



**OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM  
BOARD MEETING AGENDA**

<b>Friday August 16, 2019 9:00 A.M.</b>	<b>PERS 11410 SW 68<sup>th</sup> Parkway Tigard, OR</b>
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	ITEM	PRESENTER
<b>Administrative Rulemaking</b>		
1.	Adoption of Temporary Rules and Notice of Permanent Rulemaking – Employer Programs and Side Account Rules	VAUGHN
2.	Establish Date to Open Application Cycle for Employer Incentive Fund	

*\* PERS Board members will be utilizing a conference call option for this meeting.*

<http://www.oregon.gov/PERS/>

**2019 Meetings:** October 4, December 6\*  
**2020 Meetings:** January 31, March 30\*, May 29, July 31\*, October 2, December 4\*  
 \*Audit Committee planned for post-Board meeting



# Oregon

Kate Brown, Governor

## Public Employees Retirement System

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August 16, 2019

TO: Members of the PERS Board

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

SUBJECT: Temporary Adoption and Notice of Rulemaking for Employer Programs Rules:  
OAR 459-007-0530, *Crediting Earnings to Employer Lump Sum Payments*  
OAR 459-009-0084, *Employer Unfunded Actuarial Liability Lump-Sum Payments With an Actuarial Calculation*  
OAR 459-009-0086, *Employer Unfunded Actuarial Liability Lump-Sum Payments, Generally*  
OAR 459-009-0091, *Unfunded Actuarial Liability Resolution Program*  
OAR 459-009-0092, *Employer Incentive Fund Program*

### OVERVIEW

- Action: Adopt new temporary Employer Program rules, and begin permanent rulemaking.
- Reason for Temporary Rules: Amend the administrative rules necessary to fully implement the Employer Incentive Fund (EIF), Unfunded Actuarial Liability Resolution Program (UALRP), and the provisions of SB 1049 related to employer lump-sum payments of \$10 million or more.
- Policy Issues: *The statute establishing the Employer Incentive Fund (EIF) allows for an “up to 25%” match of an employer’s eligible lump sum deposit into a side account. At what percentage should the EIF match be set?*

### BACKGROUND

SB 1049 amends provisions of the Employer Incentive Fund Program (EIF) and UAL Resolution Program (UALRP) for employers that were originally established in SB 1566 (2018). These new provisions were effective on passage of SB 1049 – June 11, 2019. The temporary rules include new rules and amendments to existing rules that establish the EIF and UALRP and implement new provisions for employers making lump sum payments of \$10 million or more. The following is a brief description of each area.

#### Employer Incentive Fund (EIF) Program

The EIF was established to encourage employers, especially smaller employers with high UALs, to make lump sum payments into side accounts that are used to offset their employer contribution rates. The program provides matching funds of up to 25% of an employer’s eligible lump sum contribution of at least \$25,000 that is not sourced from borrow funds. Statute specifies that for the first 90 days after the board begins accepting applications, only employers whose UAL is 200% or more of payroll may apply for match funds.

The new rule 459-009-0092 provides the structure of this new program, including defining the application period, the information required in the application, the match percentage, and the establishment of a waiting list. This rule is written at a high level, providing the framework

necessary for the Board to open and administer the first application cycle. Staff acknowledges that there are elements that have not been addressed and expects that the provisions will be expanded and some elements will be refined over time as we continue to work with employers on developing the program through the permanent rulemaking process. We also acknowledge that the timeline may need to be adjusted to accommodate the timing of future streams of revenue.

PERS has received an appropriation of \$100 million from the General Fund to the EIF for the 2019-2021 biennium. The temporary rules are presented so the Board may open an application cycle to allocate and pay out this \$100 million appropriation. Employer lump sum payments made on and after June 2, 2018 (the effective date of SB 1566 (2018)), are potentially eligible for matching funds. Employers that have already made a lump sum payment **must still apply for matching funds from the EIF**. Staff have developed an application via Survey Monkey and a communication plan for this first application cycle. Staff is recommending the Board open this first application cycle in a later agenda item.

#### UAL Resolution Program (UALRP)

The UALRP requires PERS to provide employers with technical expertise to assist them in developing funding plans to improve their PERS funded status. PERS does provide a tool to employers that allows them to see the effects of different variables associated with their employer rate. Staff is currently investigating other options in addition to the existing tool to assist employers in developing funding plans and expect further development long term such that we will have a more robust program available for employers.

