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

459-009-0090
Surplus Lump-Sum Payments by Employers

Purpose. The purpose of this rule is to establish procedures and requirements for the adjustment of employer contribution rates when an individual public employer that does not have an existing unfunded actuarial liability (UAL) makes a lump-sum payment. An employer with an existing unfunded actuarial liability must first submit a lump-sum payment for the full amount of that unfunded actuarial liability under OAR 459-009-0084 or 459-009-0085, as applicable, before the employer may make a payment under this rule.

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

(a) "Actuarial Surplus" means the excess of the actuarial value of an employer's assets over the employer's actuarial liability.

(b) "Allocated Actuarial Liability" means the actuarial liability calculated using the fair market value of assets.

(c) "Amortized Amount" means the amount of a Side Account used to offset contributions due from the employer.

(d) "IAP" means the Individual Account Program of the Oregon Public Service Retirement Plan.

(e) "Pension Program Contributions" means the total calculated employer contribution due in any reporting period for both the Chapter 238 and OPSRP pension programs, excluding any IAP or retiree health insurance program contribution due.

(f) "Surplus Lump-Sum Payment" means any employer payment that is:

(A) Not regularly scheduled;

(B) Not paid as a percentage of salary;

(C) Made for the express purpose of creating an actuarial surplus or increasing an existing actuarial surplus; and

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

(g) "UAL" or "Unfunded Actuarial Liability" means the excess of the actuarial liability over the actuarial value of assets.

(h) "UAL Lump-Sum Payment" means any employer payment:

(A) That is not regularly scheduled;

(B) That is not paid as a percentage of salary;

(C) That is made for the express purpose of reducing the employer's unfunded actuarial liability; and

(D) Where the employer has control over the timing or whether to make the payment.

(2) For employers with an existing UAL that wish to make a payment in excess of the existing UAL, the surplus lump-sum payment must be made after and separately from the UAL lump-sum payment and the provisions of this rule apply only to the surplus lump-sum payment.

(3) Limitation on surplus lump-sum payments. An employer may make only one payment per every three calendar years under the provisions of this rule.

(4) Minimum surplus lump-sum payment amount. If an individual employer elects to make a surplus lump-sum payment under this rule, the payment must result in a 50 basis point reduction in the employer's pension program contribution rate based on the individual employer's reported payroll in the most recent actuarial valuation.

(5) Maximum surplus lump-sum payment amount. If an individual employer elects to make a surplus lump-sum payment under this rule, the payment may not be greater than the amount required to bring the employer's lowest pension program contribution rate to zero based upon the individual employer's reported payroll in the most recent actuarial valuation.
(6) Requirements. In order to make a surplus lump-sum payment, an employer must comply with the process described in sections (7) through (15) of this rule.
(7) Initiating surplus lump-sum payment process. At least 45 calendar days before the date the employer intends to make a surplus lump-sum payment, the employer must notify the PERS Employer Liability Coordinator in writing that it intends to make a surplus lump-sum payment. The notification must specify:
(a) Whether the intended payment shall be for the maximum payment amount as provided in section (5) of this rule, or, if other than the maximum amount, the percent of payroll reduction in the individual employer's rate or dollar amount of the intended payment; and
(b) No more than two potential dates for the payment.
(8) PERS staff must notify the employer within five business days of receipt of the notification if the notification is incomplete or the process cannot be completed by the intended date(s) of the surplus lump-sum payment.
(9) Payment to the actuary. The PERS consulting actuary must provide an invoice charging the employer for the cost of the rate reduction calculation requested by the employer. At least 30 calendar days before the date the employer intends to make a surplus lump-sum payment, the employer must remit payment for the cost of the rate reduction calculation directly to the PERS consulting actuary according to the instructions on the invoice. Failure to remit payment according to the terms of this section may result in the PERS consulting actuary not completing the employer's rate reduction calculation by the proposed surplus lump-sum payment date.
(10) Calculation of the individual employer's actuarial liability. Upon receipt of a complete notification and verification of payment to the actuary for actuarial services, PERS staff shall request that the PERS consulting actuary calculate:
(a) The minimum amount of the surplus lump-sum payment under section (4) of this rule;
(b) The maximum amount of the surplus lump-sum payment under section (5) of this rule;
(c) The alternative percentage or dollar amount specified by the employer in its notification under section (7) of this rule; and
(d) The effect of each of the amounts calculated in subsections (a) to (d) of this section on the individual employer's contribution rate using the potential date(s) for payment specified by the employer in its notification.
(11) The calculations described in section (10) of this rule must be:
(a) Based on the individual employer's pension program contribution rate from the most recent rate setting actuarial valuation;
(b) Based on the covered salary, for the individual employer or as a proportion of the pool, as applicable, reported by the employer for the year of the most recent actuarial valuation; and
(c) Adjusted to reflect the effect of time from the most recent actuarial valuation to the intended date(s) of payment, using generally recognized and accepted actuarial principles and practices.
(12) Notification of calculation. PERS staff must notify the employer in writing of the results of the individual employer's calculation under section (10). In addition, PERS must send the employer a notification describing risks and uncertainties associated with making a lump-sum payment.
(13) Notification of payment. The employer or its agent must notify the PERS Employer Liability Coordinator in writing at least three business days before making a surplus lump-sum

