

**TEACHER RETIREMENT SYSTEM OF TEXAS MEETING
BOARD OF TRUSTEES
AND
POLICY COMMITTEE**

(Mr. Colonna, Chairman; Mr. Barth; Ms. Clifton; Mr. Kelly; & Mr. McDonald, Committee Members)

AGENDA

**December 13, 2012 – 10:00 a.m.
TRS East Building, 5th Floor, Boardroom**

*The December 13, 2012 meetings of the TRS Board of Trustees and Policy Committee will be held by telephone conference call as authorized under Texas Government Code Section 551.130. The Board and Policy Committee intend to have quorums physically present at **1000 Red River Austin, Texas 78701 in the TRS East Building, 5th Floor, Boardroom.***

1. Consider the approval of the proposed minutes of the September 13, 2012 committee meeting – Joe Colonna.
2. Discuss and consider recommending to the Board final adoption of proposed amendments to the following TRS rules in Subchapter A, Retiree Health Care Benefits (TRS-Care), Chapter 41, Health Care and Insurance Programs of Title 34 of the Texas Administrative Code – Clarke Howard:
 - A. Rule § 41.2, relating to additional enrollment opportunities;
 - B. Rule § 41.5, relating to payment of contributions; and
 - C. Rule § 41.7, relating to effective date of coverage.
3. Discuss and consider authorizing for public comment publication in the *Texas Register* proposed amendments to the following TRS Rules in Title 34 of the Texas Administrative Code:
 - A. Chapter 23 (Administrative Procedures) – Tim Wei:
 - i. Rule § 23.7, relating to the Code of Ethics for Consultants; and
 - ii. Rule § 23.8, relating to the Expenditure Reporting by Consultants, Agents, Financial Advisors, Financial Services Providers, and Brokers.
 - B. Chapter 25 (Membership Credit) – Rebecca Smith:

- i. Rule § 25.1, relating to Full-time Service;
 - ii. Rule § 25.6, relating to Part-time or Temporary Employment;
 - iii. Rule § 25.21, relating to Compensation Subject to Deposit and Credit;
 - iv. Rule § 25.43, relating to the Cost for Unreported Service or Compensation;
 - v. Rule § 25.47, relating to Deadline for Verification; and
 - vi. Rule § 25.81, relating to Out of State Service Eligible for Credit.
- C. Chapter 31 (Employment After Retirement) – Rebecca Smith:
- i. Rule § 31.14, relating to One-half Time Employment; and
 - ii. Rule § 31.41, relating to Return to Work Employer Pension Surcharge.
- D. Rule § 41.4, relating to the Employer Health Benefit Surcharge of Subchapter A, Retiree Health Care Benefits (TRS-Care) of Chapter 41, Health Care and Insurance Programs – Rebecca Smith.
- E. Rule § 47.10, relating to Determination of Whether an Order is a Qualified Domestic Relations Order of Chapter 47, Qualified Domestic Relations Orders – Rebecca Smith.

NOTE: The Board of Trustees (Board) of the Teacher Retirement System of Texas will not consider or act upon any item before the Policy Committee (Committee) at this meeting of the Committee. This meeting is not a regular meeting of the Board. However, because the full Policy Committee constitutes a quorum of the Board, the meeting of the Committee is also being posted as a meeting of the Board out of an abundance of caution.

Tab 1



Minutes of the Policy Committee
September 13, 2012

The Policy Committee of the Board of Trustees of the Teacher Retirement System of Texas met on September 13, 2012, in the boardroom on the Fifth Floor of the East Building of TRS offices located at 1000 Red River Street, Austin, Texas 78701. The following committee members were present:

Committee members present:

Joe Colonna, Chair
Todd Barth
Charlotte Clifton
David Kelly
Eric McDonald

Other board members present:

Karen Charleston
Chris Moss
Anita Palmer
Nanette Sissney

TRS executives and other staff present:

Brian Guthrie, Executive Director
Ken Welch, Deputy Director
Conni Brennan, General Counsel
T. Britton Harris IV, Chief Investment Officer
Jerry Albright, Deputy Chief Investment Officer
Amy Barrett, Chief Audit Officer
Howard Goldman, Director of Communications
Betsey Jones, Director of Health Care Policy and Administration
Dinah Arce, Senior Auditor
Jase Auby, Chief Risk Officer
Mohan Balachandran, Managing Director – Risk Management and Asset Allocation
Sylvia Bell, Director of Investment Operations
Michelle Bertram, Administrative Assistant, Communications
Patricia Cantú, Director – Investment Business Management
Chi Chai, Senior Managing Director – External Private Markets
Mary Chang, Assistant General Counsel
Chris Cutler, Director of Network Infrastructure and Support
Dennis Gold, Assistant General Counsel
Brian Gomolski, Senior Investment Auditor
Tom Guerin, Manager, Benefit Counseling
Katy Hoffman, Director – External Public Markets
Janis Hydak, Managing Director – Macro, Risk, Quant and Thematic Strategies

Bob Jordan, Director – TRS Health & Insurance Benefits
Dan Junell, Secretary to the Board and Assistant General Counsel
Lynn Lau, Assistant Secretary to the Board and Program Specialist
Scot Leith, Manager of Investment Accounting
Denise Lopez, Assistant General Counsel
Rebecca Merrill, Special Advisor to Executive Director and Manager of Special Projects
Hugh Ohn, Director of Investment Audit and Compliance
David Veal, Chief of Staff to the Chief Investment Officer
Angela Vogeli, Assistant General Counsel
Tim Wei, Assistant General Counsel
Dale West, Managing Director – External Public Markets

Outside counsel, consultants, contractors, representatives of associations and organizations, and members of the public present:

Philip Mullins, former trustee & Texas State Employees Union
Dr. Keith Brown, Investment Advisor
Steven Huff, Reinhart Boerner Van Deuren, s.c., Fiduciary Counsel
Brady O’Connell, Hewitt EnnisKnupp, Investment Counsel
Steve Voss, Hewitt EnnisKnupp, Investment Counsel

With a quorum of the committee present, the meeting convened at 11:31 a.m.

1. Consider the approval of the proposed minutes of the July 20, 2012 committee meeting – Committee Chair.

On a motion by Mr. Barth, seconded by Ms. Clifton, the committee approved the proposed minutes of the July 20, 2012 meeting as presented.

2. Discuss and consider authorizing for public comment publication in the *Texas Register* proposed amendments to the following TRS rules in Subchapter A, Retiree Health Care Benefits (TRS-Care), Chapter 41, Health Care and Insurance Programs, of Title 34 of the Texas Administrative Code – Clarke Howard and Betsey Jones:

- A. Rule § 41.2, relating to additional enrollment opportunities;**
- B. Rule § 41.5, relating to payment of contributions; and**
- C. Rule § 41.7, relating to effective date of coverage.**

Mr. Howard presented the proposed changes to rule sections 41.2, 41.5 and 41.7 relating to the Retiree Health Care Benefits (TRS-Care). He confirmed for Mr. Colonna that the proposed changes would not reduce the benefits for retirees. Rather, Mr. Howard said, they were intended to clarify the coverage and eligibility provisions for multiple plans under Medicare Advantage. Upon a motion by Mr. Barth, seconded by Mr. McDonald, the committee unanimously voted to authorize staff to publish for public comment in the *Texas Register* proposed amendments to rule sections 41.2, 41.5 and 41.7.

3. Consider updating the Policy Review Schedule – Rebecca Merrill.

Ms. Merrill presented proposed changes to the Policy Review Schedule (schedule). She noted two additional changes to the proposed schedule presented in the Policy Committee book. She discussed changing the last review date of the Investment Authority Resolution (TRS 477) from December 2012 to September 2012 to reflect the impending review of the TRS 477 at this meeting. Based on its two-year review cycle, the TRS 477 will be reviewed again in September 2014. The second change would move the next review of the Mission Statement from November 2013 to December 2013 to take into account that the Policy Committee typically does not meet in November.

On a motion by Mr. Barth, seconded by Mr. McDonald, the committee unanimously voted to adopt the proposed changes to the Policy Review Schedule for FY 2013, with the additional changes presented by staff at this meeting.

4. Discuss and consider recommending to the Board proposed amendments to the Investment Policy Statement and review policy history – Jase Auby, Brady O’Connell and Steve Voss, Hewitt EnnisKnupp.

Mr. Auby provided a historical overview of the investment policies and highlighted significant changes since 2007 relating to benchmarks, board reporting, asset allocation, and statutory and delegated authority. At Mr. Colonna’s request, Mr. Barth, the former Policy Committee chairman, also provided background information pertaining to the current review of the investment policies. He recounted that the committee had taken the initiative this year to provide ample opportunities for reviewing the investment policies before the board considered the committee's recommended changes to them.

Mr. Auby presented memos from Hewitt EnnisKnupp (HEK) and Dr. Brown relating to the proposed modifications to the Investment Policy Statement (IPS). Mr. Voss, Dr. Brown, and Mr. Huff confirmed that they were comfortable with the proposed changes.

Mr. Auby presented the proposed modifications to the IPS laid out in the Policy Committee book. Concerning the removal of the tenor limits, Dr. Brown stated that it would be beneficial to monitor staff’s derivative usage through the Risk Management Committee and continue to re-evaluate the form and content of the derivatives reporting in light of the current modifications.

Upon a motion by Mr. McDonald, seconded by Mr. Barth, the committee unanimously voted to recommend that the board adopt the proposed resolution to approve the amendments to the IPS, as presented by staff.

5. Discuss and consider recommending to the Board proposed amendments to the Board’s General Authority Resolution (TRS 477) – Dennis Gold, Sylvia Bell and Scot Leith.

Mr. Gold provided an overview of the board’s general authority resolution (TRS 477), including what it was used for, how it worked, and who was delegated authority under it. He also

noted a typo in Section C of the draft presented to the committee: the word “to” should be substituted for the word “may” in the third line of the first paragraph. Mr. Leith illustrated the transaction process. Mr. Leith and Ms. Bell explained how transactions subject to the TRS 477 were processed, including redemptions, withdrawals, funding requests, and over-the-counter transactions.

Mr. Colonna asked what role the board plays with regard to TRS 477. Mr. Gold replied that the board considers proposed changes to the TRS 477, which authorizes the executive director to designate the individual TRS employees with transactional authority under the resolution. Ms. Barrett confirmed for Mr. Kelly that she agreed with the direction that staff was proposing for the TRS 477.

After a thorough presentation and discussion of the proposed amended TRS 477, on a motion by Mr. Barth, seconded by Mr. McDonald, the committee voted to recommend that the board adopt the September 6, 2012 draft of the TRS 477 as presented by staff with all of the changes to the existing adopted version accepted, plus the substitution of the word “to” for “may” in the third line of the first paragraph of Section C of the draft.

The meeting adjourned at 12:38 p.m.