Participation in the UALRP is a requirement to receive matching funds from the EIF. The temporary rule presented is structured specifically for the purpose of providing employers the tools necessary to meet the UALRP participation requirement for the first application cycle of the EIF. In addition, staff has incorporated participation in the UALRP into the actual application for EIF matching funds. It will require employers to use the employer rate tool, review their most recent valuation, and consider other factors to complete the application.

#### Employer Lump-Sum Payments of \$10 Million or More

Currently, employers who make a lump sum payment of \$10 million or more into a new side account have the option of electing a 6, 10, or 16 year amortization period instead of the standard 20 year amortization period. SB 1049 additionally allows employers making a \$10 million or more lump sum payment into a new side account to elect a deferred rate offset year. Typically, an employer will receive a rate offset from a lump sum payment at the next rate-setting date at the latest. The new provision of SB 1049 will allow employers to delay the rate offset for years; however, the date the employer chooses must still allow for all the funds in the side account to be used within 20 years.

The amendments to 459-009-0084 and 459-009-0086 incorporate this new provision and require an employer electing a deferred rate offset to request an actuarial calculation for the delay rate offset to ensure that the delay, the shorter amortization period, or the combination of the two options does not put the employer in a negative employer rate situation.

### POLICY ISSUE

*The statute establishing the Employer Incentive Fund (EIF) allows for an “up to 25%” match of an employer’s eligible lump sum deposit into a side account. At what percentage should the EIF match be set?*

The EIF was originally established in SB 1566 (2018); however, changes to the statutory structure were required to enable PERS to implement the program. Those changes were made through SB 1049 (2019). Although PERS was not able to fully implement the program with the passage of SB 1566 (2018), the program has been communicated to employers, who have been anticipating funding and the opportunity to take advantage of the program. Staff considered a number of factors in evaluating options for establishing the matching percentage, including providing the opportunity to participate to the most employers, the incentive value of the matching percentage, and employer communications regarding the program from both PERS and the media.

Staff recommends a match percentage of 25%. This match will bring an additional \$500 million into the PERS fund (\$400 million from employers, \$100 million from the EIF). Communications regarding the EIF from various sources over the last year and a half have generally cited a match of 25% and employers have come to understand and expect that the match percentage will be 25%. While a lower percentage may benefit more employers and bring in more total dollars in lump sum payments, \$100 million is a sufficient amount that will benefit many employers at a 25% match. The match percentage can be lowered in future EIF application cycles, if necessary.

The temporary rule incorporates a match percentage of 25%. If the Board decides a different match percentage is more appropriate, the Board may adopt the temporary rules with a different match percentage.

### JUSTIFICATION FOR TEMPORARY RULEMAKING

PERS received \$100 million in General Funds appropriation to the EIF in the 2019-2021 biennium. The rules establishing the structure of the EIF program are necessary to open an application cycle and begin allocating the \$100 million to employer lump sum payments.

### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held October 29, 2019, at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends November 5, 2019, at 5:00 p.m.

### LEGAL REVIEW

The attached draft rules were submitted to the Department of Justice for legal review and any comments or changes will be incorporated before the rules are presented for adoption.

### EFFECTIVE DATE

The temporary rules will become effective upon filing. The maximum period they can remain in effect is 180 days, so staff has initiated permanent rulemaking to replace the temporary rules.

### IMPACT

**Mandatory:** Yes, the rule establishes the EIF program, the structure of which is necessary to open an application window and begin allocating matching funds to employer lump sum payments.

**Effect:** Provides direction to staff and employers regarding the administration of the EIF Program.

**Cost:** There are no discrete costs attributable to the rules.

### RULEMAKING TIMELINE

August 16, 2019	PERS Board may adopt the proposed temporary rules, effective for 180 days; PERS staff will proceed with permanent rulemaking unless otherwise directed.  Staff begins the permanent rulemaking process by filing Notice of Rulemaking with the Secretary of State.  Secretary of State publishes the Notice in the Oregon Administrative Rules Database. Notice is sent to employers, legislators, and interested parties. Public comment period begins.
October 29, 2019	Rulemaking hearing to be held at 2:00 p.m. at PERS in Tigard.
November 5, 2019	Public comment period ends at 5:00 p.m.
December 6, 2019	Staff will propose adopting the permanent rules, including any changes resulting from public comment or reviews by staff or legal counsel. The permanent rules replace the previously adopted temporary rules.

### BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt new temporary rules regarding the administration of the Employer Incentive Fund Program and the UAL Resolution Program as well as temporary modifications to the Employer Side Account Rules, as presented.”
2. Direct staff to make other changes to the rules or explore other options.

### STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: The employer programs provisions of Senate Bill 1049 (2019) were effective as of June 11, 2019. While other aspects of the bill will require more time to implement, these temporary rules allow implementation of the employer program provisions of the bill.

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

NEXT STEPS

A rulemaking hearing will be held October 29, 2019, at 2:00 p.m. at PERS headquarters in Tigard. The rule is scheduled to be brought before the PERS Board for adoption at the December 6, 2019 Board meeting.

Attachment 1 – 459-007-0530, *Crediting Earnings to Employer Lump Sum Payments*

Attachment 2 – 459-009-0084, *Employer Unfunded Actuarial Liability Lump-Sum Payments With an Actuarial Calculation*

Attachment 3 – 459-009-0086, *Employer Unfunded Actuarial Liability Lump-Sum Payments, Generally*

Attachment 4 – 459-009-0091, *Unfunded Actuarial Liability Resolution Program*

Attachment 5 – 459-009-0092, *Employer Incentive Fund Program*

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 007 – EARNINGS AND INTEREST DISTRIBUTION**

1 **459-007-0530**

2 **Crediting Earnings to Employer Lump Sum Payments**

3 (1) Definitions. For the purposes of this rule:

4 (a) “Allocated Earnings” means the actual investment earnings or losses of the Public  
5 Employees Retirement Fund (PERF), apportioned based upon the proportionate size of the  
6 side account in relation to the PERF and adjusted for administrative costs as described in ORS  
7 238.229(3). These earnings are exempt from funding requirements of the Contingency or  
8 Capital Preservation Reserves.

9 (b) “Amortized Amount” means the amount of a Side Account used to offset  
10 contributions due from the employer.

11 (c) “Employer lump-sum payment” means:

12 (A)[a] Any employer payment that is:

13 [(A)](i) Not regularly scheduled;

14 [(B)](ii) Not paid as a percentage of salary; *[and]*

15 [(C)](iii) Paid at the employer’s election instead of at the PERS Board’s direction; and

16 (B) Any payment deposited into a side account for the benefit of an employer.

17 (d) “UAL factor” means the monthly or annual rate based upon allocated side account  
18 earnings.

19 (2) Subject to ORS 238.229(4), the employer lump-sum payment shall first be applied to  
20 liabilities attributable to creditable service by employees of the employer before the employer  
21 was grouped with other public employers. Earnings on these amounts shall be credited based  
22 on the following:

1 (a) For the month in which the employer lump-sum payment is received, earnings shall  
2 be credited based on the average annualized rate, prorated for the number of days from date of  
3 receipt to the end of the month.

4 (b) For the remainder of the year, the employer lump-sum payment shall receive earnings  
5 based on the difference between the final Tier Two annual earnings rate and the Tier Two  
6 earnings rate in effect as of the first of the month after receipt of the payment.

7 (c) In subsequent calendar years, earnings or losses shall be credited to the employer  
8 lump-sum payment in accordance with OAR 459-007-0005(14).

9 (3) Earnings on an employer lump-sum payment held in a separate Side Account shall be  
10 credited to the Side Account based on the following:

11 (a) For the month in which the employer lump-sum payment is received, earnings shall  
12 be credited based on the average annualized rate, prorated for the number of days from date of  
13 receipt to the end of the month.

14 (b) For the remainder of the year, the employer lump-sum payment shall receive earnings  
15 based on the difference between the annual UAL factor and the UAL factor in effect as of the  
16 first of the month after receipt of the payment.

17 (4)(a) Amortized amounts to be applied to the Employer Contribution Account shall  
18 receive earnings or losses based on the UAL factor, effective as of the first of the calendar  
19 month following the date of the application of the amortized amount.

20 (b) In subsequent calendar years, earnings shall be credited to the remaining balance of  
21 the employer's side account created when the lump-sum payment was received on an annual  
22 basis in accordance with OAR 459-007-0005(4).