payment. This notification must be in addition to the notification in section (7) of this rule and must specify the dollar amount of the payment and the date the employer intends to make the payment.
(14) Method of payment. A surplus lump-sum payment must be made by either electronic transfer or check payable to the Public Employees Retirement System.
(15) Receipt of payment. In order to adjust the employer contribution rate to that reported by PERS in section (12) of this rule, PERS must receive the correct funds no later than five business days after the corresponding intended date of the surplus lump-sum payment specified in the notification described in section (13) of this rule.
(a) If the surplus lump-sum payment is received by PERS on or before the intended date specified in the notification described in section (13) of this rule or within the five business days following the intended date, the new employer contribution rate shall be effective for payrolls dated on or after the first of the month following receipt of the payment by PERS.
(b) If the surplus lump-sum payment is received by PERS more than five business days after the intended payment date, the employer's contribution rate shall be adjusted in the next actuarial valuation based on the date of receipt of the payment.
(c) Except as provided in subsection (15)(d), if the surplus lump-sum payment received by PERS is other than any amount specified in the notification under section (13) of this rule, the employer's contribution rate shall be adjusted to the rate the payment amount fully funds using the actuarial calculation in section (10) of this rule.
(d) If the surplus lump-sum payment received by PERS is less than the minimum amount described in section (4) of this rule, or greater than the maximum amount described in section (5) of this rule, the funds shall be returned to the employer and no adjustment shall be made to the employer contribution rate.
(e) Nothing in this rule shall be construed to prevent the Board from:
(A) Adjusting employer contribution rates based upon the date of receipt of funds or errors in the notification described in section (12) of this rule; or
(B) Taking action pursuant to ORS 238.225.
(16) Actuarial treatment of the payment. For actuarial purposes, the surplus lump-sum payment made by the employer shall be treated as pre-funded contributions and additional assets for the payment of obligations of the employer under ORS Chapters 238 or 238A, rather than as a reduction of those obligations.
(17) Side Account. The surplus lump-sum payment shall be held in a Side Account for the benefit of the employer making the surplus lump-sum payment. The amortized amount for each payroll reporting period shall be applied from the Side Account to the Employer Contribution Account of the individual employer or of the employer actuarial pool in which the employer is participating, as applicable. The side account amortization period shall be equal to the remaining period that new Tier One and Tier Two gains and losses were amortized in the last rate-setting valuation.
(18) Crediting earnings or losses. Side accounts shall be credited with earnings and losses in accordance with OAR 459-007-0530.
(19) Nothing in this rule shall be construed to convey to an employer making a surplus lump-sum payment any proprietary interest in the Public Employees Retirement Fund or in the surplus lump-sum payment made to the fund by the employer.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.225 to 238.229

Impact of Payroll Size on Lump-Sum UAL Payment Amounts

Employer A - Large Payroll				
	Maximum	Minimum	Other	Other
Total Side Account	$250,000,000	$1,000,000	$5,000,000	$1,000,000
Combined Valuation Payroll	$350,000,000	$350,000,000	$350,000,000	$350,000,000
Amortization Factor	12.861	12.861	12.861	12.861
Side account rate (-2./3./4.)	-5.55%	-0.02%	-0.11%	-0.02%

Employer B - Medium Payroll				
	Maximum	Minimum	Other	Other
Total Side Account	$14,000,000	$1,000,000	$500,000	$100,000
Combined Valuation Payroll	$8,000,000	$8,000,000	$8,000,000	$8,000,000
Amortization Factor	12.861	12.861	12.861	12.861
Side account rate (-2./3./4.)	-13.61%	-0.97%	-0.49%	-0.10%

Employer C - Small Payroll				
	Maximum	Minimum	Other	Other
Total Side Account	$280,000	$70,000	$10,000	$5,000
Combined Valuation Payroll	$100,000	$100,000	$100,000	$100,000
Amortization Factor	12.861	12.861	12.861	12.861
Side account rate (-2./3./4.)	-21.77%	-5.44%	-0.78%	-0.39%

PERS Oregon Public Employees Retirement System

April 2017

OPSRP IAP Clean-Up Project – EAG Update

- The clean-up population is divided into multiple groups.

- First priority will be on the Just In Time population – members who have applied for retirement, withdrawal, or have a Data Verification Request pending.
    - Adjustments will generate invoices to the employer accounts in EDX.
    - PERS will create deposits for the employer accounts to "reimburse" for these invoices.
    - These deposits will appear on the employer account within 30 days from the date of the adjustments – depending on the statement cycle.

- Next priority will be on active members whose accounts have no data issues other than the missing IAP contributions on or after the Contribution Start Date. PERS will:
    - use .dat files to make corrections.
    - send each employer a list of employees to validate.
    - coordinate the correction schedule with each employer to ensure minimum workload impact.

- PERS technical staff is working on developing a tracking tool to track account corrections and generate financial reports.
    - Clean-up effort will begin as soon as the tracking tool is developed.

PERS Oregon Public Employees Retirement System

Employer Side Accounts

What are the laws/rules for side accounts?

The statutory authority for side accounts is ORS 238.229. The rules that set out the specific processes are:

- OAR 459-009-0084 for school districts and employers participating in the SLGRP;
- OAR 459-009-0085 for non-pooled employers; and
- OAR 459-009-0090 for employers that want to increase an existing surplus.

What is the current minimum limit?

The current minimum limit is $1 million or 25 percent of the employer's UAL, whichever is less.

When was the limit established and last reviewed?

The limit was established in 2002. It has not been reviewed since it was established.

How can the limit be changed?

The limit is set by OAR, so it can be changed through the normal rule amendment process. Any interested party can propose a rule amendment by contacting PERS with the proposed change and justification.

