Milwaukee County

Department of Human Resources

INTER-OFFICE COMMUNICATION

Date: June 24, 2026

To: Marcelia Nicholson, Chairwoman, Milwaukee County Board of Supervisors

From: Erika Bronikowski, Retirement Plan Services Director

Subject: Review of OBRA Plan in Response to 2026 Budget Amendment 09

Request

During the 2026 Budget process, Budget Amendment 09 was approved which included the following request:

"Milwaukee County established the Omnibus Budget Reconciliation Act of 1990 (OBRA) Pension Plan in 1991 to provide retirement coverage for part-time, seasonal, and temporary employees who are not eligible for the County's main pension system. Administered by the Employees' Retirement System (ERS), the OBRA Plan is fully funded by the County, which also precludes paying the employer portion of FICA, offsetting its contributions. Employees likewise do not pay the 6.2% Social Security payroll tax.

Most OBRA participants do not accrue sufficient service to vest in a defined benefit, typically receiving small cash payouts after five years of inactivity or having funds escheated to the State if unclaimed. This structure often results in minimal retirement benefits for covered employees.

To improve long-term retirement security, the Department of Human Resources, working with the Offices of Corporation Counsel, Strategy, Budget and Performance, and the Comptroller, is requested to develop a proposal for a "soft close" of the OBRA Plan. This approach would avoid the complexities associated with fully terminating the OBRA Pension Plan to eligible participants. The plan should explore enrolling new hires in Social Security while preserving obligations to current members. A report outlining recommendations, fiscal impact, and implementation steps is requested to be submitted to the County Board no later than the July 2026 meeting cycle."

Executive Summary

The OBRA Plan provides legally required retirement coverage for seasonal employees who are not covered by Social Security. While the plan satisfies federal requirements, most benefits are small, many participants do not claim their benefits, and the Plan requires ongoing administrative work. A soft close may be possible, but only if affected employees are moved into Social Security or another qualifying replacement plan. That process would likely require modification of Wisconsin's Section 218 Agreement, a participant referendum, legal review, consultant support, and multiple years to complete.

Background

Milwaukee County sponsors multiple tax-qualified defined benefit plans for its workforce. The Employees' Retirement System (ERS) is the primary defined benefit plan and is required to comply with all Internal Revenue Code provisions governing governmental defined benefit plans. In response to 2023 Wisconsin Act 12, Milwaukee County froze ERS to new hires after December 31, 2024, and began enrolling eligible employees in the Wisconsin Retirement System (WRS) starting in 2025.

The County also sponsors the Omnibus Budget Reconciliation Act of 1990 (OBRA) Retirement System, a separate tax-qualified defined benefit plan created to comply with federal OBRA 1990 requirements. OBRA serves part-time, seasonal, and temporary workers who are not eligible for ERS or Social Security. OBRA is overseen by the Pension Board and administered by Retirement Plan Services (RPS).

The OBRA Plan functions as a federally-required Social Security replacement plan. Under federal law, State and local government employees must be covered by Social Security unless they participate in a qualifying public retirement system. Milwaukee County satisfied this requirement by establishing OBRA. As a result, OBRA employees do not participate in Social Security, and neither the County nor the OBRA employees pay FICA tax.

During the 2026 Budget process, the County Board requested information regarding a soft close of the OBRA system. The following provides an initial overview of the soft close option for the County Board to consider, however it should be noted that there are other options available such as a hard freeze of the OBRA plan or the creation of a 457(b) Social Security replacement plan that could take the place of the OBRA plan.

As noted in this report, additional considerations, cost estimates, legal review, and further analysis will be needed before taking steps to change this policy.

Current OBRA Plan Structure and Concerns

Concerns have been raised regarding the OBRA benefit related to awareness and understanding of the benefit, value of benefits earned by OBRA covered employees, portability of benefit, and the relative size of administrative costs versus the value of benefits paid.

