

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

(Mr. Colonna, Committee Chair; Mr. Barth; Mr. Corpus; Mr. Kelly; & Ms. Ramirez, Committee Members)

AGENDA

**November 20, 2014 – 1:15 p.m.
TRS East Building, 5th Floor, Boardroom**

1. Consider the approval of the proposed minutes of the September 18, 2014 committee meeting – Joe Colonna.
2. Consider recommending to the Board the adoption of amendments to the Resolution Designating Persons Authorized to Sign TRS Vouchers – Don Green.
3. Conduct the required review under the Policy Review Schedule and consider recommending to the Board proposed amendments to the Board of Trustees Training Policy – Rebecca Merrill.
4. Consider recommending to the Board the adoption of the four-year statutory rule review of TRS rules in Chapters 21-51 of Title 34 of the Texas Administrative Code, including the readoption of rules in those chapters with or without changes, and the adoption of the following proposed amended rules – Rebecca Smith and Clarke Howard:
 - A. Chapter 25 (Membership Credit) – Rebecca Smith:
 - i. Rule § 25.1, relating to Full-time Service;
 - ii. Rule § 25.21, relating to Compensation Subject to Deposit and Credit;
 - iii. Rule § 25.25, relating to Required Deposits;
 - iv. Rule § 25.26, relating to Annual Compensation Creditable for Benefit Calculation;
 - v. Rule § 25.28, relating to Payroll Report Dates;
 - vi. Rule § 25.34, relating to Membership Waiting Period;
 - vii. Rule § 25.35, relating to Employer Payments for New Members;
 - viii. Rule § 25.41, relating to Deposits for Unreported Service or Compensation;
 - ix. Rule § 25.42, relating to Payment of Benefits Contingent on Deposits;

- x. Rule § 25.43, relating to Cost for Unreported Service or Compensation;
 - xi. Rule § 25.45, relating to Verification of Unreported Compensation or Service;
 - xii. Rule § 25.46, relating to Determination of Compensation Subject to Deposit and Credit;
 - xiii. Rule § 25.61, relating to Service Credit for Eligible Military Duty;
 - xiv. Rule § 25.64, relating to Crediting Fee;
 - xv. Rule § 25.74, relating to Cost;
 - xvi. Rule § 25.81, relating to Out-of-State Service Eligible for Credit;
 - xvii. Rule § 25.131, relating to Required Service;
 - xviii. Rule § 25.135, relating to Service Credit Missing from Annual Statement;
 - xix. Rule § 25.184, relating to Refund for Nonpayment;
 - xx. Rule § 25.302, relating to Calculation of Actuarial Costs of Service Credit; and
 - xxi. Rule § 25.303, relating to Calculation of Actuarial Cost for Purchase of Compensation Credit.
- B. Chapter 27 (Termination of Membership and Refunds) – Rebecca Smith.
- i. Rule § 27.4, relating to Refunds; and
 - ii. Rule § 27.6, relating to Reinstatement of an Account.
- C. Chapter 29 (Benefits) – Rebecca Smith.
- i. Rule § 29.15, relating to Termination of Employment; and
 - ii. Rule § 29.55, relating to Limitation on Contributions.
- D. Chapter 31 (Employment After Retirement) – Rebecca Smith.
- i. Rule § 31.13, relating to Substitute Service;
 - ii. Rule § 31.14, relating to One-half Time Employment;
 - iii. Rule § 31.15, relating to Full-time Employment after 12 Consecutive Month Break in Service; and
 - iv. Rule § 31.32, relating to Half-time Employment Up to 90 Days.

- E. Chapter 39 (Proof of Age) – Rebecca Smith.
 - i. Rule § 39.1, relating to Establishment of Date of Birth.
- F. Chapter 41 (Health Care and Insurance Programs) – Clarke Howard.
 - i. Rule § 41.1, relating to Initial Enrollment Periods for the Health Benefits Program under the Texas Public School Retired Employees Group Benefits Act (TRS-Care);
 - ii. Rule § 41.2, relating to Additional Enrollment Opportunities;
 - iii. Rule § 41.7, relating to Effective Date of Coverage;
 - iv. Rule § 41.10, relating to Eligibility to Enroll in the Health Benefits Program under the Texas Public School Retired Employees Group Benefits Act (TRS-Care);
 - v. Rule § 41.14, relating to Expulsion from TRS-Care for Fraud;
 - vi. Rule § 41.30, relating to Participation in the Health Benefits Program under the Texas School Employees Uniform Group Health Coverage Act by School Districts, Other Educational Districts, Charter Schools, and Regional Education Service Centers;
 - vii. Rule § 41.33, relating to Definitions Applicable to the Texas School Employees Uniform Group Health Coverage Program;
 - viii. Rule § 41.34, relating to Eligibility for Coverage under the Texas School Employees Uniform Group Health Coverage Program;
 - ix. Rule § 41.36, relating to Enrollment Periods for TRS-ActiveCare;
 - x. Rule § 41.37, relating to Effective Dates of Coverage;
 - xi. Rule § 41.38, relating to Termination Date of Coverage;
 - xii. Rule § 41.39, relating to Coverage for Individuals Changing Employers;
 - xiii. Rule § 41.50, relating to Appeals Relating to Claims or Other Benefits;
 - xiv. Rule § 41.51, relating to Appeals Relating to Eligibility;
 - xv. Rule § 41.52, relating to Expulsion from TRS-ActiveCare; and
 - xvi. Rule § 41.91, relating to Certification of Insurance Coverage.
- G. Chapter 47 (Qualified Domestic Relations Orders) – Rebecca Smith.
 - i. Rule § 47.10, relating to Determination of Whether an Order is a Qualified Domestic Relations Order.

- H. Chapter 51 (General Administration) – Rebecca Smith.
 - i. Rule § 51.5, relating to Waiver of Deadline to Remit Deposits and Documentation.
- 5. Consider authorizing for public comment publication in the *Texas Register* proposed amendments to Rule § 25.26, relating to Annual Compensation Creditable for Benefit Calculation – 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 18, 2014

The Policy Committee of the Board of Trustees of the Teacher Retirement System of Texas met on September 18, 2014, 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:

Joe Colonna, Chair
Todd Barth
David Corpus
David Kelly
Dolores Ramirez

Others present:

Karen Charleston, TRS Trustee	Dennis Gold, TRS
Christopher Moss, TRS Trustee	Tom Guerin, TRS
Anita Palmer, TRS Trustee	Clarke Howard, TRS
Nanette Sissney, TRS Trustee	Dan Junell, TRS
Brian Guthrie, TRS	Eric Lang, TRS
Ken Welch, TRS	Lynn Lau, TRS
Carolina de Onís, TRS	Hugh Ohn, TRS
Howard Goldman, TRS	Mike Pia, TRS
Britt Harris, TRS	Beckie Smith, TRS
Jerry Albright, TRS	Ken Stanley, TRS
Michael Aluko, TRS	Dale West, TRS
Jase Auby, TRS	Dr. Keith Brown, Investment Advisor
Lane Arnold, TRS	Steven Huff, Fiduciary Counsel, Reinhart Boerner Van Deuren
Dr. Mohan Balachandran, TRS	Steve Voss, Hewitt EnnisKnupp
Ashley Baum, TRS	Anumeha, Texas Pension Review Board
Sylvia Bell, TRS	Ashley Rendon, Texas Pension Review Board
Chi Chai, TRS	Ann Fickel, Texas Classroom Teachers Association
Mary Chang, TRS	Ted Melina Raab, Texas American Federation of Teachers

Mr. Colonna called the meeting to order at 12:35 p.m. All members were present. Mr. Moss attended the meeting via telephone conferencing.

1. Consider the approval of the proposed minutes of the June 5, 2014 committee meeting – Committee Chair.

On a motion by Mr. Barth, seconded by Mr. Kelly, the committee approved the proposed minutes of the June 5, 2014 meeting as presented.

2. Discuss and consider recommending to the Board proposed amendments to the Investment Policy Statement – Jase Auby and Dennis Gold.

Mr. Voss, Dr. Brown, and Mr. Huff commented on the review of the Investment Policy Statement, stating that the process was thorough, transparent, and well-documented. They agreed that the process gave everyone involved opportunities to participate and learn. Dr. Brown noted the board's ability to exercise its fiduciary responsibility over the investment process, such as setting

benchmarks. Mr. Huff and Mr. Voss both stated that the board met or exceeded best practice standards applying to oversight of an asset allocation policy and adoption of an Investment Policy Statement.

Mr. Auby highlighted three substantive changes relating to strategic asset allocation, Internal Investment Committee (IIC) membership, and investment authority in pre-IPO private securities. Per Mr. Barth's request, Dr. Brown elaborated on the "look-through" analysis that he suggested be incorporated into the risk reporting procedures. He explained that risk parity was not an asset class, but rather a portfolio strategy for generating risk-adjusted returns over time. He stated that adding the "look-through" would reveal where assets were placed and where the risks were in the portfolio. Per Mr. Barth's suggestion, Mr. Auby stated that staff would include the analysis in the risk report presented to the Risk Management Committee.

Mr. Barth asked if an industry standard benchmark would be available in the future for the risk parity strategy. Mr. Auby stated that the strategy was relatively new and an industry standard was currently unavailable. He stated that staff proposed to develop the benchmark with two peer entities having a total of 70 percent market share in risk parity. Responding to a question from Mr. Guthrie as to whether a benchmark comprised of 100 percent of the fund's external manager would lead to any unintended consequences, Mr. Voss stated that it would put pressure on the internally managed portfolio.

Mr. Barth asked how the board would be involved in setting the benchmark for the risk parity strategy. He pointed out that the Chief Investment Officer (CIO) would determine the risk parity benchmark under the proposed policy with input from the board's investment advisor, Hewitt EnnisKnupp (HEK). He observed that, with regard to all other benchmarks, HEK confers with staff, and they propose benchmarks for the board's consideration. He agreed with Mr. Kelly's suggestion that staff follow the same protocol and present the risk parity benchmark to the board for ratification. Dr. Brown commented that setting a benchmark was a board decision, and the board should be involved in the process, and be comfortable with the final decision. Mr. Auby pointed out that the CIO and HEK would select the components of the risk parity benchmark and not the board. Mr. Kelly stated that benchmarks were determined by their components and any changes to the components would change the benchmark. He stated that if the board reviewed the components, it would help the board better understand the benchmarks and provide additional oversight. Mr. Kelly concurred with Mr. Barth that the board should formally approve the benchmarks, including their components. Mr. Colonna stated that he did not believe it was the board's intention to cede responsibility for setting benchmarks. He asked Mr. Gold to draft policy language requiring board approval of all benchmarks.

Mr. Auby explained the other two key modifications to the IPS concerning IIC membership and investment authority in pre-IPO private securities.

Mr. Colonna stated that the committee would consider all action items and vote on them at the end of the meeting.

3. **Conduct the required review under the Policy Review Schedule and consider recommending to the Board proposed amendments to the General Authority Resolutions – Sylvia Bell and Dennis Gold.**

Ms. Bell provided an overview of the General Authority Resolutions, including their purpose, review schedule, and proposed changes. She noted that the only substantive change involved language authorizing the Managing Director of Investment Operations to sign compliance documents required by Dodd Frank and other derivatives-related compliance requirements. She confirmed for Mr. Colonna that the review schedule would remain once every two years.

4. **Begin the required review under the Policy Review Schedule of the Code of Ethics for Contractors and related documents – Dennis Gold.**

Mr. Gold stated that staff had begun the review of the Code of Ethics for Contractors and related documents. He stated that the new compliance officer would review the documents and present a draft of any recommended changes to the board in November.

5. **Continue the Four-Year Statutory Rule Review and consider authorizing public comment publication in the *Texas Register* of proposed amendments to or repeal or re-adoption of the following TRS rules in Title 34 of the Texas Administrative Code:**

A. Chapter 25 (Membership Credit) – Rebecca Smith:

- i. **Rule § 25.1, relating to Full-time Service;**
- ii. **Rule § 25.21, relating to Compensation Subject to Deposit and Credit;**
- iii. **Rule § 25.25, relating to Required Deposits;**
- iv. **Rule § 25.26, relating to Annual Compensation Creditable for Benefit Calculation;**
- v. **Rule § 25.28, relating to Payroll Report Dates;**
- vi. **Rule § 25.34, relating to Membership Waiting Period;**
- vii. **Rule § 25.35, relating to Employer Payments for New Members;**
- viii. **Rule § 25.41, relating to Deposits for Unreported Service or Compensation;**
- ix. **Rule § 25.42, relating to Payment of Benefits Contingent on Deposits;**
- x. **Rule § 25.43, relating to Cost for Unreported Service or Compensation;**
- xi. **Rule § 25.45, relating to Verification of Unreported Compensation or Service;**
- xii. **Rule § 25.46, relating to Determination of Compensation Subject to Deposit and Credit;**



- xiii. **Rule § 25.61, relating to Service Credit for Eligible Military Duty;**
 - xiv. **Rule § 25.64, relating to Crediting Fee;**
 - xv. **Rule § 25.74, relating to Cost;**
 - xvi. **Rule § 25.81, relating to Out-of-State Service Eligible for Credit;**
 - xvii. **Rule § 25.131, relating to Required Service;**
 - xviii. **Rule § 25.135, relating to Service Credit Missing from Annual Statement;**
 - xix. **Rule § 25.184, relating to Refund for Nonpayment;**
 - xx. **Rule § 25.302, relating to Calculation of Actuarial Costs of Service Credit; and**
 - xxi. **Rule § 25.303, relating to Calculation of Actuarial Cost for Purchase of Compensation Credit.**
- B. Chapter 27 (Termination of Membership and Refunds) – Rebecca Smith.**
- i. **Rule § 27.4, relating to Refunds; and**
 - ii. **Rule § 27.6, relating to Reinstatement of an Account.**
- C. Chapter 29 (Benefits) – Rebecca Smith.**
- i. **Rule § 29.15, relating to Termination of Employment; and**
 - ii. **Rule § 29.55, relating to Limitation on Contributions.**
- D. Chapter 31 (Employment After Retirement) – Rebecca Smith.**
- i. **Rule § 31.13, relating to Substitute Service;**
 - ii. **Rule § 31.14, relating to One-half Time Employment;**
 - iii. **Rule § 31.15, relating to Full-time Employment After 12 Consecutive Month Break In Service; and**
 - iv. **Rule § 31.32, relating to Half-time Employment Up to 90 Days.**
- E. Chapter 39 (Proof of Age) – Rebecca Smith.**
- i. **Rule § 39.1, relating to Establishment of Date of Birth.**
- F. Chapter 41 (Health Care and Insurance Programs) – Clarke Howard.**
- i. **Rule § 41.1, relating to Initial Enrollment Periods for the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act (TRS-Care);**
 - ii. **Rule § 41.2, relating to Additional Enrollment Opportunities;**



- iii. **Rule § 41.7, relating to Effective Date of Coverage;**
 - iv. **Rule § 41.10, relating to Eligibility to Enroll in the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act (TRS-Care);**
 - v. **Rule § 41.14, relating to Expulsion from TRS-Care for Fraud;**
 - vi. **Rule § 41.30, relating to Participation in the Health Benefits Program under the Texas School Employees Uniform Group Health Coverage Act by School Districts, Other Educational Districts, Charter Schools, and Regional Education Service Centers;**
 - vii. **Rule § 41.33, relating to Definitions Applicable to the Texas School Employees Uniform Group Health Coverage Program;**
 - viii. **Rule § 41.34, relating to Eligibility for Coverage under the Texas School Employees Uniform Group Health Coverage Program;**
 - ix. **Rule § 41.36, relating to Enrollment Periods for TRS-ActiveCare;**
 - x. **Rule § 41.37, relating to Effective Dates of Coverage;**
 - xi. **Rule § 41.38, relating to Termination Date of Coverage;**
 - xii. **Rule § 41.39, relating to Coverage for Individuals Changing Employers;**
 - xiii. **Rule § 41.50, relating to Appeals Relating to Claims or Other Benefits;**
 - xiv. **Rule § 41.51, relating to Appeals Relating to Eligibility;**
 - xv. **Rule § 41.52, relating to Expulsion from TRS-ActiveCare; and**
 - xvi. **Rule § 41.91, relating to Certification of Insurance Coverage.**
- G. Chapter 47 (Qualified Domestic Relations Orders) – Rebecca Smith.**
- i. **Rule § 47.10, relating to Determination of Whether an Order is a Qualified Domestic Relations Order.**
- H. Chapter 51 (General Administration) – Rebecca Smith.**
- i. **Rule § 51.5, relating to Waiver of Deadline to Remit Deposits and Documentation.**

Ms. Smith provided the background of the four-year rule review of Chapters 21-51 of TRS' rules and the timeline of the review process. She stated that the proposed changes to the rules primarily focused on providing clarification on legislative changes enacted over the last two legislative sessions and enhancing efficiency and consistency in operations and processes. She confirmed for Mr. Colonna that the action before the committee was to consider authorizing public-comment



publication in the *Texas Register* of the proposed amended rules presented by staff. She noted that no action was needed at this meeting for any rules not proposed for amendment.

Mr. Howard stated that proposed changes to Chapter 41 relating to the health care programs were to address legislative and procedural changes. He noted that after further review of the rule §41.38 staff decided not to add new language concerning a third alternative relating to the enrollment of dependents in TRS-ActiveCare.

6. Conduct the required review under the Policy Review Schedule and consider recommending to the Board adoption of proposed amendments to the TRS Board of Trustee Bylaws – Rebecca Merrill.

Ms. Merrill referred the committee to the proposed changes to the Bylaws presented in the materials. She highlighted the proposed change that would prohibit the public from using the public comment period for commercial purposes. She stated that the chairman has discretion to stop a public comment if the comment was being made for solicitation purposes. She also noted proposed changes regarding the Compensation Committee, which would change the committee from a special committee to a standing committee. She stated that the committee would be charged with reviewing the Performance Incentive Pay Plan, providing direction to the Executive Director on compensation matters, and making recommendations to the board on the not-to-exceed amounts in the exempt salary schedule in the General Appropriations Act.

7. Consider updates to the Policy Review Schedule – Rebecca Merrill.

Ms. Merrill presented the updated Policy Review Schedule.

Before taking up the motions for considering the action items, Mr. Gold reiterated for Mr. Colonna additional changes suggested by the committee to footnote No.7 in Section 1.6 of the Investment Policy Statement. Per Mr. Harris' suggestion, the phrase "until September 30, 2015 and annually thereafter" was added. Committee members concurred in the additional changes as shown below:

The Risk Parity Benchmark will be calculated using a group of risk parity managers. Until September 30, 2015 and annually thereafter ~~such time as an acceptable benchmark is created by a third party provider~~, the CIO, in consultation with the Board Investment Consultant and with comment sought from the Chairman of the appropriate Board Committee, will from time to time revise the list of risk parity managers comprising the benchmark. . . . Any resulting changes to the composition of the benchmark will be presented for Board consideration prior to ~~made on~~ October 1 for the year commencing on such date. (Footnote No. 7 to the Asset Allocation Table, Section 1.6)

On a motion by Mr. Barth, seconded by Mr. Colonna, the committee unanimously voted to recommend that the board adopt the proposed Investment Policy Statement, as presented by staff with additional changes recommended by the committee.

On a motion by Mr. Barth, seconded by Ms. Ramirez, the committee unanimously voted to recommend that the board adopt the proposed General Authority Resolutions, as presented by staff.



On a motion by Mr. Barth, seconded by Mr. Kelly, the committee unanimously voted to authorize public comment publication of the proposed amended rules as presented by staff with additional amendments presented at this meeting to the proposed amended rule §41.38.

On a motion by Mr. Barth, seconded by Mr. Kelly, the committee unanimously voted to recommend that the board adopt the proposed amendments to the Bylaws of the TRS Board of Trustees, as presented by staff.