PERS will consider any reasonable request, keeping in mind that every lump-sum payment must go into a new side account (ORS 238.229(2)), with its own actuarial calculation, administrative fees ($2,500 the first year and $1,000 per year thereafter), contribution rate, and associated annual maintenance and reconciliation by PERS staff.

It is not cost effective for the employer or operationally efficient for PERS to establish small side accounts, which was the rationale for the minimum established in 2002. Employers with limited available funds may be better off maintaining their own reserve accounts, which remain accessible and under their control, rather than depositing those funds with PERS.

If individual employers have questions about establishing or growing side accounts, who do they ask?

Questions about side accounts can be directed to actuarial.services@pers.state.or.us.

What information is provided to employers when they ask about side accounts?

Employers will be provided with:

- An overview of the process, timing, and fees;
- The applicable OAR; and
- The "Lump-Sum Payment Considerations" document prepared by Milliman that describes some of the potential benefits and risks of making a lump-sum payment.

Oregon Public Employees Retirement System
Lump Sum Payment Considerations

Executive Summary

Establishing a side account via a lump sum payment is one of the most significant long-term decisions that an OPERS employer can make. If the funds for the lump sum payment are obtained from a pension obligation bond ("POB") then establishing a side account is a financial choice to trade a fixed payment (the POB repayment schedule) for a variable reward (an offset in OPERS employer contribution rates). The borrowed POB proceeds are invested in equities and other investment classes in the OPERS fund, with the investment policy set by the Oregon Investment Council (OIC). The OPERS fund has no guarantees for near-term or long-term future levels of investment return. The determination as to whether an employer ends up "money ahead" or "money behind" for establishing a side account will be closely linked to future PERS fund investment returns compared to POB borrowing costs over a limited time period. That determination will play out over a fairly short timeframe as investment returns in the first few years immediately after establishing a side account are highly influential in determining if an employer wins or loses in the long run on its financial decision. Once several years have passed since the establishment of the side account, enough of the side account's principal has been deployed as employer contribution rate offsets that even a significant reversal of the initial years' returns may not alter the winning or losing course set by early year investment results.

As noted above, the determination whether an employer will be a financial winner or loser from establishing a side account cannot be known in advance. In contrast, one consequence of a side account that can be known in advance is increased volatility in the employer's contribution rate. The largest source of contribution rate volatility for OPERS employers has been actual biennial investment performance compared to the long-term investment return assumption set by the PERS Board, in consultation with the system's actuary. Employer contribution rates are set such that over the long-term benefits for retired members are fully funded from the only two available sources of funding: contributions and investment earnings.

Benefits = Contributions + Investment Earnings

Current contribution rate levels are set in a manner that the benefit funding equilibrium noted above will occur if actual future investment earnings equal the long-term assumption. Of course, actual fund investment earnings in any given biennium will not equal the long-term assumption. Because of this, contribution rate adjustments are made every two years to "course correct" for actual recent investment experience. If investments underperform compared to the assumption, contribution rates will increase to account for assumed earnings not achieved. Of course, if investment returns outperform assumption then contribution rates will decrease. The magnitude of the contribution rate change is closely related to the amount an employer has invested in the PERS fund. Employers with side accounts have increased their investment levels by pre-paying a portion of their employer contributions for future employee payrolls. As such, the contribution rate adjustments for actual investment experience are necessarily larger for side account employers than those for employers that have not elected to pre-pay contributions via a side account. More detail on side accounts and the leveraging effect they have on employer contribution rates, and employer rate setting principles can be found in a March 2011 presentation to the PERS Board by the system actuary that is available at: *http://www.oregon.gov/pers/docs/financial_reports/0328_financial_modeling.pdf*

Lump Sum Payment Treatment by PERS

For non-pooled employers, a lump sum payment establishes a new side account for the employer. A portion of the side account is used each year to reduce the otherwise applicable employer contribution rate for pension liabilities.

For pooled employers, a lump sum payment first applies towards the remaining balance of any transition liability that is being amortized. If the lump sum payment exceeds the amount of any transition liability, a side account is established. A portion of the side account is used each year to reduce the otherwise applicable employer contribution rate for pension liabilities.

Once a side account is established, the portion of the fund used to offset contributions is calculated as the level percentage of payroll amortization payment that is expected to use the entire side account by the end of the side account amortization period. The amortization period is the same as used for the Tier 1/Tier 2 amortization base established in the most recent rate-setting actuarial valuation. For example, a side account created in 2012 or 2013 would be amortized over the same period used for the Tier 1/Tier 2 base established in the December 31, 2011 valuation. This results in an amortization period ending December 31, 2031. Each year, the side account is credited with actual regular account earnings or losses. At each biennial employer rate setting valuation, the remaining balance in the side account is re-amortized over the remaining amortization period.

The calculation of the contribution offset amounts uses the current assumptions and methods adopted by the PERS Board. Changes to these assumptions and methods in the future would change the amount of contribution offset calculated for an employer.

In essence, lump sum payments are treated as pre-paid contributions that are credited with the actual investment experience until they are used for otherwise required contributions. The amount used for otherwise required contributions is determined by the actuary following the methods outlined in this document. The employer is still responsible for making any remaining regularly scheduled contributions based on the rate calculated by the actuary.

Example. If an employer with a $20 million payroll makes a $10 million side account payment as of December 31, 2012, the immediate reduction in the employer rate would be 3.82%, which is the percentage of payroll that amortizes the $10 million payment over 19 years assuming a 3.75 percent growth in payroll and an 8 percent investment return.