Membership. The OBRA retirement system provides benefits to seasonal employees of Milwaukee County who are not covered by Social Security. Seasonal employees eligible for OBRA typically include the following:

Airport Ground Worker Seasonal
Airport Worker - Seasonal
Aquatic Program Supervisor Seasonal
Assistant Head Lifeguard Seasonal
Food Service Operator Seasonal
Head Lifeguard Seasonal
Heritage Farm Attendant Seasonal
Horticulturist I Seasonal
Lifeguard Seasonal
Office Assistant I Seasonal
Park Athletic Official Seasonal
Park Patrol Seasonal
Park Worker III, IV, V Seasonal
Zoo Worker II, III, IV, V, VI Seasonal
ZooKeeper Seasonal

Benefit Design. The OBRA retirement system is completely funded by Milwaukee County contributions and investment returns (no employee contributions). OBRA benefits are earned by eligible employees based on a formula. Employees in the OBRA system are vested immediately and the benefits paid are owed to them at the designated date unless they pass away prior to that date. There are no death benefits in OBRA.

Annuity Formula: 2% x covered salary x number of years the member is employed = Annuity

Lump sum Conversion: Annuity x actuarial present value factor = lump sum

Payment Types and Timing. OBRA payments fall into two categories: annuities and lump sums. Individuals who have earned a benefit that has a net present value less than $5,000 are paid a lump sum. Individuals whose benefits have a present value above $5,000 are paid an annuity.

Annuity eligible members are paid their annuity at age 65. If they continue working past age 65, their annuity is recalculated annually to incorporate new service as they continue working.

Lump sum eligible members are paid at the earlier of two dates: age 65 or after being absent from service for five years. If the lump benefit is under $1,000, it is paid to the individual or, if no election is received, it is escheated to the State of Wisconsin Department of Revenue after five years, and the individual can collect their funds on the WI-DOR unclaimed funds site. If the lump sum benefit is over $1,000, it is paid to the individual or, if no election is received, their benefit is forced out of OBRA into an IRA in the individual's name. The benefit is calculated as of the date the individual is eligible to receive it and not recalculated unless that individual returns to service.

Similar to late retirement annuities, individuals who continue to work beyond retirement age 65 are entitled to receive their benefit. As they continue working, their lump sum benefits are recalculated each year that they continue working in OBRA.

Annual Cost. The County's annual contribution to OBRA has averaged approximately $438,000 since 2019. The portion of administrative costs attributable to OBRA has averaged $194,000 each year since 2019. OBRA administration requires relatively limited staff time compared to ERS but still represents ongoing operational responsibilities for RPS.

	County Contribution Made	Administrative Costs	Total Benefit Payments	Total Amount Escheated	Number of Payments Escheated	Total Seasonals Employed in the Year	Annuitants at end of year	Number of Lump Sums Processed (not escheated)
2024	$425,000	$180,371	$311,664	$14,840	200	1,228	63	387
2023	$186,000	$182,773	$459,062	$9,947	221	1,172	60	493
2022	$203,000	$187,298	$279,165	$9,683	203	988	63	199
2021	$759,000	$172,020	$265,473	$8,783	201	967	62	204

2020	$536,000	$220,575	$265,265	$6,541	297	716	56	271
2019	$519,000	$220,924	$312,584	$11,691	352	1,181	56	356

<u>Sample Member Data.</u> The average amount of a lump sum paid from the OBRA system over the past five years is $501. This is inflated by the lump sums paid to individuals over 65:

	Number of Lump Sums Since 2019	Total Lump Sums Since 2019	Average
Under 65	1,632	$524,841.71	$321.59
Age 65 and Over	563	$640,785.78	$1,138.16
Total	2,195	$1,100,079.07	$501.17

It has been noted that a large percentage of OBRA lump sums are not paid directly to the individual owed because RPS cannot locate them. OBRA lump sums are payable five years after a member's last termination of service. RPS will then attempt to pay that individual five times (annually, over five years) and if the individual does not respond, their benefit is escheated to the Wisconsin Department of Revenue and can be collected by the individual on the unclaimed funds site.

Sample year: 2024 escheatments. Seasonal employeess whose final year of employment was in 2013: 422.

In early 2019, these small lump sum cashouts became eligible for payment. After five annual attempts, the unclaimed benefits were escheated. Benefits are typically unclaimed because RPS is unable to locate former employees.

Year Terminated	**Over $5,000 (future Annuity)**	**$200 - $5000 Lump Sum**	**Under $200 Lump sum**
2013	5	75	347

Mailing Year	**Remaining from 2013 Terminations:**	**Lump Sums paid $200 - $5,000**	**Lump Sums Under $200**
2019 (first mailing)	422	39	108
2020	275	1	28
2021	246	2	0
2022	244	0	1
2023	243	6	19
2024 (final escheatment notice)	218	4	16
Escheated Late 2024	198 total	23	175

Of the 422 individuals eligible to receive lump sum payments in 2019, 198, or nearly 47%, had benefits escheated after five annual unsuccessful outreach attempts in 2024.

