surviving Spouse for purposes of death benefits and the DRO treats the Alternate Payee as the Surviving Spouse. ~~Typically, this type of DRO~~

~~is only used when a Member's pension payments have commenced prior to issuance of the DRO.~~

"Final Pay." The term "Final Pay" shall mean the highest Base Pay received by the FPDR Two or FPDR Three Member for any of the three consecutive 365-day or, in a leap year, 366-day periods where the most recent day is the last day for which pay was received in the calendar month preceding the calendar month in which the Member retires, dies, or otherwise terminates employment with the Bureau of Fire or Police. Final Pay for any such period does not include any retroactive payments received by the Member for days preceding such 365-day or 366-day period but does include adjustments to the Base Pay of the Member's position in the Bureau of Fire or Police that would have been received had the Member's applicable collective bargaining agreement been in effect during such 365-day or 366-day period.

Final Pay for any FPDR Two or FPDR Three Member who retires, dies or otherwise terminates employment with the Bureau of Fire or Police and has either received FPDR disability benefits or who was employed in a part-time status by the Bureau of Fire or Police during any such 365-day or 366-day period shall be based on the Base Pay for a full-time employee in the Member's position in the Bureau of Fire or Police at the time of retirement, death or termination from employment.

"Office of Administrative Hearings." The term "Office of Administrative Hearings" or "OAH" shall mean an independent body that has been authorized by the Board of Trustees to review the decision of the Director that is concerning retirement or death benefits. The review may take into account all comments, documents, records, and other information the Member or Beneficiary submits, without regard to whether that information was submitted or considered in the initial benefit determination.

"Surviving Spouse." The term "Surviving Spouse" means the individual who, at the time of the Member's death, was the Spouse of the Member, had been the Member's Spouse throughout the 12-month period immediately preceding the Member's death and had not been judicially separated or divorced by interlocutory or final court decree at the time of death, unless otherwise provided in a domestic relations order that is enforceable with respect to the Member's Plan benefit. The term "Spouse" shall, on and after June 26, 2013, mean an individual to whom a Member is lawfully married under state law, and shall be defined consistent with Rev. Rul. 2013-17 and Notice 2014-19, under which the terms "Spouse," "husband and wife," "husband," and "wife" include an individual married to another individual of the same sex if the individuals are lawfully married under state law, and the term "marriage" includes such a marriage between individuals of the same sex, ~~provided that the marriage was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages.~~ A same-sex domestic partner of a Member who filed an affidavit of domestic partner status form in accordance with Ordinance No. 176258 or a registered domestic partnership certificate with FPDR prior to June 26, 2013, is also considered a Surviving Spouse.

"Years of Service." The term "Years of Service" of a FPDR Two or FPDR Three Member shall mean the service credit for FPDR Two retirement benefits as defined in Charter Section 5-302 and these Administrative Rules.

5.4.09 – DOMESTIC RELATIONS ORDERS

- (A) In order to release information to any party other than the Member or Member's attorney, a prior written authorization from the Member must be on file.
- (B) Draft Domestic Relations Orders (DRO) should be reviewed within thirty (30) days of receipt unless there are circumstances beyond the control of FPDR which prevent the review being completed within thirty (30) days.
 - (1) DROs must contain the following required information:
 - (a) the name and last known mailing address of the Member and of the Alternate Payee;
 - (b) identification of the plan name as the City of Portland, Oregon Fire and Police Disability, Retirement and Death Benefit Plan;
 - (c) the applicable article: Article 3 (FPDR Two) or Article 5 (FPDR One) of the Plan;
 - (d) the amount or percentage of the Member's Accrued Benefit to be paid to the Alternate Payee, or the manner in which such amount or percentage is to be determined, as well as the benefit division date which may be a specific date in the past or some future date defined by the DRO;
 - (e) if the Member is currently in pay status, the Alternate Payee's benefit start date specified as the first of the month following the Director's acceptance of the DRO; and
 - (f) for a Member not yet in pay status, the Alternate Payee's earliest benefit start date specified as the later of the first of the month following the Director's acceptance of the DRO or the Member's earliest retirement date, and the Alternate Payee's latest benefit start date as the Member's retirement date.
 - (2) DROs must not:
 - (a) require the Plan to provide any type or form of benefit, or any option, not otherwise provided under the Plan, **or to provide an Alternate Payee benefit in the form of a Joint and Survivor Annuity**; ~~which includes a reversion of the Alternate Payee's interest to the Member, except as provided under 5.4.09(D);~~