Risks, Rewards and Limitations

Investment Return

The largest risk and potential for reward stems from the investment return on a side account. Each biennium, the side account is re-amortized based on the market value of the side account reflecting the actual earnings credited to the account and the actual payments from the account. As of its most recent biennial review conducted in July 2011, the PERS Board selected an eight percent annual investment return assumption. Actual returns will be much more volatile and may not ever equate to an average return of eight percent.

If the actual return on side account assets is greater than eight percent and all other assumptions are met, the reduction in employer contribution rates will be greater than the initial estimate. If the actual return is less than eight percent and all other assumptions are met, the reduction in employer contribution rates will be less than the initial estimate.

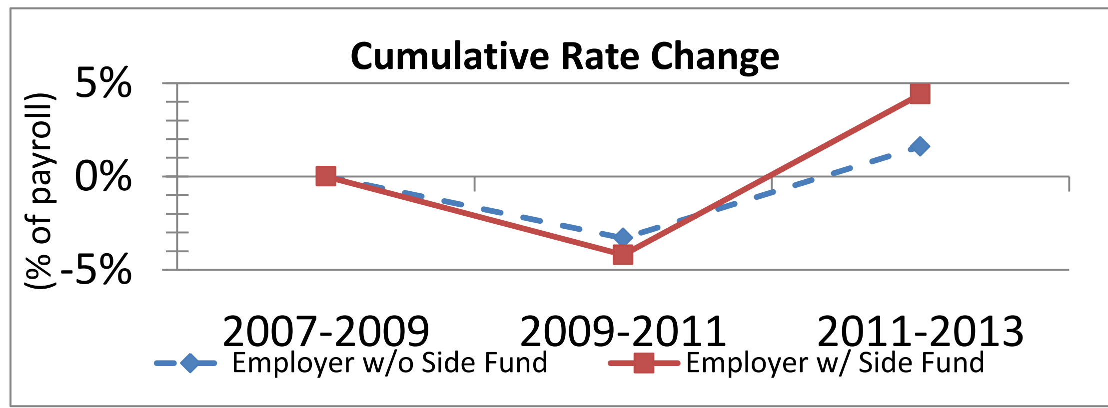
An employer issuing bonds or otherwise borrowing in order to make the lump sum payment, will need to assess the risk of side account investment returns against the fixed cost of borrowing. **Such a**

transaction is not analogous to refinancing a fixed-rate mortgage. Instead, it is an investment decision with a risk/reward profile similar to investing on margin.

Based on the experience of PERS employers who have previously created side accounts, as well as analyses performed by the PERS actuary, the following aspects of the risks associated with side accounts have become apparent:

- While side accounts are typically established with the expectation of reducing overall PERS-related contributions, if investment returns on the side account fall short of the assumption, the reduction in employer PERS rates could be less than the payments on bonds issued to finance the investment.
- Though side accounts are amortized over a long period, the investment return on the fund in early years has an outsized impact on the ultimate success of the strategy. This is because gains or losses in early years affect a relatively larger balance that has not yet been drawn down significantly by providing contribution offsets. Early year losses followed by gains in later years may cause the combination of side account reductions and bond repayments to produce a higher total PERS-related contribution than would have been the case without a side account. This can be the case even if the cumulative return over the life of the amortization period exceeds the interest rate charged on the bond.
- A side account introduces leverage and increases the volatility of the net PERS contribution rate paid by an employer. Employers with side accounts see larger rate reductions when investment returns are better than expected and larger rate increases when investments underperform compared to employers without side accounts.
- The impact of the side account rate offset is not limited by the "contribution rate collar" currently employed by the PERS Board.

The following illustration, presented at the August 28, 2012 PERS Board meeting, illustrates the increased volatility that a representative PERS employer saw in their net contribution rate over a three biennium period as a result of having a side account. The solid line represents the change in the employer's rate reflecting the experience of their side account; the dashed line represents the change in their rate they would have paid in the absence of a side account.



Payroll Changes

The amortization schedule for a side account depends on the assumed future growth in payroll from the latest actuarial valuation. Currently, that assumption is 3.75 percent annual growth in payroll. Differences between an employer's actual payroll compared to assumed levels will affect the remaining balance of the side account and the associated reduction in the employer rate in future years. A smaller growth in payroll will result in a greater reduction in employer rates in future years. A greater increase in payroll will result in a smaller reduction in employer rates in future years. Dramatic changes in payroll

compared to the assumed 3.75 percent annual growth could significantly change the pattern of a side account's amortization compared to the original expectation.

Example. The following table illustrates what happens to the employer rate reduction in year two under different investment return and payroll growth scenarios for the same example used above that resulted in a 3.82% reduction in employer rates in the first year. Note that side account rate reductions are calculated each biennium based on the appropriate rate-setting actuarial valuation.

Year Two Reduction in Employer Contribution Rate Under Various Scenarios				
		Actual Year One Annual Investment Return		
		0%	8%	16%
Payroll Growth	1.75%	3.60%	3.90%	4.20%
	3.75%	3.53%	3.82%	4.11%
	5.75%	3.45%	3.74%	4.03%

As shown above, if the assumptions are met, the employer rate reduction remains the same in year two. The rate reduction changes, however, if there is any variance from the assumptions. Note that the same factors that decrease side account rate reductions may also increase pension contribution rates (before reflecting rate reductions). In other words, not only could an employer receive less assistance from a side account in these scenarios, but in those same scenarios the employer may be responsible for higher contribution rates even prior to the reflection of the side account's rate offset. For example, when investment returns are low, the overall contribution requirement for PERS increases at the same time the rate reduction from the side account used to help pay those contributions decreases.