Tab 2



M E M O R A N D U M

To: TRS Policy Committee and Board of Trustees

From: Wm. Clarke Howard, TRS Assistant General Counsel

Copy: Brian K. Guthrie, TRS Executive Director; Ken Welch, TRS Deputy Director; Betsey Jones, Director of Health Care Policy and Administration; Conni Brennan, TRS General Counsel

Date: November 26, 2012

Re: Adoption of Proposed Amendments to TRS-Care rules 34 TAC §§41.2, 41.5 and 41.7

Background

Staff is recommending final action to adopt proposed amendments to the following three TRS-Care rules: (1) TRS-Care rule §41.2 (Additional Enrollment Opportunities), (2) TRS-Care rule §41.5 (Payment of Contributions), and (3) TRS-Care rule §41.7 (Effective Date of Coverage).

Adoption of Proposed Rule Amendments

At its September 2012 meeting, the Policy Committee authorized publication of proposed amendments to TRS-Care rules §§41.2, 41.5 and 41.7. The staff submitted the proposed amendments to the Texas Secretary of State for publication in the *Texas Register*. The proposed amendments were published for at least 30 days before this meeting, and they now may be adopted by the Board of Trustees. No public comments were submitted concerning the proposed changes to these rules.

Summary of Proposed Rule Amendments

While a number of the proposed rule amendments include changes to improve the clarity of the rules, the most substantive amendments are proposed mainly to address the upcoming introduction of the TRS-Care Medicare Advantage (medical) plans and the TRS-Care Medicare Part D (drug) plans.

1. Addition of the New Medicare Advantage Plans and the New Medicare Part D Plans.

Currently, there is only one medical plan and one drug plan offered in both the TRS-Care 2 level of coverage and the TRS-Care 3 level of coverage in TRS-Care. Thus, a reference to the TRS-Care 2 level of coverage was a clear reference to the medical plan and the drug plan offered at this level of coverage. The same can also be said with regard to the TRS-Care 3 level of coverage. However, with the introduction of the new TRS-Care Medicare Advantage (medical) plans and the new TRS-Care Medicare Part D (drug) plans on January 1, 2013, for the first time, there will be several available medical plans and several available drug plans within both the TRS-Care 2 and TRS-Care 3 levels of coverage. Consequently, unlike in the past, there will be the need, beginning on January 1, 2013, to distinguish between the plans offered under the TRS-Care 2 and TRS-Care 3 levels of coverage and the levels of coverage themselves.

Further, not all individuals enrolled in TRS-Care at the TRS-Care 2 and TRS-Care 3 levels of coverage will be able to, under law, enroll in the new TRS-Care Medicare Advantage (medical) plans and the new TRS-Care Medicare Part D (drug) plans.

Consequently, to address the above noted distinctions, staff is proposing clarifying language: (1) in subsections (a)(5), (a)(6), and (a)(7) of TRS-Care rule §41.2, which addresses the opportunities to enroll in TRS-Care that are in addition to the initial enrollment opportunities described in TRS-Care rule §41.1; and (2) in subsections (e) and (h)(3)(B) of TRS-Care rule §41.5, which addresses the payment of contributions in TRS-Care.

2. Special Enrollment Opportunities.

With the passage of time, there is no longer a need to distinguish between the special enrollment events that occurred on or before August 31, 2011 and those that occurred or will occur on or after September 1, 2011. In light of the need to make the changes to TRS-Care rule §41.2, noted above, staff recommends that TRS take advantage of this opportunity to also make the deletions found in subsection (b) of TRS-Care rule §41.2. These deletions simplify this subsection by removing references to special enrollment events "that occur" on or before August 31, 2011; such events can no longer take place.

The same can also be said with regard to the deletions proposed in subsection (g) of TRS-Care rule §41.7, which addresses the effective dates of coverage under TRS-Care. The changes to this subsection are consistent with the above noted deletions found in subsection (b) of TRS-Care rule §41.2.

3. Non-substantive changes to enhance clarity.

There are a handful of proposed amendments that are non-substantive in nature, yet enhance the clarity of certain TRS-Care rules. These non-substantive proposed amendments include those marked changes found in subsection (d) of TRS-Care rule §41.2, in subsection (h)(3)(C) of TRS-Care rule §41.5, and in subsections (m) and (n) of TRS-Care rule § 41.7.

Requested Action

Staff requests that the Policy Committee recommend that the Board of Trustees adopt the proposed amendments to TRS-Care rules §§41.2, 41.5 and 41.7, each as published in the *Texas Register*.

In turn, staff requests the Board of Trustees adopt the proposed amendments to TRS-Care rules §§41.2, 41.5 and 41.7, each as published in the *Texas Register*.

**CONSIDERATION OF ADOPTION OF PROPOSED
AMENDMENTS TO TRS-CARE RULES 34 TAC §§41.2, 41.5 AND 41.7**

TRS Policy Committee and Board of Trustee Meetings
December 13 - 14, 2012

Text of Proposed Rule Changes Published
for Public Comment in the *Texas Register*

TEXAS ADMINISTRATIVE CODE

<u>TITLE 34</u>	PUBLIC FINANCE
<u>PART 3</u>	TEACHER RETIREMENT SYSTEM OF TEXAS
<u>CHAPTER 41</u>	HEALTH CARE AND INSURANCE PROGRAMS
<u>SUBCHAPTER A</u>	RETIREE HEALTH CARE BENEFITS (TRS-CARE)

RULE § 41.2. Additional Enrollment Opportunities

(a) Age 65 Additional Enrollment Opportunity. "Eligible participants," as defined in paragraph (1) of this subsection, have an additional enrollment opportunity in TRS-Care as described in this subsection when they become 65 years old (the "Age 65 Additional Enrollment Opportunity").

(1) For purposes of this subsection, the term "eligible participants" means:

(A) all TRS service retirees who are enrolled in TRS-Care;

(B) dependents, as defined in Insurance Code, §1575.003, who are enrolled in TRS-Care and who are eligible to enroll in TRS-Care in their own right as a TRS service or disability retiree; and

(C) surviving spouses, as defined in Insurance Code, §1575.003 who are enrolled in TRS-Care.

(2) Those eligible participants who are enrolled in TRS-Care on August 31, 2004, and who become 65 years old after that date have the Age 65 Additional Enrollment Opportunity on the date that they become 65 years old.

(3) Those eligible participants who enroll in TRS-Care after August 31, 2004, and who become 65 years old after the date of their enrollment have the Age 65 Additional Enrollment Opportunity on the date that they become 65 years old.

(4) The Age 65 Additional Enrollment Opportunity for those eligible participants who enroll in TRS-Care after August 31, 2004, and who are 65 years old or older when they enroll in TRS-Care runs concurrently with the initial enrollment period as set out in §41.1 of this title (relating to Initial Enrollment Periods for the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act (TRS-Care)).

(5) An eligible participant who is not enrolled in Medicare Part A at the time of his or her Age 65 Additional Enrollment Opportunity can enroll:

(A) in any plan, for which he or she is eligible under law, located in the next-higher TRS-Care coverage tier (level of coverage), as determined by TRS-Care; and

(B) add dependent coverage in any plan, for which the dependent is eligible under law, located in that same coverage tier (level of coverage).

(6) An eligible participant who is enrolled in Medicare Part A at the time of his or her Age 65 Additional Enrollment Opportunity can enroll:

(A) in any plan, for which he or she is eligible under law, located in any TRS-Care coverage tier (level of coverage); and

(B) add dependent coverage in any plan, for which the dependent is eligible under law, located in that same coverage tier (level of coverage).

(7) An eligible participant, at the time of his or her Age 65 Additional Enrollment Opportunity, can:

(A) choose to remain in the same TRS-Care coverage tier (level of coverage),

(B) enroll in any plan, for which he or she is eligible under law, located in that same TRS-Care coverage tier (level of coverage); and

(C) add dependent coverage in any plan, for which the dependent is eligible under law, in that same coverage tier (level of coverage).

(8) The period to enroll in TRS-Care pursuant to the Age 65 Additional Enrollment Opportunity for eligible participants described in paragraph (2) or (3) of this subsection expires at the end of the later of:

(A) the 31st day following the last day of the month in which the eligible participant becomes 65 years old; or

(B) the 31st day after the date printed on the notice of the additional enrollment opportunity sent to the eligible participant at the eligible participant's last-known address, as shown in the TRS-Care records.

(b) Special Enrollment Opportunity.

~~(1) For a special enrollment event that occurs on or after September 1, 2011, a~~An individual who becomes eligible for coverage under the special enrollment provisions of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191, 110 Stat. 1936 (1996)), including a dependent whose coverage under TRS-Care was waived due to the existence of other coverage for the dependent during the Age 65 Additional Enrollment Opportunity described in subsection (a) of this section, may elect to enroll in TRS-Care.

~~(2) For a special enrollment event that occurs on or before August 31, 2011, except as provided in the exceptions found in subparagraphs (A) - (C) of this paragraph, an individual who becomes eligible for coverage under the special enrollment provisions of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191, 110 Stat. 1936 (1996)), including a dependent whose coverage under TRS-Care was waived due to the existence of other coverage for the dependent during the Age 65 Additional Enrollment Opportunity described in subsection (a) of this section, may elect to enroll in TRS-Care.~~

~~(A) In no event may an individual who is already enrolled in TRS-Care elect a different plan, for himself or any eligible dependents, but may only add eligible dependents for coverage under the individual's existing plan selection upon the occurrence of a special enrollment event.~~

~~(B) In no event may a TRS retiree enroll in TRS-Care as a result of a special enrollment event applicable to his dependent.~~

~~(C) In no event, as a result of a special enrollment event applicable to the dependent, may the dependent of a TRS retiree enroll in TRS-Care if the TRS retiree is not enrolled in TRS-Care.~~

~~(23)~~ The enrollment period for an individual who becomes eligible for coverage due to a special enrollment event shall be the 31 calendar days immediately after the date of the special enrollment event. To make an effective election, a completed TRS-Care application must be received by TRS within this 31-day period.

(c) Enrollment Opportunity Established by TRS. If an eligible TRS retiree or his eligible dependent does not have either an Age 65 Additional Enrollment Opportunity or a special enrollment event, then he may enroll in TRS-Care only during a subsequent enrollment period established by TRS.

(d) This section does not affect the right of a TRS service retiree or surviving spouse enrolled in a TRS-Care coverage tier (level of coverage) to drop coverage, select a lower coverage tier (level of coverage), or drop dependents at any time.

RULE § 41.5. Payment of Contributions

(a) Retirees, surviving spouses, and surviving dependent children or their representative (collectively, "participants") shall pay monthly contributions as set by the trustee for their and their dependents' participation in TRS-Care.

(b) To be eligible for TRS-Care coverage, a participant must authorize the trustee in writing to deduct the contribution amount from the annuity payment. After such authorization, the trustee may deduct the amount of the contribution from the annuity payment.