23 (5) The provisions of this rule are effective on January 1, 2008.



- 1 Statutory/Other Authority: ORS 238.650
- 2 Statutes/Other Implemented: ORS 238.225 - 238.229

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 009 – PUBLIC EMPLOYER**

1 **459-009-0084**

2 **Employer Unfunded Actuarial Liability Lump-Sum Payments With an Actuarial**  
3 **Calculation**

4 The words and phrases used in this rule have the same meaning given them in OAR  
5 459-009-0086.

6 (1) An actuarial calculation is required before an employer may make a UAL lump-  
7 sum payment if the employer:

8 (a) Has a transition liability;

9 (b) Intends to establish a new side account with a new employer contribution rate as  
10 of a date specified by the employer;

11 (c) Has requested an actuarial calculation where a calculation is not otherwise  
12 required; or

13 (d) Intends to make a UAL lump-sum payment as specified in OAR 459-009-  
14 0086(9).

15 (2) At least 45 calendar days before the date the employer intends to make a UAL  
16 lump-sum payment with an actuarial calculation, the employer must notify PERS  
17 Actuarial Services in writing that it intends to make such a UAL lump-sum payment. The  
18 notification must specify:

19 (a) The amount of the intended lump-sum payment;

20 (b) Whether it is a lump-sum payment pursuant to OAR 459-009-0086(9), and if so:

21 (i) The amortization period elected, and

22 (ii) The year the employer rate offset is to begin;

1            (c) At least one potential date for the payment; and

2            (d) If the employer so elects, a specific effective date for the contribution rate change  
3 resulting from the UAL lump-sum payment, [. S] such date must be the first of any month  
4 following the employer's intended payment date but may not be more than 12 months  
5 after the employer's intended payment date, except for UAL lump-sum payments made  
6 pursuant to 459-009-0086(9).

7            (3) PERS staff must notify the employer within five business days of receipt of a  
8 notification in section (2) of this rule if the notification is incomplete or the process  
9 cannot be completed by the earliest intended date of the UAL lump-sum payment.

10           (4) The PERS consulting actuary must provide an invoice charging the employer for  
11 the cost of the UAL calculation requested by the employer. At least 30 calendar days  
12 before the date the employer intends to make a UAL lump-sum payment, the employer  
13 must remit payment for the cost of the UAL calculation directly to the PERS consulting  
14 actuary according to the instructions on the invoice. Failure to remit payment according  
15 to the terms of this section may result in the PERS consulting actuary not completing the  
16 employer's UAL calculation by the proposed UAL lump-sum payment date.

17           (5) Upon receipt of notification that an employer has made payment in full for the  
18 requested UAL calculation, PERS staff shall request that the PERS consulting actuary  
19 calculate:

20           (a) For an employer participating in an employer actuarial pool, 100 percent of the  
21 employer's share of the UAL for the employer actuarial pool. This calculation will be:

22           (A) Based on the fair value UAL of the employer actuarial pool, from the most  
23 recent actuarial valuation;

1 (B) Based on the employer’s covered salary, as a proportion of the pool, as reported  
2 in the most recent actuarial valuation; and

3 (C) Adjusted to reflect the effect of time from the most recent actuarial valuation to  
4 the intended date(s) of payment, using generally recognized and accepted actuarial  
5 principles and practices.

6 (b) For an employer not participating in an employer actuarial pool, 100 percent of  
7 the individual employer’s UAL. This calculation will be:

8 (A) Based on the fair value UAL of the individual employer, from the most recent  
9 actuarial valuation; and

10 (B) Adjusted to reflect the effect of time from the most recent actuarial valuation to  
11 the intended date(s) of payment, using generally recognized and accepted actuarial  
12 principles and practices.

13 (c) For a UAL lump-sum payment to establish a new side account, the effect of the  
14 following UAL lump-sum payment amounts on the individual employer’s contribution  
15 rates using the information specified by the employer in its notification in section (2) of  
16 this rule:

17 (A) 100 percent of the individual employer’s UAL calculated in subsection (5)(a) or

18 (b) of this rule;

19 (B) The UAL lump-sum payment amount(s) specified by the employer in its  
20 notification, if provided; and

21 (C) The minimum amount of the UAL lump-sum payment, if any.