Sustained variation from the assumptions will compound the impact on employer rates. The following table illustrates what happens to the employer rate reduction in year four assuming the different investment return and payroll growth scenarios are sustained for the first three years.

Year Four Reduction in Employer Contribution Rate Under Various Scenarios Assuming all Scenarios are Sustained for Three Years				
		Actual Annual Years 1-3 Investment Return		
		0%	8%	16%
Payroll Growth	1.75%	3.18%	4.08%	5.12%
	3.75%	2.98%	3.82%	4.80%
	5.75%	2.80%	3.58%	4.50%

Limit on Reduction in Rate

The rate reduction associated with a side account can only be applied to the pension plan portion of the employer rate. That is, the rate attributable to the retiree healthcare plan must be paid directly and cannot be offset by a side account. While the rate reduction applies to PERS rates charged on both Tier 1/Tier 2 and OPSRP payroll, it cannot reduce the pension rate charged on a payroll category to less than zero. It also cannot be applied toward any IAP contribution that an employer may "pick up" for members.

Ultimately, the risk is that the side account can create a surplus that can't be used as quickly as originally scheduled and has less immediate impact on contribution rates than originally expected. This could

occur either through investment returns above expectation or by a significant reduction in payroll compared to assumption.

Assumption Changes

Every biennium, PERS reviews the assumptions and methods that are used in its actuarial valuations and frequently modifies them to better reflect the anticipated experience of the system. These assumptions and methods affect the value of the liabilities, the assets, and the unfunded accrued liability. They can also affect the pattern of the amortization of a side account. For example, reducing the investment return assumption or increasing the length of the amortization period would also reduce the employer rate reduction from a side account. Reducing the assumed payroll increase rate would increase the current employer rate reduction from a side account.

Other Changes

PERS is subject to changes from a variety of other sources that may also affect the impact of a side account on employer contribution rates including 1) current and future litigation; 2) future changes in PERS Board policies; 3) future changes in accounting and federal requirements; and 4) future changes in state statutes or in the interpretation of state statutes.

Amount of Lump Sum Payments

In accordance with the governing administrative rules, employers with an unfunded actuarial liability (UAL) in the most recent valuation that wish to make a lump sum payment can have the PERS actuary calculate the effect of three different payment amounts at up to two potential payment dates. The three payment amounts are 1) 100% of the employer's estimated UAL calculated in accordance with the rule, 2) the minimum payment amount per the rule, and 3) a separate amount specified by the employer.

While the administrative rule requires the illustration of a lump sum payment equal to 100% of the estimated UAL for an employer, please note that there is no compelling logic to equate the size of a lump sum payment with this amount. The estimated UAL is not a fixed debt of the employer; rather, it is a single point in time estimate of liabilities attributable to service already earned in excess of the assets accumulated to pay those benefits. This number can change significantly from one valuation to the next, particularly during times of asset volatility.

The size of a lump sum payment (and any associated side account created) should be determined based on an employer's risk tolerance and assessment of the investment decision, not solely in terms of a single point in time estimate of PERS funded status.

Other Considerations

In addition to these and other potential PERS risk variables that might affect the anticipated value of an employer's lump-sum payment in the future, employers should be aware of the following:

1. *Estimates of lump-sum payment amounts provided by PERS are based on the fair market value UAL as of the last valuation date (Dec. 31, 2011). The estimates do not represent the true UAL responsibility of the employer at the time the payment is made or in the future;*
2. *Employers making lump-sum payments will still be responsible for any and all pension liabilities attributed to them;*
3. *Lump-sum payments, once made, become the property of the trust, although employers will be given full credit for lump-sum payments in the calculation of their employer rates; and*

4. *PERS provides no guarantees regarding assumed earnings rates, the crediting of earnings, or other actuarial assumptions or methods that may affect the anticipated value of lump-sum payments.*

Oregon

Kate Brown, Governor

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April 18, 2017

To: State Agency Directors
From: Steven Patrick Rodeman, Executive Director
Re: Pending PERS Legislation and Potential Impacts to Member Benefits

Pending Legislation Impacting PERS Benefits

At this time, six bills that affect PERS benefits have moved out of a Senate Committee to the Joint Committee on Ways and Means (no PERS bills were heard or moved in the House):

Bill	Relating Clause	General Summary
SB 200	Relating to retirement credit for periods of service in uniformed services	Expands the definition of "uniformed service" to include former employees of US Public Health Service and NOAA as members who may purchase retirement credit.
SB 201	Relating to salary of employees of universities with a governing board under OPSRP	Clarifies that, for a specific period of time, salary paid to some OPSRP members who worked for universities but lived out-of-state will be included as salary for PERS benefit calculation.
SB 214	Relating to the eligibility of post-doctoral scholars for retirement benefits	Eliminates participation of post-doctoral scholars at universities and OHSU from PERS.
SB 559	Relating to the calculation of final average salary under PERS	Changes the Final Average Salary calculation from three to five years.
SB 560	Relating to public employee retirement	Redirects the six percent member contribution from the IAP to a member pension account. Establishes a cap of $100,000 on salary used for Final Average Salary.
SB 712	Relating to credit for periods of disability under OPSRP	Provides service credit to OPSRP members who receive workers' compensation disability payments and are reemployed by a PERS-covered employer.

Talking Points Regarding PERS Bills and Retirement

We appreciate that members are trying to plan for retirement, and that a variety of proposals may impact future benefits. Deciding whether to retire should involve thorough planning and preparation; possible PERS legislation should not be much of a factor for those deciding whether to retire.