On a motion by Mr. Barth, seconded by Mr. Kelly, the committee unanimously voted to adopt the proposed amendments to the Policy Review Schedule, as presented by staff.

The meeting adjourned at 1:30 p.m.

Approved by the Policy Committee of the Board of Trustees of the Teacher Retirement System of Texas on the 20th day of November, 2014.

ATTESTED BY:

Dan Junell
Secretary to the TRS Board of Trustees

Date



Tab 2

**RESOLUTION
DESIGNATING PERSONS AUTHORIZED TO SIGN TRS VOUCHERS**

November 20, 2014

WHEREAS, In accordance with section 825.104 of the Texas Government Code, the Board of Trustees (the "Board") of the Teacher Retirement System of Texas ("TRS") has previously granted authority to certain persons to approve and sign vouchers for payment from accounts of TRS; and

WHEREAS, The Board desires to re-designate those persons to whom this authority has been granted and to add Arlene Caballero as Employee Benefits & Payroll Manager as an additional authorized designee; now, therefore, be it

RESOLVED, That the Board designates the following persons to approve and sign vouchers for payment from accounts of TRS from and after November 20, 2014, and until the designated person separates from employment with TRS, is no longer employed in any capacity for which authority is granted under this resolution, or is not re-designated by the Board, whichever occurs first:

Brian K. Guthrie	Executive Director
Ken Welch	Deputy Director
Don Green	Chief Financial Officer
Jamie Pierce	Director of General Accounting & Budget
Scot Leith	Director of Investment & Benefit Accounting
Janie Duarte	Assistant Director of General Accounting & Budget
Cindy Haley	Financial Reporting Manager
Arlene Caballero	Employee Payroll & Benefits Manager
Vicki Garcia	Team Leader of Investment Accounting

ATTESTED:

Signed: _____
R. David Kelly, Board Chairman

Date: November 20, 2014

Signed: _____
Brian K. Guthrie, Executive Director

Date: November 20, 2014

Tab 4



Legal Services

Memorandum

DATE: November 6, 2014

TO: Policy Committee and Board of Trustees

FROM: Carolina de Onís, TRS General Counsel; and Clarke Howard, Dan Junell, and Rebecca Smith, TRS Assistant General Counsels.

COPY: Brian Guthrie, TRS Executive Director

RE: Four-year Rule Review of Chapters 21 through 51 of TRS' Rules

Background

The Policy Committee began the statutory, four-year rule review of Chapters 21 through 51 of TRS' rules in March 2014. As authorized by the committee, notice of the proposed rule review was published in the April 25, 2014 issue of the *Texas Register*. The notice invited public comments on the chapters under review. To date, no comments have been received on the review.

The committee and staff have reviewed 250 rules in 14 chapters. As part of the review, the committee authorized public comment publication of proposed amendments to 48 rules in eight chapters: Chapters 25, 27, 29, 31, 39, 41, 47, and 51. Those proposed changes are intended to update and improve the rules. The changes are described in separate memoranda and rule texts included in your materials. The proposed amendments were published in the October 17, 2014 issue of the *Texas Register*. To date, no comments have been received on the proposed amendments. Because over 30 days have passed since publication of the notices of the proposed rule review and amended rules, the review and amended rules are ready to be considered for adoption.

Summary of Recommendations

Staff recommends the committee and board consider taking the following actions to conclude the current four-year rule review:

- determine that the reasons for initially adopting the rules in Chapters 21 through 51 continue to exist;
- adopt the proposed amendments to most of the rules in Chapters 25, 27, 29, 31, 39, 41, 47, and 51 without changes to the proposed text as published for public comment in the *Texas Register* on October 17, 2014;
- adopt the proposed amendments to rules § 25.25 and § 25.26 with changes to the proposed text as published, as explained in the specific materials for those rules, and without having to republish the amended rules for comment;
- for purposes of the rule review, readopt all the rules with amendments in Chapters 25, 27, 29, 31, 39, 41, 47, and 51, and readopt the remaining rules in those chapters without changes;
- for purposes of the rule review, readopt the rules in Chapters 21, 23, 33, 35, 43, and 49 without changes;
- authorize publication of the adopted amended rules and notice of readoption (adopted review), including authorizing staff to work with the *Texas Register* and make technical changes as needed to file and publish the amended rule and rule review documents; and
- authorize the board chairman to sign on behalf of the board an order accomplishing the foregoing actions.

A proposed adopted-review notice is attached to this memorandum. A proposed board order is included in your materials.

Requested Action

Staff asks the committee to recommend that the board adopt the proposed order included in your materials.

Teacher Retirement System of Texas
Title 34, Part 3

Adopted Review

The Teacher Retirement System of Texas (TRS) adopts the four-year review of its rules in Texas Administrative Code, Title 34, Part 3, Chapters 21, 23, 25, 27, 29, 31, 33, 35, 39, 41, 43, 47, 49, and 51 in accordance with the requirements § 2001.039 of the Government Code. Section 2001.039 directs TRS and state agencies to review and consider for readoption each of their rules every four years. The notice of intention to review (proposed review) was published in the April 25, 2014 issue of the *Texas Register* (39 TexReg 3454). No comments were received in response to that notice of the proposed review.

TRS finds that the reasons for adopting the chapters reviewed continue to exist. As part of the review, TRS updated and improved certain rules. TRS proposed amendments to the following rules:

Chapter 25. Membership Credit

Subchapter A. Service Eligible for Membership

§ 25.1. Full-time Service

Subchapter B. Compensation

§ 25.21. Compensation Subject to Deposit and Credit

§ 25.25. Required Deposits

§ 25.26. Annual Compensation Creditable for Benefit Calculation

§ 25.28. Payroll Report Dates

§ 25.34. Membership Waiting Period

§ 25.35. Employer Payments for New Members

Subchapter C. Unreported Service or Compensation

§ 25.41. Deposits for Unreported Service or Compensation

§ 25.42. Payment of Benefits Contingent on Deposits

§ 25.43. Cost for Unreported Service or Compensation

§ 25.45. Verification of Unreported Compensation or Service

§ 25.46. Determination of Compensation Subject to Deposit and Credit

Subchapter E. Military Service

§ 25.61. Service Credit for Eligible Military Duty

§ 25.64. Crediting Fee

Subchapter F. Veteran's (USERRA) Service Credit

§ 25.74. Cost

Subchapter G. Purchase of Credit for Out-of-State Service

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

Subchapter J. Creditable Time and School Year

§ 25.131. Required Service

§ 25.135. Service Credit Missing from Annual Statement

Subchapter N. Installment Payments

§ 25.184. Refund for Nonpayment

Subchapter P. Calculation of Fees and Costs

§ 25.302. Calculation of Actuarial Costs of Service Credit

§ 25.303. Calculation of Actuarial Cost for Purchase of Compensation Credit

Chapter 27. Termination of Membership and Refunds

§ 27.4. Refunds

§ 27.6. Reinstatement of an Account.

Chapter 29. Benefits

Subchapter A. Retirement

§ 29.15. Termination of Employment

Subchapter D. Plan Limitations

§ 29.55. Limitation on Contributions

Chapter 31 (Employment after Retirement):

Subchapter B. Employment after Service Retirement

§ 31.13. Substitute Service

§ 31.14. One-half Time Employment

§ 31.15. Full-time Employment after 12 Consecutive Month Break in Service

Subchapter C. Employment after Disability Retirement

§ 31.32. Half-time Employment Up to 90 Days

Chapter 39. Proof of Age

§ 39.1. Establishment of Date of Birth

Chapter 41. Health Care and Insurance Programs

Subchapter A. Retiree Health Care Benefits (TRS-Care)

§ 41.1. Initial Enrollment Periods for the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act (TRS-Care)

§ 41.2. Additional Enrollment Opportunities

§ 41.7. Effective Date of Coverage

§ 41.10. Eligibility to Enroll in the Health Benefits Program under the Texas Public School Retired Employees Group Benefits Act (TRS-Care)

§ 41.14. Expulsion from TRS-Care for Fraud

Subchapter C. Texas School Employees Group Health (TRS-ActiveCare)

§ 41.30. Participation in the Health Benefits Program under the Texas School Employees Uniform Group Health Coverage Act by School Districts, Other Educational Districts, Charter Schools, and Regional Education Service Centers

§ 41.33. Definitions Applicable to the Texas School Employees Uniform Group Health Coverage Program

§ 41.34. Eligibility for Coverage under the Texas School Employees Uniform Group Health Coverage Program

§ 41.36. Enrollment Periods for TRS-ActiveCare

§ 41.37. Effective Dates of Coverage

§ 41.38. Termination Date of Coverage

§ 41.39. Coverage for Individuals Changing Employers

§ 41.50. Appeals Relating to Claims or Other Benefits

§ 41.51. Appeals Relating to Eligibility

§ 41.52. Expulsion from TRS-ActiveCare

Subchapter D. Comparability of Group Health Coverages

§ 41.91. Certification of Insurance Coverage

Chapter 47. Qualified Domestic Relations Orders

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

Chapter 51. General Administration

§ 51.5. Waiver of Deadline to Remit Deposits and Documentation

TRS adopted the amended rules in Chapters 25, 27, 29, 31, 39, 41, 47, and 51 without changes to the text of the proposed rules as published in the October 17, 2014 issue of the *Texas Register* (39 TexReg 8176-8205) but for amended § 25.25 and § 25.26. TRS adopted amended § 25.25 with clarifying changes. TRS adopted amended § 25.26 without certain proposed amendments

regarding the calculation of retirement benefits to reconsider them. Official notice of the adopted rules with further explanation of the adopted changes will be published separately in the *Texas Register*.

The remaining rules in Chapters 21, 23, 25, 27, 29, 31, 33, 35, 39, 41, 43, 47, 49, and 51 are readopted without changes. As a result of the rule review, TRS readopts the following chapters in Title 34, Part 3, of the Texas Administrative Code, which may be viewed at [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.viewtac](http://info.sos.state.tx.us/pls/pub/readtac$ext.viewtac):

Chapter 21. Purpose and Scope

Chapter 23. Administrative Procedures

Chapter 25. Membership Credit

Chapter 27. Termination of Membership and Refunds

Chapter 29. Benefits

Chapter 31. Employment After Retirement

Chapter 33. Legal Capacity

Chapter 35. Payments by TRS

Chapter 39. Proof of Age

Chapter 41. Health Care and Insurance Programs

Chapter 43. Contested Cases

Chapter 47. Qualified Domestic Relations Orders

Chapter 49. Collection of Delinquent Obligations

Chapter 51. General Administration

This concludes the review of Chapters 21, 23, 25, 27, 29, 31, 33, 35, 39, 41, 43, 47, 49, and 51.

Brian K. Guthrie
Executive Director
Teacher Retirement System of Texas



Legal Services

Memorandum

DATE: November 3, 2014

TO: Policy Committee of the Board of Trustees

FROM: Rebecca M. Smith, Assistant General Counsel

COPY: Brian Guthrie, Executive Director
Ken Welch, Deputy Director
Carolina de Onís, General Counsel

RE: Four-Year Rule Review: 34 Texas Administrative Code, Chapter 25,
Membership Credit

Under §2001.039 of the Texas Government Code, the Board of Trustees is required to review the rules in the Texas Administrative Code, Chapter 25, and determine whether to readopt, readopt with revisions, or repeal the rules in this chapter. Chapter 25 addresses service eligible for membership in Subchapter A; compensation subject to credit by TRS in Subchapter B; unreported service and compensation in Subchapter C; military service in Subchapter E; veteran's (USERRA) service credit in Subchapter F; purchase of credit for out-of-state service in Subchapter G; joint service with the Employees Retirement System in Subchapter H; verification of service and compensation in Subchapter I; creditable time and school year in Subchapter J; developmental leave credit in Subchapter K; other special service credit in Subchapter L; optional retirement program in Subchapter M; installment payments for service credit in Subchapter N; rollover distributions and transfers to TRS in Subchapter O; and calculation of fees and costs in Subchapter P.

As required by §2001.039, staff reviewed the rules in Chapter 25 and concluded that 45 rules in this chapter should be readopted without changes and 21 rules readopted with changes; there are no rules recommended for repeal. The Policy Committee authorized public comment publication of the proposed amendments to the rules, which were published October 17, 2014, in the *Texas Register* (39 TexReg 8176). After the September committee meeting, staff identified additional changes needed to §25.26 (relating to Annual Compensation Creditable for Benefit Calculation), specifically the addition of subsection (f) and a reference in subsection (b) to the implementation date of subsection (f). Brian Guthrie, in his capacity as Executive Director, and as provided by the Bylaws of the Board of Trustees, authorized publication for public comment of the additional changes which are explained more fully below. However after the proposed additional amendments to the rule were published, staff determined that application of the proposed changes at an earlier date than published would better serve the business needs of TRS. To ensure proper notice and effective adoption of the amendment, staff recommends that the amendments relating to the earlier effective date be published again for public comment. Staff proposes that the committee recommend

adoption of §25.26 with changes from the published text. The changes include the deletion of proposed subsection (f) and reference in subsection (b) to the implementation date of proposed subsection (f). The request for authorization to publish for public comment the additional proposed amendments to §25.26 is addressed in a separate memorandum to the committee. Staff also recommends adding further clarifying language in §25.25(a) that does not require re-publication of the proposed amendments. The additional proposed language is reflected in the marked rule text attached to this memorandum.

The proposed rule amendments will have been published for at least 30 days before the committee and board consider their adoption at the November meeting. To date TRS has not received any written comments regarding the proposed amendments. Any written comments that TRS receives after the date of this memorandum will be addressed in a separate document that will be available for your review at the November meeting.

Staff recommends that 19 rules in Chapter 25 with proposed changes be adopted as published; that §25.25 be adopted with changes to the published text that further clarify when member contributions must be made; that §25.26 be adopted with changes to the published text by deleting subsection (f) and the reference in subsection (b) to the implementation date of subsection (f); and the remaining 45 rules in Chapter 25 be readopted without changes. Summaries of the proposed changes to the rules in Chapter 25 are provided below. Marked rule texts for those rules for which staff proposes amendments are also attached to this memorandum for your review.

Subchapter A. Service Eligible for Membership

The rules in this subchapter address the amount and type of service or employment that is eligible for membership in TRS.

§25.1- Full-time Service (*Changes recommended*)

Section 25.1 addresses the basic requirements for membership in TRS: employment for one-half or more of the standard full-time work load at a rate of pay comparable to the rate of compensation for others employed in similar positions for a period of four and one-half months or more. The proposed amendments clarify how TRS will count the time spent as an instructor in higher education in evaluating the position for membership in TRS. Proposed language provides that the class must be taken for college credit and that on-line classes will be counted as two clock hours for every college or semester hour assigned to the class rather than two clock hours for every hour spent teaching in the classroom or lab. The proposed amendment for on-line classes is needed because many of the on-line classes do not require that instruction be provided at a set time or to a group for a specified period of time. Also, the proposed changes clarify that the conversion ratio provided in subsection (i) does not apply to continuing education classes, adult education classes, and/or classes taught to employees of companies and that instruction in these types of courses will be evaluated on the number of clock hours worked. The proposed amendments also clarify the minimum number of hours employed in concurrent employment that will qualify the combined employment for membership in TRS.

§25.3- Independent or Third-Party Contractors (*Readopt without changes*)

§25.4- Substitutes (*Readopt without changes*)

§25.6- Part-time or Temporary Employment (*Readopt without changes*)

§25.10- Student Employment (*Readopt without changes*)

Subchapter B. Compensation

The rules in this subchapter address the compensation that is creditable for benefit calculation purposes; the amount of contributions that must be paid by the member through an employer pick-up arrangement; the amount of contributions that must be submitted to TRS by the employer and the duration of the contributions; how the annual compensation used by TRS to calculate benefits will be determined; when payroll reports from the employer are due to TRS; the limit on increases in compensation that will be credited by TRS from year to year; and how amounts converted from noncreditable compensation to creditable compensation may be excluded from the member's annual compensation in the final years before retirement.

§25.21- Compensation Subject to Deposit and Credit (*Changes recommended*)

Section 25.21 provides detailed descriptions of the types of compensation that are included as creditable compensation for TRS purposes as well as the types of compensation excluded from benefit calculation. The changes proposed in §25.21(d)(3) clarify that continued payments of normal compensation while on administrative or emergency leave are creditable for TRS purposes. Proposed changes to §25.21(d)(15) clarify that the requirement to obtain a determination from TRS before reporting compensation paid pursuant to a settlement agreement do not apply if the compensation is normal payment of salary paid to the employee while the employee is on paid leave of any type. Other proposed changes standardize the cites to relevant statutory codes and are clerical in nature.

§25.22- Contributions to Cafeteria Plans and Deferred Compensation (*Readopt without changes*)

§25.24- Performance Pay (*Readopt without changes*)

§25.25- Required Deposits (*Changes recommended*)

Section 25.25 establishes the rate of member contributions and requires that the employer must submit the member deposits with each regular payroll report to TRS. The rule also requires that a member must make contributions on all compensation paid by a TRS covered employer, once membership is established in one or a combination of positions. The proposed amendments to this rule clarify that if a member has earned a year of service credit in the current school year and the member later works in the same school year for a TRS-covered employer in a position that is not eligible for membership in TRS, member contributions must be made on compensation earned in the position until the end of the school year. Staff recommends adopting §25.25 with changes to the published text by adding further clarifying language that does not require re-publication of the proposed amended rule.

§25.26- Annual Compensation Creditable for Benefit Calculation (*Changes recommended*)

Section 25.26 establishes how TRS will determine a member's annual compensation for benefit calculation purposes. The most basic requirement is that it is the sum of 12 months of compensation paid from September 1 through August 31 for 12 months of work. This rule describes the "standard" school year now used by TRS to determine annual compensation and service credit.

However, experience with the standard school year over the last few years has highlighted the need to expressly state that the compensation must be for no more than 12 months of work and to clarify how TRS will credit compensation earned during the final school year before retirement but not yet paid by the date of retirement. The proposed amendments also provide that if an error

by the employer results in additional compensation being paid to the retiree after the effective date of retirement and the distribution of benefits has begun, TRS will adjust the annuity going forward from the date the correction is made and the deposits are paid to TRS, but the corrections must be made by the end of the school year following the year of retirement.

In addition, staff recommends adding subsection (e) to address the consequences of requiring all employers to report compensation in the month it is paid rather than the month it is earned. The requirement to report compensation when paid takes effect on September 1, 2015 if the proposed amendments to §25.28 are adopted. TRS anticipates that as a result of changing the month compensation is reported, in the year of transition members will lose one month of compensation credit. The changes proposed by staff allow TRS to attribute an additional month of compensation to the member in the 2014-2015 school year for purposes of benefit calculation.

Finally, after the September committee meeting, staff identified further changes to §25.26 that would reduce the administrative burden of manually comparing prior contract year salaries and standard school year salaries for school years prior to the 2012-2013 school year. Staff proposed adding subsection (f) to limit the comparison of salaries required in §25.26(b) to only the 2012-2013 school year rather than to all prior years. Experience with the rule has proven the comparison to be complex and to substantially increase the amount of time required to manually prepare the member's retirement estimate. TRS originally adopted the subsection to minimize the impact on annual compensation caused by the change to a standard school year. In some instances the TRS rule effectively results in a higher final average salary and a higher annuity than before the law change. Staff proposes to limit the comparison to the 2012-2013 school year which is the year of transition to the standard school year. The additional proposed amendments were published under the authority of the Executive Director. The proposed rule change as published will apply to the calculation of benefits for retirements and deaths occurring after August 31, 2015. After further review, staff proposes to apply the proposed rule changes to the calculation of benefits for retirements and deaths occurring after March 31, 2015. The change in date requires that the proposed amendments to subsection (f) with the new date be published for public comment before adoption. Staff recommends adopting §25.26 with changes to the published text by deleting subsection (f) and the reference in subsection (b) to the application date of the changes in subsection (f). Authorization to publish the proposed changes to subsection (f) are addressed in a separate memorandum to the committee.

