



Oregon

Kate Brown, Governor

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR
Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
888-320-7377
TTY (503) 603-7766
www.oregon.gov/pers

May 27, 2022

TO: Members of the PERS Board
FROM: Stephanie Vaughn, Manager, Policy Analysis & Compliance Section
SUBJECT: Adoption of Employer Incentive Fund Program Rule:
OAR 459-009-0092, *Employer Incentive Fund Program*

OVERVIEW

- Action: Adopt the Employer Incentive Fund Program rule.
- Reason: Extend the Employer Incentive Fund (EIF) employer lump-sum payment deadline for employers on waitlist.
- Policy Issue: None identified.

BACKGROUND

The Oregon Legislature established the Employer Incentive Fund (EIF) in 2018. The purpose of the fund is to provide matching funds to employers who make lump sum deposits into employer side accounts under ORS 238.229. OAR 459-009-0092 sets the match percentage at 25% of the amount deposited by the employer. The EIF is held outside the PERS trust and receives funds from various sources, including general fund dollars and sports betting revenues. With an appropriation of \$100 million from the legislature in 2019, the first application cycle for matching contributions was opened on September 3, 2019 and was originally set to close on August 31, 2020. Under OAR 459-009-0092, an application cycle will close the earlier of: a) 12 months after the cycle is opened, or b) when all the funds have been paid out.

In May 2020, the PERS Board, by temporary rule, extended the EIF employer lump-sum payment deadline from August 31, 2020 to December 1, 2020, for the application cycle established on September 3, 2019. In September 2020, the Oregon Legislature disappropriated \$35 million of the original \$100 million to the EIF. At the December 1, 2020 payment deadline, there were approximately 44 employers on the waitlist. The waitlisted employers had committed a total of \$148,108,750 in lump-sum payments on their EIF applications; 12 of these employers have, in fact, already made their lump-sum payments without an EIF match.

In the 2022 legislative session, an additional amount of \$17,250,000 from the general fund and \$2,669,467 from lottery sports betting revenues was appropriated to the EIF. When considering other expected revenues from sports betting, the EIF will have approximately \$36,600,000 available as matching funds between April 2022 and March 2023.

In consultation with the Oregon Legislative Fiscal Office, and in consideration of the fact that the 2020 Oregon Legislature disappropriated \$35 million of the original \$100 million that was previously appropriated to EIF and allocated to employers, PERS staff is recommending that the board once again extend the payment deadline for the first EIF application cycle from December

1, 2020 to March 31, 2023. This will allow waitlisted employers, particularly those who were allocated and expecting funds, to make their lump-sum contributions and receive matching funds.

SUMMARY OF MODIFICATIONS TO RULE SINCE NOTICE

No modifications were made to the rule since notice.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held remotely on April 26, 2022, at 2:00 p.m. No members of the public attended. The public comment period ended May 2, 2022, at 5:00 p.m. No public comment was received.

LEGAL REVIEW

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

IMPACT

Mandatory: No, the board need not adopt the rule modifications.

Benefit: These rule modifications will allow waitlisted employers to make lump-sum contributions and receive matching funds that would be available from the EIF.

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

RULEMAKING TIMELINE

March 28, 2022	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
March 28, 2022	PERS Board notified that staff began the rulemaking process.
April 1, 2022	Secretary of State published the Notice in the Oregon Administrative Rules Database. Notice was sent to employers, legislators, and interested parties. Public comment period began.
April 26, 2022	Rulemaking hearing held remotely at 2:00 p.m.
May 2, 2022	Public comment period ended at 5:00 p.m.
May 27, 2022	Board may adopt the rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

BOARD OPTIONS

The PERS Board may:

1. Pass a motion to “adopt the Employer Incentive Fund Program rule, as presented.”
2. Direct staff to make other changes to the rule or explore other options.

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STAFF RECOMMENDATION

Staff recommends the PERS Board choose Option #1.

B.3. Attachment 1 - 459-009-0092, *Employer Incentive Fund Program*