(c) If the amount of the contribution is more than the amount of the annuity payment, the participant will be billed directly by TRS or the TRS-Care administrator for the entire contribution amount.

(d) Failure to timely pay the full amount of a required contribution for coverage of a dependent or a surviving dependent child will result in termination of coverage for the dependent or surviving dependent child at the end of the month for which the last contribution was made.

(e) Failure to timely pay the full amount of a required contribution for coverage of a retiree or a surviving spouse enrolled in [a TRS-Care 2 plan](#) or [a TRS-Care 3 plan](#) will result in termination of coverage in [the TRS-Care 2 plan](#) or [the TRS-Care 3 plan](#), as applicable, and enrollment in TRS-Care 1 for the retiree or surviving spouse, resulting in a decrease in coverage at the end of the month for which the last contribution was made. The retiree or surviving spouse will not be able to change his or her TRS-Care coverage tier ([level of coverage](#)) unless and until the retiree or surviving spouse has an additional enrollment opportunity as set out in §41.2 of this title (relating to Additional Enrollment [Opportunity Opportunities](#)) or some other opportunity under Insurance Code, §1575.161.

(f) A disability retiree whose annuity payments are forfeited under §31.36 of this title (Relating to Forfeiture of Disability Retirement Annuity Payments Due to Excess Compensation) shall pay the total monthly cost of coverage, as determined by the trustee, attributable to the participation of that disability retiree and the dependents of that disability retiree during the months for which the disability retiree's annuity payments are forfeited. A disability retiree shall pay the total monthly cost of coverage starting with the calendar month for which the first annuity payment is forfeited. The disability retiree shall continue to pay the total monthly cost of coverage for each month of coverage in which the annuity payment for that month is forfeited in accordance with §31.36 of this title. Nothing in this section shall be construed to prevent TRS from collecting the total monthly cost of coverage for months in which annuities should have been but were not forfeited if TRS determines that a disability retiree knowingly failed to

report compensation as required and the failure resulted in payment of annuities by TRS that the disability retiree was not eligible to receive.

(g) Notwithstanding subsections (d) and (e) of this section, a disability retiree whose annuity payments are forfeited under §31.36 of this title who fails to timely pay the full amount of a required contribution for coverage attributable to his participation or that of his dependents, including but not limited to amounts found due and owing pursuant to a TRS determination that a disability retiree knowingly failed to report compensation as required and the failure resulted in payment of annuities by TRS that the disability retiree was not eligible to receive, shall have coverage under TRS-Care for himself and his dependents suspended unless TRS-Care receives full payment of all costs of coverage currently due and owing within thirty-one (31) days after TRS-Care mails written notice to the disability retiree of the current amount due and owing. Under such circumstances, the suspension of coverage will be effective at midnight of the last day of the month in which TRS-Care mailed the above written notice to the disability retiree of the current amount due and owing. During such a suspension, coverage under TRS-Care will cease and the costs of coverage for TRS-Care will no longer accrue.

(h) If TRS resumes payment of an annuity to a disability retiree whose coverage has been suspended as described in subsection (g) of this section, the following shall apply:

(1) Such disability retiree shall pay, no later than the last day of the month in which TRS resumes annuity payments to the disability retiree, all costs of coverage due and owing attributable to the participation of that disability retiree and the dependents of that disability retiree, including past due amounts for coverage prior to the suspension and the costs of coverage for all months during which the disability retiree's annuity payments are resumed, if any.

(2) Upon payment, reinstatement of TRS-Care coverage shall be effective the first day of the earliest month for which the disability retiree's annuity payments are resumed.

(3) If payment in full of all required contributions then due and owing is not timely received by TRS-Care, then notwithstanding subsections (d) and (e) of this section:

(A) TRS-Care coverage for the dependents of that disability retiree shall be terminated effective the last day of the month in which coverage was suspended under subsection (g) of this section;

(B) TRS-Care coverage for the disability retiree enrolled in [a TRS-Care 2 plan](#) or [a TRS-Care 3 plan](#) prior to the suspension, as applicable, will terminate effective the last day of the last month during which the disability retiree's coverage was suspended and the disability retiree will be enrolled in TRS-Care 1, effective the first day of the earliest month for which the disability retiree's annuity payments are resumed following the suspension, resulting in a decrease in coverage; and

(C) TRS-Care coverage for the disability retiree enrolled prior to the suspension in TRS-Care 1 will resume effective the first day of the earliest month for which the disability retiree's annuity payments are resumed following the suspension. The disability retiree will not be able to change his TRS-Care coverage tier ([level of coverage](#)) or add dependents unless and until the disability retiree has an additional enrollment opportunity as set out in §41.2 of this title (~~relating to Additional Enrollment Opportunity~~) or some other opportunity under Insurance Code, §1575.161.

RULE § 41.7. Effective Date of Coverage

(a) Except as allowed by subsection (c) of this section, for TRS members who take a service or disability retirement and enroll in coverage during their initial enrollment period as described in §41.1 of this title (relating to Initial Enrollment Periods for the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act (TRS-Care)), the effective date of coverage is:

(1) the first day of the month following the effective date of retirement if the application for coverage is received by TRS-Care on or before the effective retirement date; or

(2) the first day of the month following the receipt of the application for coverage by TRS-Care if the application is received after the effective retirement date but within the initial enrollment period.

(b) A TRS member who takes a service or disability retirement and enrolls in coverage during his or her initial enrollment period may, at any time during his or her initial enrollment period, make changes to his or her coverage elections. The effective date of coverage for the new elections is the first day of the month following receipt by TRS-Care of the application requesting the change in coverage.

(c) Regardless of the date a TRS member submits his application for retirement, if a TRS member enrolls in coverage during his initial enrollment period as described in §41.1 of this title, the TRS member may defer the effective date of coverage described in subsection (a) of this section for himself and his eligible dependents to the first day of any of the three (3) months immediately following the month after the effective date of retirement. This deferment period runs concurrent with, and does not extend, the enrollment period as described in §41.1 of this title. In no event may a TRS member defer the effective date of TRS-Care coverage to a date prior to the date upon which TRS-Care receives the application for coverage from the TRS member.

(d) The effective date of coverage for a surviving spouse or for a surviving dependent child is the first day of his or her eligibility if TRS-Care receives an application within the initial enrollment period as described in §41.1 of this title and the deceased participant had the surviving spouse or the surviving dependent child enrolled in TRS-Care before the participant died.

(e) If the surviving spouse or the surviving dependent child was not enrolled in TRS-Care immediately preceding his or her becoming eligible for coverage, the effective date of coverage will be, at the election of the surviving spouse or the surviving dependent child, either the first day of the month following:

(1) TRS-Care's receipt of an application during the initial enrollment period as described in §41.1 of this title; or

(2) the month of the death of the deceased TRS service or disability retiree or deceased active TRS member, provided TRS-Care receives an application during the initial enrollment period as described in §41.1 of this title.

(f) The effective date of coverage for an eligible dependent who is enrolled under a retiree's or surviving spouse's TRS-Care coverage during the initial enrollment period is the same date as the retiree or surviving spouse's effective date of coverage unless the dependent is enrolled after the retiree's effective retirement date and after the retiree has enrolled but within the initial enrollment period, in which case the dependent's effective date of coverage will be the first day of the month following TRS-Care's receipt of the application to enroll the dependent.

(g) ~~The effective date of coverage for a special enrollment event is determined as follows:~~

~~(1) For a special enrollment event that occurs on or after September 1, 2011, the effective date of coverage for an eligible individual who is enrolled in TRS-Care as a result of a special enrollment event, as described in §41.2(b)(1) of this chapter (relating to Additional Enrollment Opportunities), is the date specified under the provisions of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191, 110 Stat. 1936 (1996)).~~

~~(2) For a special enrollment event that occurs on or before August 31, 2011, the effective date of coverage for an eligible individual who is enrolled under a retiree's or surviving spouse's TRS-Care coverage as a result of a special enrollment event, as described in and limited by §41.2(b)(2) of this chapter, is the date specified under the provisions of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191, 110 Stat. 1936 (1996)).~~

(h) The effective date of coverage for a retiree, a surviving spouse, and an eligible dependent described in §41.2(a)(2) or (3) of this title who submit an application within the time period described by §41.2(a)(8) of this title is:

(1) the first day of the month following the retiree's or surviving spouse's 65th birthday if the application for coverage is received by TRS-Care on or before the retiree's or surviving spouse's 65th birthday; or

(2) the first day of the month following the receipt of the application by TRS-Care if the application is received after the retiree's or surviving spouse's 65th birthday but within the enrollment period.

(i) Except as provided in subsections (l), (m), and (n) of this section, the effective date of changes in coverage due to the acquisition of Medicare is the first of the month following the date of TRS-Care's receipt of a copy of the participant's or dependent's Medicare card.

(j) Except as provided in subsections (l), (m), and (n) of this section, the effective date of reduction in coverage shall be the first day of the month following TRS-Care's receipt of a signed request for reduced coverage.

(k) A retiree, surviving spouse, or surviving dependent child may cancel any coverage by submitting the appropriate cancellation notice to TRS-Care. Cancellations will be effective on:

(1) the first day of the month following the date printed on the notice of cancellation form ("notice date") sent to the retiree at the retiree's last known address, as shown in the TRS-Care records, if TRS-Care receives the completed notice of cancellation within fourteen days of the notice date; or

(2) the first day of the month following TRS-Care's receipt of the retiree's completed notice of cancellation form if the form is received more than fourteen calendar days after the notice date; or

(3) the first day of the month following TRS-Care's receipt of a written request to cancel coverage from a surviving spouse or from or on behalf of a surviving dependent child.

(l) Where a participant who has Medicare Part A coverage incorrectly enrolls in an insurance coverage option that provides for coverage without corresponding Medicare Part A coverage and payment is made by Medicare and TRS-Care in a manner that violates the provisions of Chapter 1575, Insurance Code, which requires TRS-Care to be secondary to Medicare, TRS may seek the recovery of funds paid in violation of Chapter 1575 and may make the effective date of the correct coverage retroactive to the first day of the earliest month for which recovery of such overpaid funds is possible under Medicare rules.

(m) Where a participant who has Medicare Part A coverage incorrectly enrolls in a TRS-Care coverage option that provides for coverage without corresponding Medicare Part A [coverage](#) and there is no claim made upon TRS-Care or the legitimate claim is less than the amount of overpaid contributions, TRS-Care may refund or credit the amount due to the participant and may make the effective date of the correct coverage retroactive to when the participant was first enrolled in both Medicare and TRS-Care to a maximum

retroactive period of twelve months, including the month in which proof of Medicare Part A [coverage](#) is received by TRS-Care.