§25.28- Payroll Report Dates (*Changes recommended*)

Section 25.28 provides instruction to employers regarding the information and contributions that must be provided to TRS with each monthly payroll report. Anticipated changes due to the TEAM project as well as GASB requirements have highlighted the need to address specific requirements for the reports as well as to clarify the month in which compensation should be reported to TRS. Proposed changes to this rule include the requirement to provide information regarding compensation and employment on all employees and clarify that employers must report contract dates to TRS. Additional proposed changes clarify that it is not necessary to seek a written determination from TRS regarding amounts paid pursuant to a settlement agreement if the payments are continuing amounts of normal compensation paid while the employee is on any type of paid leave.

Staff also proposes changes to §25.28(g) that will allow an employer to request a waiver of the requirement that all reports and contributions must be made to TRS before the seventh day after the last day of the month in which compensation was paid in order to correct errors of unreported

compensation or service that occurred no earlier than the previous school year. The corrections may be made if the employee is still employed by the same employer and compensation is still due to the employee. The employer must submit corrected reports, the contributions that are due, and the interest required for late deposits and reports. The corrections must be made no later than the end of the school year following the school year in which the error occurred.

The changes proposed by staff also clarify that employers may not delay reporting compensation to TRS of compensation paid in earlier months for the purpose of pushing compensation into the final year of compensation to avoid the consequences of the standard school year and may not spread compensation due in one month over more than one month in order to ensure the member receives a year of service credit. Finally, the changes proposed by staff require that effective September 1, 2015, employers must report compensation to TRS in the month it is paid rather than the month it is earned. This change will standardize reporting for all TRS-covered employers and result in consistent crediting and calculation of benefits.

§25.30- Conversion of Noncreditable Compensation to Salary (*Readopt without changes*)

§25.31- Percentage Limits on Compensation Increases (*Readopt without changes*)

§25.33- Contribution Limitation Based on Compensation (*Readopt without changes*)

§25.34- Membership Waiting Period (*Changes recommended*)

Section 25.34 regards the 90-day waiting period for membership eligibility that was in effect from September 1, 2003 through August 31, 2005. While members no longer experience a delay in membership eligibility, recent changes in the law regarding retirement eligibility have been based in part on when membership began. Because a member may purchase service credit for the year in which the member experienced the 90-day waiting period, it is important to clarify that purchasing service credit for the year in which the waiting period occurred does not establish an earlier membership start date. The changes proposed by staff for this section make this clarification.

§25.35- Employer Payments for New Members (*Changes recommended*)

Section 25.35 addresses the requirement that employers must pay the state contribution amount on creditable compensation paid to new members during the first 90 days of employment in a membership eligible position. Currently, this section requires that the employer make the state contribution for the “pay period” containing the first day of eligible employment and continue making the payment through the pay period containing the 90th day of employment. TRS does not capture the pay periods for each employer. Changes proposed by staff require that effective September 1, 2015, the employer must pay the state contribution amount for the entire report month in which the first day of eligible employment falls and continue making the contribution through the report month containing the 90th day of employment.

Subchapter C. Unreported Service or Compensation

The rules in this subchapter regard the requirement to make contributions on compensation paid for service rendered in a membership eligible position; how to verify and purchase unreported service or compensation; the cost to purchase unreported service or compensation; and the deadline for verifying unreported service or compensation.

§25.41- Deposits for Unreported Service or Compensation (*Changes recommended*)

Section 25.41 clarifies the requirement that when it is discovered that contributions have not been made on membership eligible employment, the member must immediately begin making contributions. Amendments proposed by staff clarify that contributions owed but not paid in the current school year must be made. If the error is not corrected as recommended in the changes proposed by staff for §25.28(g), the member must pay the actuarial cost to purchase the unreported service and/or compensation.

§25.42- Payment of Benefits Contingent on Deposits (*Changes recommended*)

Section 25.42 requires that no benefits may be paid until all required deposits have been received by TRS. In order to gain efficiencies in commencing benefit distributions, staff is recommending an amendment to this section that will allow TRS to begin a distribution before all deposits have been received if the compensation and deposits have been certified by the employer as due and payable.

§25.43- Cost for Unreported Service or Compensation (*Changes recommended*)

Section 25.43 describes the cost for establishing service credit for unreported service or salary credit for unreported compensation. Generally, a member must pay the actuarial cost of the increased benefits associated with the unreported service and/or compensation. However, in the changes proposed by staff for §25.28(g) relating to Payroll Report Dates, an employer may correct an error by complying with the requirements and paying the required deposits and interest provided the error is corrected no later than the end of the school year following the school year in which the error occurred. The proposed changes to §25.43 reference the correction method proposed for §25.28(g) relating to Payroll Report Dates and make other non-substantive corrections to cites and recently adopted §25.303 relating to Calculation of Actuarial Cost for Purchase of Compensation Credit.

§25.45- Verification of Unreported Compensation or Service (*Changes recommended*)

Section 25.45 addresses the requirements for verifying the unreported service or compensation to TRS. The amendments to this rule proposed by staff include a reference to §25.28(g) relating to Payroll Report Dates which provides a method of correcting an error in the school year in which the error occurred or no later the end of the following school year without paying the actuarial cost. Also, this section as currently adopted provides that unreported compensation may not be verified and purchased after the date of retirement. Staff recommends adding a reference in this section to §25.26, which if adopted with the changes currently proposed by staff, will authorize TRS to accept additional deposits after retirement provided the requirements of that section are met.

§25.46- Determination of Compensation Subject to Deposit and Credit (*Changes recommended*)

Section 25.46 provides that deposits on unreported service or compensation must be made based on the member contribution rate in effect for the year in which the service was rendered or the compensation was paid. Staff recommends adding a reference to §25.28(g) relating to Payroll Report Dates, which if adopted with the changes proposed by staff, will allow an error to be corrected in the current school year or no later than the end of the school year following the year

in which the error occurred by obtaining a waiver and submitting the corrected reports and all contributions and interest due.

§25.47- Deadline for Verification (*Readopt without changes*)

Subchapter E. Military Service

The rules in this subchapter regard the types of military service that may be purchased for service credit, the cost of purchasing military service credit, and the requirements for applying to purchase military service credit, including the documentation needed to verify eligible military service.

§25.61- Service Credit for Eligible Military Duty (*Changes recommended*)

The provisions of §25.61 establish a limit on the number of years of military service that may be purchased for service credit and the amount of military service that must be rendered each year in order to receive a year of service credit in TRS for that military service. Staff proposes a change in this section that will provide a more general requirement than the current standard that requires the member must serve a minimum of four and one-half months in a school year. Staff proposes to amend the language to provide that a person must serve an equivalent amount of military service as a member must serve in order to receive a year of service credit.

§25.64- Crediting Fee (*Changes recommended*)

Section 25.64 provides the details of how a crediting fee is added to the cost to purchase military service credit based on the amount of time between the date the military service is rendered and the date payment is received by TRS. The cost to purchase military service is established in §25.61 relating to Service Credit for Eligible Military Duty and is stated as the member contributions due on the full rate of annual compensation for the last school year of membership service that preceded the military duty. Section 25.64 further provides a crediting fee of 8 percent compounded annually for each year from the date the service is rendered until payment for the credit is received. Staff proposes amendments to this rule that clarify that the military service credit must be purchased in the order the service is rendered so that the earliest year of military service credit is purchased first.

§25.66- Application for Military Credit (*Readopt without changes*)

Subchapter F. Veteran's (USERRA) Service Credit

The rules in this subchapter regard the opportunity for a member to establish service credit for active military duty in lieu of or in addition to the military service credit that may be established under Subchapter E. USERRA service credit may be purchased and used in the calculation of benefits or simply verified and used to establish eligibility for certain benefits but not the amount of benefit.

§25.71- Service Credit for Eligible Active Military Duty under the Uniformed Services Employment and Re-Employment Rights Act (*Readopt without changes*)

§25.72- Limitations on Eligible Service (*Readopt without changes*)

§25.73- Ineligible Military Service (*Readopt without changes*)

§25.74- Cost (*Changes recommended*)

Staff recommends one amendment to clarify that USERRA service credit, like the proposed amendment to §25.64 relating to Crediting Fee for military service credit, must be purchased in the order the service is rendered so that the earliest year of active military service is purchased first.

§25.75- Application for Eligible Active Military Duty under the Uniformed Services Employment and Re-Employment Rights Act (*Readopt without changes*)

§25.76- Eligibility of Retiree (*Readopt without changes*)

§25.77- USERRA Service Creditable but not Established (*Readopt without changes*)

Subchapter G. Purchase of Out-of-State Service

The rules in this subchapter establish the types of out-of-state service eligible for purchase, the requirements for verifying the service and the cost to purchase the service credit.

§25.81- Out-of-State Service Eligible for Credit (*Changes recommended*)

Section 25.81 addresses the type of service in an out-of-state public educational institution that is eligible for purchase. The rule currently requires that a member serve at least 90 days in the out-of-state public educational institution in order to establish an eligible year of service. Staff proposes to amend the language to provide that a person must serve an equivalent amount of service in the out-of-state public educational institution as a member must serve in order to receive a year of service credit.

§25.82- Cost (*Readopt without changes*)

§25.84- Crediting Fees (*Readopt without changes*)

§25.85- Amount of Out-of-State Service Which Can Be Purchased (*Readopt without changes*)

§25.86- Computing Average Compensation (*Readopt without changes*)

§25.87- Effective Date of Out-of-State Service Credit and Time for Payment (*Readopt without changes*)

Subchapter H. Joint Service with Employees Retirement System

The rule in this subchapter regards the transfer of service credit between the Employees Retirement System of Texas (ERS) and TRS. The rule addresses the type of notice a member must give in order to transfer service credit between the systems, how withdrawn service credit may be reinstated, how compensation and service will be credited, and when a retiree may return to employment with either system.

§25.113- Transfer of Credit Between TRS and ERS (*Readopt without changes*)

Subchapter I. Verification of Service or Compensation

The rules in this subchapter address the type of documentation needed to verify unreported service or compensation to TRS and who must certify the information provided to TRS.

§25.121- Employer Verification (*Readopt without changes*)

§25.122- Affidavit (*Readopt without changes*)

§25.123- Certification (*Readopt without changes*)

Subchapter J. Creditable Time and School Year

The rules in Subchapter J establish the amount of time a member must work or serve on paid leave in order to receive a year of service credit. The rules also clarify the 12-month period (September 1 – August 31) that is the standard school year for TRS benefit calculation purposes.

§25.131- Required Service (*Changes recommended*)

Section 25.131 provides that a member must serve at least 90 days or receive paid leave for at least 90 days in order to receive a year of service credit. Staff proposes amendments to this rule that clarify that the member must not only work 90 days but must also receive pay for those 90 days in order to receive a year of service credit. In addition, staff recommends an amendment to the rule that will become effective on the first day of the 2015-2016 school year and will provide an alternate standard for accruing a year of service credit for members who are regularly scheduled to work fewer than 5 days per week. The alternate standard for those members is four and one-half months; however, the member must serve at least 4 full calendar months during which the member must work at least 8 days, and an additional 5 days in either the preceding or following month(s). The proposed changes also provide that a member may not receive a year of service credit before December 31 except in the year of retirement when a member may earn a full year of service credit by working the entire fall semester.

§25.132- Paid Leave Time (*Readopt without changes*)

§25.133- School Year (*Readopt without changes*)

§25.134- Credit Limit (*Readopt without changes*)

§25.135- Service Credit Missing from Annual Statement (*Changes recommended*)

Section 25.135 establishes the deadline for notifying TRS of service credit missing from the member's annual statement and verifying that service credit to TRS. Generally, the deadline for verifying the service credit is the last day of the fifth school year following the end of the school year in which the service was rendered. Staff recommends adding a reference to §25.28(g) relating to Payroll Report Dates which, if the proposed amendments are adopted, will establish an opportunity to correct unreported service or compensation in the same school year in which it was rendered or paid or no later than the end of the school year following the school year in which the service was rendered or the compensation was paid. In order to meet the requirements of §25.28(g), the member must notify TRS by May 31 of the error so that it can be corrected by the end of the school year as required.

Subchapter K. Developmental Leave

The rules in this subchapter regard the opportunity for a member to purchase service credit for developmental leave authorized by the employer. The sections address the requirements that a member must obtain the employer's authorization and notify TRS before the leave is taken and of the cost to purchase developmental leave credit.

§25.151- Application for Developmental Leave (*Readopt without changes*)

§25.152- Eligibility, Cost, and Payment for Developmental Leave Credit (*Readopt without changes*)

Subchapter L. Other Special Service Credit

The rules in this subchapter address other types of special service credit that may be purchased, including work experience required for certification in a career or technology field, state personal or sick leave credit which allows a member to purchase one year of service credit for 50 days or 400 hours of unused state leave, service credit purchase option which is a type of service credit no longer available for purchase and allowed a member to effectively purchase enhanced retirement benefits at actuarial cost, and service credit for service during a school year in which the member experienced the 90-day membership waiting period.

§25.161- Work Experience Service Credit (*Readopt without changes*)

§25.162- State Personal or Sick Leave Credit (*Readopt without changes*)

§25.163- Service Credit Purchase (*Readopt without changes*)

§25.164- Credit for Service During School Year with Membership Waiting Period (*Readopt without changes*)

Subchapter M. Optional Retirement Program

The rules in Subchapter M regard the Optional Retirement Program (ORP) available to certain faculty and administrators in institutions of higher education. During the first 90 days of employment in an ORP eligible position, persons eligible for membership in TRS may elect to participate in ORP in lieu of participation in TRS; the election is a one-time election and is irrevocable.

§25.171- Election of ORP (*Readopt without changes*)

§25.172- ORP and TRS (*Readopt without changes*)

Subchapter N. Installment Payments

The rules in Subchapter N regard the use of an installment agreement to purchase service credit. The rules address how TRS will credit service credit as it is purchased and what is considered a nonpayment that triggers a refund of the contributions. The rules also address the opportunity for a beneficiary to complete the purchase of service credit by paying the balance in a lump sum payment and the amounts that are not refundable in the event of a nonpayment event.

§25.181- Minimum Monthly Payments (*Readopt without changes*)

§25.182- Yearly Increments of Credit (*Readopt without changes*)

§25.183- Nonpayment (*Readopt without changes*)

§25.184- Refund for Nonpayment (*Changes Recommended*)

Section 25.184 describes the circumstances that result in a refund for nonpayment when a member is purchasing service credit on an installment payment plan. Staff recommends deleting subsection (b) of this section that prohibits a member from utilizing an installment plan to purchase service credit for 3 years after a refund for nonpayment has been issued to a member. Experience with installment payment plans and technology have resolved any administrative concerns about the amount of work required to establish or re-establish an installment payment plan. This change will delete the prohibition from the TRS rules but a legislative change is also required to §825.410(a) of the Government Code to remove the statutory prohibition. In the event the law is not changed, staff will continue to enforce the statutory prohibition.

§25.185- Amounts Not Refundable (*Readopt without changes*)

§25.186- Automatic Bank Draft (*Readopt without changes*)

§25.188- Payment by Beneficiary (*Readopt without changes*)

§25.189- Fees Set at the Time of First Payment (*Readopt without changes*)

Subchapter O. Rollover Distributions and Transfers to TRS

The rule in Subchapter O addresses the types of funds that TRS may accept as payment for the purchase of service credit and defines a rollover for TRS purposes.

§25.201- Acceptance of Rollovers and Transfers for Purchase of TRS Credit (*Readopt without changes*)

Subchapter P. Calculation of Fees and Costs

The rules in this subchapter regard the cost to purchase service credit or compensation credit and provide the actuarial cost factor tables to be used in calculating the cost.

§25.301- Calculation of Fees (*Readopt without changes*)

§25.302- Calculation of Actuarial Costs of Service Credit (*Changes recommended*)

Section 25.302 provides the methodology for calculating the cost of purchasing service credit and the actuarial cost factors used in calculating the cost of the service credit. The subsections of this rule address the cost and the cost factors for members based on tier placement. In calculating the cost to purchase service credit that will make the member immediately eligible to retire, staff currently must estimate the salary for the current year. Proposed changes to the rule authorize staff to use the annual salary for the most recent year of service credit so that the process for issuing a bill for service credit may be automated. Also, staff proposes amendments to the rule

that will authorize the use of the member's age and service credit on September 1 of the year in which the bill is requested to avoid inequities in the cost of the service credit based on the date of the request. The TRS actuary has confirmed that the proposed changes will not result in additional cost to the pension fund.

§25.303- Calculation of Actuarial Cost for Purchase of Compensation Credit (*Changes recommended*)

Section 25.303 provides the methodology for calculating the cost of purchasing compensation credit and the actuarial cost factors used in calculating the cost of the compensation credit. Much of the text of this rule was pulled from §25.302 relating to the calculation of fees to purchase service credit to reduce the complexity of that rule. The Board of Trustees adopted this section in June 2014. After further review of the rule, staff recommends amending §25.303 to eliminate subsection (f) as the requirements of that subsection are not necessary due to the actuarial factor tables taking into account the differences in using a three year versus five year compensation average. The TRS actuary agrees that the elimination of this subsection is appropriate.

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) Except as provided in subsection (j) of this section regarding adjunct faculty, 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) as an instructor of classes taken by students for college credit that is 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. Employment as an instructor of an on-line class taken by students for college credit that is 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 counted as a minimum of two clock hours for each course hour or semester hour. Employment as an instructor of continuing education, adult education, and/or classes offered to employers or businesses for employee training, that is not measured or expressed in terms of the number of courses; semester or course hours/credits; or instructional units or other units of time rather than clock hours and for which the students/participants do not receive college credit must be considered for membership based on the number of clock hours worked.

(j) Beginning on the first day of the 2013-2014 school year, the minimum number of hours required per week that will qualify an adjunct faculty position for TRS membership is 20. For purposes of this section, an adjunct faculty position is an instructor position that is filled on a semester-by-semester basis, compensated on a per class basis, and the duties include only those directly related to instruction of students in a class taken by students for college credit. If a person combines work as an adjunct faculty instructor and any other type of employment, the minimum number of hours worked per week that will qualify the person for membership is 20.

(k) A person employed by an open enrollment charter school authorized under Subchapter D, Chapter 12, Education Code, or the open enrollment charter holder is eligible for membership in TRS if the person is performing services on behalf of the Texas open enrollment charter school and the employment otherwise meets the requirements of this section. A person employed by a management company or other entity retained by the charter school or charter holder to provide management or other services on behalf of the open enrollment charter school is not eligible for membership in TRS.

(l) A person employed by a Texas public school district and performing services on behalf of a campus or program charter school authorized under Subchapter C, Chapter 12, Education Code, is eligible for membership in TRS if the employment otherwise meets the requirements of this

section. An employee of an open enrollment charter holder that is contracted to provide services to a campus or program charter school is eligible for membership in TRS if the person is performing services on behalf of the campus or program charter school and the employment otherwise meets the requirements of this section. An employee of a management company or other entity retained to provide management or other services on behalf of the campus or program charter school is not eligible for membership in TRS.

(m) Beginning on September 1, 2015, if an employee is employed in two or more part-time positions, the minimum number of hours the employee must work in all positions in order to establish eligibility for membership in TRS must equal or exceed one-half of the hours required for the full-time equivalent position requiring the greater number of hours per week.

