



Office of State Human Resources

ROY COOPER
Governor

BARBARA GIBSON
Director, State Human Resources

MEMORANDUM

TO: Agency Human Resources Directors
Agency Chief Fiscal Officers

FROM: Barbara Gibson, State Human Resources Director
Charles Perusse, State Budget Director

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Handwritten signature of Charles Perusse in cursive.

DATE: August 5, 2022 (Updated August 17, 2022. Updates are marked below.)

RE: Labor Market Adjustment Reserve

Session Law 2022-74 (the 2022 Appropriations Act) establishes the Labor Market Adjustment Reserve (LMAR), and Section 39.2 of that Act establishes how agencies can use LMAR funds. This memorandum discusses the key provisions governing use of funds in this reserve. This memo also discusses the structure for reporting use of those funds as required under the Appropriations Act.

Funding

The Appropriations Act placed in most agencies' budgets LMAR funding equal to the cost of providing a one percent (1%) increase of the agency's appropriated salaries and the increase in associated benefits. In addition, the Appropriations Act authorizes the Director of State Budget to adjust an agency's budgeted receipts to provide an equivalent one percent (1%) LMAR. [Sec. 39.2(c).] All LMAR funds are subject to the same requirements, as detailed below, regardless of funding source. [Sec. 39.2(c)]

Use of Labor Market Adjustment Reserve

The LMAR shall be used to "award salary adjustments to identified employees." [Appropriations Act, Sec. 39.2(a).] Each agency decides which employees should receive these salary adjustments. There is no need for OSHR to approve any LMAR decisions, but agencies' use of LMAR funds must be reported to OSHR as described in the "Reporting" section of this memo below. Because the Appropriations Act states that LMAR shall be used for "salary adjustments" [Sec. 39.2(a)], LMAR funds may not be used for non-salary pay administration actions, such as sign-on or retention bonuses.

The Appropriations Act's Joint Conference Committee Report provides further information about the legislative intent for use of LMAR funds. The Committee Report states for each agency, "The funds shall be used by agencies to address specific staffing issues by providing targeted salary increases to recruit and retain capable labor." [See, for example, page C 4 of the Conference Report.] The Appropriations Act specifies that this Committee Report language is "part of this act" and shall "be used to construe this act." [Sec. 43.2(a)]

Requirements for Use of the Labor Market Adjustment Reserve

The Appropriations Act sets the following requirements for use of LMAR funds:

- Any increase provided to an employee shall not exceed the number that is the greater of (i) fifteen thousand dollars (\$15,000) and (ii) fifteen percent (15%) of their current base salary. [Sec. 39.2(a)(1).]
- Any increase provided to an employee may not result in the employee's salary exceeding the maximum of the salary range associated with the position. [Sec. 39.2(a)(2).]
- No more than twenty-five percent (25%) of the agency's permanent employees may receive a salary increase from the funds appropriated for this purpose. [Sec. 39.2(a)(3).]
 - **Updated 8/17/2022:** Fiscal Research, which will receive the report on behalf of the legislature, interprets this provision as 25% of all positions, including vacant positions. OSBM and OSHR agree with this interpretation.
- Certain types of employees are not eligible for LMAR funding. See “Ineligible Employees” in this memo below. [Sec. 39.2(a)(4),(b)]
- Funds must be used to increase salaries paid to employees and shall not be used to supplant other funding sources or for any other purpose. [Sec. 39.2(a)(5)]

Ineligible Employees

Under the Appropriations Act, LMAR funds may not be used for certain types of employees.

- The Act excludes the State Highway Patrol and the State Bureau of Investigation from use of LMAR funds. [Sec. 39.2(b)]
- LMAR funds may not be used on positions whose salaries are set in law. [Sec. 39.2(a)(4)]
- LMAR funds may not be used on employees who are paid based on an experience-based salary schedule that is eligible to receive funding from the Pay Plan Reserve. [Sec. 39.2(a)(4)]

Concerning the last of these types of ineligible employees, agencies may wish to consult G.S. 143C-4-9, which establishes which employees are eligible to receive funding from the Pay Plan Reserve. Correctional officers and probation & parole officers are not eligible, since their positions are set in law.

Time-Limited Employees

The Appropriations Act does not prohibit use of LMAR funds on time-limited positions.