(n) Upon TRS-Care's discovery that a participant does not have Medicare Part A coverage and is incorrectly enrolled in a TRS-Care coverage option that requires Medicare Part A coverage, TRS-Care will contact the participant and advise the participant that the cost of coverage and the coverage will be adjusted prospectively effective the first day of the next month unless a copy of a Medicare card showing [Medicare](#) Part A coverage is received prior to that date. Claims will be paid based upon the coverage in effect at the time the services were provided. Any claims already paid as if [Medicare](#) Part A were in effect will not be adjusted.



Teacher Retirement System of Texas

BOARD RESOLUTION

Adopting Amended TRS-Care Rules 34 TAC §§41.2, 41.5 and 41.7

December 13 - 14, 2012

Whereas, Chapter 1575, Insurance Code, authorizes the Teacher Retirement System of Texas (TRS), as trustee, to implement and administer the uniform group health benefits program under the Texas Public School Retired Employees Group Benefits Act (TRS-Care), as described in the statute;

Whereas, TRS-Care rule §41.2 provides details about additional enrollment opportunities with regard to TRS-Care;

Whereas, TRS-Care rule §41.5 addresses the payment of contributions into TRS-Care by participants in TRS-Care;

Whereas, TRS-Care rule §41.7 describes the effective dates of coverage under TRS-Care;

Whereas, staff has recommended amendments to TRS-Care rules §§41.2, 41.5 and 41.7 in order to address issues that will arise from the introduction on January 1, 2013 of the TRS-Care Medicare Advantage (medical) plans and the TRS-Care Medicare Part D (drug) plans and in order to clarify and update these rules;

Whereas, pursuant to the authority granted by the Policy Committee at its September 2012 meeting, TRS published proposed amendments to TRS-Care rules §§41.2, 41.5 and 41.7 for public comment in the October 5, 2012 issue of the *Texas Register*, and the public had at least 30 days notice of TRS' intention to adopt the proposed amendments before the board considered their adoption, and TRS received no comments; and

Whereas, The board's policy committee has recommended that the board adopt the proposed amendments, and the board desires to adopt the proposed amendments without changes to the published texts of the proposed rules; now, therefore, be it

Resolved, That the board hereby:

- 1) Adopts amended TRS-Care rules 34 Tex. Admin. Code §§41.2, 41.5 and 41.7 as published in the October 5, 2012 issue of the *Texas Register* (37 TexReg 7980);
- 2) Incorporates by reference into this Resolution, as though fully set out in it, the applicable policy committee and board meeting materials, discussions and actions, including the approved rule texts and reasoned justification for their adoption as presented in those meeting materials, discussions and actions;
- 3) Grants the TRS staff authority to prepare and to file all documents required by this Resolution, to work with the Office of the Secretary of State in preparing and filing such documents, and to make any technical changes required for publication of the adopted rules; and
- 4) Grants the presiding officer of the board the authority to sign an order showing the action of the board.

Tab 3A



M E M O R A N D U M

To: Policy Committee of the Board of Trustees

From: Timothy Wei, Assistant General Counsel

Copy: Brian Guthrie, Executive Director
Ken Welch, Deputy Director
Conni Brennan, General Counsel
Rebecca Merrill, Special Advisor to the Executive Director and Manager of Special Projects
Dennis Gold, Assistant General Counsel
Dan Junell, Assistant General Counsel

Date: November 28, 2012

Re: Proposed Amendments to TRS Code of Ethics Rules 23.7 & 23.8

REQUESTED ACTION

Staff asks the Policy Committee to authorize publication of proposed amendments to the two ethics rules for contractors — Rule 23.7, relating to the Code of Ethics for Contractors (“Code”), and Rule 23.8, relating to expenditure reporting by contractors. The proposed amendments, which simply update the rules to reflect the board’s most recent adoptions, would be published for public comment in the *Texas Register* for at least 30 days before the committee and board consider their adoption.

WHY THE ACTION IS REQUESTED

The proposed amendments would update the rules to reflect the current versions of the Code adopted by the board and the related memorandum from the executive director to contractors explaining reporting requirements under the Code.

BACKGROUND OF THE REQUESTED ACTION

Rule 23.7. Government Code § 825.212(e) requires the board to adopt by rule standards of conduct applicable to TRS consultants and advisors (contractors) who likely will be paid over \$10,000 in a year or who provide important investment advice. Rule 23.7 adopts the Code by reference. In April 2012, the board adopted a revised Code. The proposed rule amendments update Rule 23.7 to reflect the current version of the Code. Other minor changes would clarify references to the revised Code and the terms used in it.

Rule 23.8. Texas Government Code § 825.212(g) requires the Board by rule to require consultants and advisors to the retirement system and brokers (contractors) to file with the system a report detailing any expenditure of more than \$50 made on behalf of a trustee or employee of the system. The board adopts the form used by contractors to report such expenditures. The executive director provides an explanatory memorandum addressed to contractors to accompany the reporting form. Rule 23.8 adopts by reference the board's reporting form, the Expenditure Reporting Form for Contractors, and the executive director's memorandum, the Expenditure Reporting Memorandum. In September 2010, the Board adopted a revised reporting form. In March 2012, the executive director approved a revised memorandum. The proposed amendments to Rule 23.8 would adopt by reference the latest version of the executive director's memorandum. Other minor changes clarify the reporting requirements for Contractors under the updated Code adopted by reference in Rule 23.7.

PROPOSED RULE TEXTS (showing changes)

§23.7. Code of Ethics for Contractors.

~~Any Consultant, Agent, Financial Advisor, or Financial Services Provider doing business with~~The Code of Ethics for Contractors (the Code) sets forth the ethical responsibilities and requirements of Contractors, as that term is defined in the Code, in performing services for the Teacher Retirement System of Texas (TRS), ~~or Broker approved to do business with TRS, must comply with TRS' Code of Ethics for Contractors (the Code of Ethics).~~ The Board of Trustees of TRS ~~(the board)~~ adopts by reference the Code ~~of Ethics~~ as most recently revised and adopted to be effective ~~September 17, 2010~~April 20, 2012. ~~Capitalized words appearing in this section have the same meaning assigned to them in the Code of Ethics.~~ A copy of the most recently revised Code ~~of Ethics~~ has been filed with the Office of the Secretary of State in Austin. Copies of the Code ~~of Ethics~~ are available from TRS at 1000 Red River Street, Austin, Texas 78701-2698, (512) 542-6400. Also, a copy of the Code ~~of Ethics~~ can be found on and printed from the TRS website, www.trs.state.tx.us, in the information regarding TRS Ethics.

§23.8. Expenditure Reporting by ~~Consultants, Agents, Financial Advisors, Financial Services Providers, and Brokers~~Certain Contractors.

Under 23.7 of this title (relating to the Code of Ethics for Contractors) and the Code of Ethics for Contractors (the Code) adopted by the Board of Trustees of the Teacher Retirement System of Texas (TRS), each Contractor, as that term is defined in the Code, must annually file an expenditure report on the prescribed TRS form. The Contractor must include in the report itemized, reasonably detailed lists of expenditures of more than \$50 per day made by or on behalf of the Contractor with respect to or for the benefit of each TRS Trustee or Employee. Each Contractor must comply with TRS rules governing the filing of and requirements for the expenditure reporting form promulgated by TRS, including ~~Consultants, Agents, Financial Advisors, and Financial Services Providers doing business with the Teacher Retirement System of Texas (TRS), and Brokers approved to do business with TRS, must report expenditures made of more than \$50 on behalf of any one trustee or employee of TRS and must file any other report required by the Code of Ethics for Contractors (Code of Ethics), which is adopted by reference in §23.7 of this title (relating to Code of Ethics for Contractors).~~ The reports must be filed no later

~~than April 15 of each year with the Executive Director and must comply with~~ the Code ~~of Ethics~~
~~and the~~ Expenditure Reporting Memorandum (reporting memorandum),² and the Expenditure
Reporting Form for Contractors (reporting form) as promulgated and applicable under the Code
~~of Ethics for Contractors~~ and revised from time to time. TRS adopts by reference the reporting
memorandum as most recently revised ~~November 2, 2010~~ March 13, 2012 and the reporting
form as most recently revised September 17, 2010. Capitalized words appearing in this section
have the same meaning assigned to them in the Code ~~of Ethics~~, as revised from time to time.
Copies of the most recently revised reporting memorandum and reporting form have been filed
with the Office of the Secretary of State in Austin. Copies of the reporting memorandum and the
reporting form are available from TRS at 1000 Red River Street, Austin, Texas 78701-2698,
(512) 542-6400. Also, copies of the reporting memorandum and the reporting form can be found
on and printed from the TRS website, www.trs.state.tx.us, in the information regarding TRS
Ethics.

Tab 3B



MEMORANDUM

To: Policy Committee of the Board of Trustees

From: Rebecca M. Smith, Assistant General Counsel

Copy: Brian Guthrie, Executive Director
Ken Welch, Deputy Director
Conni Brennan, General Counsel
Rebecca Merrill, Special Advisor to the Executive Director and Manager of Special Projects

Date: November 29, 2012

Re: Proposed Amendments to Chapter 25, relating to Membership Credit

REQUESTED ACTION

Staff asks the Policy Committee to authorize publication of the proposed amendments to six rules in Chapter 25 regarding membership eligibility, creditable compensation, and out-of-state service credit. Specifically, staff proposes amendments to §25.1, relating to Full-time Service; §25.6, relating to Part-time or Temporary Employment; §25.21, relating to Compensation Subject to Deposit and Credit; §25.43 relating to Cost for Unreported Service or Compensation; §25.47, relating to Deadline for Verification; and §25.81, relating to Out-of-State Service Eligible for Credit. The proposed amendments would be published for public comment in the *Texas Register* for at least 30 days before the committee and board consider their adoption.

WHY THE ACTION IS REQUESTED

The proposed rule changes address how employment in institutions of higher education that is expressed in terms of the number of courses or semester hours taught is considered in determining eligibility for TRS membership. This change would establish the same standard for workloads expressed in course credits or semester hours for determining membership eligibility that is used for one-half time employment for retirees. The proposed amendment regarding the length of the employment period considered temporary employment will clarify how employment on a semester-by-semester basis should be considered in determining membership eligibility. The proposed amendments regarding workers' compensation paid as temporary wage replacement pay will clarify and provide notice of how TRS credits workers' compensation in determining benefits. The proposed amendments to the rule regarding establishing out-of-state service credit reflect the 90-day standard for a creditable year of service credit that was adopted for crediting service beginning with the 2011-2012 school year.

BACKGROUND OF THE REQUESTED ACTION

Section 25.1. The standards for membership eligibility in TRS are established in §25.1: employment for one-half or more of the standard full-time work load, for a period of four and one-half months or more, with pay at a rate comparable to the rate of compensation for other persons employed in similar positions. Consistent application of this standard is difficult when the work load is expressed in terms of semester hours or course credits taught as is the common practice for faculty employed in institutions of higher education rather than clock hours. The proposed rule amendments establish the same ratio for converting semester hours or course credits to clock hours used for the purpose of determining the number of hours worked by a retiree under the one-half time exception: two clock hours for every hour of instruction in the classroom or lab. This conversion ratio reflects the instructional time as well as preparation, grading, and other time typically associated with one hour of instruction. Providing the same conversion ratio for membership eligibility and employment after retirement will reduce confusion, ease communication, and improve consistent administration of the standard. The proposed amendments also clarify that employment in an institution of higher education is “regular” employment if it is *expected* to continue more than one full semester in the same school year or if it continues for more than one full semester in a school year.