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), Government Code and §25.24 of this ~~title~~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, Education Code;

(9) amounts deducted from regular pay for a qualified transportation benefit under ~~Texas Government Code~~ §659.202, Government Code;

(10) compensation designated as health care supplementation by an employee under Subchapter D, ~~of~~ 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 paragraph.

(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, administrative, or emergency 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 except that compensation paid to an employee while on paid leave of any type, including paid administrative or emergency leave under the terms of a settlement agreement is creditable under subparagraph (3) of this subsection; 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 §25.25 Required Deposits

(a) Members shall deposit with the Teacher Retirement System of Texas 6.4% of the compensation received each pay period, including compensation received for part-time, irregular, seasonal, or temporary employment in a school year in which the member rendered service eligible for membership and in which a year of service credit is earned and the part-time, irregular, seasonal, or temporary employment is concurrent with other employment or rendered in a school year in which the member has already rendered sufficient service in an eligible position or combination of positions to earn a year of service credit.

(b) Deposits due for a pay period must be deducted by the employer from the member's salary for that pay period.

(c) The employer must submit the deposits with each regular payroll report to TRS.

(d) A member employed in an eligible position or in a combination of positions that together qualifies as service eligible for membership, as defined in TRS laws and rules, must make contributions on all eligible compensation received from all TRS-covered employers.

(e) Beginning September 1, 2014, the rate of contribution for each member that must be deposited under this section is 6.7 percent of the member's annual compensation for service rendered after August 31, 2014 and before September 1, 2015; 7.2 percent of the member's annual compensation for service rendered after August 31, 2015 and before September 1, 2016; and 7.7 percent of the member's annual compensation for service rendered after August 31, 2016 and before September 1, 2017. For service rendered on or after September 1, 2017, the rate of contribution for each member shall be the lesser of 7.7 percent of the member's annual compensation or a percentage of the member's annual compensation equal to 7.7 percent reduced by one-tenth of one percent for each one-tenth of one percent that the state contribution rate for the fiscal year to which the service relates is less than the state contribution rate established for the 2014-2015 school year.

RULE §25.26 Annual Compensation Creditable for Benefit Calculation

(a) Except as provided in subsection (b) of this section, for the purpose of computing the amount of a retirement benefit or a death benefit under §824.402, Government Code, annual compensation means creditable compensation for service paid to a member of the retirement system during a 12-month period beginning September 1 and ending August 31 of the next calendar year for service rendered during no more than a 12-month period. For the school year in which the member retires and except as provided in §25.24(e) of this title (relating to Performance Pay), creditable annual compensation earned by the date of retirement but not yet paid at the date of retirement shall be included in the annual compensation for that year. If due to an error of the employer, compensation earned by the retiree in the final school year before retirement is not paid and/or not reported before the first annuity payment is issued, upon notice to TRS and the submission of all required corrected reports and member and employer contributions on the compensation, TRS shall adjust its records. If the additional compensation results in increased benefits payable on behalf of the retiree, the adjusted benefit shall be paid beginning in the month TRS receives the additional contributions and the corrected reports. In no event may an error be corrected under this subsection after the end of the school year following the school year in which the member retired.

(b) For the purpose of computing the amount of a retirement benefit or a death benefit under §824.402, Government Code, for retirements or deaths before September 1, 2015, annual compensation paid prior to September 1, 2012 is the greater of:

(1) the amount of creditable compensation for service paid to a member of the retirement system during a 12-month school year as defined in §25.133(a) of this title (relating to School Year); or

(2) the amount of creditable compensation paid to the member during a 12-month period beginning September 1 and ending August 31 of the next calendar year.

(c) Unless otherwise provided by law or this chapter, a member shall receive credit only for annual compensation actually received.

(d) Compensation from which deductions for an Optional Retirement Program annuity were made shall not be included in annual compensation for benefit calculation purposes.

(e) If as a result of the requirement in §25.28(c) to report compensation in the month that it is paid rather than the month it is earned a member has only 11 months of salary credited by TRS in the 2014-2015 school year and that year of compensation would have been one of the years of compensation used in calculating the member's highest average salary for benefit calculation purposes, TRS will attribute an additional month of salary in the 2014-2015 school year for purposes of benefit calculation.

(f) For the purpose of computing the amount of retirement benefit or a death benefit under §824.402, Government Code, for retirements or deaths after August 31, 2015, annual compensation shall be:

~~(1) for the 2013-2014 school year and thereafter, annual compensation is the amount of creditable compensation for service paid to a member of the retirement system during a 12-month period beginning September 1 and ending August 31 of the next calendar year;~~

~~(2) for the 2012-2013 school year, annual compensation is the greater of:~~

~~(A) the amount of creditable compensation for service paid to a member of the retirement system during the 12-month school year as defined in §25.133(a) of this title (relating to School Year); or~~

~~(B) the amount of creditable compensation paid to the member during a 12-month period beginning September 1, 2012 and ending August 31, 2013.~~

~~(3) for school years prior to the 2012-2013 school year annual compensation shall be the amount of creditable compensation for service paid to a member of the retirement system during the 12-month school year as defined in §25.133(a) of this title (relating to School Year).~~

RULE §25.28 Payroll Report Dates

(a) The executive director shall establish dates on which payroll reports are due and the method to be used in reporting information regarding compensation and employment and such member and employer deposits as are due to the Teacher Retirement System of Texas (TRS). School officials shall be notified of such regulations.

(b) Each employer must report each month ~~on in a form~~ prescribed furnished by TRS information on the total amount of salary paid to employees eligible to participate in TRS from federal funds and/or private grants. Reporting districts must transmit to TRS the current state contribution rate of the monies paid as salary for those employees covered by TRS in addition to the amount transmitted for member contributions. If the maximum percentage legally provided for retirement purposes from the funds is less than the current state contribution rate, the employer shall transmit the amount provided and indicate by letter the name of the grant and the rate.

(c) Effective September 1, 2015, each employer must report each calendar month in a form prescribed by TRS, information regarding the persons it employs, the positions held, the time worked and the compensation paid, including the number of days and/or hours worked and the amount and type of salary paid to employees during that calendar month, including salary paid from federal funds and/or private grants. Employers must transmit to TRS the current state contribution rate of the monies paid as salary from federal funds and/or private grants for those employees covered by TRS in addition to the amount transmitted for member contributions and contributions required by §§ 825.405, 825.4034 and 825.4071, Government Code. If the maximum percentage legally provided for retirement purposes from the federal funds and/or private grants is less than the current state contribution rate, the employer shall transmit the amount provided and indicate by letter the name of the grant and the rate.

~~(d) Employees~~ Members who have a qualified contract or an oral or written work agreement shall have information about the contract ~~be~~-reported by each school district ~~in~~ on a form ~~prescribed~~ provided by TRS.

(1) A qualified contract is an employment agreement which meets the following criteria.

(A) Service under the agreement must begin on or after July 1, but not later than August 31, of the same calendar year.

(B) Service contemplated by the agreement must be for a definite period extending past August 31 of the same calendar year in which service under the agreement began, as evidenced by an enforceable legal obligation on the part of the ~~employer~~ public school to employ and to compensate the employee for such period.

(C) ~~Not included are~~ Employees who can be terminated by the ~~employer~~ school district without the ~~employer~~ school being obligated to pay a fixed amount stated in a contract are not included in the report.

(2) Reports on contracts and oral or written work agreements with a beginning date in July should be submitted to TRS in the July report. Reports on contracts and oral or written work agreements with a beginning date in August should be filed with the August or September report.

(ed) Any employer may ask the retirement system for a written statement on whether a particular form of compensation is salary and wages subject to member deposits under the law and rules governing the system. A request for such a statement should be submitted in writing to the retirement system together with any contracts, board minutes, briefs, memoranda, or other material relevant to the request.

(fe) An employer paying amounts to a member pursuant to a settlement agreement must obtain a written determination from TRS that the amounts are creditable compensation before reporting such amounts to TRS as compensation. In the absence of the written determination from TRS, amounts paid pursuant to a settlement agreement are not creditable compensation for TRS purposes and will not be included in determining the amount of benefits payable by TRS. The requirement in this subsection to obtain a written determination from TRS before reporting amounts to TRS that are paid pursuant to a settlement agreement does not apply to normal amounts of compensation paid to the employee while the employee is on paid leave of any type, including paid administrative or emergency leave, pursuant to a settlement agreement.

(g) If due to a technological error, an employer does not report all service rendered and/or salary paid as required in subsection (b) of this section and the error regards service rendered and/or salary paid in the immediately preceding school year, the error may be corrected if the following requirements are met:

(1) the person for whom contributions were due is currently employed by the employer and compensation for the current year remains due to the employee;

(2) the employer requests a waiver of the reporting requirements under §825.408 (a), Government Code and the request is granted by TRS;

(3) the employer submits member contributions on the unreported amounts pursuant to §825.409, Government Code, from any remaining compensation due and any employer contributions due on the compensation are paid by the employer;

(4) the employer pays the interest required by §825.408, Government Code and corrects the records for the report months in which the compensation was paid as directed by TRS; and

(5) the error is corrected by the end of the school year following the school year in which the service was rendered and/or the compensation was paid.

Upon receipt of the member and employer contributions and the corrected report(s), the service credit and/or compensation credit will be credited to the member. In no event may

service or compensation credit be granted under this subsection for service rendered or compensation received in a school year prior to the immediately preceding school year.

(h) An employer must report each calendar month only compensation paid in that calendar month in accordance with normal pay periods for all employees. In no event may an employer include salary paid in a prior month or may an employer delay payment of salary that should have been paid in a prior month for the purpose of increasing the employee's annual compensation for benefit calculation purposes. If compensation should have been paid in a prior month but due to a technological or accounting error, the compensation was not reported in the report month that it was paid and the error occurred in the current school year, or if the employer is required by law to correct an error in payment that occurred during the current school year, the monthly report shall be adjusted in the manner prescribed by TRS.

(i) An employer may not pay an employee less than the amount owed in a calendar month for the purpose of extending the employee on payroll in order to receive a year of service credit or to establish eligibility for participation in health care benefits as provided in Chapter 1579, Insurance Code, Title 8, Subtitle H.

RULE §25.34 Membership Waiting Period

An employee subject to the 90-day waiting period in effect from September 1, 2003, through August 31, 2005, may be eligible to receive a year of TRS service credit if the employee was employed in a TRS-covered position and participated as a contributing member of TRS for the amount of time in a school year required by this title, including §25.1 of this title (relating to Full-Time Service) and §25.131 of this title (relating to Required Service). Employment service prior to the date on which a person is eligible for TRS membership may not be used to meet the minimum requirements for service creditable in a school year unless a member purchases it in accordance with applicable requirements. A member may not establish a membership start date earlier than the end of the 90-day waiting period by purchasing the service credit described in this section.

RULE §25.35 Employer Payments for New Members

(a) The employer of a new member as defined by §825.4041, Government Code, shall pay the retirement system the required amount during the first 90 days of employment of the new member. When used in this section, "employer" has the meaning given it in §821.001(7), Government Code.

(b) In determining the period of employment subject to employer payments, the following provisions apply:

(1) An employer shall count the date of employment of a new member as the first day of the 90-day payment period.

(2) An employer shall count calendar days of an employment period on or after September 1, 2005, towards the payment period, regardless of whether the days are in different school years.

(3) An employer shall count calendar days on or after September 1, 2005, during which an individual previously served as an employee with another TRS reporting entity towards the payment period.

(4) An employer shall not count any calendar days between periods of employment towards the payment period.

(5) Service provided by an employee on one calendar day to more than one employer that is a TRS reporting entity shall count as only one calendar day in the payment period. Each employer shall include such an employee's compensation in the aggregate compensation on which employer payment is required.

(6) A person who was hired before September 1, 2005, and who did not complete the 90-day waiting period before that date becomes eligible to participate in the retirement system starting September 1, 2005. The employer shall treat the member as a new member for the purpose of employer payments during the remainder of the 90-day period.

(c) For the purpose of administering this section, the date of employment means the date on which an employee begins to perform service for an employer that is a TRS reporting entity and the service is of a type that would otherwise qualify the employee for membership in the TRS pension plan, as provided under Subchapter A of this chapter (relating to Service Eligible for Membership). If the date of employment is a holiday or another type of day on which the employer does not normally require actual service to be performed by an employee, the employer may nevertheless count the day as the date of employment if the employer considers the individual to be an employee on that day.

(d) An employer shall submit employer payments and member and other required contributions to TRS on compensation paid to an employee for the entire pay period that contains the first date of the employee's eligibility for membership. An employer also shall submit such payments to TRS on compensation paid to an employee for the entire pay period that contains the 90th day of

employment. For the purpose of this section, a pay period is the normal, established period of employment for which the employer regularly pays compensation to the employee, regardless of the date on which the employer actually pays the compensation. Effective September 1, 2015, an employer shall submit employer payments under this section beginning with the entire report month that contains the first date of the employee's eligibility for membership and continuing through the entire report month that contains the 90th day of employment.

(e) An employer required by law to pay the state contribution from certain funds for its employees who are TRS members is not required to make additional payment to TRS under this section during the first 90 days of employment of a new member.

(f) An employer shall submit reports in a form required by TRS. Upon request by TRS, an employer or an employee shall provide copies of, or otherwise make available, any records that TRS determines are necessary to administer this section.

(g) An employer shall notify TRS immediately if it has failed to report an employee who was eligible for TRS membership and shall begin to report the employee as a member no later than the month immediately following the month in which the employer discovered the error. The employer shall correct any previous reports filed with TRS and make payments as required by this title.

(h) An election to participate in ORP must be made before the 91st day after becoming eligible to make the election, as required by §830.102, Government Code, but may not be made before the date on which an employee is eligible for TRS membership.

RULE §25.41 Deposits for Unreported Service or Compensation

Persons who have been required by law to be members of the Teacher Retirement System of Texas (TRS) or who have service or compensation on which contributions were required but who have not made the required deposits shall start making deposits immediately for current service and in addition shall make required contributions on any service rendered or compensation received earlier in the current school year. If the service was rendered and/or compensation was received in a prior school year, except as provided in Section 25.28(g) of this title (relating to Payroll Report Dates), the member ~~and~~ may make payment of the actuarial cost to establish the~~for~~ previous service or compensation under §25.43 of this title (relating to Cost for Unreported Service or Compensation).

RULE §25.42 Payment of Benefits Contingent on Deposits

No benefits will be paid until all required deposits have been received or the compensation and deposits have been certified to TRS as due and payable.

RULE §25.43 Cost for Unreported Service or Compensation

(a) Except as provided by [Section 25.28\(g\) of this title \(relating to Payroll Report Dates\)](#) and subsections (e), (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 [for Service Credit](#)). To calculate the actuarial cost of purchasing unreported compensation credit, TRS will use the factors and method as set forth in §25.303 [of this title \(relating to the Calculation of Actuarial Cost for Purchase of Compensation Credit\)](#), ~~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 percent%~~ 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 percent%~~ 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 §25.45 Verification of Unreported Compensation or Service

Members who claim unreported service or compensation after the school year in which it was received and for whom the employer has not requested a waiver as provided in §25.28(g) of this title (relating to Payroll Report Dates), must verify the claim on a form prescribed by the Teacher Retirement System and must present such evidence as the staff of the system may require to provide clear and convincing proof of the existence and amount of such service or compensation, such as a copy of the minutes of the governing board of the employing institution, copies of any written contracts between the member and the employer, a verified statement by the employer of the reasons why such service or compensation was not reported earlier, and copies of income tax documents showing that the compensation was reported as income for the member. Except as provided in §25.26(a) of this title (relating to Annual Compensation Creditable for Benefit Calculation) for the calculation of a member's annual compensation in the school year in which the member retires, in no event shall verification, salary reports, or member contributions for additional compensation or service credit be accepted after a member has retired from the system and the first monthly annuity payment has been issued, after the effective date of a member's participation in the Deferred Retirement Option Plan, or after the payment of a death benefit. The cost for unreported service or compensation shall be as provided in §25.43 of this title (relating to Cost for Unreported Service or Compensation).

RULE §25.46 Determination of Compensation Subject to Deposit and Credit

The amount of deposits due for unreported service rendered or compensation paid in the current school year or for unreported service rendered or compensation paid in the immediately preceding school year and corrected as provided in §25.28(g) of this title (relating to Payroll Report Dates) will be calculated at the member contribution rate in effect for the year in which the service was rendered or compensation was paid but for which no deposits or insufficient deposits were made. Contributions will be based on creditable compensation as determined under the laws and rules applicable at the time of the service.

RULE §25.61 Service Credit for Eligible Military Duty

(a) A member with five years of credit for service in the public schools of Texas may receive additional retirement credit for active military duty.

(b) Credit for military duty under this section is limited to a maximum of five years. Eligible military duty will be evaluated for crediting only in the school year in which it was rendered. In order to obtain military service credit for that year, a member must have served an equivalent amount of a minimum of 4 1/2 months of military duty to the amount of service required for a member to receive a year of service credit in that a school year ~~to be eligible to obtain military service credit for that year~~. No credit may be given for any school year of military duty which duplicates any other credit already granted or in which a year of creditable service is available for service in the public schools of Texas. If a member establishes military service credit but TRS determines that credit already has been given for the military service in another Texas public retirement system, TRS shall refund the amount paid for the military credit duplicated in TRS, less fees that are not refundable, and shall cancel the TRS credit and, if applicable, adjust the calculation of benefits. In accordance with §25.113(m)(3) of this title (relating to Transfer of Credit Between TRS and ERS), a person retiring from the Employees Retirement System of Texas (ERS) under Government Code, Chapter 805, and returning to work in a TRS-eligible position may not establish more than a total of five years of military service credit, including any military service established before retirement under either TRS or ERS.

(c) To obtain each school year of military credit, the member must make a deposit based upon the full annual compensation rate for the last school year of membership service preceding the school year of military duty, if the member was a member while the duty was being rendered, or upon the full annual compensation rate for the first school year of membership service occurring after the duty. Membership service does not include service as a substitute. The deposit shall be a percentage of the applicable full annual compensation rate equal to that in effect for deductions from member salaries for the school year in which the military duty was rendered.

RULE §25.64 **Crediting Fee**

(a) A crediting fee of ~~8.0%~~percent compounded annually shall be charged for the purchase of credit from the end of the year in which the member was first eligible to purchase the credit until payment for the credit is received. The date of first eligibility to purchase credit shall be the latest of the following:

_(1) the date the member obtains 5 years' credit for service in the public schools of Texas;

_(2) the date the Teacher Retirement Law made the military service available for credit;

_(3) the date the member completed military service to qualify for each year of credit.

(b) Service credit purchased under §25.61 of this title (relating to Service Credit for Eligible Military Duty) shall be purchased in the order in which the service was rendered, with the earliest years of military service being purchased first.

RULE §25.74 Cost

(a) To obtain service credit for active military duty under the Uniformed Services Employment and Re-Employment Rights Act (USERRA) and §25.71 of this title (relating to Service Credit for Eligible Active Duty under the Uniformed Services Employment and Re-Employment Rights Act), the member must deposit with the retirement system for each school year of service claimed an amount equal to member contributions based on the following:

(1) the percentage of the applicable full annual compensation rate equal to that in effect for deductions from member salaries for the school year in which the military duty was rendered; and

(2) the full annual compensation rate for each school year of membership service in which the member was on active military duty eligible under the USERRA and §25.71 of this title. Membership service does not include service as a substitute. For purposes of determining the full annual compensation rate under this section, the Teacher Retirement System (TRS) will use the amount of wages and salary the member would have received had he continued to be employed in his former TRS covered position from which he left for active military duty. The member must submit a certification by the employer whose employ he left to enter into active military duty of the wages and salary he would have received had he remained in the TRS covered position.