Timing of Increases

At the option of the agency, salary increases from the LMAR may be used to retroactively increase salaries starting on July 1, 2022, provided that the employee was in pay status on that day. This is the effective date of the Appropriations Act. [Sec. 43.8]

The Appropriations Act does not contain language that requires LMAR salary increases to be made by any particular date. By September 30, 2022, agencies must report all their uses of LMAR funds to date. [Sec. 39.2(d)] This report will be submitted to the Fiscal Research Division no later than October 31, 2022. [Sec. 39.2(d)] Agencies can continue to award LMAR increases after September 30 and October 31.

Employees on Leave

Employees that are out on Leave Without Pay are eligible for the LMAR increase when the employee is reinstated into the position. Funds are not forfeited. Agencies should increase the budgeted salary on the position and report that in the template with the name of the employee who is out on leave.

Vacant Positions

LMAR funds can be used on vacant positions. Like other uses of LMAR funds, this use must be reported under the process identified in the Appropriations Act; see the details below.

Indirectly Supported Positions

(The text in this paragraph was [updated 8/17/2022](#) to reflect the joint interpretation that the statute applies to 25% of positions, not 25% of employees.)

If an agency supports a position at another agency (for example, through DIT optimization), it may use LMAR funds to increase that position's salary, with the supported agency's consent. These employees count toward the supported agency's limit in the Appropriations Act that allows only 25% of each agency's permanent employee positions to receive a salary increase from LMAR funds. [Sec. 39.2(a)(3)] For example, if an agency with 100 employees provided LMAR salary increases to 25 employee positions, no LMAR increases to additional employees could be provided that would take the agency above the 25% limit, even if those LMAR funds were provided by another agency.

Reporting

Agencies must report use of LMAR (including funds from all sources, whether appropriated, highway, receipt, or federal) to OSHR by September 30, 2022. [Appropriations Act, Sec. 39.2(d)] OSHR will submit the combined agency responses to the General Assembly by October 31, 2022. [Sec. 39.2(d)]

The Act requires that agency reports be made on the uniform reporting template developed by OSHR. [Sec. 39.2(d)] To save time for agency staff, the template is set up to automatically add many pieces of information, such as job classification and the maximum of the salary range. Only the yellow-highlighted columns in the reporting spreadsheet require answers.

The reporting template includes, as required by the Act, a place where agencies must report "the market-based justification for the awarded salary increases." [Sec. 39.2(d)] The template allows agencies to select several common market-based justifications, then allows agencies a free-form field where they can offer other market-based justifications or other comments.

University and Community College institutions should report first to the University System or the Community College System, respectively. The system office will compile reports and send those reports to OSHR.

The Appropriations Act provision on reporting to OSHR does not say that it is limited to employers who are subject to the State Human Resources Act. [Sec. 39.2(d)] Therefore, OSHR will be prepared to receive reports from all agencies that received LMAR funds. If there is an interpretation from Fiscal Research that indicates an agency does not need to provide a report to OSHR, then OSHR requests a note so that OSHR knows not to expect a report from that agency.

Integrated HR-Payroll System Operational Procedures

- Agencies must process a salary adjustment action (ZC), using the new reason of Labor Market Adjustment Reserve (38).
- BEST Shared Services will process mass actions for agencies that meet the requirements on a current basis. Any mass request must be submitted prior to monthly payroll initialization. Please open a ticket with the OM/PA Team for any questions.
- To report vacant positions receiving LMAR funds, include them on the agency spreadsheet with “Vacant” in the employee name column and the budgeted salary in the “Current Salary” field.

Funding Sources

In accordance with G.S. 143C-6-6, payments on behalf of employees for salary increments, legislative salary increases, longevity payments, and required employer salary-related contributions (e.g. retirement benefits, social security, etc.) shall be paid from the General Fund or the Highway Fund only to the extent of the proportionate part paid from the General Fund or Highway Fund, in support of the salary of the employee; the remainder of the employer's contribution requirements shall be paid from the same source that supplies the remainder of the employee's salary.

Questions about the Labor Market Adjustment Reserve

If you have any questions about LMAR, please contact Ronnie Condrey of OSHR at Ronnie.Condrey@nc.gov or Lanier McRee of OSBM at Lanier.McRee@osbm.nc.gov.

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