Section 25.6. The proposed amendment incorporates the current administrative interpretation of temporary employment for purposes of determining eligibility for membership in TRS for employees of institutions of higher education. Amending the rule to specifically define temporary employment for faculty in higher education will further the consistent application of the eligibility requirements and simplify communication regarding the standard for temporary employment.

Section 25.21. Proposed amendments to this rule regard the eligibility of workers’ compensation paid as temporary wage replacement pay for credit with TRS. Currently, there is no reference to workers’ compensation in the TRS rule regarding creditable compensation. However, the current practice is to credit workers’ compensation for any month that the member also receives creditable compensation from the employer. Because workers’ compensation is not paid directly by the employer, the member must verify the workers’ compensation to TRS after the fact and make deposits on the amount of workers’ compensation paid. With the change to the cost of unreported service increasing to the actuarial cost of the increased benefits associated with the additional compensation credit/service credit, staff recommends that the rule provide notice of how the temporary wage replacement benefit will be credited at TRS. The proposed amendment provides that workers’ compensation is creditable compensation provided that the compensation is reported/verified to TRS by the end of the school year following the year in which it was paid. This amendment will allow a member sufficient time to verify the compensation and pay the member contributions before the cost is increased.

Section 25.43. The proposed changes to this rule address the amount that must be paid to TRS to receive not only compensation credit for workers’ compensation but also service credit associated with the workers’ compensation. If the workers’ compensation is reported or verified to TRS no later than the last day of the school year following the school year in which the workers’ compensation is paid, the cost to establish the compensation and associated service credit is the amount of member contributions owed on the compensation. The cost of the

compensation and associated service credit must be paid in a lump sum no later than the last day of the school year following the year in which the workers' compensation was paid. If the compensation and associated service credit are not verified or reported and/or the member contributions not paid by the end of the school year following the school year in which the workers' compensation was paid, the cost of establishing the compensation and/or service credit is the actuarial cost of unreported service or compensation described in this section.

Section 25.47. The proposed amendment to this rule clarifies that workers' compensation paid as temporary wage replacement pay is not unreported compensation until after the end of the school year following the school year in which the compensation was paid.

Section 25.81. The proposed amendment to this rule updates the rule to reflect the new 90-day standard for the amount of time that a member must have worked in an otherwise eligible position in an out-of-state school in order to purchase the service credit.

RULE §25.1 Full-time Service.

(a) Employment of a person by a TRS covered employer for one-half or more of the standard full-time work load at a rate comparable to the rate of compensation for other persons employed in similar positions is regular, full-time service eligible for membership.

(b) Any employee of a public state-supported educational institution in Texas shall be considered to meet the requirements of subsection (a) of this section if his or her customary employment is for 20 hours or more for each week and for four and one-half months or more.

(c) Membership eligibility for positions requiring a varied work schedule is based on the average of the number of hours worked per week in a calendar month and the average number of hours worked must equal or exceed one-half of the hours required for a similar full-time position.

(d) For purposes of subsection (a) of this section, full-time service is employment that is usually 40 clock hours per week. If the TRS-covered employer has established a lesser requirement for full-time employment for specified positions that is not substantially less than 40 hours per week, full-time service includes employment in those positions. In no event may full-time employment require less than 30 hours per week.

(e) Beginning on the first day of the 2011-2012 school year and thereafter:

(1) If there is no equivalent full-time position of a given position, the minimum number of hours required per week that will qualify the position for TRS membership is 15.

(2) The requirement in this subsection applies to all positions, including bus drivers.

(f) For school years prior to the 2011-2012 school year:

(1) If there is no equivalent full-time position of a given non-certified position, the minimum number of hours required per week that will qualify the position for TRS membership is 15.

(2) If there is no equivalent full-time position of a given certified position, the minimum number of hours required per week that will qualify the position for TRS membership is 20.

(3) Persons regularly employed as bus drivers for routes approved by the Transportation Department of the Texas Education Agency are eligible for membership. A person will be considered regularly employed as a bus driver if his or her customary employment requires driving at least one such route per day.

(g) For purposes of subsection (a) of this section, regular employment is employment that is expected to continue for four and one-half months or more. [Employment with an institution of higher education \(including community and junior colleges\) is regular employment if it is expected to continue for more than one full semester or continues for more than one full semester in the same school year.](#)

Employment that is expected to continue for less than four and one-half months [or for no more than one full semester in a school year](#) is temporary employment and is not eligible for membership.

(h) For purposes of subsection (a) of this section, a rate of compensation is comparable to other persons employed in similar positions if the rate of compensation is within the range of pay established by the Board of Trustees for other similarly situated employees or is the customary rate of pay for persons employed by that employer in similar positions.

[\(i\) For purposes of this section, employment in institutions of higher education \(including community and junior colleges\) measured or expressed in terms of the number of courses; semester or course hours/credits; instructional units; or other units of time representing class or instructional time must be converted to clock hours and counted as a minimum of two clock hours for each clock hour of instruction or time in the classroom or lab in order to reflect instructional time as well as preparation, grading, and other time typically associated with one hour of instruction. If the employer has established a greater amount of preparation time for each hour in the classroom or lab, the employer's standard will be used to determine the number of clock hours scheduled for work.](#)

RULE §25.6 Part-time or Temporary Employment.

Part-time (employment that is less than one-half the standard work load), irregular, seasonal, or temporary employment (employment for a definite period of less than four and 1/2 months or for employment with an institution of higher education, the employment is for no more than one semester in a school year) is eligible only if such employment, when combined with other employment in Texas public educational institutions during the same school year, qualifies as service eligible for membership or if such other employment in itself qualifies as service eligible for membership.

RULE §25.21 Compensation Subject to Deposit and Credit

(a) The contributions required from a member to the Teacher Retirement System of Texas are generally based upon the member's annual compensation. Benefits paid by the retirement system are also generally based in whole or in part upon the annual compensation credited to a member for certain school years. A member's annual compensation for any particular school year has the meaning given by the law and rules applicable for that year. Beginning with the 1981-1982 school year, and for school years thereafter, annual compensation consists of the salary and wages that are paid or payable to a member for employment which is eligible for membership in the retirement system during that school year.

(b) Some payments made by an employer to a member are not salary or wages, even though the payments may be otherwise considered as compensation under the employment contract or federal tax laws. In general salary and wages creditable and subject to deposit are those types of monetary compensation that are recurring base pay for periods of employment and that:

- (1) are earned or accrue proportionally as the work is performed, so that a member terminating employment between pay periods is entitled to a proportional amount of the compensation based on either length of employment or amount of work performed;
- (2) are paid or payable at fixed intervals, generally at the end of each pay period; and
- (3) are not specifically excluded under subsection (d) of this section.

(c) The following types of monetary compensation are to be included in annual compensation:

- (1) amounts deducted from regular pay for the state-deferred compensation program, for a tax-sheltered annuity, or for a deferred compensation arrangement qualifying under the United States Internal Revenue Code, §401(k);
- (2) normal payroll deductions which are not tax-exempt or tax-deferred;
- (3) additional compensation paid for additional duties, for longevity, for overtime worked as required by law, or for service in a particular location or specialty the employer determines requires additional compensation compared to other employees of that employer, provided that these payments clearly meet the requirements of subsection (b) of this section;
- (4) delayed payments of lump-sum amounts which by law or contract should have been paid at fixed intervals and which otherwise meet the requirements of subsection (b) of this section provided the amounts are credited to the payroll period in which they were earned;
- (5) amounts withheld from regular pay under a cafeteria plan as provided by §25.22 of this title (relating to Contributions to Cafeteria Plans and Deferred Compensation);
- (6) performance pay provided it meets the requirements of the Texas Government Code §822.201(b)(4) and §25.24 of this chapter (relating to Performance Pay);
- (7) compensation received under the relevant parts of the educator excellence awards program under Subchapter O of Chapter 21, Education Code, or a mentoring program under §21.458, Education Code, that authorize compensation for service, and compensation earned under the awards for student achievement program under Subchapter N of Chapter 21, Education Code, prior to the repeal of statutory provisions authorizing that program;
- (8) a merit salary increase made under Education Code, §51.962;
- (9) amounts deducted from regular pay for a qualified transportation benefit under Texas Government Code §659.202; ~~and~~
- (10) compensation designated as health care supplementation by an employee under Subchapter D, Chapter 22, Education Code; ~~and~~
- (11) workers' compensation paid as temporary wage replacement pay and reported or verified to TRS and with member contributions paid on the amount of workers' compensation, by the end of the school year following the year in which it was paid. Workers' compensation paid as temporary wage replacement pay and not reported or verified to TRS with member contributions paid on the workers'

[compensation in the time period provided may be verified and purchased as provided in §25.45 of this title \(relating to Verification of Unreported Compensation or Service\) and §25.43 of this title \(relating to Cost for Unreported Service or Compensation\) no later than the end of the fifth year following the school year in which it may be reported or verified under this subsection.](#)

(d) The following are excluded from annual compensation:

(1) allowances, including housing, car, cell phone, and expense allowances;

(2) reimbursements for expenses;

(3) payments for accrued compensatory time for overtime worked or for accrued sick leave or vacation, except that continued payments of normal compensation when vacation or sick leave or compensatory time is actually taken by an employee will be included in annual compensation to the extent otherwise permitted by this section;

(4) benefits, except as provided in subsection (c)(1) of this section, which either are not subject to federal income tax or which will be subject to federal income tax in a future year;

(5) bonus and incentive payments, including signing or retention bonuses that are offered to entice a person to enter into an employment arrangement or to stay for a period of time in an employment arrangement, whether paid under Subchapter O, Chapter 21 of the Education Code or other authority, unless state law expressly provides that a type of bonus or incentive payment is to be considered TRS-creditable compensation;

(6) employer payments for fringe benefits, including direct cash payments in lieu of fringe benefits, except as provided in §25.22 of this title (relating to Contributions to Cafeteria Plans and Deferred Compensation);

(7) payments, except as provided in subsection (c)(1), (2), (5), and (9) of this section, made to third parties for the benefit of a member;

(8) payments for work as an independent contractor or consultant;

(9) all nonmonetary compensation;

(10) active employee health coverage or compensation supplementation or any other amount received by an employee under former Article 3.50-8, Insurance Code; former Chapter 1580, Insurance Code; Subchapter D, Chapter 22, Education Code, as that subchapter existed on January 1, 2006; or Rider 9, page III-39, Chapter 1330, Acts of the 78th Legislature, Regular Session, 2003 (the General Appropriations Act), regardless of whether the employee receives the amount in cash, uses it for payment of health care coverage, or uses it for any other option available by law;

(11) any other fringe benefit;

(12) payments that an employer intentionally does not include in salary and wages because they are not expected to be permanently recurring in each pay period of employment or because they are not considered base pay and that, for the protection of the actuarial soundness of the retirement system, the type of payment should not be included in the calculation of a lifetime retirement benefit intended to replace a percentage of the member's base pay at retirement;

(13) payments for terminating employment or paid as an incentive to terminate employment. Examples of such payments include payments for contract buy-outs, amounts paid pursuant to an agreement in which the employee agrees to terminate employment or to waive or release rights to future employment, and amounts paid pursuant to early retirement incentive programs or other programs intended to increase the compensation paid to the employee upon receipt of the resignation of the employee or the waiver or release of rights to future employment. Increased compensation paid in the final year of employment prior to retirement that exceeds increases approved by the employer for all employees or classes of employees is presumed to be payment for terminating employment;

(14) payments received under relevant parts of the educator excellence awards program under Subchapter O of Chapter 21, Education Code that do not represent payments for service rendered by the member;

(15) except as provided in §25.28(e) of this title (relating to Payroll Report Dates), amounts paid pursuant to a settlement agreement; and

(16) differential pay that is less than 50% of the compensation for service in a full-time position.