22 (d) For a UAL lump-sum payment as specified in OAR 459-009-0086(9), the  
23 maximum lump-sum payment amount that will not result in a contribution rate of less

1 than 0.00%, if the amount of the intended lump-sum payment specified by the employer  
2 in subsection (2)(a) of this rule would in effect result in a surplus lump-sum payment as  
3 defined under OAR 459-009-0090(1)(g).

4 (e) For a UAL lump-sum payment into an existing side account, the estimated effect  
5 of the additional deposit on the individual employer’s contribution rates effective July 1  
6 of the year following publication of the actuarial valuation for the year in which the  
7 additional deposit is made.

8 (6) PERS staff must notify the employer in writing of the results of the individual  
9 employer’s calculation in section (5) of this rule otherwise designated by the employer  
10 under subsection (2)(c) of this rule. In addition, PERS must send the employer a  
11 notification describing risks and uncertainties associated with the calculation of the  
12 individual employer’s UAL if such notification has not already been provided.

13 (7) The employer must notify PERS Actuarial Services in writing at least three  
14 business days before making a UAL lump-sum payment. This notification shall be in  
15 addition to the notification in section (2) of this rule and must specify:

- 16 (a) The amount of the payment;
- 17 (b) The date the employer intends to make the payment;
- 18 (c) Whether the payment is to establish a new side account or to be deposited into an  
19 existing side account; and
- 20 (d) If the payment is to be deposited into an existing side account and the employer  
21 has more than one side account, which side account is to receive the deposit.

22 (8) For a UAL lump-sum payment to establish a new side account, PERS must  
23 receive the correct funds no later than five business days after the intended date of the

1 UAL lump-sum payment specified by the employer in the notification described in  
2 section (7) of this rule in order to adjust the employer contribution rate to that reported by  
3 PERS in section (6) of this rule.

4 (a) If the UAL lump-sum payment is received by PERS on or before the intended  
5 payment date specified in the notification described in section (7) of this rule or within  
6 the five business days following the intended payment date, the new employer  
7 contribution rate shall be effective for payrolls dated on or after:

8 (A) The first of the month following receipt of the UAL lump-sum payment by  
9 PERS; or

10 (B) The date specified by the employer in subsection (2)(c) of this rule, whichever is  
11 later.

12 (b) If the UAL lump-sum payment is received by PERS more than five business days  
13 after the intended payment date, the employer’s contribution rate shall be adjusted based  
14 on the next actuarial valuation after the date of receipt of the UAL lump-sum payment  
15 and effective July 1 of the year following publication of that valuation.

16 (c) If the UAL lump-sum payment received is other than any amount specified in the  
17 notification under section (7) of this rule, the employer’s contribution rate shall be  
18 adjusted to the rate the payment amount fully funds using the actuarial calculation in  
19 subsection (5)(c) of this rule.

20 (d) If the UAL lump-sum payment received is less than the minimum amount  
21 described in OAR 459-009-0086, the payment will be returned to the employer and no  
22 adjustment will be made to the employer contribution rate.

1           (9) When an employer makes a UAL lump-sum payment into an existing side  
2 account:

3           (a) The final rate adjustment from the additional UAL lump-sum payment(s) will be  
4 calculated in the actuarial valuation for the year in which the payment is made, and will  
5 be effective on July 1 of the year following publication of that valuation.

6           (b) The calculation in subsection (a) of this section will supersede any estimate  
7 provided in an actuarial calculation under subsection (5)(d) of this rule.

8           (10) Nothing in this rule shall be construed to prevent the Board from:

9           (a) Adjusting employer contribution rates based upon the date of receipt of funds or  
10 errors in the notification described in section (7) of this rule; or

11           (b) Taking action pursuant to ORS 238.225.

12           Stat. Auth.: ORS 238.650

13           Stats. Implemented: ORS 238.225 - 238.229

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 009 – PUBLIC EMPLOYER**

1       **459-009-0086**

2       **Employer Unfunded Actuarial Liability Lump-Sum Payments, Generally**

3       (1) Definitions. For the purposes of this rule:

4       (a) “Amortized amount” means the amount of a side account used to offset pension  
5 contributions due from the employer.