(b) To obtain credit for member compensation for active military duty under the USERRA and §25.71 of this title, the member must deposit with the retirement system for each school year of salary credit claimed an amount equal to member contributions based on the following:

(1) the percentage of the applicable full annual compensation rate equal to that in effect for deductions from member salaries for the school year in which the military duty was rendered; and

(2) the full annual compensation rate for each school year of membership service in which the member was on active military duty eligible under the USERRA and §25.71 of this title. Membership service does not include service as a substitute. For purposes of determining the full annual compensation rate under this section, TRS will use the amount of wages and salary the member would have received had he continued to be employed in his former TRS covered position from which he left for active military duty. The member must submit a certification by the employer whose employ he left to enter into active military duty of the wages and salary he would have received had he remained in the TRS covered position.

(c) Credit for member compensation may be established for any school year of active military duty eligible under the USERRA and §25.71 of this title, even if service credit has already been granted for the school year for service in the public schools of Texas.

(d) Establishment of compensation credit does not entitle a member to service credit for a school year unless no service credit has been granted for the school year through sufficient service in the public schools of Texas.

(e) A member is first eligible to establish credit under §25.71 of this title on the date of application for reemployment in a TRS covered position or on November 12, 1991, whichever is later.

(f) Service credit purchased under this section shall be purchased in the order in which the service was rendered, with the earliest years of military service being purchased first.

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 in a position otherwise eligible for out-of-state service credit for at least the minimum amount of time 90 days required of a member to receive service credit in ~~that 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 credit. 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 service credit for that year.

RULE §25.131 Required Service

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

(1) Except as provided in paragraph (3) of this subsection, a member must work in a TRS eligible position and be paid or receive paid leave from a TRS eligible position at least 90 days during the school year to receive a year of service credit.

2) A substitute as defined in §25.4 of this title (relating to Substitutes) will be qualified for membership and granted a full year of service credit by working 90 or more days as a substitute in a school year, receiving pay for that work, and verifying the work as provided in §25.121 of this title (relating to Employer Verification) and paying deposits and fees for the work as provided in §25.43 of this title (relating to Fee on Deposits for Unreported Service or Compensation).

(3) In the last school year of service before retirement, a member serving in an eligible position who worked and was paid for that work or received paid leave for less than 90 days in the school year but worked and was paid for that work or received paid leave for a full fall semester in accordance with the employer's calendar will receive a year of service credit. If the employer's calendar does not provide for semesters, a member must work and be paid for work in an eligible position or receive paid leave from an eligible position for at least ~~ninety~~90 days in order to receive a year of service credit for the school year before retirement.

(4) Days that the employer is scheduled to be closed for business are not included in the 90 days of work required to receive a year of service credit unless the day(s) are paid holidays by the employer or the employee was charged with paid leave during the closing. Holidays that are not included in the required number of work days for an employee are not counted as paid holidays or days of paid leave.

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

(1) Except as provided in paragraph (2), (3), or (4) of this subsection, a member must serve at least 4 1/2 months in an eligible position during the school year to receive credit for a year of service.

(2) A member who served less than four and one-half months in a school year but served a full semester of more than four calendar months will receive credit for a year of service.

(3) A substitute as defined in §25.4 of this title will be qualified for membership and granted a full year of service credit by rendering 90 or more days of service as a substitute in a school year and verifying the service as provided in §25.121 of this title and paying deposits and fees for the service as provided in §25.43 of this title.

(4) An employee who enters into an employment contract or oral or written work agreement for a period which would qualify the employee for a year of service credit under the other provisions of this section but who actually renders only the amount of service specified in §25.4

of this title will receive credit for a year of service credit.

(c) Beginning on the first day of the 2015-2016 school year and thereafter, in lieu of the requirements in subsection (a) of this section, a member who is serving in a membership eligible position and who is regularly scheduled to work fewer than 5 days per week, may establish a year of service credit by working and receiving pay for that work or using paid leave, for four and one-half months. The four and one-half month period must include four full calendar months in which the member renders service and is paid or the member uses paid leave, for at least 8 days and an additional five days of service rendered and for which the member is paid or paid leave used in another calendar month or months that precede and/or follow the four full calendar months.

(d) Except as provided in subsection (a) of this section, for service credit granted in the school year in which the member retires, in no event may a member receive a year of service credit earlier than December 31.

RULE §25.135 Service Credit Missing from Annual Statement

- (a) If membership service has not been credited by TRS on a member's annual statement, the member must notify TRS in writing of the service that the member requests to be credited. If an error on the annual statement regards either service rendered or compensation paid in the immediately preceding school year and the error may be corrected as provided in §25.28(g) of this title (relating to Payroll Report Dates), the member must notify TRS in writing of the error by May 31 of the school year following the school year in which the error occurred.
- (b) Except as provided in subsection (a) of this section, ~~F~~or service rendered after August 31, 2011, in order for service missing from an annual statement to be creditable, TRS must receive the written notification on or before the last day of the fifth school year after the end of the school year in which the service was rendered.
- (c) For service rendered on or before August 31, 2011, in order for service missing from an annual statement to be creditable, TRS must receive the written notification on or before the last day of the fifth school year after the end of the school year in which the service was rendered or August 31, 2016, whichever is later.
- (d) The notification deadline is applicable to any membership service that has not been properly credited on a member's annual statement, including service not reported by an employer or service reported but for which TRS did not grant credit to the member.
- (e) Failure to receive an annual statement in one or more years, including years in which the person is not a member of TRS, does not extend the notification deadline.
- (f) Required deposits deducted and paid to TRS are not refundable to a member if service is not creditable, unless a member terminates membership by withdrawal of all contributions in accordance with applicable law.
- (g) After making timely notification to TRS, a member must provide verification and make deposits as required by TRS before service may be credited. Verification must be made in the form and within the time period specified by applicable laws and rules, including §25.47 of this title (relating to Deadline for Verification). Service shall be creditable only if TRS determines that the verified service is sufficient to establish the credit being sought.

RULE §25.184 Refund for Nonpayment

(a) The Teacher Retirement System of Texas (TRS) may refund installment payments already made, but not credited towards service, if:

- (1) an installment payment is not made in full within 60 days after the due date;
- (2) two or more consecutive monthly payments have been made through a check on an account with insufficient funds or a closed account or through an automatic bank draft for which insufficient funds were available;
- (3) a member notifies TRS in writing that he will no longer make payments pursuant to the installment schedule and requests a refund of amounts previously paid; or
- (4) the number of partial payments becomes excessive.

~~(b) If TRS refunds payments pursuant to this section, the member is not permitted to use the installment payment method or the payroll deduction method of payment for the same service for a period of three years from the date of the refund.~~

(b)(e) If TRS refunds payments to a member pursuant to this section and the member later makes payment by lump sum payment or by the installment method for the same service credit for which the refund was made, any fees required by law or rule will be calculated using the new date of payment rather than the date of initial participation in the installment payment method.

RULE §25.302 Calculation of Actuarial Costs of Service Credit

(a) When a member is purchasing TRS service credit for which the law requires that the actuarial cost or actuarial present value be deposited and for which the method in this section is referenced by another section of this title, TRS will calculate the cost using the cost factors obtained from the Actuarial Cost Tables adopted and method described in this section. Effective September 1, 2015, for purposes of this section, TRS will use the age of the member and the service credit established by the member on September 1 of the school year in which the cost of the purchase is established.

(b) The factors for individuals whose membership was established before September 1, 2007 and who have five years of service credit on August 31, 2014 and maintain membership in TRS until the time of purchase, are shown in the tables adopted as part of this subsection, which shall be used when the service credit cost is paid on or after September 1, 2012, or an installment agreement is entered into on or after September 1, 2012. Within each set of tables, the number of years of service credit to be purchased will determine which specific table will be used. Each of the tables cross-references the member's age in rows with years of credited service (before purchase) in columns. The intersection of the participant's age and service is the cost per \$1,000 of salary. The cost factor for a participant with more years of service credit than shown on the table is the same as the factor shown for the highest number of years of service credit on the table for the participant. TRS will calculate the cost to purchase service credit under this section by dividing the participant's salary by 1000 and multiplying the resulting quotient by the appropriate cost factor obtained from the table. The tables set forth the cost, per \$1,000 of salary, to purchase from one year to fifteen years of service credit. The number of years of service credit available for purchase is determined by the laws and rules applicable to the type of service credit to be purchased. For the purpose of calculating the required amount for a member who is grandfathered to use a three-year salary average under §51.12 of this title (relating to Applicability of Certain Laws in Effect before September 1, 2005), the term "salary" is defined as follows:

(1) For the upper region of the table (where the factors appear above the line), salary is the greater of ~~current~~ the annual salary for the last year of credited service or the average of the member's highest years of compensation calculated on September 1 of the school year in which the cost of the service credit is established, with either two or three years of compensation used for the average, depending on whether the member has only two years or has three or more years of service credit at the time of the calculation; or

(2) For the lower region of the table (where the factors appear below the line), salary is the average of the member's highest three years of compensation calculated on September 1 of the school year in which the cost of the service credit is established. A member's highest three years of compensation shall be calculated as if the member were retiring at the time the service credit is purchased. The lower region of the table (where the factors appear below the line) reflects those age and service combinations where the purchase of service credit results in immediate eligibility of the member for unreduced retirement benefits.

Attached Graphic

(c) For the purpose of calculation of actuarial cost for service credit for a member described in subsection (b) of this section who is not grandfathered to use a three-year salary average, the term "salary" shall have the same meaning as in subsection (b) of this section except that a five-year salary average shall be used instead of a three-year salary average. Additionally, the cost shall be 96 percent of the cost as calculated under subsection (b) of this section when a factor in the upper region of the table is used.

(d) For individuals whose membership was established on or after September 1, 2007 and who have five years of service credit on August 31, 2014 and maintain membership in TRS until the time of purchase, the methodology described in subsection (b) of this section shall be used to determine cost of additional service credit, but TRS shall use the factors in the tables adopted as part of this subsection, which shall be used when the service credit cost is paid on or after September 1, 2012, or an installment agreement is entered into on or after September 1, 2012. If the member is not grandfathered to use a three-year salary average, the term "salary" shall have the same meaning as in subsection (b) of this section except that a five-year salary average shall be used instead of a three-year salary average.

Attached Graphic

(e) If an individual established membership on or after September 1, 2007 and has five years of service credit on August 31, 2014 and maintains membership in TRS until the time of purchase, but is grandfathered to use a three-year salary average, the term "salary" shall have the same meaning as in subsection (b) of this section. The cost of establishing additional service credit for a grandfathered member described in this subsection, shall be 1.04 times the cost as calculated under subsection (d) of this section when a factor in the upper region of the table is used.

(f) An individual who first was a member of TRS before September 1, 2007, but who terminated membership through withdrawal of accumulated contributions and then again joined TRS on or after September 1, 2007 and has five years of service credit on August 31, 2014 and maintains membership in TRS until the time of purchase, is subject to the calculation of cost for additional service credit under subsections (d) and (e) of this section.

(g) For the cost calculations described in subsections (b) and (d) of this section, when the cost is calculated for a purchase that is paid in full before September 1, 2012, or for a purchase for which an installment agreement is entered into before September 1, 2012, the factors in the tables adopted as part of this subsection shall be used.

Attached Graphic

Attached Graphic

(h) Effective September 1, 2014, for members who do not have five years of service credit on August 31, 2014 or whose current membership began after August 31, 2014, the methodology

described in subsections (b) and (c) of this section shall be used to determine the cost of additional service credit, but TRS shall use the factors in the tables adopted as a part of this subsection.

Attached Graphic

(i) For the purpose of calculation of actuarial cost for service credit for a member described in subsection (h) of this section who is not grandfathered to use a three-year salary average, the term "salary" shall have the same meaning as in subsection (b) of this section except that a five-year salary average shall be used instead of a three-year salary average.

(j) If the individual did not have five years of service credit on August 31, 2014 or whose current membership began after August 31, 2014 but is grandfathered to use a three-year salary average, the term "salary" shall have the same meaning as in subsection (b) of this section. The cost of establishing additional service credit for a grandfathered member described in this subsection shall be 1.04 times the cost as calculated under subsection (h) of this section when a factor in the upper region of the table is used.

RULE §25.303 Calculation of Actuarial Cost for Purchase of Compensation Credit

(a) When a member is purchasing TRS compensation credit for which the law requires that the actuarial cost or actuarial present value be deposited and for which the method in this section is referenced by another section of this title, TRS will calculate the cost using the cost factors obtained from the Actuarial Cost Tables adopted and the method described in this section.

(b) Each of the tables cross-references the member's age in rows with years of credited service in columns. The intersection of the participant's age and service is the cost factor that shall be applied to the additional final average salary that may result from the purchase. TRS will calculate the cost to purchase compensation credit under this section by dividing the additional compensation by three or five years, as determined by the standard annuity calculation applicable to the member, and dividing that quotient by 1,000 and multiplying the resulting quotient by the appropriate cost factor obtained from the table. The eligibility of additional compensation credit available for purchase is determined by the laws and rules applicable to the type of compensation sought to be credited.

(c) For individuals whose membership was established before September 1, 2007 and who have five years of service credit on August 31, 2014 and maintain membership in TRS until the time of purchase, the methodology described in subsection (b) of this section shall be used to determine cost of additional compensation credit, but TRS shall use the factors in the tables adopted as part of this subsection.

Attached Graphic

(d) For individuals whose membership was established on or after September 1, 2007 and who have five years of service credit on August 31, 2014 and maintain membership in TRS until the time of purchase, the methodology described in subsection (b) of this section shall be used to determine cost of additional compensation credit, but TRS shall use the factors in the tables adopted as part of this subsection.

Attached Graphic

(e) Effective September 1, 2014, for members who do not have five years of service credit on August 31, 2014 or whose current membership began after August 31, 2014, the methodology described in subsection (b) of this section shall be used to determine the cost of additional compensation credit, but TRS shall use the factors in the tables adopted as a part of this subsection.

Attached Graphic

~~(f) If the member described in subsection (e) of this section is grandfathered to use a three-year salary average, the cost of establishing additional compensation credit shall be 1.04 times the cost as calculated under subsection (e) of this section when a factor in the upper region of the table is used.~~



Legal Services

Memorandum

DATE: November 3, 2014

TO: Policy Committee of the Board of Trustees

FROM: Rebecca M. Smith, Assistant General Counsel

COPY: Brian Guthrie, Executive Director
Ken Welch, Deputy Director
Carolina de Onís, General Counsel

RE: Four-Year Rule Review: 34 Texas Administrative Code, Chapter 27,
Termination of Membership and Refunds

Under §2001.039 of the Texas Government Code, the Board of Trustees is required to review the rules in the Texas Administrative Code, Chapter 27, and determine whether to readopt, readopt with revisions, or repeal the rules in this chapter. Chapter 27 addresses the termination of membership in TRS by withdrawal of member contributions; when a refund may be made to a member; the effect of terminating membership on the right to receive benefits from TRS in the future; the requirements for reinstating a withdrawn account; the limitations on reinstating a withdrawn account when the termination was due to the member's election to participate in the Optional Retirement Program (ORP); and the prohibition that forfeitures resulting from terminating rights to future benefits may not be used to increase benefits to remaining participants.

As required by §2001.039, staff reviewed the rules in Chapter 27 and concluded that 5 rules in this chapter should be readopted without changes and 2 rules readopted with changes; there are no rules recommended for repeal. The Policy Committee authorized public comment publication of the proposed amendments to the rules, which were published October 17, 2014, in the *Texas Register* (39 TexReg 8189). The proposed rule amendments will have been published for at least 30 days before the committee and board consider their adoption at the November meeting. To date TRS has not received any written comments regarding the proposed amendments. Any written comments that TRS receives after the date of this memorandum will be addressed in a separate document that will be available for your review at the November meeting.

Staff recommends that the 2 rules in Chapter 27 with proposed changes be adopted as published and the remaining 5 rules in Chapter 27 be readopted without changes. Summaries of the proposed changes to the rules in Chapter 27 are provided below. Marked rule texts for those rules for which staff proposes amendments are also attached to this memorandum for your review.

§27.2- Eligibility for Withdrawal of Member Contributions (*Readopt without changes*)

§27.3- False Affidavit and Ineligible Refunds (*Readopt without changes*)

§27.4- Refunds (*Changes recommended*)

Section 27.4 establishes the requirement that a refund will not be made until the final deposit of contributions for the member is received from the last employer and posted to the member's account. The purpose of this rule was to prevent additional money from being submitted by the employer after the account was "closed" by TRS due to the termination of membership. With efficiencies anticipated as a result of the TEAM project, staff proposes changes to this rule that will allow TRS to issue refunds more promptly. If additional deposits are received after the initial refund, a second refund will be made. The changes proposed by staff reorganize the rule and provide that a refund can be issued when the termination of employment is confirmed or when the final deposit is received.

§27.5- Termination of Rights to Benefits (*Readopt without changes*)

§27.6- Reinstatement of an Account (*Changes recommended*)

Section 27.6 regards the circumstances under which a member may reinstate a withdrawn account; however, the rule does not address the reinstatement of accounts terminated by absence from service, i.e., "escheated accounts." Currently, if a person with an escheated account returns to TRS membership, the escheated account is not re-activated until the member requests TRS to do so. Based on changes in processes considered in the TEAM project, staff would like for the accounts to be combined upon receipt of new member information from a TRS-covered employer. The language proposed by staff provides for the "activation" of the escheated account immediately upon return to TRS membership provided the former account was not refunded.

§27.8- Reinstatement of Membership and Service Credit by ORP Participants (*Readopt without changes*)

§27.10- Forfeitures May Not Increase Benefits (*Readopt without changes*)

RULE §27.4 Refunds

Refunds to members who are terminating accounts will not be made until required application forms have been filed and termination of the member's employment is confirmed or the final deposit of the withdrawing member is received and posted to his account ~~and required application forms have been filed.~~

RULE §27.6 Reinstatement of an Account

(a) Any member who has withdrawn an account resulting in the cancellation of service credit may reinstate this account and receive credit for the canceled service by meeting the following requirements:

(1) resume membership service in the retirement system or establish eligibility under Government Code, Chapter 803 or 805;

(2) redeposit the amount withdrawn for the years during which the membership was terminated;

(3) except as provided by subsections (b) and (c) of this section, pay a reinstatement fee of ~~8.0%~~ percent compounded annually in whole year increments from August 31st of the plan year in which the withdrawal occurred to the date of redeposit;

(4) reinstate all withdrawn accounts which resulted in the cancellation of service credit. A withdrawn account representing less than a creditable year of service must be reinstated only when it is necessary to combine the canceled service in the account with all other canceled service or with other eligible membership service or equivalent membership service performed in the same year to constitute a creditable year of service.

(b) A member may establish withdrawn service credit by paying the deposits and fees required in subsection (c) of this section if:

(1) the member otherwise meets all eligibility requirements under ~~Government Code,~~ §823.501, Government Code, as amended;

(2) all of the service for which credit is sought to be established was rendered before September 1, 2011, and TRS received an application to withdraw the credit on or before August 31, 2011; and

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

(c) To reinstate withdrawn service credit under subsection (b) of this section, the member shall redeposit the amount withdrawn for the years during which the membership was terminated and shall pay a reinstatement fee of ~~6%~~ percent compounded annually in whole year increments from August 31 of the plan year in which the withdrawal occurred to the date of redeposit.

(d) Membership service credit and the accumulated contributions associated with the membership terminated by not qualifying for service credit for five consecutive years as provided in §822.003(a)(4), Government Code, may be restored by TRS when the person returns to TRS covered employment provided the accumulated contributions in the member account have not been withdrawn. If the accumulated contributions have been withdrawn, the member may reinstate the withdrawn account as provided in this section.