Differential pay is pay by an employer to a member who leaves membership eligible employment to serve in the military and the pay represents all or some of the difference between what the member earned in the TRS covered employment and what he or she is earning in the military job. Differential pay that is at least 50% of the compensation for full-time service in the membership eligible position may be reported to TRS and deposits submitted at the discretion of the employer.

(e) The maximum amount of compensation of any member that may be taken into account under the retirement system shall not exceed \$150,000 for plan years commencing on or after September 1, 1996. For plan years commencing on or after January 1, 2002, the maximum amount of compensation shall not exceed the limit contained in the Internal Revenue Code §401(a)(17)(A), 26 United States Code §401(a)(17)(A). For plan years beginning before January 1, 1997, in determining the compensation of any member for any year, the family aggregation rules of the Internal Revenue Code, §414(q)(6), 26 United States Code §414(q)(6) shall apply except the term "family" shall include only the spouse of the member and any lineal descendants of the member who have not attained age 19 before the end of the year. The limits set forth in the first two sentences of this subsection shall be increased from time to time, to reflect cost of living increases, in accordance with the Internal Revenue Code, §401(a)(17), 26 United States Code §401(a)(17). The dollar limitation prescribed in the first two sentences of this subsection shall not apply to limit the compensation of any person who first becomes a member before September 1, 1996. Furthermore, that limitation shall not apply for any period during which such limitation is repealed or is not enforced by the Internal Revenue Service with regard to governmental plans. In applying the limits described in this section, a plan year is September 1 through August 31.

(f) TRS may rely upon employer certifications in determining creditable compensation or may conduct an investigation to determine whether any ineligible compensation has been reported. At the request of TRS, employers will provide copies of any records or information the retirement system requests. Such records may include, but are not limited to, copies of contracts, work agreements, salary schedules or addenda, board minutes, payroll records, or other materials that will assist the retirement system in making a determination.

RULE §25.43 Cost for Unreported Service or Compensation.

(a) Except as provided by subsections (e), ~~and (f)~~, and (g) of this section, the cost of establishing unreported service or compensation credit is the actuarial cost, as determined by TRS, of the additional standard annuity retirement benefits that would be attributable to the unreported service or compensation credit purchased under this subchapter.

(b) To calculate the actuarial cost of purchasing a year of unreported service credit, TRS will use the cost factors and method described in §25.302 of this title (relating to Calculation of Actuarial Cost). To calculate the actuarial cost of purchasing unreported compensation credit, TRS will use the factors and method as set forth in §25.302, modified as may be necessary to reflect the purchase of compensation credit instead of service credit.

(c) The purchase cost described in this section assumes a lump-sum deposit will be made. If deposits are made under an installment agreement, a non-refundable installment fee of 9% applies.

(d) If a member has membership service and contributions in the same school year as the year in which the unreported service was rendered, TRS shall adjust the actuarial cost as calculated under subsection (b) of this section proportionately by applying a ratio, the numerator of which is the number of TRS-covered service days rendered by the member and the denominator of which is 90 days of service required for a year of membership service credit.

(e) A member may establish unreported service or compensation credit by paying the deposits and fees required in subsection (f) of this section if the member meets all applicable requirements to purchase unreported service or compensation credit and if:

(1) the person otherwise meets all eligibility requirements of §825.403, Government Code, as amended by Acts of the 82nd Legislature, R.S., S.B. 1668 (2011);

(2) the service for which credit is sought to be established was rendered, or the compensation for which credit is sought was paid, before September 1, 2011; and

(3) the person makes payment for the credit, or enters into an installment agreement for payment, not later than August 31, 2013.

(f) The cost of establishing unreported service or compensation credit under subsection (e) of this section is the amount of deposits previously required but not paid plus a fee computed at the rate of 5.0% per annum of the deposits due from the end of the school year in which the deposits were due or the end of the 1974-1975 school year, whichever is later, until the date of payment.

(g) For purposes of this section, workers' compensation paid as temporary wage replacement pay may be reported or verified to TRS until the end of the school year following the school year in which it is paid. If the workers' compensation is reported or verified to TRS no later than the end of the school year following the school year in which it is paid, member contributions on the workers' compensation paid are required to establish the compensation and service credit associated with the workers' compensation. The member contributions on the worker's compensation must be paid in full in a lump sum by the end of the school year following the year in which the workers' compensation was paid. If the workers' compensation is not reported or verified and member contributions are not paid by the end of the school year following the year in which the workers' compensation is paid, the member may establish the service and compensation as unreported compensation as provided in this section.

RULE §25.47 Deadline for Verification.

(a) For unreported service or unreported compensation paid after August 31, 2011, TRS must receive the required verification not later than five years after the end of the school year in which the service was rendered or compensation was paid in order for it to be creditable with TRS.

(b) For unreported service rendered or unreported compensation paid before September 1, 2011, TRS must receive the required verification not later than August 31, 2016, in order for it to be creditable with TRS.

(c) The person seeking credit must obtain the required verification from the employer and submit it to TRS before the applicable deadline.

(d) For purposes of this section, workers' compensation paid as temporary wage replacement pay is not unreported compensation until after the end of the school year following the school year in which the compensation was paid.

RULE §25.81 Out-of-State Service Eligible for Credit.

A member may obtain out-of-state service credit for qualified employment in public educational institutions which are maintained in whole or in part by one of the states in the United States of America; by a commonwealth, territory, or possession of the United States of America; or by the United States government. Public educational institutions of the United States government must have been maintained for the primary purpose of educating the children of United States citizens either in foreign countries or in locations within the United States where state and local government have not provided public educational facilities. The service in eligible institutions must satisfy the requirements for membership in the Teacher Retirement System of Texas, except for the requirement that the employment be in Texas. Further, the service must have been for at least 4 1/2 months of the school year, or for at least a full semester of more than four calendar months, or for at least 90 days of a school year as a substitute in a position otherwise eligible for out-of-state service. [For service rendered in the 2011-2012 school year and after, a member must have worked or received paid leave for at least 90 days in a school year in a position otherwise eligible for out-of-state service or worked for at least 90 days in a school year as a substitute in a position otherwise eligible for out-of-state service.](#) A member may satisfy any of these requirements by combining the out-of-state service with employment in the Texas public schools that occurred in the same school year and for which deposits are maintained in the member's account. A member eligible to establish normal membership service credit for a school year may not obtain out-of-state credit for that year.

Tab 3C



M E M O R A N D U M

To: Policy Committee of the Board of Trustees

From: Rebecca M. Smith, Assistant General Counsel

Copy: Brian Guthrie, Executive Director
Ken Welch, Deputy Director
Conni Brennan, General Counsel
Rebecca Merrill, Special Advisor to the Executive Director and Manager of Special Projects

Date: November 29, 2012

Re: Proposed Amendments to Chapter 31, relating to Employment After Retirement

REQUESTED ACTION

Staff asks the Policy Committee to authorize publication of proposed amendments to two rules in Chapter 31 regarding employment after retirement and the employer pension surcharge. Specifically, staff proposes amendments to §31.14, relating to One-half Time Employment and §31.41, relating to Return to Work Employer Pension Surcharge. The proposed amendments would be published for public comment in the *Texas Register* for at least 30 days before the committee and board consider their adoption.

WHY THE ACTION IS REQUESTED

The proposed rule changes to §31.14 address how employment in institutions of higher education that is expressed in terms of the number of courses or semester hours taught is considered in determining the number of clock hours that can be worked under the limits for one-half time employment by a retiree. The most recent changes made to this rule provided a new standard for one-half time employment. The new standard for retirees working for TRS-covered employers allowed a retiree to work the equivalent of four clock hours for every work day in the month without forfeiting the annuity payable for that month. Experience with the rule and the conversion ratio in the rule indicates that further refinement is needed to ensure consistent application of the rule. Similarly, experience with the new standard for one-half time employment for retirees reflects the confusion that occurs when the standard for payment of the pension surcharge is different than the standard for one-half time employment without loss of annuity. The proposed amendments to §31.41 incorporate the same standard for triggering payment of the pension surcharge and the loss of annuity for exceeding one-half time employment.

BACKGROUND OF THE REQUESTED ACTION

Section 31.14. Recent changes to this rule created one standard for all service retirees working for TRS-covered employers after retirement. In the absence of a 12 full, consecutive calendar month break in service from employment with a TRS-covered employer, retirees who retired after January 1, 2011 are limited to working no more than one-half time without forfeiting the monthly annuity. One-half time means working no more than the equivalent of four clock hours for each work day in that calendar month. A conversion ratio was also added to the rule that required work expressed in course or semester hours to be converted to clock hours. The ratio was two clock hours for each course or semester hour.

Experience with the new language revealed a further need for clarification in the ratio language that is addressed in the current proposed amendments. Rather than converting semester hours or course credits to clock hours, the proposed amendments direct that the number of hours of instruction in the classroom or lab be converted to clock hours using the conversion ratio. The conversion ratio takes into account not only the amount of time spent instructing students, but also the amount of preparation time, time spent grading work and submitting grades, and similar work related to the classroom instruction. This amendment is recommended to eliminate the need to specifically include the many different terms used by employers to describe the amount of work performed by faculty by using a single standard of the amount of time in the class room or lab to ensure consistent application of the limit.