6       (b) “Employer actuarial pool” means a grouping of employers for actuarial purposes  
7 such as the School District Pool and the State and Local Government Rate Pool.

8       (c) “Fair value UAL” means the unfunded actuarial liability calculated using the fair  
9 market value of assets.

10       (d) “Side account” means an account in the Public Employees Retirement Fund into  
11 which a UAL lump-sum payment that is not used to satisfy a transition liability is  
12 deposited.

13       (e) “Transition liability” means the unfunded actuarial liability attributed to an  
14 individual employer for the period before entry into the State and Local Government Rate  
15 Pool.

16       (f) “Transition surplus” means the actuarial surplus attributed to an individual  
17 employer for the period before entry into the State and Local Government Rate Pool.

18       (g) “Unfunded actuarial liability” or “UAL” means the excess of the actuarial  
19 liability over the actuarial value of assets for the specified pension program.

20       (h) “UAL lump-sum payment” means any employer payment that is:

21       (A) Not regularly scheduled;

22       (B) Not paid as a percentage of salary;



1 (C) Made for the express purpose of reducing the pension contributions that would  
2 otherwise be required from the employer, or reducing or paying off the employer's  
3 transition liability; and

4 (D) Paid at the employer's election instead of at the PERS Board's direction.

5 (2) A UAL lump-sum payment must be made by either wire transfer or check  
6 payable to the Public Employees Retirement System.

7 (3) An employer may make a UAL lump-sum payment to pay 100 percent of its  
8 transition liability.

9 (4) A UAL lump-sum payment shall first be applied to the employer's transition  
10 liability, if any. The remainder of the payment, if any, shall be held in a side account.

11 (5) An actuarial calculation must be performed prior to an employer making a UAL  
12 lump-sum payment if the employer:

13 (a) Has a transition liability;

14 (b) Intends to establish a new side account with rate relief beginning on a date  
15 specified by the employer; *[or]*

16 (c) Requests an actuarial calculation where a calculation is not otherwise required;  
17 or

18 **(d) Intends to make a lump sum payment pursuant to (9) of this rule.**

19 (6) The amount of a UAL lump-sum payment that is held in a side account will be  
20 used to reduce the pension contributions that would otherwise be required from the  
21 employer making the UAL lump-sum payment. The amortized amount for each payroll  
22 reporting period shall be transferred from the side account to the appropriate employer  
23 reserve account.

1 (7) The minimum UAL lump-sum payment required to establish a new side account  
2 is the lesser of:

3 (a) 25 percent of the individual employer’s UAL calculated under OAR 459-009-  
4 0084 or 459-009-0085; or

5 (b) \$250,000.

6 (8) An employer with one or more existing side accounts may make additional UAL  
7 lump-sum payments into such side account(s).

8 (a) An employer may not make more than two additional UAL lump-sum payments  
9 per side account in a calendar year.

10 (b) Additional UAL lump-sum payments into an existing side account will not affect  
11 the amortization period of the existing side account.

12 (c) Adjustment to the employer’s contribution rates from a UAL lump-sum payment  
13 into an existing side account will be effective on July 1 of the calendar year following  
14 completion of the actuarial valuation for the year in which the additional deposit is made.

15 (9) An employer making a UAL lump-sum payment equal to or greater than \$10  
16 million, not sourced from a pension obligation bond, *[and electing]* must establish a  
17 new side account for the lump-sum payment if it:

18 (a) Elects an amortization period of 6 years, 10 years, or 16 years; or

19 (b) Chooses the year in which to begin the employer rate offset. *[must establish a*  
20 *new side account for the lump-sum payment.]*

21 (10) Each employer side account shall be charged an administration fee of \$1,500 for  
22 the year in which the side account is established, and \$500 per year thereafter.

1           (11) Side accounts shall be credited with earnings and losses in accordance with  
2 OAR 459-007-0530.

3           (12) Nothing in this rule shall be construed to prevent the PERS Board from taking  
4 action pursuant to ORS 238.225.

5           (13) Nothing in this rule shall be construed to convey to an employer making a UAL  
6 lump-sum payment any proprietary interest in the Public Employees Retirement Fund or  
7 in the UAL lump-sum payment made to the fund by the employer.