Definitions

Soft close or soft freeze: closes the plan to new entrants while allowing current members to continue earning benefits.

Hard freeze: stops future benefit accruals for current members and prevents new entrants.

Plan termination: ends the plan after all liabilities are addressed, benefits are paid or transferred, and required legal steps are completed.

457(b) Social Security replacement plan: a defined contribution alternative designed to satisfy federal Social Security replacement requirements.

Considerations for a Soft Freeze of OBRA

Given the recent soft freeze to Milwaukee County's ERS, it is worthwhile considering options for the future of OBRA. In 2025, Milwaukee County became a covered employer under the WRS, which means that all new employees who meet the applicable eligibility requirements are covered by the WRS. There are some seasonal employees who are expected to meet the WRS eligibility requirements who will be moved into the WRS and covered by Social Security upon enrollment in WRS. The overwhelming majority of seasonal employees are not expected to meet eligibility requirements for the WRS, so they would remain in OBRA and not be covered by Social Security. As such, it should be noted that closing the OBRA system would leave many seasonal employees with no employer-provided pension benefit, and the County would have to cover them under Social Security.

OBRA employees are, by definition, not covered by Social Security. Milwaukee County's OBRA plan is a Social Security replacement plan created in response to the federal OBRA 90 Act. According to the Social Security Administration: "The Omnibus Budget Reconciliation Act of 1990 (OBRA 90) imposed mandatory Social Security coverage on State and local government employees beginning July 2, 1991 who are not (1) already covered for Social Security under an agreement, or (2) members of a retirement system which meets certain Treasury regulations or requirements. This provision is intended to ensure that all public employees have some type of retirement protection, either obtained as part of Social Security or through a plan offered by the employer."

Milwaukee County addressed this federal requirement by creating the OBRA 1990 Retirement System of The County of Milwaukee to comply with Internal Revenue Service regulation section 31.3121(b)(7).-2(d)(1)(i), which implements Internal Revenue Code section 3121(b)(7)(F), as created by sec. 11332 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, 104 Stat. 1388.

Based on these federal requirements, there are limited options for the County to consider related to the future of OBRA. A soft close of the OBRA plan is an option that may address concerns related to the OBRA plan: affected employees will likely have a much better understanding of Social Security than the OBRA plan and administrative costs incurred by the Retirement Plan Services team to administer OBRA would be reduced in the long-term. It should be noted that covering employees with Social Security will have its own costs paid by Milwaukee County and paid by this group of employees.

<u>Potential Pathway to Soft Close OBRA</u>

Step 1. Provide Social Security Coverage in Lieu of OBRA Coverage through Modification of 218 Agreement (if approved by referendum): Removing OBRA coverage for employees would require covering them under Social Security to comply with federal law. Covering these employees under Social Security is only permissible with a Modification of Wisconsin's Section 218 Agreement.

In 1951, Congress added Section 218 to the Social Security Act, which allowed a state to independently decide whether to cover some or all of its employees under Social Security. All States have a Section 218 Agreement that extends Social Security and Medicare coverage to State and local government employees. Within each State, there is a state administrator who works closely with SSA and the IRS to address the coverage and employment tax issues affecting employees.

Amending the 218 Agreement is a complex process that, even if undertaken, may not result in Social Security coverage and may require the continuation of OBRA.

A modification of Wisconsin's 218 agreement requires a request to the Governor's Office and a referendum for the OBRA members administered by Milwaukee County.

> 1a. Request to the Governor's Office regarding Modification of Wisconsin's 218 Agreement. Under federal law, state and local employees are covered by Social Security only if their positions fall within a coverage group included in the State's 218 Agreement. Wisconsin's agreement excludes Milwaukee County's seasonal employees and if Milwaukee County wants these employees to participate in Social Security, the State would need to submit a formal Modification to its 218 Agreement.
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> 1b. Referendum. Referendums require the development of ballots, voting procedures and methodology. There are two referendum options:
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> *Majority referendum: OBRA members vote either to all be covered under Social Security or all not be covered. A majority of OBRA employees employed at the time of the election notice AND at the time of the election must vote in favor to pass. If the OBRA members reject the referendum, the County cannot hold another referendum for a year. If passed, all OBRA members would become covered by Social Security and the OBRA plan could be terminated. If not passed, OBRA would have to continue. The decision cannot be bifurcated among existing and new seasonal employees. They would all be covered by Social Security or none would.*
>
> *OR*
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> *Divided referendum: OBRA members who vote to be covered by Social Security will be covered and the members that do not vote for coverage will not be covered by Social Security and continue in OBRA. Under this second referendum option, new OBRA members will be covered by Social Security and existing OBRA employees would have coverage based on their choice in the referendum.*

Upon successful modification of Wisconsin's 218 agreement to provide Social Security coverage for OBRA employees, a soft freeze may be considered.