Section 31.41. The proposed amendments to this rule address the requirements for triggering payment of the pension surcharge. Currently, a pension surcharge is owed by the employer who employs a retiree who retired September 1, 2005 or after and is working in a TRS-eligible position. Experience with using two different one-half time standards to evaluate the employment of a retiree highlighted the confusion experienced by employers, the difficulty in communicating the two standards to employers and retirees, and the unanticipated cost to both parties when the work triggered the surcharges. The standard for one-half time employment that avoids loss of the monthly annuity is working no more than the equivalent of four clock hours for each work day in the calendar month and the standard for triggering the surcharge is working at least one-half the full-time load for a period of four and one-half months or more. The proposed amendments establish the same standard for triggering payment of the surcharge and the loss of annuity for exceeding one-half time employment.

RULE §31.14 One-half Time Employment.

(a) A person who is receiving a service retirement annuity may be employed on a one-half time basis without forfeiting annuity payments for the months of employment. In this section, one-half time basis means the equivalent of 4 clock hours for each work day in that calendar month. The total number of hours allowed for that month may be worked in any arrangement or schedule.

(b) Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(c) Paid time-off, including sick leave, vacation leave, administrative leave, and compensatory time for overtime worked, is employment for purposes of this section and must be included in the determining the total amount of time worked in a calendar month and reported to TRS as employment for the calendar month in which it is taken.

(d) For the purpose of this section, actual course or lab instruction with an institution of higher education in state-supported colleges (including community and junior colleges), ~~and universities~~ that is expressed measured in terms of number of courses; course or semester hours/credits; instructional units; or other units of time representing class or instructional time shall be counted as a minimum of two clock hours for each clock hour of instruction or time in the classroom or lab ~~per one course or semester hour~~ in order to reflect instructional time as well as preparation, grading, and other time typically associated with one course-hour of instruction. If the employer has established a greater amount of preparation time for each ~~course or semester~~-hour in the classroom or lab, the employer's established standard will be used to determine the number of courses or labs or semester hours a retiree may teach under the exception to loss of annuity provided by this section. The equivalent clock hours computed under this subsection may not be greater than the number of work hours authorized in subsection (a) of this section.

(e) This exception and the exception for substitute service may be used during the same calendar month without forfeiting the annuity only if the total amount of time that the retiree works in those positions in that month does not exceed the amount of time per month for work on a one-half time basis.

Beginning September 1, 2011 and thereafter, the exception for one-half time employment under this section and the exception for substitute service under §31.13 of this chapter (relating to Substitute Service) may be used during the same calendar month without forfeiting the annuity only if the total number of days that the retiree works in those positions in that month does not exceed one-half the number of days available for that month for work.

(f) A person working under the exception described in this section is not separated from service with all Texas public educational institutions for the purpose of the required 12 full consecutive month break described in §31.15 of this chapter (relating to Full-time Employment after 12-Consecutive-Month Break in Service).

(g) The exception described in this section does not apply for the first month after the person's effective date of retirement (or the first two months if the person's retirement date has been set on May 31 under §29.14 of this title (relating to Eligibility for Retirement at the End of May)).

RULE §31.41 Return to Work Employer Pension Surcharge.

- (a) ~~For school years prior to the 2013-2014 school year, for each report month a retiree who retired September 1, 2005 or after is working for a TRS-covered employer (employer) or third party entity in a position eligible for membership in TRS, the employer that reports the retiree on the Employment of Retired Members Reports shall pay the Teacher Retirement System of Texas (TRS) the surcharge described in this section.~~ (ab) Beginning September 1, 2013, fFor each report month a retiree is working ~~for an in a TRS-covered position~~ employer or third party entity for more than the equivalent of four clock hours for each work day in that calendar month~~and reported on the Employment of Retired Members Report~~, the employer that reports the retiree on the Employment of Retired Members Report shall pay to ~~the Teacher Retirement System of Texas (TRS)~~ a surcharge based on the retiree's salary paid that report month. For purposes of this section, the employer is the reporting entity that reports the employment of the retiree and the criteria used to determine if the retiree is working more than the equivalent of four clock hours for each work day in that calendar month~~in a TRS-covered position~~ are the same as the criteria for determining one-half time employment under §31.14 of this title (relating to One-half Time Employment)~~eligible for TRS membership, except that. A~~ a retiree reported as a substitute must meet the requirements of §31.1(b) of this title (relating to Definitions) for the surcharge not to apply.
- (bc) The surcharge amount that must be paid by the employer for each retiree working more than the equivalent of four clock hours for each work day in that calendar month~~in a TRS-covered position~~ is an amount that is derived by applying a percentage to the retiree's salary. The percentage applied to the retiree's salary is an amount set by the Board of Trustees and is based on member contribution rate and the state pension contribution rate.
- (de) The surcharge is due from each employer that reports a retiree as working as described in this section on or after September 1, 2005, beginning with the report month for September 2005.
- (ed) The surcharge is not owed by the employer for any retiree ~~employed~~ who retired from the retirement system before September 1, 2005.
- (fe) The surcharge is not owed by the employer for a retiree that is reported as working under the exception for Substitute Service as provided in §31.13 of this title (relating to Substitute Service) unless that retiree combines Substitute Service under §31.13 of this title with other ~~TRS-covered~~ employment with the same or another employer or third party entity in the same calendar month. For each calendar month that the retiree combines substitute service and other ~~TRS-covered~~ employment as described so that the work exceeds one-half time as described in §31.14(e) of this title (relating to One-half Time Employment), the surcharge is owed on all compensation paid to the retiree, including compensation paid for substitute service. If the employment is with more than one employer, the surcharge is owed by each employer on the compensation paid by that employer~~by the employer that reports the retiree on all compensation earned by the retiree, including compensation for the substitute service.~~
- (gf) The surcharge is owed by the employer on any retiree who is working for a third party entity and performing duties or providing services on behalf of the employer for more than the equivalent of four clock hours for each work day in that calendar month~~but serving in a TRS-covered position~~ and who is considered an employee of that employer under §824.601(d) of the Government Code.
- (hg) Except as provided in subsection (e) of this section relating to combining substitute service with other employment, if a retiree is employed concurrently in more than one position ~~that is not eligible for TRS membership,~~ the surcharge is owed if the combined employment is for more than the equivalent of four clock hours for each work day in that calendar month~~eligible for membership under §25.6 of this title (relating to Part-time or Temporary Employment)~~. If the employment is with more than one employer, the surcharge is owed by each employer.

(i) For school years prior to the 2013-2014 school year, if a retiree is employed concurrently in more than one position that is not eligible for membership, the surcharge is owed if the combined employment is eligible for membership under §25.6 of this title (relating to Part-time or Temporary Employment). If the employment is with more than one employer, the surcharge is owed by each employer.

(h) For school years prior to the 2013-2014 school year, if a retiree is employed concurrently in more than one position and one of the positions is eligible for TRS membership and one is not, the surcharge is owed on the combined employment. If the employment is with more than one employer, the surcharge is owed by each employer.

(k) For school years prior to the 2013-2014 school year, if a retiree is employed in a position eligible for TRS membership, the surcharge is owed by each employer on all subsequent employment with a TRS-covered employer for the same school year.

Tab 3D



MEMORANDUM

To: Policy Committee of the Board of Trustees

From: Rebecca M. Smith, Assistant General Counsel

Copy: Brian Guthrie, Executive Director
Ken Welch, Deputy Director
Conni Brennan, General Counsel
Rebecca Merrill, Special Advisor to the Executive Director and Manager of Special Projects
Clarke Howard, Assistant General Counsel

Date: November 29, 2012

Re: Proposed Amendments to TRS rule §41.4 relating to Health Benefit Surcharge

REQUESTED ACTION

Staff asks the Policy Committee to authorize publication of proposed amendments to one rule in Chapter 41 regarding TRS-Care and the health benefit surcharge owed by employers when retirees are employed. Specifically, staff proposes amendments to §41.4, relating to Employer Health Benefit Surcharge. The proposed amendments would be published for public comment in the *Texas Register* for at least 30 days before the committee and board consider their adoption.

WHY THE ACTION IS REQUESTED

The proposed rule changes to §41.4 establish a new standard for triggering payment of the health benefit surcharge. Prior changes made to §31.14, relating to One-half Time Employment established a new standard for one-half time employment after retirement. Under the revised standard, service retirees can work the equivalent of four clock hours for each work day in the calendar month without forfeiting the annuity for the month. A ratio for converting course credits or semester hours to clock hours was also established. However, payment of the health benefit surcharge is required when the retiree is hired in a position eligible for membership in TRS and membership is authorized when the employee is working one-half or more of the full-time load for a period of four and one-half months or more. Experience with the revised language of the rule reflected confusion with the different standards used to trigger payment of the health benefit surcharge and for loss of annuity for exceeding one-half time employment. The proposed amendments to §41.4 incorporate the same standard for triggering payment of the health benefit surcharge as the limit on one-half time employment that results in loss of the monthly annuity and tracks the standard used for triggering payment of the pension surcharge.

BACKGROUND OF THE REQUESTED ACTION

Section 41.4. The proposed amendments to this rule address the requirements for triggering payment of the health benefit surcharge. Currently, a health benefit surcharge is owed by the employer who employs a retiree who retired September 1, 2005 or after and who is working in a TRS-eligible position. Experience with using the new standard for one-half time employment for retirees (equivalent of four clock hours for each work day in the calendar month) and the standard for one-half time employment eligible for membership (one-half the full-time load) to trigger payment of the health benefit surcharge revealed confusion on the part of employers, difficulty in communicating the two standards to the employers and retirees, and unanticipated cost to both when the retiree worked one-half time. The proposed amendments establish the same standard for triggering payment of the surcharge and loss of annuity for exceeding one-half time employment.

RULE §41.4 Health Benefit Surcharge.

(a) When used in this section, the term "employer" has the meaning given in §821.001(7), Government Code.

(b) For school years prior to the 2013-2014 school year, for each report month a retiree is enrolled in the health benefits program (TRS-Care) provided pursuant to the Texas Public School Retired Employees Group Benefits Act and working for an employer or a third party entity as defined in §824.601, Government Code, in a position eligible for membership in TRS, the employer that reports the retiree on the Employment of Retired Members Report shall pay the monthly surcharge described in this section to the Retired School Employees Group Insurance Fund (the Fund).