- As we understand the 2015 Oregon Supreme Court *Moro* decision, legislation cannot reduce benefits earned before enactment, but may only reduce benefits earned for service after enactment.
  - Generally, member benefits increase with each additional month of service. If a member retires today, they'll get less in benefits than if they retire tomorrow; if legislation alters that paradigm, it probably fails the court's *Moro* decision.
  - Legislation may reduce the pace at which benefits grow for future service, but a member will still earn more in retirement benefits for future service, just "less more" than before reforms.
- If legislation is adopted, our assumption after *Moro* is that part of a member's total benefit at retirement will be based on the service and calculations BEFORE the legislation and part of their benefit attributed to service and calculation AFTER legislation. The exact impact will differ for every member, so any effect is necessarily dependent on an individual's circumstances.

PERS cannot and does not speculate on the impact of various proposals until they are adopted; the Legislature is the plan sponsor and their laws control the benefits we pay to our members.

KATE BROWN
Governor

March 31, 2017

Public Employees Retirement Board
11410 SW 68th Parkway
Tigard, OR 97223

Dear PERS Board Members:

As you know, I have had a number of conversations over the past two years about PERS and how we might address the current Unfunded Actuarial Liability while also ensuring the system is strong moving forward. I appreciate all your work, and the conversations you and your staff have engaged in with me and with my staff on these issues. Thank you for your service to Oregonians.

As I have talked to a number of PERS stakeholders, including public employees and employers, two things have stood out to me as potential changes which, while small, will strengthen the PERS system and may lead to increased rate stability. The first relates to a decision I hope you will make today. The second relates to a structural change I hope you will consider addressing at your May 26, 2017 Board meeting.

Today, you will decide how to allocate excess funds from the Contingency Reserve. Rather than allocating these funds equally across accounts, as you have done at times in the past, I urge you to instead allocate them exclusively to the Benefits in Force Reserve. Given the historic imbalance between the assets in that reserve and the present liability to retired members, your action to bolster that reserve seems to be the most prudent action.

At your next meeting, please discuss options for easing the requirements around the creation of employer side accounts. These accounts offer employers the opportunity to pre-pay for their future obligations to PERS. I have heard from a number of employers that there are barriers to creation of these accounts which force them to hold reserves for predicted PERS rate increases in their own internal accounts. Their own accounts are not always interest bearing, and those that are rarely see the returns gained by the PERS fund.

Increasing flexibility for public employers to dedicate their resources most efficiently to satisfy their future PERS obligations would maximize their options to resolve this difficult financial situation. Please work with staff to determine how side accounts could be made more accessible to public entities wishing to set aside smaller amounts of funds or to set aside funds on a more frequent basis.

Thank you for your work. I know that you all take seriously your responsibility to oversee our state's public retirement system and I appreciate your diligent work.

Sincerely,

Governor Kate Brown

KB/epg

Cc: Steve Rodeman, Executive Director, Oregon PERS

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

459-009-0084
Unfunded Actuarial Liability Lump-Sum Payments by Employers Participating in an Employer Actuarial Pool

Purpose. The purpose of this rule is to establish procedures and requirements for the adjustment of employer contribution rates when an individual public employer participating in an employer actuarial pool makes an unfunded actuarial liability lump-sum payment.
(1) Definitions. For the purposes of this rule:
(a) “Amortized Amount” means the amount of a Side Account used to offset contributions due from the employer.
(b) “Employer Actuarial Pool” means a grouping of employers for actuarial purposes such as the School District and the State and Local Government Rate Pools.
(c) “Fair Value UAL” means the unfunded actuarial liability calculated using the fair market value of assets.
(d) “Transition Unfunded Actuarial Liabilities” means the unfunded actuarial liabilities attributed to an individual employer for the period before entry into the Local Government Rate Pool, or the State and Local Government Rate Pool if the employer did not participate in the Local Government Rate Pool.
(e) “Unfunded Actuarial Liability” or “UAL” means the excess of the actuarial liability over the actuarial value of assets.
(f) “Unfunded Actuarial Liability Lump-Sum Payment” means any employer payment that is:
(A) Not regularly scheduled;
(B) Not paid as a percentage of salary;
(C) Made for the express purpose of reducing the employer’s unfunded actuarial liability; and
(D) Paid at the employer’s election instead of at the PERS Board’s direction.
(2) Lump-sum payment amount. If an individual employer elects to make a UAL lump-sum payment under this rule, the payment must be at least 25 percent of the individual employer’s UAL calculated under section (6) of this rule or $1 million, whichever is less. Alternatively, an employer may elect to pay 100 percent of the individual employer’s UAL calculated under section (6) of this rule.
(3) Requirements. In order to make a UAL lump-sum payment, an employer must comply with the process described in sections (4) through (10) of this rule.
(4) Initiating UAL lump-sum payment process. At least 45 calendar days before the date the employer intends to make a UAL lump-sum payment, the employer must notify the PERS Employer Liability Coordinator in writing that it intends to make a UAL lump-sum payment. The notification must specify:
(a) The amount of the intended lump-sum payment;
(b) Whether the intended payment is to be for 100 percent of the individual employer’s calculated UAL; and
(c) No more than two potential dates for the payment. PERS staff must notify the employer within five business days of receipt of the notification if the notification is incomplete or the process cannot be completed by the intended dates of the UAL lump-sum payment.