Step 2. Soft Freeze: A soft freeze of a defined benefit plan includes stopping new entrants from entering the system and allowing only individuals who were in the plan to continue benefit accruals. If new employees who would have otherwise been covered by OBRA were no longer eligible to enter the OBRA system, they would need to be covered by Social Security or another Social Security-equivalent plan. During a soft freeze of a Social Security replacement plan, there are employees who will continue to participate in the OBRA plan working alongside employees who are covered by Social Security.

Under a soft freeze, once all benefits are earned by the remaining population and eventually paid out, all plan liabilities are addressed, and the plan can be terminated.

Step 3. Plan Termination: Terminating a qualified governmental defined benefit plan means that the plan effectively ceases to exist when certain processes are completed. Under a plan termination, no new members are added, existing members are paid their benefits, and existing annuitant liabilities are assumed by the purchase of annuity contracts (typically through an insurance company).

> 3a. Full funding. OBRA would need to be fully funded by Milwaukee County if terminated.
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> 3b. Address Lump Sums Liabilities. RPS (or a third party hired by the County) would need to pay out all benefits in the year of Plan termination.
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> 3c. Address Annuities in Payment Status. A provider would need to be identified to take over administration of the annuities in payment status.
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> 3d. IRS Determination Letter. A determination letter application should be filed with the IRS and a determination letter received to ensure that the termination is completed correctly.

As explained above, if new employees who would have otherwise been covered by OBRA were no longer eligible to enter the OBRA system, they would need to be covered by Social Security or another Social Security-equivalent plan.

<u>Cost of Social Security Coverage for Seasonals</u>

If current or future seasonal employees no longer earn service in OBRA (or a qualified Social Security Replacement Plan), they would need to be covered by Social Security. This includes a cost to the employer and a cost to the employees. A fiscal analysis will be included under separate cover that details the costs associated with closing the OBRA plan and providing Social Security coverage for seasonal employees.

<u>Summary</u>

The OBRA retirement system satisfies a federal requirement by providing retirement coverage for seasonal, part-time, and temporary employees who are not covered by Social Security or another qualifying retirement system. Concerns have been raised about the current OBRA benefit because many benefits are small, the benefit has limited portability, and members may have difficulty understanding how it fits into their broader financial wellness and retirement planning.

A soft close of OBRA is possible, but the County cannot simply stop enrolling eligible employees in the Plan unless those employees are covered by Social Security or another qualifying Social Security replacement plan. Moving OBRA members to Social Security would likely require significant legal review, coordination with the State to modify Wisconsin's Section 218 Agreement, a participant referendum process, payroll and administrative changes, and consultant support.

A soft close would also take multiple years to complete and would involve one-time implementation costs, staff time across multiple departments, and ongoing employer Social Security costs. Employees covered by Social Security would also begin paying the employee share of Social Security taxes.

Given the concerns with the current OBRA benefit, a change may still be appropriate. Options for further review include a soft close, a hard freeze, or transition to a Deferred Compensation/457(b) Social Security replacement plan. Any recommended change should include additional legal analysis, fiscal estimates, implementation steps, and a timeline for County Board consideration.

CC: Supervisor Steve Taylor, Chairman, Committee on Finance
Supervisor Deanna Alexander, Chairperson, Committee on Personnel
David Crowley, County Executive
Claire Miller, Interim Chief Human Resources Officer
Mary Jo Meyers, Chief of Staff, Office of the County Executive
Aaron Hertzberg, Director, Department of Administrative Services
Nick Sinram, Budget and Management Director, Office of Strategy, Budget, and Performance
Liz Sumner, Comptroller
Jennifer Folliard, Director of Audit, Office of the Comptroller
Steve Cady, Research and Policy Director, Office of the Comptroller
Scott Brown, Corporation Counsel