~~(bc) Beginning September 1, 2013, for each report month a retiree is enrolled in the health benefits program ("TRS-Care") provided pursuant to the Texas Public School Retired Employees Group Benefits Act, and is working for an employer in a TRS-covered position for more than the equivalent of four clock hours for each work day in that calendar month, the employer that reports the employment of the retiree and is reported on the Employment of Retired Members Report to the Teacher Retirement System of Texas ("TRS"), the employer that reports the retiree shall pay monthly to the Retired School Employees Group Insurance Fund (the "Fund") a surcharge established by the Board of Trustees of TRS.~~

~~(cd) The criteria used to determine if the retiree is working more than the equivalent of four clock hours for each work day in that calendar month in a TRS-covered position are the same as the criteria for determining one-half time employment under §31.14 of this title (relating to One-half Time Employment) eligible for TRS membership.~~

~~(de) The surcharge is also owed by the employer on any retiree who is enrolled in TRS-Care, is working for a third party entity but is working for more than the equivalent of four clock hours for each work day in that calendar month serving in a TRS-covered position, and who is considered an employee of that employer under §824.601(d) of the Government Code.~~

~~(ef) The surcharge under subsection (b) of this section is not owed:~~

~~(1) by an employer for any retiree employed by that employer who retired from TRS before September 1, 2005; or~~

~~(2) by an employer for a retiree reported as working under the exception for Substitute Service as provided in §31.13 of this title (relating to Substitute Service) unless that retiree combines Substitute Service under §31.13 of this title with other TRS-covered employment with the same or another employer or third party entity in the same calendar month. For each calendar month that the retiree combines substitute service and other TRS-covered employment as described so that the work exceeds one-half time as described in §31.14(e) of this title (relating to One-half Time Employment), the surcharge is owed by each employer as provided in this section.~~

~~(fg) A retiree who is enrolled in TRS-Care, is working for an in a TRS-covered employer or third party entity for more than the equivalent of four clock hours for each work day in that calendar month position, and is reported on the Employment of Retired Members Report to TRS shall inform the employer of the identification of all employers of the retiree and all employers of any other retiree enrolled under the same account identification number. An employer who reports to TRS the employment of a retiree who is enrolled in TRS-Care and is working more than the equivalent of four clock hours for each work day in that calendar month in a TRS-covered position shall inform TRS as soon as possible in writing of the name, address, and telephone number of any other employer that employs the retiree or any other retiree who is also enrolled under the same account identification number.~~

~~(gh) If more than one employer reports the employment of a retiree who is enrolled in TRS-Care to TRS during any part of a month, the surcharge under subsection (b) of this section required to be paid into the Fund by each reporting employer for that month is the total amount of the surcharge due that month divided by the number of reporting employers. The pro rata share owed by each employer is not~~

based on the number of hours respectively worked ~~each week~~ by the retiree for each employer, nor is it based on the number of days respectively worked during the month by the retiree for each employer.

(~~h~~i) If a retiree who is enrolled in TRS-Care is employed concurrently by one or more employers in more than one position ~~that is not eligible for TRS membership~~, the surcharge is owed if the combined employment is for more than the equivalent of four clock hours for each work day in that calendar month eligible for membership under §25.6 of this title. If the employment is with more than one employer, the surcharge will be paid according to subsection (hg) of this section by each employer.

(~~i~~j) For school years prior to the 2013-2014 school year, if a retiree who is enrolled in TRS-Care is employed concurrently in more than one position and one of the positions is eligible for TRS membership and one is not, the surcharge is owed on the combined employment. If the employment is with more than one employer, the surcharge will be paid according to subsection (hg) of this section by each employer.

(~~k~~j) For school years prior to the 2013-2014 school year, if a retiree who is enrolled in TRS-Care is employed in a position eligible for TRS membership, the surcharge will be paid according to subsection (hg) of this section by each employer on all subsequent employment, whether eligible for membership or not, with a TRS-covered employer for the same school year.

(~~l~~k) The employer shall maintain the confidentiality of any information provided to the employer under this section and shall use the information only as needed to carry out the purposes stated in this section and related applicable rules or statutes.

Tab 3E



MEMORANDUM

To: Policy Committee of the Board of Trustees

From: Rebecca M. Smith, Assistant General Counsel

Copy: Brian Guthrie, Executive Director
Ken Welch, Deputy Director
Conni Brennan, General Counsel
Rebecca Merrill, Special Advisor to the Executive Director and Manager of Special Projects

Date: November 29, 2012

Re: Proposed Amendments to Chapter 47, relating to Qualified Domestic Relations Orders

REQUESTED ACTION

Staff asks the Policy Committee to authorize publication of proposed amendments to one rule in Chapter 47 regarding qualified domestic relations orders. Specifically, staff proposes amendments to §47.10, relating to Determination of Whether an Order is a Qualified Domestic Relations Order. The proposed amendments would be published for public comment in the *Texas Register* for at least 30 days before the committee and board consider their adoption.

WHY THE ACTION IS REQUESTED

The proposed rule changes to §47.10 establish a requirement that domestic relations orders entered by a court September 1, 2013 or after must be in a form prescribed by TRS. Currently, TRS provides a model order to aid parties in drafting a domestic relations order that meets all of the plan requirements in order to be a qualified order. Although most orders are based in large part on the model order, many parties include limiting language or additional requirements that are difficult for TRS to administer and/or require manual administration. TRS requested and received statutory authorization in the last legislative session to require use of a prescribed form. The proposed changes implement the statutory authority to require use of a prescribed form in order for the order to be approved by TRS as a qualified order.

BACKGROUND OF THE REQUESTED ACTION

Section 47.10. TRS was given authority in 1991 to administer qualified domestic relations orders. A domestic relations order is any judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, alimony

payments, or marital property rights to a spouse, former spouse, child, or other dependent of a member or retiree, and is made pursuant to a domestic relations law, including a community property law of the State of Texas or another state. A court enters the domestic relations order that directs TRS to pay an alternate payee a part or all of the benefits owed on behalf of the participant and TRS must review the order and determine if it is a qualified order. The Legal-Benefits Team in the Legal Services Department performs this review on behalf of the Executive Director. The parties are notified by TRS if the order is approved and the requirements of the order are set up in the alternate payment system (ALTP) for administration. If the order does not meet the statutory requirements, the parties are provided with a written determination that the order is not a qualified order that includes the basis for the rejection of the order. The parties may then either return to court to obtain an amended order or may appeal the determination to district court in Travis County after a request for reconsideration of the determination by the Executive Director.

TRS developed the first model domestic relations order in 1992 and continues to use a revised version of the original model order. However, in the absence of a requirement to use the model order, courts make revisions to the order that must be evaluated for compliance with the plan's terms. A determination must also be made that it possible for TRS to administer the order programmatically. For example, one party may owe the other a sum of money or an equal division of the assets cannot be achieved. The court may order the amount owed to be deducted from the benefits to be received from TRS or may order a disproportionate share of one type of benefit to be awarded to the former spouse. The responsibility for tracking the payments and administering the division introduces the possibility of human error and can become a liability for the trust fund. By having the requirement that the parties use a form or model prescribed by TRS, programming can be developed to ensure the accurate administration of the order and reduce the amount of staff time required to manually track payments. Also, the amount of staff time required to review and approve or reject orders will also be reduced by the requirement to use a prescribed form.

RULE §47.10 Determination of Whether an Order is a Qualified Domestic Relations Order

(a) A domestic relations order entered by a court of competent jurisdiction September 1, 2013 or after must be in a form prescribed by TRS. The form prescribed by TRS must ensure compliance with the requirements in subsection (b) of this section.

(b) For domestic relations orders entered by a court of competent jurisdiction before September 1, 2013, TRS shall apply the statutory criteria to determine whether an order is a QDRO. The following provisions shall also be used in making the determination.

(1) The order must provide for each possible distribution by the retirement system for the member or retiree. This requirement may be met by a provision that:

(A) awards a specified or clearly determinable percentage, rather than an amount, of each distribution by TRS based on the participant's account; or

(B) awards all benefits not specified to the participant to be paid in accordance with plan provisions.

(2) The order must provide for reducing the amount awarded in the event of reduction of the benefit based on the age of the participant, each reduction to be in proportion to the factors used to reduce the standard annuity on the basis of the participant's age below normal retirement age. This requirement shall not apply if:

(A) the order awards a percentage of whatever monthly benefit is payable after all elections have been made by the member, or in the event of death benefits, by the designated beneficiary;

(B) the member or retiree has reached normal retirement age and, if a retiree, has retired without any reduction for early age retirement at the time of the determination as to whether the order is a QDRO; or

(C) the order reflects that the retiree is, or will be receiving, retirement benefits reduced for early age retirement and the award to the alternate payee has considered the reduced amount of the retiree's annuity payments.

(3) The order may not:

(A) purport to require the designation by the participant of a particular person as the recipient of benefits in the event of a member's or annuitant's death;

(B) purport to require the selection of a particular payment plan or benefit option;

(C) require any action on the part of the retirement system contrary to its governing statutes or plan provisions other than the direct payment of the benefit awarded to an alternate payee; or

(D) award any interest in distributions by the retirement system contingent on any condition other than those conditions resulting in the liability of the retirement system for payment under its plan provision.

(4) A QDRO may not provide for the award of a specific amount of a benefit, rather than a percentage of this benefit, to an alternate payee unless the order also provides for a reduction of the amount awarded in the event that the benefits available to the retiree or member are reduced by law. This requirement shall not apply to benefit waivers executed by the participant.

(5) If the order intends to award the participant the full amount of any future benefit increases that are provided or required by the legislature, the order must explicitly state such. TRS, its board of trustees, and its officers and employees shall not be liable for making payment of part of any future benefit increases to any person if the order so requires or if the order awards a percentage of benefits payable and does not explicitly state that future benefit increases are awarded solely and completely to the plan participant.

(6) An order that purports to give to someone other than a member the right to designate a beneficiary or choose any retirement plan available from TRS is one that requires an action contrary to TRS' governing statute and plan provisions and therefore is not a QDRO.

(7) An order that attaches a lien to any part of amounts payable with respect to a member or retiree is one that requires an action contrary to TRS' governing statute and plan provisions and therefore is not a qualified domestic relations order.

(8) An order that awards an alternate payee a portion of the benefits payable with respect to a member or retiree under TRS and that purports to require TRS to make a lump sum payment of the awarded portion of the benefits to the alternate payee that are not payable in a lump sum is one that requires action contrary to TRS' governing statute and plan provisions and therefore is not a QDRO.

(9) An order shall specify the date of the marriage.

(10) An order that allocates the participant's investment in contract in a manner not in compliance with any requirements of the Internal Revenue Code and applicable regulations is not a QDRO. An order that does not allocate a participant's investment in contract may be determined to be a QDRO if it provides sufficient information for TRS to make the allocation in accordance with applicable laws and regulations.

(11) An order that purports to require a member to terminate employment, to withdraw contributions, or to apply for retirement, is not a QDRO.

(12) The order must satisfy the requirements of Internal Revenue Code §414(p)(1)(A)(i) and §414(p)(1)(B).

(13) The order may contain provisions consistent with §824.1012, Government Code, or §824.1013, Government Code, and TRS may rely on the provisions of the order as though the provisions were included in the decree of divorce or order accepting a property settlement.

(14) The order may specify an alternative method for the parties to verify their Social Security numbers to TRS, if the court finds that omission of the numbers in the order is necessary to reduce the risk of identity theft. The order is not a QDRO if TRS finds that the method of verification is insufficient for the purpose of payment of benefits or reporting of income for tax purposes.