



# Oregon

Kate Brown, Governor

## Public Employees Retirement System

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September 30, 2022

TO: Members of the PERS Board  
FROM: Stephanie Vaughn, Manager, Policy Analysis & Compliance Section  
SUBJECT: Adoption of IAP Optional Employer Account Contributions Rule:  
OAR 459-080-0050, *IAP Employer Account Contributions*

### OVERVIEW

- Action: Adopt the Individual Account Program (IAP) Optional Employer Account Contributions rule.
- Reason: Clarify that rule applies to IAP Optional Employer Account contributions.
- Policy Issue: None identified.

### BACKGROUND

Oregon Revised Statute (ORS) 238A.340 allows participating employers to contribute an additional 1% to 6% of an employee's salary to an employer account within the member's IAP for some or all its employees. This optional contribution is provided by employer agreement, which may be by policy or collective bargaining. Oregon Administrative Rule (OAR) 459-080-0050 covers specific issues related to the establishment and maintenance of these accounts. In order to distinguish the employer contributions to this optional account from contributions made to the IAP by an employer on behalf of its employees, staff has edited the rule by adding the word "optional" to the rule title and in the rule text, which will clarify that the rule only applies to employer contributions to the optional employer account in the IAP.

### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held remotely on August 24, 2022, at 2:00 p.m. No members of the public appeared to provide public comment. The public comment period ended August 30, 2022, at 5:00 p.m. One public comment letter was received. Aruna Masih, with Bennett Hartman, submitted public comment on August 30, 2022. A copy of her letter is included as Attachment 2.

In her comments, Ms. Masih writes on behalf of the PERS Coalition to express concerns with the need for the proposed change as well as potential unintended consequences. She provides a summary of the legislative history that created the IAP employer account in 2003, and notes that there have not been any problems with the way the employer account has been implemented in OAR 459-080-0050. Ms. Masih goes on to say that adding the word "optional" will have unintended consequences, using the example that such contributions are not optional if mandated by a collective bargaining agreement.

Regarding the concern about the need for the rule amendment, PERS' staff requested the change for purposes of clarifying the meaning of these types of contributions. The term "IAP optional

employer account” is widely used in agency rules and policies and has been since the inception of the Oregon Public Service Retirement Plan (OPSRP) IAP. By not including the term “optional,” a reader may assume the contributions refer to member contributions the employer can choose to make on behalf of an employee to the employee’s IAP member account (i.e., Employer-Paid-Pre-Tax (EPPT) contributions). IAP optional employer account contributions are credited to a member’s “OPSRP IAP optional employer account,” which is different than the “OPSRP IAP member account.” Also, omitting the term “optional” could lead to confusion for newer staff and employers who may think the IAP employer account contributions are required of all employers.

In regard to the concern about unintended consequences, staff notes that only six employers currently make these types of employer contributions. These participating employers made a decision to do so via collective bargaining agreements or written employer policies, not due to a mandate by PERS’ statutes. The term “optional” refers to the fact that the employer chose to bargain for or write into employer policy these additional employer contributions. Since the establishment of the Employee Pension Stability Accounts in Senate Bill 1049 (2019), staff have received a number of inquiries regarding the optional employer contributions and how they work, and suspect they are becoming a topic in negotiating collective bargaining agreements. For these reasons, staff concludes that adding the term “optional” before “employer account” provides clarification rather than confusion.

#### 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: Addition of the word “optional” throughout the rule will clarify to which type of employer contributions the rule applies.

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

#### RULEMAKING TIMELINE

July 22, 2022	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
July 22, 2022	PERS Board notified that staff began the rulemaking process.
July 22, 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.
August 24, 2022	Rulemaking hearing held remotely at 2:00 p.m.
August 30, 2022	Public comment period ended at 5:00 p.m.

September 30, 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 IAP Optional Employer Account Contributions rule, as presented.”
2. Direct staff to make other changes to the rule or explore other options.

### STAFF RECOMMENDATION

Staff recommends the PERS Board choose Option #1.

B.2. Attachment 1 - 459-080-0050, *IAP Employer Account Contributions*

B.2. Attachment 2 - Public Comment Letter dated 08-30-2022 from Aruna Masih