(5) Payment to the actuary. The PERS consulting actuary must provide an invoice charging the employer for the cost of the actuarial liability calculation requested by the employer. At least 30 calendar days before the date the employer intends to make a UAL lump-sum payment, the employer must remit payment for the cost of the UAL calculation directly to the PERS consulting actuary according to the instructions on the invoice. Failure to remit payment according to the terms of this section may result in the PERS consulting actuary not completing the employer's UAL calculation by the proposed UAL lump-sum payment date.
(6) Calculation of the individual employer's UAL. Upon receipt of a complete notification and verification of payment to the actuary for actuarial services, PERS staff shall request that the PERS consulting actuary calculate:
(a) 100 percent of the employer's share of the UAL for the employer actuarial pool in which the employer is participating. This calculation must be:
(A) Based on the fair value UAL of the actuarial pool in which the employer participates, from the most recent actuarial valuation;
(B) Based on the covered salary, as a proportion of the pool, reported by the employer for the year of most recent actuarial valuation; and
(C) Adjusted to reflect the effect of time from the most recent actuarial valuation to the intended date(s) of payment, using generally recognized and accepted actuarial principles and practices.
(b) The effect of the following UAL lump-sum payment amounts on the individual employer's contribution rate using the one or two potential dates for payment specified by the employer in its notification in section (4) above:
(A) 100 percent of the individual employer's UAL calculated in subsection (6)(a) of this rule;
(B) The UAL lump-sum payment amount specified by the employer in its notification, if provided; and
(C) The minimum amount of the UAL lump-sum payment under section (2) of this rule.
(7) Notification of calculation. PERS staff must notify the employer in writing of the results of the individual employer's calculation in section (6) above, including the effective date(s) for the reduced employer contribution rates based on the one or two potential dates for payment. In addition, PERS must send the employer a notification describing risks and uncertainties associated with the calculation of the individual employer's UAL.
(8) Notification of UAL lump-sum payment. The employer or its agent must notify the PERS Employer Liability Coordinator in writing at least three business days before making a UAL lump-sum payment. This notification shall be in addition to the notification in section (4) of this rule and must specify the amount of the payment and the date it intends to make the payment.
(9) Method of payment. A UAL lump-sum payment must be made by either electronic transfer or check payable to the Public Employees Retirement System.
(10) Receipt of UAL lump-sum payment. In order to adjust the employer contribution rate to that reported by PERS in section (7) of this rule, PERS must receive the correct funds no later than five business days after the corresponding intended date of the UAL lump-sum payment specified in the notification described in section (8) of this rule.
(a) If the UAL lump-sum payment is received by PERS on or before the intended date specified in the notification described in section (8) of this rule or within the five business days following the intended date, the new employer contribution rate shall be effective for payrolls dated on or after:
(A) The date specified in the notification; or

(B) The first of the month following receipt of the UAL lump-sum payment by PERS, whichever is later.
(b) If the UAL lump-sum payment is received by PERS more than five business days after the intended payment date, the employer's contribution rate shall be adjusted in the next actuarial valuation based on the date of receipt of the UAL lump-sum payment.
(c) If the UAL lump-sum payment received is other than any amount specified in the notification under section (8) of this rule, the employer's contribution rate shall be adjusted to the rate the payment amount fully funds using the actuarial calculation in subsection (6)(b) of this rule.
(d) If the UAL lump-sum payment received is less than the minimum amount described in section (2) of this rule, the funds will be returned to the employer and no adjustment will be made to the employer contribution rate.
(e) Nothing in this rule shall be construed to prevent the Board from:
(A) Adjusting employer contribution rates based upon the date of receipt of funds or errors in the notification described in section (7) of this rule; or
(B) Taking action pursuant to ORS 238.225.
(11) Actuarial treatment of the UAL lump-sum payment. For actuarial purposes, the UAL lump-sum payment made by the employer shall first be applied to any transition unfunded actuarial liabilities. The remainder of the payment shall be held in a side account to offset any pooled unfunded actuarial liabilities and shall be treated as pre-funded contributions and additional assets for the payment of obligations of the employer under ORS chapters 238 or 238A, rather than as a reduction of those obligations of that employer.
(12) Side Account. The amount of an UAL lump-sum payment shall be held in a Side Account for the benefit of the employer making the UAL lump-sum payment. The amortized amount for each payroll reporting period shall be transferred from the Side Account to the appropriate employer actuarial pool in which the employer is participating.
(13) Crediting earnings or losses. Side accounts shall be credited with earnings and losses in accordance with OAR 459-007-0530.
(14) Nothing in this rule shall be construed to convey to an employer making a UAL lump-sum payment any proprietary interest in the Public Employees Retirement Fund or in the UAL lump-sum payment made to the fund by the employer.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.225 to 238.229