8           Stat. Auth.: ORS 238.650

9           Stats. Implemented: ORS 238.225 - 238.229

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 009 – PUBLIC EMPLOYER**

1 **459-009-0091**

2 **Unfunded Actuarial Liability Resolution Program**

3 **(1) The Unfunded Actuarial Liability Resolution Program offers employers a**  
4 **PERS resource checklist and the use of the Employer Rate Projection Tool to assess**  
5 **the potential impact on employer contribution rates with varying employer lump sum**  
6 **payments and amortization periods.**

7 **(2) An employer will meet the requirement for participation in the Unfunded**  
8 **Actuarial Liability Resolution Program when it submits an attestation confirming its**  
9 **use of the Employer Rate Projection Tool along with the resource checklist provided**  
10 **by PERS to form its own funding plan.**

11 **Stat. Auth.: ORS 238.650**

12 **Stats. Implemented: ORS 238.225 - 238.229**

OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 009 – PUBLIC EMPLOYER

1 459-009-0092

2 Employer Incentive Fund Program

3 The words and phrases used in this rule have the same meaning given them in

4 OAR 459-009-0086.

5 (1) When the PERS Board determines that a sufficient amount of money has  
6 been allocated to the Employer Incentive Fund, it shall open an application period by  
7 declaring:

8 (a) The date upon which the application period shall open; and

9 (b) The total amount of funds available for matching employer UAL lump-sum  
10 payments during the application period.

11 (2) The application period shall end at the earlier of:

12 (a) 12 months after the application period start date; or

13 (b) Once all funds available for matching employer UAL lump-sum payments  
14 declared in subsection (1)(b) of this rule have been paid out.

15 (3) Unless otherwise specified in this rule, all the requirements and timelines  
16 established in OAR 459-009-0084, 459-009-0085, and 459-009-0086 apply to UAL  
17 lump-sum payments made in association with the Employer Incentive Fund Program.

18 (4) During the first 90 days of an application period, applications for the  
19 Employer Incentive Fund Program will only be open to employers with an unfunded  
20 actuarial liability greater than 200 percent of the employer's PERS payroll. After the  
21 first 90 days have expired, applications will be open to all PERS participating  
22 employers.

1 (5) A PERS employer seeking participation in the Employer Incentive Fund

2 Program must submit an application to PERS and provide:

3 (a) The amount of the UAL lump-sum payment. The amount eligible for  
4 matching funds excludes:

5 (A) Side account deposits of less than \$25,000; and

6 (B) Any amount that will be applied to any outstanding transition liability;

7 (b) The date the employer made, or intends to make, the UAL lump-sum  
8 payment. Such date must be:

9 (A) No earlier than June 2, 2018; and

10 (B) No later than 12 months after the date the application period opens;

11 (c) A statement that the UAL lump-sum payment is not sourced from any type of  
12 borrowed funds;

13 (d) The information required under OAR 459-009-0084(2)(c), if the employer is  
14 making a UAL lump-sum payment under OAR 459-009-0084(2); and

15 (e) Proof of participation in the Unfunded Actuarial Liability Resolution  
16 Program as provided under OAR 459-009-0091.

17 (6) PERS shall allocate a match amount equal to 25 percent of the eligible  
18 employer UAL lump-sum payment amount indicated in subsection (5)(a) of this rule  
19 upon approval of the employer's application; however, such allocated match amount  
20 may not exceed the greater of:

21 (a) Five percent of the unfunded liability attributable to the employer applying to  
22 participate in the Employer Incentive Fund Program; or

23 (b) \$300,000.

1 (7) For the purposes of sections (4) and (6) of this rule, the unfunded actuarial  
2 liability calculated by the PERS consulting actuary for the most recent actuarial  
3 report prepared under ORS 238.605 as of the application period start date will be  
4 used.

5 (8) Notwithstanding section (6) of this rule, in the event that moneys in the  
6 Employer Incentive Fund are not sufficient to match the entire 25% of an employer's  
7 UAL lump-sum payment commitment, only available moneys will be used in the  
8 match.

9 (9) PERS shall process the applications and allocate matching funds based upon  
10 the order in which the applications are received.

11 (10) Except as otherwise provided in this rule, an employer will fail to qualify to  
12 participate in the Employer Incentive Fund Program, thereby forfeiting any allocated  
13 matching funds, if PERS does not receive the UAL lump-sum payment the employer  
14 has committed under subsection (5)(a) of this rule on the due date specified in the  
15 application. An employer may change:

16 (a) The amount of the UAL lump-sum payment indicated in its application.