Legal Services

Memorandum

DATE: November 3, 2014

TO: Policy Committee of the Board of Trustees

FROM: Rebecca M. Smith, Assistant General Counsel

COPY: Brian Guthrie, Executive Director
Ken Welch, Deputy Director
Carolina de Onís, General Counsel

RE: Four-Year Rule Review: 34 Texas Administrative Code, Chapter 29,
Benefits

Under §2001.039 of the Texas Government Code, the Board of Trustees is required to review the rules in the Texas Administrative Code, Chapter 29, and determine whether to readopt, readopt with revisions, or repeal the rules in this chapter. Chapter 29 addresses retirement benefits in Subchapter A; benefits paid at the death of a member who has not retired; plan limitations established by the Internal Revenue Code for qualified plans in Subchapter D; payments under the Deferred Retirement Option Plan in Subchapter E; partial lump sum payments in Subchapter F; and proportionate retirement in Subchapter G.

As required by §2001.039, staff reviewed the rules in Chapter 29 and concluded that 32 rules in this chapter should be readopted without changes and 2 rules readopted with changes; there are no rules recommended for repeal. The Policy Committee authorized public comment publication of the proposed amendments to the rules, which were published October 17, 2014, in the *Texas Register* (39 TexReg 8190). The proposed rule amendments will have been published for at least 30 days before the committee and board consider their adoption at the November meeting. To date TRS has not received any written comments regarding the proposed amendments. Any written comments that TRS receives after the date of this memorandum will be addressed in a separate document that will be available for your review at the November meeting.

Staff recommends that the 2 rules in Chapter 29 with proposed changes be adopted as published and the remaining 32 rules in Chapter 29 be readopted without changes. Summaries of the proposed changes to the rules in Chapter 29 are provided below. Marked rule texts for those rules for which staff proposes amendments are also attached to this memorandum for your review.

Subchapter A. Retirement

The rules in this subchapter address eligibility for service retirement; compensation that is used to calculate a retirement benefit; the requirement to apply for retirement and complete the process within 12 months; the types of payment plans offered by TRS; how survivor benefits will be split among joint beneficiaries;

how the early age benefit is calculated and the early age reduction factors used to calculate the benefit; the requirement to terminate employment by the effective date of retirement and to observe a one full calendar month break-in-service after retirement; how benefits that are unpaid at the time of death will be distributed by TRS; eligibility for retirement at the end of May; approval of disability retirements; the amount of benefits paid to disability retirees based on years of service credit; and the discontinuation of disability benefits.

§29.1- Eligibility for Service Retirement (*Readopt without changes*)

§29.4- Actual Compensation (*Readopt without changes*)

§29.5- Computation of Retirement Benefits (*Readopt without changes*)

§29.7- Completion of Retirement Application Process (*Readopt without changes*)

§29.8- Retirement Payment Plans (*Readopt without changes*)

§29.9- Survivor Benefits (*Readopt without changes*)

§29.10- Retirement under Options 3 and 4 (*Readopt without changes*)

§29.11- Actuarial Tables (*Readopt without changes*)

§29.12- Early Age Retirement Benefit Calculated on Law in Effect Before September 1, 2005 (*Readopt without changes*)

§29.13- Changing Beneficiary for Survivor Benefits (*Readopt without changes*)

§29.14- Eligibility for Retirement at the End of May (*Readopt without changes*)

§29.15- Termination of Employment (*Changes recommended*)

Section 29.15 addresses the requirement that employment must terminate in order to establish eligibility for retirement. The rule further establishes when a contract for future employment may result in a determination that employment has not terminated and when retirement is revoked by returning to work with a TRS-covered employer in the first month following retirement.

Experience with the requirement to observe the one full calendar month break in service reflects a basic misunderstanding regarding how TRS views working as a substitute in the month following retirement. Staff proposes language that will clarify that working as a substitute in the month following retirement is prohibited and will revoke retirement.

§29.16- Unpaid Benefits (*Readopt without changes*)

§29.21- Beneficiary Tables (*Readopt without changes*)

§29.22- Approval of Disability Retirements (*Readopt without changes*)

§29.23- Disability Retirement with Less Than 10 Years of Creditable Service (*Readopt without changes*)

§29.24- Purchase of Credit (*Readopt without changes*)

§29.26- Discontinuance of Disability Benefits (*Readopt without changes*)

Subchapter B. Death before Retirement

The rules in this subchapter regard when active member death benefits will be paid on behalf of a member who was absent from service at the time of death and various details regarding the payment of benefits at the death of a member such as when the final benefit payment will be made, how payments to joint beneficiaries will be determined, and when a beneficiary may change payment options.

§29.33- Absence from Service (*Readopt without changes*)

§29.34- Events Affecting Payment (*Readopt without changes*)

Subchapter D. Plan Limitations

The rules in this subchapter are in large part references to requirements for qualified plans established in the Internal Revenue Code. The rules address the amount of money that may be contributed voluntarily each year for the purchase of service credit; the limits on the amount of compensation that may be credited in the school year; the amount of benefit that may be paid out in a plan year; and the minimum distribution required in order to avoid additional taxes on distributions.

§29.50- Definitions (*Readopt without changes*)

§29.51- Plan Limitations on Annual Benefits and Member Contributions (*Readopt without changes*)

§29.52- Adjustment to Annual Benefit Limit (*Readopt without changes*)

§29.55- Limitation on Contributions (*Changes recommended*)

Section 29.55 expresses the limits on voluntary contributions to the TRS pension plan for the purchase of service credit and the parameters authorized by the Internal Revenue Code for testing the amount of voluntary contributions against the member compensation in order to determine if the limits have been exceeded. At the recommendation of tax counsel, staff proposes additional language in subsection (a) to specifically reference §823.006, Government Code and to clarify that TRS can decline to allow a participant to make a contribution for the purchase of service credit if the amount of the contribution would exceed the limits established in §415 of the Internal Revenue Code.

§29.56- Minimum Distribution Requirements (*Readopt without changes*)

Subchapter E. Deferred Retirement Option Plan

The rules in this subchapter address how TRS will administer the Deferred Retirement Option Plan (DROP); the deadlines for purchasing service credit; and how becoming unemployed by any TRS-covered employer will affect participation in DROP.

§29.61- Distribution (*Readopt without changes*)

§29.62- Unemployment during Deferred Retirement Option Plan (*Readopt without changes*)

§29.63- Deadline for Purchase of Service Credit (*Readopt without changes*)

Subchapter F. Partial Lump-Sum Payment

The rules in this subchapter establish eligibility requirements for electing a partial lump-sum option (PLSO) payment, the factor tables used to reduce the retiree's benefit after electing to receive a PLSO, and how TRS will distribute PLSO payments.

§29.70- Distribution (*Readopt without changes*)

§29.71- Tables (*Readopt without changes*)

§29.72- Eligibility to Select PLSO (*Readopt without changes*)

Subchapter G. Proportionate Retirement

The rules in this subchapter regard the use of combined service credit in TRS and in another retirement plan participating in the Proportionate Retirement Program to establish eligibility for benefits; the eligibility of the member to use combined service credit to establish eligibility for retirement benefits; and how the final average salary will be calculated when the member has fewer years of service credit than usually required.

§29.80- Eligibility for Normal Age Retirement (*Readopt without changes*)

§29.81- Eligibility of Member (*Readopt without changes*)

§29.82- Calculation of Salary Average (*Readopt without changes*)

RULE §29.15 Termination of Employment

(a) Employment in any position, including as a substitute, by a TRS-covered employer, regardless of compensation, during the first month following a person's effective date of retirement, or during the first two months following a person's effective date of retirement if the retirement was established by using ~~Government Code~~ §824.002(d), Government Code, revokes the retirement and requires a return of any benefits received under retirement.

(b) A member who is eligible for normal age retirement and who has a contract or agreement for future employment that does not qualify for one of the exceptions in ~~Government Code~~ §824.602, Government Code, has not ended all employment with a TRS covered employer and may not retire and receive any benefits. Contracts or work agreements for employment that do not qualify for one of the exceptions in that section must be negotiated after the break in service required in ~~Government Code~~ §824.005, Government Code.

(c) A member who is eligible for early age retirement may not have a contract or promise of future employment with any TRS covered employer until after the required break in service referenced in subsection (a) of this section. A person who enters into such an agreement has not ended all employment with a TRS covered employer and may not retire and receive any benefits.

RULE §29.55 **Limitation on Contributions**

(a) Notwithstanding any other provision of law to the contrary, and in accordance with §823.006, Government Code, this rule describes application of the federal limits on service purchases. TRS may refuse a request by a member to make a contribution to the retirement system for the purchase of service credit if the amount of the contribution would exceed the limits provided in §415 of the Internal Revenue Code.

(b) A member may use an installment payment plan to the extent permitted under applicable law to avoid making a contribution in excess of the limits under §415(c) or §415(n) of the Internal Revenue Code.

(c) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under TRS, then the requirements of §415 of the Internal Revenue Code will be treated as met only if:

(1) the requirements of §415(b) of the Internal Revenue Code are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of §415(b) of that code; or

(2) the requirements of §415(c) of the Internal Revenue Code are met, determined by treating all such contributions as annual additions for purposes of §415(c) of that code.

(d) For purposes of applying subsection (c)(1) of this section, the retirement system will not fail to meet the reduced limit under §415(b)(2)(C) of the Internal Revenue Code solely by reason of this section, and for purposes of applying subsection (c)(2) of this section, the system will not fail to meet the percentage limitation under §415(c)(1)(B) of that code solely by reason of this section.

(e) For purposes of subsection (c) of this section the term "permissive service credit" means service credit:

(1) specifically authorized by state law and recognized by the retirement system for purposes of calculating a member's benefit under the system;

(2) which such member has not received under the system, prior to the purchase of such service credit; and

(3) which such member may receive only by making a voluntary additional contribution, in an amount determined under the System, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

(f) Effective for permissive service credit contributions made in years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding subsection (e)(2) of this section, may include service credited in

order to provide an increased benefit for service credit which a member is receiving under the System. Permissive service credit shall include:

- (1) military service credit under ~~Tex. Gov't Code~~ §823.302, Government Code;
- (2) developmental leave service credit under ~~Tex. Gov't Code~~ §823.402, Government Code;
- (3) membership waiting period service credit under ~~Tex. Gov't Code~~ §823.406, Government Code;
- (4) substitute service credit under §25.4 of this title (relating to Substitutes);
- (5) out-of-state service credit under ~~Tex. Gov't Code~~ §823.401, Government Code;
- (6) unused leave service credit under ~~Tex. Gov't Code~~ §823.403, Government Code;
- (7) service credit for work experience by a career or technology teacher; and
- (8) "additional service credit" under the service credit purchase option authorized by ~~Tex. Gov't Code~~ §823.405, Government Code.

(g) For the retirement system to meet the requirements of subsection (c) of this section:

(1) more than five years of nonqualified service credit shall not be taken into account for purposes of subsection (c) of this section; and

(2) no nonqualified service credit shall be taken into account under subsection (c) of this section before the member has at least five years of participation under the system.

(h) For purposes of subsection (g) of this section, effective for permissive service credit contributions made in years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:

(1) service (including parental, medical, sabbatical, and similar leave) as an employee of the government of the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in §415(k)(3) of the Internal Revenue Code);

(2) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in paragraph (1) of this subsection) of an education organization described in §170(b)(1)(A)(ii) of the Internal Revenue Code which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;

(3) service as an employee of an association of employees who are described in paragraph (1) of this subsection; or

(4) military service (other than qualified military service under §414(u) of the Internal Revenue Code) recognized by TRS.

(i) In the case of service described in subsection (h)(1) - (3) of this section, such service will be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan. The Internal Revenue Code standards for qualified permissive service credit as reflected in subsection (h)(1) - (4) of this section do not expand the authorized types of service credit available to be purchased under the TRS plan.

(j) In the case of a trustee-to-trustee transfer after December 31, 2001, to which §403(b)(13)(A) or §457(e)(17)(A) of the Internal Revenue Code applies (without regard to whether the transfer is made between plans maintained by the same employer):

(1) the limitations of subsection (g) of this section will not apply in determining whether the transfer is for the purchase of permissive service credit; and

(2) the distribution rules applicable under federal law to TRS will apply to such amounts and any benefits attributable to such amounts.

(k) For an eligible member, the limitation of §415(c)(1) of the Internal Revenue Code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of the statutes and rules applicable to TRS as in effect on August 5, 1997. For purposes of this subsection, an eligible member is an individual who first became a member of TRS before September 1, 2000.



Legal Services

Memorandum

DATE: November 3, 2014

TO: Policy Committee of the Board of Trustees

FROM: Rebecca M. Smith, Assistant General Counsel

COPY: Brian Guthrie, Executive Director
Ken Welch, Deputy Director
Carolina de Onis, General Counsel

RE: Four-Year Rule Review: 34 Texas Administrative Code, Chapter 31,
Employment after Retirement

Under §2001.039 of the Texas Government Code, the Board of Trustees is required to review the rules in the Texas Administrative Code, Chapter 31, and determine whether to readopt, readopt with revisions, or repeal the rules in this chapter. Chapter 31 establishes in Subchapter A the definitions of relevant terms; the requirement for TRS-covered employers to submit monthly reports regarding the employment of retirees; and the requirement that the exceptions to forfeiting annuities by returning to work with a TRS-covered employer apply only to effective retirements. The rules in Subchapter B address the exception to loss of annuities for employment as a substitute, for one-half time employment, and for full-time employment after a 12 month break in service and provide that the limits on employment after retirement do not apply to certain retirees. The rules in Subchapter C regard employment after disability retirement and establish the limits on substitute employment and one-half time employment and the opportunity to work full-time for as long as three months on a trial basis to determine if the retiree is able to return to work full-time; and the requirement that a disability retiree must report compensation earned in excess of the greater of \$40,000 or the retiree's highest salary in any school year before disability retirement. The rules in Subchapter D regard the employer pension surcharge that must be paid by the employer when a retiree who retired after September 1, 2005 works in excess of one-half time.

As required by §2001.039, staff reviewed the rules in Chapter 31 and concluded that 12 rules in this chapter should be readopted without changes and 4 rules readopted with changes; there are no rules recommended for repeal. The Policy Committee authorized public comment publication of the proposed amendments to the rules, which were published October 17, 2014, in the *Texas Register* (39 TexReg 8192). The proposed rule amendments will have been published for at least 30 days before the committee and board consider their adoption at the November meeting. To date TRS has not received any written comments regarding the proposed amendments. Any written comments that TRS receives after the date of this memorandum will be addressed in a separate document that will be available for your review at the November meeting.

Staff recommends that the 4 rules in Chapter 31 with proposed changes be adopted as published and the remaining 12 rules in Chapter 31 be readopted without changes. Summaries of the proposed changes to the rules in Chapter 31 are provided below. Marked rule texts for those rules for which staff proposes amendments are also attached to this memorandum for your review.

Subchapter A. General Provisions

The rules in Subchapter A provide the relevant definitions for terms used in this chapter and clarify that employers must submit a monthly report to TRS detailing the amount and type of employment performed by retirees. The rules also regard the requirement to terminate employment in order to have an effective retirement before utilizing the exceptions to forfeiting annuities by returning to work with a TRS-covered employer.

§31.1- Definitions (*Readopt without changes*)

§31.2- Monthly Certified Statement (*Readopt without changes*)

§31.3- Exceptions Apply only to Effective Retirements (*Readopt without changes*)

Subchapter B. Employment after Service Retirement

The rules in this subchapter regard the exceptions to the general rule that a retiree will forfeit the monthly annuity for each month that the retiree works for a TRS-covered employer. The current exceptions exempt retirees who retired before January 1, 2011 from any restrictions on employment with a TRS-covered employer. In addition, the rules exempt retirees who work only as a substitute, retirees who work no more than the equivalent of 4 clock hours for every work day in the month; retirees who combine substitute and any other amount of work in the same calendar month but limit the work to no more than one-half of the work days in that month; and retirees who return to work full-time after observing a 12 full, consecutive calendar month break in service.

§31.11- Employment Resulting in Forfeiture of Service Retirement Annuity (*Readopt without changes*)

§31.12- Exceptions to Forfeiture of Service Retirement Annuity (*Readopt without changes*)

§31.13- Substitute Service (*Changes recommended*)

Section 31.13 provides the requirements for working under the Substitute Service exception and clarifies that working as a substitute during the required one full calendar month break in service revokes retirement. Also, a retiree who is working as a substitute is not considered absent from service for the purpose of establishing the 12 month break in service required for full-time employment. The rule also clarifies that a retiree may combine work under the one-half time exception and under the substitute service exception in the same calendar month provided the retiree does not work more than half of the work days in that calendar month. Experience with this rule has revealed that many retirees and employers do not realize that the retiree may not work the one-half day that remains when working in a calendar month with an odd number of work days. Staff proposes amendments to this section that clarify that the retiree may not work the one-half day or any amount of additional time when dividing an odd number of work days in half to determine how many days the retiree may work in the combined employment.

§31.14- One-half Time Employment (*Changes recommended*)

Section 31.14 provides clarification on how much a retiree may work under the one-half time exception without forfeiting the annuity for that month. The current rule provides that a retiree may work as much as the equivalent of 4 clock hours for every work day in the month. A work day is defined as every Monday through Friday in the month, without regard to whether the day is a holiday, the employer is open for business, or the retiree is scheduled to work each day. Currently, the rule provides special instructions for retirees employed as instructors in institutions of higher education and directs that the retiree must count every hour in the lab or classroom as 2 hours of work to take into consideration the preparation time, the grading time, time spent providing reviews, and similar duties. Staff recommends changes to this rule to clarify that with regard to employment as an instructor with an institution of higher education, the classes must be taken for college credit in order for the instructor to utilize the 2 to 1 conversion ratio. Also, the staff proposes a change that will clarify that on-line classes should be counted as 2 clock hours for every semester hour or college credit hour assigned to the class and adult education classes or continuing education classes are counted hour for hour. Finally, staff proposes the changes recommended in §31.13 regarding combining employment as a substitute and other employment in the same calendar month be carried over to this rule. Staff recommends clarifying that if a calendar month has an odd number of work days, the retiree may not work any part of the remaining one-half day after dividing the total number of days by 2 to determine how many days are “one-half” the working days in the month.

§31.15- Full-time Employment after 12 Consecutive Month Break in Service (*Changes recommended*)

Section 31.15 establishes the requirements for observing a break in service of 12 full, consecutive calendar months before returning to full-time employment for retirees who retired January 1, 2011 or after. This section clarifies that working as a substitute or under the one-half time exception is considered employment that interrupts the 12 month break in service and that paid leave is also considered employment that must be counted. Staff proposes non-substantive changes to this rule to address typographical errors and inconsistent statutory cites.

Subchapter C. Employment after Disability Retirement

The rules in Subchapter C address the exceptions to forfeiture of annuities for disability retirees who return to work with a TRS-covered employer. Disability retirees are limited to working no more than 90 days as a substitute or 90 days in one-half time or less employment. A disability retiree may not work full-time except during the 3 month trial period provided by statute. Further, disability retirees who applied and retired after August 31, 2007 are also limited in the amount of compensation they may earn. Disability retirees who are affected by this requirement may not earn more than the greater of \$40,000 or the highest salary earned before retirement without forfeiting the annuities paid by TRS.

§31.31- Employment Resulting in Forfeiture of Disability Retirement Annuity (*Readopt without changes*)**§31.32- Half-time Employment Up to 90 Days (*Changes recommended*)**

Section 31.32 provides clarification on how much a disability retiree may work under the one-half time exception without forfeiting the annuity for that month. The current rule provides that a retiree may work as much as the equivalent of 4 clock hours for every work day in the month. A work day is defined as every Monday through Friday in the month, without regard to whether the day is a holiday, the employer is open for business, or the retiree is scheduled to work each

day. However, disability retirees are also limited to working no more than 90 days in a school year. Currently, the rule provides special instructions for retirees employed as instructors in institutions of higher education and directs that the retiree must count every hour in the lab or classroom as 2 hours of work to take into consideration the preparation time, the grading time, time spent providing reviews, and similar duties. Staff recommends changes to this rule to clarify that with regard to employment as an instructor with an institution of higher education, the classes must be taken for college credit in order for the instructor to utilize the 2 to 1 conversion ratio. Also, the staff proposes a change that will clarify that on-line classes should be counted as 2 clock hours for every semester hour or college credit hour assigned to the class and adult education classes or continuing education classes are counted hour for hour.