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

459-009-0085
Unfunded Actuarial Liability Lump-Sum Payments by Employers Not Participating in an Employer Actuarial Pool
Purpose. The purpose of this rule is to establish procedures and requirements for the adjustment of employer contribution rates when an individual public employer not participating in an actuarial group makes an unfunded actuarial liability lump-sum payment.
(1) Definitions. For the purposes of this rule:
(a) “Amortized Amount” means the amount of a Side Account used to offset contributions due from the employer.
(b) “Fair Value UAL” means the unfunded actuarial liability calculated using the fair market value of assets.
(c) “Unfunded Actuarial Liability” or “UAL” means the excess of the actuarial liability over the actuarial value of assets.
(d) “Unfunded Actuarial Liability Lump-Sum Payment” means any employer payment that is:
(A) Not regularly scheduled;
(B) Not paid as a percentage of salary;
(C) Made for the express purpose of reducing the employer’s unfunded actuarial liability; and
(D) Paid at the employer’s election instead of at the PERS Board’s direction.
(2) Lump-sum payment amount. If an employer elects to make a UAL lump-sum payment under this rule, the payment must be at least 25 percent of the employer’s UAL calculated under section (6) of this rule or $1 million, whichever is less. Alternatively, an employer may elect to pay 100 percent of the employer’s UAL calculated under section (6) of this rule.
(3) Requirements. In order to make a UAL lump-sum payment, an employer must comply with the process described in sections (4) through (10) of this rule.
(4) Initiating UAL lump-sum payment process. At least 45 calendar days before the date the employer intends to make a UAL lump-sum payment, the employer shall notify the PERS Employer Liability Coordinator in writing that it intends to make a UAL lump-sum payment. The notification shall specify:
(a) The amount of the intended lump-sum payment;
(b) Whether the intended payment is to be for 100 percent of the employer’s calculated UAL; and
(c) No more than two potential dates for the payment. PERS staff must notify the employer within five business days of receipt of the notification if the notification is incomplete or the process cannot be completed by the intended dates of the UAL lump-sum payment.
(5) Payment to the actuary. The PERS consulting actuary must provide an invoice charging the employer for the cost of the actuarial liability calculation requested by the employer. At least 30 calendar days before the date the employer intends to make a UAL lump-sum payment, the employer must remit payment for the cost of the UAL calculation directly to the PERS consulting actuary according to the instructions on the invoice. Failure to remit payment according to the terms of this section may result in the PERS consulting actuary not completing the employer’s UAL calculation by the proposed UAL lump-sum payment date.

(6) Calculation of an employer's UAL. Upon receipt of a complete notification and verification of payment to the actuary for actuarial services, PERS staff shall request that the PERS consulting actuary calculate:
(a) 100 percent of the employer's UAL. This calculation must be:
(A) Based on the fair value UAL from the most recent actuarial valuation; and
(B) Adjusted to reflect the effect of time from the most recent actuarial valuation to the intended date(s) of payment, using generally recognized and accepted actuarial principles and practices.
(b) The effect of the following UAL lump-sum payment amounts on the employer's contribution rate using the one or two potential dates for payment specified by the employer in its notification in section (4) above:
(A) 100 percent of the employer's UAL calculated in subsection (6)(a) of this rule;
(B) The UAL lump-sum payment amount specified by the employer in its notification, if provided; and
(C) The minimum amount of the UAL lump-sum payment under section (2) of this rule.
(7) Notification of calculation. PERS staff must notify the employer in writing of the results of the employer's calculation in section (6) above, including the effective date(s) for the reduced employer contribution rates based on the one or two potential dates for payment. In addition, PERS must send the employer a notification describing risks and uncertainties associated with the calculation of the individual employer's UAL.
(8) Notification of UAL lump-sum payment. The employer or its agent must notify the PERS Employer Liability Coordinator in writing at least three business days before making a UAL lump-sum payment. This notification shall be in addition to the notification in section (4) of this rule and must specify the amount of the payment and the date it intends to make the payment.
(9) Method of payment. A UAL lump-sum payment must be made by either electronic transfer or check payable to the Public Employees Retirement System.
(10) Receipt of UAL lump-sum payment. In order to adjust the employer contribution rate to that reported by PERS in section (7) of this rule, PERS must receive the correct funds no later than five business days after the corresponding intended date of the UAL lump-sum payment specified in the notification described in section (8) of this rule.
(a) If the UAL lump-sum payment is received by PERS on or before the intended date specified in the notification described in section (8) of this rule or within the five business days following the intended date, the new employer contribution rate will be effective for payrolls dated on or after:
(A) The date specified in the notification; or
(B) The first of the month following receipt of the UAL lump-sum payment by PERS, whichever is later.
(b) If the UAL lump-sum payment is received by PERS more than five business days after the intended payment date, the employer's contribution rate shall be adjusted in the next actuarial valuation based on the date of receipt of the UAL lump-sum payment.
(c) If the UAL lump-sum payment received is other than any amount specified in the notification under section (8) of this rule, the employer's contribution rate shall be adjusted to the rate the payment amount fully funds using the actuarial calculation in subsection (6)(b) of this rule.
(d) If the UAL lump-sum payment received is less than the minimum amount described in section (2) of this rule, the funds will be returned to the employer and no adjustment will be made to the employer contribution rate.
(e) Nothing in this rule shall be construed to prevent the Board from:

(A) Adjusting employer contribution rates based upon the date of receipt of funds or errors in the notification described in section (7) of this rule; or
(B) Taking action pursuant to ORS 238.225.
(11) Actuarial treatment of the UAL lump-sum payment. For actuarial purposes, the UAL lump-sum payment made by the employer shall be treated as pre-funded contributions and additional assets for the payment of obligations of the employer under ORS chapters 238 or 238A, rather than as a reduction of those obligations.
(12) Side Account. The UAL lump-sum payment shall be held in a Side Account for the benefit of the employer making the UAL lump-sum payment. The amortized amount for each payroll reporting period shall be transferred from the Side Account to the employer's Employer Contribution Account.
(13) Crediting earnings or losses. Side accounts shall be credited with earnings and losses in accordance with OAR 459-007-0530.
(14) Nothing in this rule shall be construed to convey to an employer making a UAL lump-sum payment any proprietary interest in the Public Employees Retirement Fund or in the UAL lump-sum payment made to the fund by the employer.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.225 to 238.229