17 (A) If the UAL lump-sum payment amount is increased, only the original amount  
18 will be eligible for matching funds; and

19 (B) If the UAL lump-sum payment amount is decreased:

20 (i) The new amount must be at least \$25,000; and

21 (ii) Any allocated matching funds will be decreased proportionately.

22 (b) The date of the UAL lump-sum payment indicated in its application.

23 (A) The employer must notify PERS at least five business days before the date  
24 the employer indicated it would make the payment; and

1 (B) The new payment date must be within 12 months after the date the  
2 application period opened.

3 (c) The rate offset date or UAL lump-sum payment amount for employers  
4 making UAL lump-sum payments under OAR 459-009-0084.

5 (A) The employer will need to request and pay for a new actuarial calculation;  
6 and

7 (B) The UAL lump-sum payment must be made within 12 months after the date  
8 the application period opens to remain eligible to receive matching funds.

9 (11) Once all the funds identified in subsection (1)(b) of this rule have been  
10 allocated, employers applying for matching funds will be placed on a waiting list.

11 (a) If moneys become available again during the same application period, the  
12 employers on the waiting list will receive matching allocations based upon the order  
13 in which their applications were received.

14 (b) If additional moneys become available on the last day of the application  
15 period, employers on the waiting list that are notified they will receive a matching  
16 allocation will have an additional five days to submit their UAL lump-sum payment.

17 (12) OAR 459-009-0084(8), 459-009-0085(4) and (5), and 459-009-0086(7) do not  
18 apply to UAL lump-sum payments receiving matching funds under this rule.

19 Stat. Auth.: ORS 238.650

20 Stats. Implemented: ORS 238.225 - 238.229





# Oregon

Kate Brown, Governor

## Public Employees Retirement System

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August 16, 2019

TO: Members of the PERS Board  
FROM: Stephanie Vaughn, Manager, Policy Analysis & Compliance Section  
SUBJECT: Application Cycle for Employer Incentive Fund Program

### **DISCUSSION**

Senate Bill 1566 (2018) established an Employer Incentive Fund (EIF) to encourage employers to make additional lump-sum payments into side accounts by providing matching funds for qualifying employer lump-sum payments. PERS has received a General Fund appropriation of \$100 million to the EIF for the 2019-2021 biennium to match employer lump-sum payments. Any funds remaining at the end of the biennium could be appropriated elsewhere by the Legislature. Given that the first 90 days of the application cycle is open only to employers with an unfunded actuarial liability (UAL) equal to 200% or more of their covered payroll, staff recommends opening the first application cycle as soon as possible in order to provide all employers the opportunity to receive matching funds before December 31, 2019. Deposits made before December 31, 2019, will be reflected in the 2019 valuation, upon which employer rates will be set for the 2021-2023 biennium.

The temporary rule requires the board to declare the date upon which the application cycle shall open, and the total amount of funds available for matching employer UAL lump-sum payments during the application cycle. Staff recommends opening the application cycle September 3, 2019; only the 200% UAL employers will be able to apply for the first 90 days and the application process will open to all employers beginning on December 2, 2019. Staff recommends maintaining a minimum amount of \$1,000 in the EIF at Treasury to cover any potential administrative fees, so of the \$100 million appropriation, \$99,999,000 will be available to match employer lump-sum payments.

By rule, the application cycle will end at the earlier of: (a) 12 months after the application cycle start date; or (b) Once all funds available for matching employer UAL lump-sum payments have been paid out. Therefore, if the application cycle opens September 3, 2019, the application cycle will end August 31, 2020, unless the entire \$99,999,000 is paid out before then.

### **BOARD OPTIONS**

The board may:

1. Pass a motion to “establish a date of September 3, 2019, to open the first Employer Incentive Fund Program application cycle to allocate and pay the \$99,999,000 currently available in matching funds.”
2. Direct staff to review one or more of the Board’s recommended changes and return with recommendations that more closely align with the Board’s direction.

**STAFF RECOMMENDATION**

Staff recommends the board choose Option #1.

- Reason: Opening the application cycle on September 3, 2019, will provide all employers the opportunity to apply for and receive matching funds before December 31, 2019.

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