Finally, staff proposes the changes recommended in §31.13 regarding combining employment as a substitute and other employment in the same calendar month be carried over to this rule. Staff recommends clarifying that if a calendar month has an odd number of work days, the retiree may not work any part of the remaining one-half day after dividing the total number of days by 2 to determine how many days are “one-half” the working days in the month.

§31.33- Substitute Service Up to 90 Days (*Readopt without changes*)

§31.34- Employment Up to Three Months on a One-Time Only Trial Basis (*Readopt without changes*)

§31.35- Disability Retiree Report of Excess Compensation (*Readopt without changes*)

§31.36- Forfeiture of Disability Retirement Annuity Payments Due to Excess Compensation (*Readopt without changes*)

§31.37- Application of Excess Compensation Provisions to Employment in Texas Public Educational Institutions (*Readopt without changes*)

Subchapter D. Employer Pension Surcharge

The rule in this subchapter regards the surcharge that TRS-covered employers must pay when employing a retiree who retired September 1, 2005 or after and the employee works more than the equivalent of 4 clock hours for every work day in the month. The amount of the surcharge is a percentage of the retiree’s compensation equal to the member and state contribution amounts.

§31.41- Return to Work Employer Pension Surcharge (*Readopt without changes*)

RULE §31.13 Substitute Service

- (a) Any person receiving a service retirement annuity who retired after January 1, 2011, may work in a month as a substitute in a public educational institution without forfeiting the annuity payment for that month.
- (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, and may not be combined with the substitute service exception without forfeiting the annuity payment except as provided in this chapter.
- (c) 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 title~~ (relating to Full-time Employment after 12-Consecutive-Month Break in Service).
- (d) The exception described in this section and the exception for one-half time employment described in §31.14 of this ~~chapter title~~ (relating to One-half Time Employment) may be used during the same school year. If the substitute service and the ~~other one-half time~~ employment occur in the same calendar month, the total amount of time that the retiree works in both positions may not exceed the amount of time available that month for work on a one-half time basis. Beginning September 1, 2011 and thereafter, the exception for substitute service under this section and the exception for one-half time employment under §31.14 of this ~~chapter title~~ (relating to One-half Time Employment) 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. If the calendar month has an odd number of work days available for work, the retiree is limited to working only the number of whole days available and may not work any amount of additional time in the one-half day remaining when dividing the total number of work days in the month by 2 without forfeiting the annuity for that month.
- (e) 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)).
- (f) A retiree who reports for duty as a daily substitute during any day and works any portion of that day shall be considered to have worked one day.

RULE §31.14 One-half Time Employment

(a) A person who is receiving a service retirement annuity who retired after January 1, 2011 may be employed on as much as 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 four 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 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 (including community and junior colleges) in classes taken by students for college credit and that is expressed 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 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 established standard will be used to determine the number of courses or labs 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. Employment as an instructor of an on-line class taken by students for college credit that is 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 counted as a minimum of two clock hours for each course or semester hour. Employment as an instructor of continuing education, adult education, and/or classes offered to employers or businesses for employee training, that is not measured or expressed in terms of the number of courses; semester or course hours/credits; or instructional units or other units of time rather than clock hours and for which the students/participants do not receive college credit, must be counted based on the number of clock hours worked.

(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 title (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. If the calendar month has an odd number of work days available for work, the retiree is limited to working only the number of whole days available and may not work any amount of additional time in the one-half day remaining when dividing the total number of work days in the month by 2 without forfeiting the annuity for that month.

(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 title (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 §31.15 Full-time Employment after 12 Consecutive Month Break in Service

(a) If a person who retired after January 1, 2011, and who is receiving a service retirement annuity complies with subsection (b) of this section, the person may, without forfeiting payment of the annuity for the months of employment, be employed in any capacity in Texas public education, including as much as full-time.

(b) To be eligible to be employed without forfeiting payment of the annuity under subsection (a) of this section, the service retiree must have been separated from service with all Texas public educational institutions for at least 12 full consecutive calendar months after the effective date of retirement. The 12-month separation period required under ~~Government Code~~, §824.602(a)(3), Government Code for the full-time exception may be any 12 consecutive calendar months following the month of retirement. During the separation period, the retiree may not be employed in any position or capacity by a public educational institution covered by TRS.

(1) Employment as a substitute or on a half-time basis under the exceptions provided for in this chapter is considered employment for the purpose of this subsection.

(2) Paid time off, including sick leave, vacation leave, administrative leave, and compensatory time for overtime worked, is considered employment for purposes of this subsection.

(3) Employment by a third party entity is considered employment by a Texas public educational institution for purposes of this subsection 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) If a person who retired after January 1, 2011, and who is receiving a service retirement annuity does not meet the separation from service period required in subsection (b) of this section, the person will forfeit payment of the annuity for any month of full-time employment in Texas public education. In this section full-time employment means any employment that does not meet the substitute service exception as described in §31.13 of this ~~titlechapter~~ (relating to Substitute Service) or the one-half time exception in §31.14 of this ~~titlechapter~~ (relating to One-half Time Employment).

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

(2) Employment by a third party entity is considered employment by a Texas public educational institution for purposes of this section and must be reported to TRS as employment for the calendar month in which it occurs 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.

RULE §31.32 Half-time Employment Up to 90 Days

(a) Any person receiving a disability retirement annuity may, without affecting payment of the annuity, be employed for a period not to exceed 90 days during any school year by a public educational institution covered by TRS on as much as a one-half time basis. In this section, one-half time basis means the equivalent of four 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; working any part of a day counts as one day towards the 90 day annual limit established in this section. This exception does not apply for the first month after the retiree'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)).

(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) Total substitute service under §31.33 of this ~~title~~chapter (relating to Substitute Service Up to 90 Days) and half-time employment may not exceed 90 days during any school year. Substitute service under §31.33 of this ~~title~~chapter (relating to Substitute Service Up to 90 Days) and half-time employment may be combined in the same calendar month only if the total number of days that the disability retiree works in those positions in that month does not exceed one-half the number of days available that month for work. Working any part of a day as a substitute or half-time counts as working one day. If the calendar month has an odd number of work days available for work, the retiree is limited to working only the number of whole days available and may not work any amount of additional time in the one-half day remaining when dividing the total number of work days in the month by 2 without forfeiting the annuity for that month.

(d) 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 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.

(e) For the purpose of this section, actual course instruction in state-supported colleges (including junior colleges), and universities of classes taken by students for college credit that is measured in course or semester hours shall be counted as a minimum of two clock hours per one course or semester hour in order to reflect instructional time as well as preparation 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, the employer's established standard will be used to determine the number of course 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. Employment as an instructor of an on-line class taken by students for college credit that is 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 counted as a minimum of two clock hours for each course or semester hour. Employment as an instructor of continuing education, adult education, and/or classes offered to employers or businesses for employee training, that is not measured or expressed in terms of the number of courses; semester or course hours/credits; or instructional units or other units of time rather than clock hours and for which the students/participants do not receive college credit must be counted based on the number of clock hours worked.



Legal Services

Memorandum

DATE: November 3, 2014

TO: Policy Committee of the Board of Trustees

FROM: Rebecca M. Smith, Assistant General Counsel

COPY: Brian Guthrie, Executive Director
Ken Welch, Deputy Director
Carolina de Onis, General Counsel

RE: Four-Year Rule Review: 34 Texas Administrative Code, Chapter 39,
Proof of Age

Under §2001.039 of the Texas Government Code, the Board of Trustees is required to review the rule in the Texas Administrative Code, Chapter 39, and determine whether to readopt, readopt with revisions, or repeal the rule in this chapter. Chapter 39 establishes the types of documentation that TRS will accept in order to establish a date of birth. A participant's age is important in determining eligibility for benefits and the appropriate early age reduction factor to use in calculating benefits.

As required by §2001.039, staff reviewed the single rule in Chapter 39 and concluded that the rule in this chapter should be readopted with changes; there are no rules recommended for repeal. The Policy Committee authorized public comment publication of the proposed amendments to the rule, which were published October 17, 2014, in the *Texas Register* (39 TexReg 8195). The proposed rule amendments will have been published for at least 30 days before the committee and board consider their adoption at the November meeting. To date TRS has not received any written comments regarding the proposed amendments. Any written comments that TRS receives after the date of this memorandum will be addressed in a separate document that will be available for your review at the November meeting.

Staff recommends that the rule in Chapter 39 with proposed changes be adopted as published. A summary of the proposed changes to the rule in Chapter 39 are provided below. Marked rule text which reflects the amendments proposed by staff is also attached to this memorandum for your review.

§39.1- Establishment of Date of Birth (*Changes recommended*)

Section 39.1 establishes the types of documentation that TRS will accept to establish a date of birth. Staff proposes changes to this rule to include a state issued driver license or ID and a U.S. or state issued military ID as acceptable documents for showing proof of date of birth. The proposed changes also give staff more discretion to determine other forms of acceptable proof of date of birth.

RULE §39.1 Establishment of Date of Birth

(a) Date of birth may be established by any one of the following:

- (1) an original birth certificate or a legible unaltered copy thereof;
- (2) a delayed birth certificate in accordance with Chapter 192, Subchapter B, Health and Safety Code, or a legible unaltered copy provided by the Bureau of Vital Statistics;
- (3) a delayed birth certificate issued by the state in which birth occurred or a legible unaltered copy provided by the registration agency;
- (4) an original baptismal record or parish record wherein the age of the individual at the time of baptism is given, or a legible unaltered copy of such record;
- (5) a family Bible record when properly abstracted or copied and accompanied by the prescribed affidavit forms issued by the Teacher Retirement System of Texas (TRS);
- (6) a report from the Bureau of Census stating the age of the individual at a census year when the individual was less than 20 years of age;
- (7) a signed letter from the Social Security Administration indicating a date of birth which has been accepted by Social Security Administration;
- (8) naturalization or citizenship papers showing the individual's date of birth;
- (9) for a member, an original birth certificate or a legible unaltered copy thereof when there is no given name listed for the infant as long as it is consistent with other birth information in the TRS file;
- (10) an alien registration card;
- (11) a hospital birth record signed by the administrator or custodian of records of the hospital;
- (12) a U.S. passport; ~~or~~
- (13) a state issued driver license or state issued ID card;
- (14) a U.S. or state issued military ID; or
- ~~(15) in the event none of these is obtainable, any such~~ other evidence of age as may be approved by TRS.

(b) If there is any question concerning a copy of the documents listed in this section, a certified copy of the document may be required.

M E M O R A N D U M

To: TRS Policy Committee & 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, Chief Health Care Officer
Carolina de Onís, TRS General Counsel**

Date: November 20-21, 2014

Re: Four-Year Rule Review; Adoption of Proposed Amendments to various TRS-Care rules located in 34 TAC Chapter 41, Subchapter A, to various TRS-ActiveCare rules located in 34 TAC Chapter 41, Subchapter C, and to rule §41.91 of 34 TAC Chapter 41, Subchapter D

Introduction

In association with the Four-Year Rule Review by TRS, staff has reviewed the rules in subchapters A, B, C, and D of 34 TAC Chapter 41 (Health Care and Insurance Programs). Chapter 41 addresses (i) in subchapter A, various aspects of the TRS-Care health benefits program, (ii) in subchapter B, various aspects of long-term care, disability, and life insurance administered by TRS, (iii) in subchapter C, various aspects of the TRS-ActiveCare health benefits program, and (iv) in subchapter D, the responsibilities of school districts that do not participate in TRS-ActiveCare to determine the comparability of the health coverage offered to their respective employees.

Staff identified various rules for readoption with changes, as more fully described below and set out in the marked rule texts provided to the Policy Committee (the "committee") during its September 2014 meeting. Accordingly, the committee authorized public comment publication of these proposed amendments, which were published in the October 17, 2014 issue of the *Texas Register* (39 TexReg 8196). The proposed rules will have been published for at least 30 days by the time the November 2014 meetings take place. No public comments have been received as of the date of this memorandum. Any written comments received after the date of this memorandum will be addressed at the November 2014 meetings.

Accordingly, staff is presenting the proposed rule amendments, as marked in the attached rule texts, to the committee and to the Board of Trustees (the "board") for final adoption during the November 2014 meetings. Additionally, staff is further recommending the readoption without changes of the remaining rules in Chapter 41, as noted below.

The recommendations of staff and the action of TRS in response thereto are being made under the following statutory provisions, which authorize TRS or the board to take actions considered necessary to administer the three plans or programs noted above, to adopt rules reasonably necessary to implement these plans or programs, and to adopt rules regarding the comparability of a school district's group health coverage: Texas Insurance Code §1575.051, §1575.052, §1576.002, §1576.006, §1579.051, §1579.052, and Texas Education Code §22.004.

Subchapter A, Retiree Health Care Benefits (TRS-Care)

The rules in this subchapter address various aspects of TRS-Care, including without limitation, eligibility to enroll in TRS-Care, initial enrollment periods, special enrollment events, opportunities to enroll in higher levels of TRS-Care coverage, effective dates of coverage, the employer health benefit surcharge, and the Retirees Advisory Committee. A discussion of the proposed amendments to the TRS-Care rules is found in the listing below.

§41.1 — Initial Enrollment Periods for the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act (TRS-Care) ***(Changes Recommended)***

Rule §41.1 addresses initial enrollment periods for TRS-Care. The revised language in subsection (f) clarifies existing language and is more consistent with subsection (e). Retirees are allowed to add new spouses and new dependents during enrollment periods; however, due to state law provisions regarding dependents eligible to enroll in TRS-Care, surviving spouses are only allowed to add new dependents during enrollment periods. This revised language makes no substantive changes to existing TRS-Care operations or rules.

§41.2 – Additional Enrollment Opportunities ***(Changes Recommended)***

Rule §41.2 addresses the additional enrollment opportunities available in TRS-Care. Consistent with state law and TRS-Care practices, the word "service" is being deleted in subsection (a)(1)(A). Both service retirees and disability retirees are qualified to exercise the Age 65 Additional Enrollment Opportunity and are therefore considered to be "eligible participants."

The revision in subsection (a)(8) is proposed as a clarification. During an Age 65 Additional Enrollment Opportunity, individuals may not only add eligible dependents

under TRS-Care, but also can change their level of coverage. The term “exercise” is sufficiently broad to address both types of opportunities.

§41.3 – Retirees Advisory Committee (Re-adopt without changes)

§41.4 – Employer Health Benefit Surcharge (Re-adopt without changes)

§41.5 – Payment of Contributions (Re-adopt without changes)

§41.6 – Required Contributions from Public Schools (Re-adopt without changes)

§41.7 – Effective Date of Coverage (***Changes Recommended***)

Rule §41.7 addresses the effective date of coverage under TRS-Care. Recent legislation has restricted the ability of individuals to enroll in the higher levels of coverage in TRS-Care until they reach the age of 62. The new language in subsection (b) clarifies that the rights under this subsection are subject to this new enrollment restriction.

The new language in subsection (d) provides that existing coverage for a surviving spouse and surviving dependent children will continue after the participant’s death, without the need to submit an application to TRS-Care.

When making changes to coverage due to the acquisition of Medicare Part A, TRS-Care no longer requires receipt of a copy of a participant’s or dependent’s Medicare card. The revised language in subsection (i) provides the flexibility to accept other proof of Medicare Part A coverage.

The revised language of subsections (l) and (m) replaces outdated language, more clearly stating that where TRS-Care has been paying primary to Medicare on claims associated with a participant with Medicare Part A coverage, TRS-Care may seek the recovery of overpaid funds paid by TRS-Care and may refund or credit any overpaid premium amounts to the participant to a maximum retroactive period of twelve months. This revised language does not alter current procedures of TRS-Care, nor does it make any substantive changes to existing rule language.

The revised language of subsection (n) also replaces outdated language, more clearly providing that when TRS-Care discovers that its records incorrectly reflect that a participant has Medicare Part A coverage when the participant actually does not have such coverage, TRS-Care may adjust its records and claims processing. Further, TRS-Care will contact the participant to discuss the cost of Medicare Part A coverage and will advise the participant of the financial consequences under TRS-Care if the participant does not obtain such coverage. The revised language provides the flexibility to accept proof of Medicare Part A coverage other than just the participant’s Medicare card.

§41.8 – Eligible Bidders (Re-adopt without changes)

§41.9 – Bid Procedure (Re-adopt without changes)

§41.10 – Eligibility to Enroll in the Health Benefits Program under the Texas Public School Retired Employees Group Benefits Act (TRS-Care) ***(Changes Recommended)***

Rule §41.10 addresses eligibility to enroll in TRS-Care. Revisions to subsection (c)(1)(F) clarify, consistent with existing law, that in order to be considered for eligibility in TRS-Care, military service credit must be purchased and credited in the system. In contrast, USERRA service credit does not need to be purchased and is acceptable upon satisfactory proof to TRS.

The revisions to subsection (j) effectuate recent changes to state law.

The newly added subsection (k) clarifies that combined service credit under the Proportionate Retirement Program may not be used to establish eligibility for TRS-Care. This is consistent with current TRS-Care law and procedures.

§41.11 – Years of Service Credit Used to Determine Premiums (Re-adopt without changes)

§41.14 – Expulsion from TRS-Care for Fraud ***(Changes Recommended)***

Rule §41.14 addresses the expulsion of an individual from TRS-Care for fraud. The new language in subsection (b) concerning adjudicative hearing before the State Office of Administrative Hearings (SOAH) provide better clarity and/or greater flexibility to TRS in handling a petition for expulsion.

The changes to references regarding the “executive director” are made simply for the sake of consistency between both the TRS-Care rules as well as the TRS-ActiveCare rules. For example, rule §41.3 already has this reference.

Subchapter B, Long-Term Care, Disability and Life Insurance

The rules in this subchapter address various aspects of the long-term care insurance program administered by TRS, including without limitation, coverage options related to the program, eligibility to enroll in the program, initial enrollment periods, and effective dates of coverage under the program.

§41.15 – Requirements to Bid on Insurance for School District Employees and Retirees Under Chapter 1576 of the Insurance Code (Re-adopt without changes)

§41.16 – Coverage Offered under the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program (Re-adopt without changes)

§41.17 – Definitions (Re-adopt without changes)

§41.18 – Eligibility for the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program (Re-adopt without changes)

§41.19 – Initial Enrollment Periods for Texas Public School Employees and Retirees Group Long-Term Care Insurance Program (Re-adopt without changes)

§41.20 – Effective Date of Coverage under the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program (Re-adopt without changes)

Subchapter C, Texas School Employees Group Health (TRS-ActiveCare)

The rules in this subchapter address various aspects of TRS-ActiveCare, including without limitation, elections to become a participating entity in TRS-ActiveCare, eligibility to enroll in TRS-ActiveCare, enrollment periods, effective dates of coverage, termination dates of coverage, and appeals relating to claims and to eligibility. A discussion of the proposed amendments to the TRS-ActiveCare rules is found in the listing below.

§41.30 – Participation in the Health Benefits Program under the Texas School Employees Uniform Group Health Coverage Act by School Districts, Other Educational Districts, Charter Schools, and Regional Education Service Centers ***(Changes Recommended)***

Rule §41.30 addresses participation in TRS-ActiveCare by the participating entities. As with the revisions to rule §41.14 discussed immediately above, the changes to references regarding the “executive director” made in rule §41.30 are made simply for the sake of consistency between the TRS-Care rules and the TRS-ActiveCare rules.