- (b) require the payment of benefits to an Alternate Payee that is required to be paid to another Alternate Payee under another order previously determined by the Director to be a DRO; or
 - (c) require the Plan to provide increased benefits (determined on the basis of Actuarial Equivalent value) to the Member and the Alternate Payee than would be paid to the Member and his or her Beneficiary absent the DRO, **except in the case of reversion of an Alternate Payee's benefit to the Member when the Alternate Payee predeceases the Member, as provided by the Plan.**
- (3) The Director will accept DROs that are in conformance with the Charter and Administrative Rules.
- (C) FPDR staff or the Fund's actuaries determine the Alternate Payee's benefit amount, **or the reduction from the Member's current or future benefit in the event the Alternate Payee's benefit amount is specified in the DRO**, using the discount rate, Member and Alternate Payee mortality and cost of living increase assumptions used in the most recent actuarial valuation of the FPDR pension plan that has been presented to the FPDR Board of Trustees at the time the Director accepts the DRO.

Assumptions specific to the division of benefits calculation include:

- (1) For a DRO where the Member is not of retirement eligible age as of the benefit division date, the Member's benefit is valued based on the **Actuarial Equivalent of projected future payments starting on the m**Member's expected retirement date. The Alternate Payee may begin payments no earlier than the earliest retirement date, and no later than the date that the Member actually commences retirement benefits.
 - (2) For a DRO where the Member is of eligible retirement age as of the benefit division date but has not yet commenced retirement benefits, the Member's benefit is valued based on the **Actuarial Equivalent of projected future payments starting on the m**Member's expected retirement date. The Alternate Payee may begin payments no earlier than the first of the month after the Director's acceptance of the DRO, and no later than the date that the Member actually commences retirement benefits.
 - (3) For a DRO where the Member has already commenced benefits, the Member's benefit is valued based on the Actuarial Equivalent of projected future payments starting on the first of the month after the Director's acceptance of the DRO based on the life expectancy of the Member and Alternate Payee and the form of benefit elected by the Member at retirement.
- (D) Reversion to the Member of benefits assigned to the Alternate Payee may occur where:
- (1) In the case of a separate interest DRO that does not contain instructions to the contrary, the Alternate Payee dies prior to commencing retirement

benefits; the Member's benefit shall then be determined and paid without regard to the DRO.

- (2) **For Members belonging to the Portland Fire Fighters Association, the Portland Police Association or the Portland Police Commanding Officers Association at the time of the Alternate Payee's death, or who belonged to those Associations at their retirement or termination from FPDR membership: In the case of a separate interest DRO that does not contain instructions to the contrary, if the Alternate Payee dies after commencing retirement benefits and before the Member dies, the Member's monthly benefit payable from the Fund will be increased by the amount of the monthly benefit the Alternate Payee was receiving at death, payable prospectively to the Member for the rest of the Member's life. Upon Member's subsequent death, any death benefit payable to the Member's survivor(s) shall be based on the Member's monthly benefit without taking into account the additional monthly benefit that was previously being paid to the Member as a result of the Alternate Payee's death.**
 - (32) In the case of a shared interest DRO, the Alternate Payee predeceases the Member; the amount that previously was being paid to the Alternate Payee shall then instead be paid to the Member for the rest of the Member's life.
- (E) In the event the Member predeceases the Alternate Payee:
- (1) If the Member dies before reaching the earliest retirement date, the Alternate Payee does not have a vested interest and cannot receive any retirement benefits. **The Alternate Payee may still be eligible for death benefits required by the DRO, in accordance with Section 5.5 (Death Benefits) of the Administrative Rules.**
 - (2) In a separate interest DRO if the Member dies on or after reaching the earliest retirement date but has not yet commenced receiving retirement benefits, the Alternate Payee does have a vested interest and can elect to start receiving benefits.
 - (3) If the Member dies after having commenced receiving retirement benefits:
 - (a) In a separate interest DRO, the Alternate Payee continues to receive the benefit ~~he or she~~ was **they were** receiving; the Member's death has no effect on the Alternate Payee's benefits.
 - (b) In a shared interest DRO, the Alternate Payee's **retirement benefits cease at the Member's death. The Alternate Payee** may receive a portion of the death benefit determined by the Member's election at retirement, if payable and the DRO treats the Alternate Payee as the Surviving Spouse, **in accordance with Section 5.5 (Death Benefits) of the Administrative Rules.**

- (F) The **\$300** administrative fee assessed will ~~be the maximum amount permitted under,~~ and be apportioned between the Member and Alternate Payee ~~per, Oregon Revised Statute 237.600~~ **based on the fractions of the benefit received by the Member and Alternate Payee.**