§41.31 – Eligible Bidders (Re-adopt without changes)

§41.32 – Bid Procedure (Re-adopt without changes)

§41.33 – Definitions Applicable to the Texas School Employees Uniform Group Health Coverage Program ***(Changes Recommended)***

Rule §41.33 contains definitions that are applicable to TRS-ActiveCare. The changes to the introductory language of subsection (1) and to the introductory language of subsection (1)(D)(iii) effectuate recent changes to state law that have an impact on age limits and the use of marital status as an element of eligibility as a dependent.

The revisions to subsection (2) more accurately align the definition of a full-time employee with the operations of the pension and remove references to other rules that are no longer necessary. This revised language makes no substantive changes to existing TRS-Care operations or rules.

The revised language in subsection (5) also more accurately aligns the definition of a participating member with the operations of the pension. This definition now takes into consideration two possible situations. The first situation is typical: an individual is working in a TRS-eligible position, currently contributing to the pension during the entire year of service. The second situation is less typical. The individual began the year working in a TRS-eligible position and contributing to the pension; however, during the same year, the individual's work hours later drop to the point where he or she is no longer working in a TRS-eligible position. If the individual has already earned a year of service credit, he or she is required to continue making payments to the pension for the remainder of the school year.

The newly proposed subsection 6(B) more accurately aligns the definition of a part-time employee to the proposed revisions noted in subsection (2) above concerning the definition for a full-time employee.

§41.34 – Eligibility for Coverage under the Texas School Employees Uniform Group Health Coverage Program **(CHANGES RECOMMENDED)**

Rule §41.34 addresses eligibility for coverage under TRS-ActiveCare. The change to subsection (3) effectuates recent changes to state law that impact age limits under TRS-ActiveCare.

§41.35 – Coverage Plans (Re-adopt without changes)

§41.36 – Enrollment Periods for TRS-ActiveCare **(CHANGES RECOMMENDED)**

§41.37 – Effective Date of Coverage **(CHANGES RECOMMENDED)**

§41.39 – Coverage for Individuals Changing Employers **(CHANGES RECOMMENDED)**

Rule §41.36 addresses the enrollment periods for TRS-ActiveCare. Rule §41.37 addresses the effective date of coverage under TRS-ActiveCare. And rule §41.39 addresses coverage under TRS-ActiveCare for individuals changing employers.

The revisions to subsection (i) of rule §41.36 result in the delegation of authority from the board to the executive director or a designee to establish open enrollment periods for TRS-ActiveCare and to establish the conditions for enrollment during open enrollment periods. This will provide flexibility and reduce time and effort associated with the establishment of the annual enrollment periods. The resolution process will no longer be

needed to establish open enrollment periods. The revisions to subsection (c) of rule §41.37 and to subsection (d) of rule §41.39 are consistent with these revisions to subsection (i) of rule §41.36.

§41.38 – Termination Date of Coverage ***(Changes Recommended)***

Rule §41.38 addresses the termination date of coverage under TRS-ActiveCare. The changes to subsection (b) effectuate changes to state law. From a practical standpoint, the changes to state law and now to this rule have little if any impact upon the operations of TRS-ActiveCare.

§41.40 – Coverage Continuation While on Leave Without Pay (Re-adopt without changes)

§41.41 – Premium Payments (Re-adopt without changes)

§41.45 – Required Information from School Districts with More than 1,000 Employees
(Re-adopt without changes)

§41.50 – Appeals Relating to Claims or Other Benefits ***(Changes Recommended)***

§41.51 – Appeals Relating to Eligibility ***(Changes Recommended)***

§41.52 – Expulsion from TRS-ActiveCare ***(Changes Recommended)***

Rule §41.50 addresses appeals relating to claims or other benefits under TRS-ActiveCare. Rule §41.51 addresses appeals relating to eligibility under TRS-ActiveCare. Rule §41.52 addresses expulsion from TRS-ActiveCare.

As with the revisions to rules §§41.14 and 41.30 discussed above, the changes to references regarding the “executive director” made in rules §§41.50, 41.51 and 41.52 are made simply for the sake of consistency between the TRS-Care rules and the TRS-ActiveCare rules.

The new language in rule §41.52 concerning petitions for expulsion for fraud mirrors existing and proposed language in rule §41.14, the TRS-Care rule that also addresses expulsion for fraud. These revisions provide greater flexibility to TRS in handling a petition for expulsion and results in consistency between TRS-Care and TRS-ActiveCare.

Subchapter D, Comparability of Group Health Coverages

The single rule in this subchapter addresses the statutory requirement that each school district that does not participate in TRS-ActiveCare determine the comparability of the group health coverage it offers to its employees to the coverage provided under the Texas Employees Group Benefits Act (Chapter 1551, Insurance Code). This rule also contains

factors to be considered by each school district in determining comparability and addresses reports that each school district must generate concerning compatibility.

§41.91 – Certification of Insurance Coverage ***(Changes Recommended)***

Rule §41.91 addresses the certification of insurance coverage concerning school districts that do not participate in TRS-ActiveCare.

As with the revisions to rules §§41.14, 41.30, 41.50, 41.51, and 41.52 discussed above, the changes to the reference regarding the “executive director” made in rule §41.91 are made simply for the sake of consistency between the TRS-Care rules and the TRS-ActiveCare rules.

The deleted language in subsection (f) is no longer needed in light of the repeal of Section 22.004(e) of the Texas Education Code.

Summary of Recommendations

Recommendation: The reasons for the board to have initially adopted the rules in Chapter 41 continue to exist. The rules are still needed to implement and administer the TRS-Care and TRS-ActiveCare health benefit programs and the long-term care insurance program. As indicated above, the Policy Committee and staff have proposed amendments to some of those rules to update and improve them. Therefore, staff recommends that those rules be readopted with changes and that the remaining rules in Chapter 41 be readopted without changes at the November 2014 meeting.

Requested Action

Staff asks the committee to recommend that the board adopt the proposed order adopting the proposed amendments to various rules in Chapter 41 and readopting the remaining rules in the chapter without changes, as described in this memorandum and the attached marked rule texts.

MARKED TEXT OF PROPOSED AMENDMENTS TO VARIOUS TRS-CARE RULES LOCATED IN 34 TAC CHAPTER 41, SUBCHAPTER A, TO VARIOUS TRS-ACTIVECARE RULES LOCATED IN 34 TAC CHAPTER 41, SUBCHAPTER C, AND TO RULE 41.91 OF 34 TAC CHAPTER 41, SUBCHAPTER D

**CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS
Subchapter A. Retiree Health Care Benefits (TRS-Care)**

RULE § 41.1. Initial Enrollment Periods for the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act (TRS-Care)

(a) The initial enrollment period in the health benefits program under the Texas Public School Retired Employees Group Benefits Act (TRS-Care) for eligible Teacher Retirement System of Texas (TRS) retirees who take a service retirement and who are eligible to enroll in TRS-Care at the time of retirement expires at the end of the later of:

(1) the last day of the month that is 3 consecutive calendar months, but in no event less than 90 days, after their effective retirement date; or

(2) the last day of the month that is 3 consecutive calendar months, but in no event less than 90 days, following the last day of the month in which their election to retire is received by TRS.

(b) The initial enrollment period in TRS-Care for eligible TRS disability retirees expires at the end of the last day of the month that is 3 consecutive calendar months, but in no event less than 90 days, after the date that the disability retirement is approved by the TRS Medical Board.

(c) The initial enrollment period in TRS-Care for a surviving spouse and a surviving dependent child of an eligible retiree expires at the end of the later of:

(1) the 31st day after the end of the month in which the eligible retiree died; or

(2) the 31st day after the date of the notice of eligibility that is sent to the surviving spouse or the surviving dependent child at the individual's last known address, as shown in the TRS-Care records.

(d) The initial enrollment period for a surviving spouse of a deceased active member and for a surviving dependent child, as both are defined by §1575.003, Insurance Code, expires at the end of the later of:

(1) the 31st day after the end of the month in which the active member died; or

(2) the 31st day following the date of the notice of opportunity to enroll that is sent to the surviving spouse or the surviving dependent child at the individual's last known address, as shown in the TRS-Care records.

(e) Notwithstanding the other provisions of this section:

(1) A retiree may enroll a new spouse within 31 days of the date on which the retiree marries;

(2) A retiree or surviving spouse may enroll a child who becomes a dependent as defined by § 1575.003, Insurance Code, within 31 days after the date on which the child becomes a dependent eligible for coverage under TRS-Care; and

(3) A participant shall be entitled to all applicable COBRA rights under the Federal Public Health Service Act.

(f) If a retiree ~~or surviving spouse~~ fails to enroll a newly eligible spouse or dependent child or if a surviving spouse fails to enroll a newly eligible dependent child within the time periods set out in subsection (e) of this section, the retiree or surviving spouse will not be able to enroll the spouse or dependent child in TRS-Care until a subsequent enrollment period.

Source Note: The provisions of this § 41.1 adopted to be effective April 7, 1987, 12 TexReg 1000; amended to be effective November 6, 1987, 12 TexReg 3926; amended to be effective June 15, 1999, 24 TexReg 4460; amended to be effective March 12, 2003, 28 TexReg 2112; amended to be effective August 25, 2004, 29 TexReg 8128; amended to be effective February 9, 2006, 31 TexReg 709; as amended to be effective September 10, 2009, 34 TexReg 6121

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 ~~exercise 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) 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) 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.

Source Note: The provisions of this §41.2 adopted to be effective August 25, 2004, 29 TexReg 8128; amended to be effective February 9, 2006, 31 TexReg 709; amended to be effective March 25, 2008, 33 TexReg 2553; amended to be effective September 1, 2011, 36 TexReg 5378, 36 TexReg 5378; amended to be effective January 6, 2013, 37 TexReg 10248

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) [Subject to §1575.1581, Insurance Code, Aa](#) 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. Surviving spouses and surviving dependent child(ren) who are currently enrolled with the participant at the time of the participant's death will continue to be enrolled in the same level of coverage and the same coverage plan.~~

(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 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)).

(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 Part A is the first of the month following the date of TRS-Care's receipt of proof, satisfactory to TRS-Care, a copy of the participant's or dependent's Medicare Part A coverage 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 has been paying primary to Medicare on Medicare Part A claims, in a manner that violates the provisions of Chapter 1575, Insurance Code, which requires TRS-Care to be secondary to Medicare, TRS-Care 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 TRS-Care has been paying primary to Medicare on Medicare Part A claims, 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, satisfactory to TRS-Care, of Medicare Part A coverage is

received by TRS-Care, and based thereon, TRS-Care may refund or credit the amount due to the participant.

(n) Upon TRS-Care's discovery that a participant does not have Medicare Part A coverage, in contrast to TRS-Care records indicating the participant has 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 proof, satisfactory to TRS-Care, a copy of a Medicare card showing of Medicare Part A coverage is received by TRS-Care 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.

Source Note: The provisions of this §41.7 adopted to be effective November 6, 1987, 12 TexReg 3965; amended to be effective February 1, 1989, 14 TexReg 317; amended to be effective March 12, 2003, 28 TexReg 2112; amended to be effective August 25, 2004, 29 TexReg 8132; amended to be effective February 9, 2006, 31 TexReg 709; amended to be effective March 25, 2008, 33 TexReg 2555; amended to be effective September 10, 2009, 34 TexReg 6121; amended to be effective September 1, 2011, 36 TexReg 5378; amended to be effective January 6, 2013, 37 TexReg 10248

RULE § 41.10. Eligibility to Enroll in the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act (TRS-Care)

(a) If they meet the applicable requirements set out in this section, the following persons are eligible to enroll in the health benefits program under the Texas Public School Retired Employees Group Benefits Act (TRS-Care):

(1) service retirees of the Teacher Retirement System of Texas (TRS) who are not eligible to enroll as an employee or retiree in a plan provided under the Texas Employees Group Benefits Act (Insurance Code, Chapter 1551), or under the State University Employees Uniform Insurance Benefits Act (Insurance Code, Chapter 1601);

(2) disability retirees of TRS who are not eligible to enroll as an employee or retiree in a plan provided under the Texas Employees Group Benefits Act (Insurance Code, Chapter 1551) or under the State University Employees Uniform Insurance Benefits Act (Insurance Code, Chapter 1601);

(3) surviving spouses of deceased service or disability retirees of TRS or of certain deceased active TRS members; and

(4) surviving dependent children of deceased service or disability retirees of TRS or of certain deceased active TRS members.

(b) To be eligible to enroll in TRS-Care under this section, a service retiree of TRS who retires before September 1, 2004 must have 10 years of service credit for actual service in the public schools of Texas, which can include only the following types of service credit:

(1) service credit for actual service in Texas public schools;

(2) service credit transferred to TRS from the Employees Retirement System of Texas (ERS);

(3) withdrawn service credit that the member has purchased and that has been credited to the member's account;

(4) service credit for unreported service that the member has purchased and that has been credited to the member's account;

(5) service credit for substitute service that the member has purchased and that has been credited to the member's account; and

(6) up to five years of out-of-state service credit that the member has purchased and that has been credited to the member's account.

(c) To be eligible to enroll in TRS-Care under this section, a service retiree of TRS who retires after September 1, 2005 must meet the following requirements:

(1) at the time of retirement, a member has at least 10 years of service credit in the system, which can include only the following types of service credit:

(A) service credit for actual service in Texas public schools;

(B) service credit transferred to TRS from ERS;

(C) withdrawn service credit that the member has purchased and that has been credited to the member's account;

(D) service credit for unreported service that the member has purchased and that has been credited to the member's account;

(E) service credit for substitute service that the member has purchased and that has been credited to the member's account;

(F) up to five years of military service credit that the member has purchased or re-employed veteran's (USERRA) service credit that the member has purchased and that has been credited to the member's account, or up to five years of re-employed veteran's (USERRA) service credit, whether purchased or not, evidence of which is provided by the service retiree to the satisfaction of TRS; and

(2) at the time of retirement, a member either:

(A) meets the Rule of 80, which is determined by having the sum of the individual's age and the amount of service credit in the system noted in subparagraph(C) of this paragraph, equal or exceed 80, regardless of whether the member had a reduction in the retirement annuity for early age retirement; or

(B) has 30 or more years of service credit in the system noted in subparagraph (C) of this paragraph.

(C) for purposes of this paragraph (2) of this subsection, service credit in the system includes the following:

- (i) the types of service credit in the system listed in paragraph (1) of this subsection;
- (ii) out-of-state service credit under §25.81 of this title (relating to Out-of-State Service Eligible for Credit);
- (iii) credit for developmental leave under §25.151 of this title (relating to Developmental Leave, Eligibility, Cost);
- (iv) work experience service credit under §25.161 of this title (relating to Work Experience Service Credit);
- (v) state personal or sick leave credit under §25.162 of this title (relating to State Personal or Sick Leave Credit);
- (vi) credit under the service credit purchase option under §25.163 of this title (relating to Service Credit Purchase);
- (vii) credit for service during a school year with a membership waiting period under §25.164 of this title (relating to Credit for Service During School Year With Membership Waiting Period); and
- (viii) any other type of service credit purchased for equivalent or special service credit allowed by law or by rule adopted by TRS.

(d) To be eligible to enroll in TRS-Care under this section, a service retiree of TRS who retires after September 1, 2004, but on or before August 31, 2005, must meet, on September 1, 2005, either of the following requirements:

- (1) the 10-year service credit requirement of subsection (b) of this section; or
- (2) the 10-year service credit requirement of subsection (c)(1) of this section and one of the requirements of subsection (c)(2) of this section.

(e) Any service retiree of TRS who is enrolled in TRS-Care on August 31, 2005, maintains eligibility for TRS-Care on or after September 1, 2005, unless and until an applicable rule or law prohibits continued enrollment in TRS-Care.

(f) For purposes of this section, "public school" is an educational institution or organization in this state that is entitled by law to be supported in whole or in part by state, county, school district, or other municipal corporation funds.

(g) A disability retiree with less than 10 years of service credit will not be eligible for coverage under TRS-Care when disability retirement benefits terminate.

(h) A surviving spouse of a deceased TRS service or disability retiree is eligible to enroll in TRS-Care if the deceased TRS service or disability retiree was enrolled, eligible to enroll, or would have been eligible to enroll in TRS-Care at the time of the retiree's death.

(i) A surviving spouse of a deceased active TRS member is eligible to enroll in TRS-Care if the deceased active member:

(1) died on or after September 1, 1986;

(2) had 10 or more years of actual service credit in TRS; and

(3) made contributions to TRS-Care at the member's last place of employment in public education in Texas.

(j) A surviving dependent child of a deceased TRS retiree or deceased active TRS member is eligible to enroll in TRS-Care if the deceased retiree met the conditions of subsection (h) of this section or the deceased active member met the conditions of subsection (i) of this section. A surviving dependent child must also meet the following conditions:

(1) the child must be a natural or adopted child of [or a child who was lawfully placed for legal adoption with](#) the deceased retiree or member or must be a foster child, stepchild, or other child who lived in a parent-child relationship with the retiree or member; and

(2) the child must be ~~unmarried and~~ under age ~~25~~[26](#), or ~~if 26 years of age or older,~~ must be ~~age 25 or older but still~~ unmarried and [have a mental disability or is physically incapacitated](#) ~~fully disabled~~ to such an extent as to have been dependent upon the deceased retiree or active member for support at the time of the retiree's or active member's death, as determined by TRS as trustee and as described by Insurance Code, §1575.003.

[\(k\) Combined service credit under the Proportionate Retirement Program may not be used to establish eligibility for TRS-Care.](#)

Source Note: The provisions of this §41.10 adopted to be effective January 24, 1992, 17 TexReg 255; amended to be effective March 12, 2003, 28 TexReg 2112; amended to be effective August 25, 2004, 29 TexReg 8128; amended to be effective February 9, 2006, 31 TexReg 709; amended to be effective May 28, 2006, 31 TexReg 4235; amended to be effective April 1, 2011, 36 TexReg 2000

RULE § 41.14. Expulsion from TRS-Care for Fraud

(a) The trustee, acting through the ~~TRS Executive D~~irector, may expel from participation in TRS-Care a person who has engaged in, caused, or attempted to engage in fraudulent activity relating to the program or any benefits offered under the program.

(b) Upon receipt of a complaint or upon its own motion, the TRS staff may file a petition for expulsion with the ~~E~~xecutive ~~D~~irector. The ~~E~~xecutive ~~D~~irector may docket the petition and refer the matter for an [adjudicative](#) hearing ~~before~~[by](#) the State Office of Administrative Hearings [or otherwise as authorized by law](#). If a petition is docketed, the provisions of Chapter 43 of this title (relating to Contested Cases) shall apply to the proceeding.

(c) Following a hearing, the Executive Director may expel a person from participation in TRS-Care for a period of time not to exceed five years. Pursuant to the delegation of authority through this section, the order of the Executive Director is the final decision of TRS.

Source Note: The provisions of this § 41.14 adopted to be effective March 12, 2003, 28 TexReg 2112

Subchapter C. Texas School Employees Group Health (TRS-ActiveCare)

RULE § 41.30. Participation in the Health Benefits Program under the Texas School Employees Uniform Group Health Coverage Act by School Districts, Other Educational Districts, Charter Schools, and Regional Education Service Centers

(a) Manner, form and effect of election.

(1) Form of the notice of election. All elections to participate in the health benefits program, referred to as "TRS-ActiveCare," under the Texas School Employees Uniform Group Health Coverage Act (the "Act"), Chapter 1579, Insurance Code, shall be in writing, in a form prescribed by the Teacher Retirement System of Texas (TRS), as trustee of TRS-ActiveCare. An incomplete or unsigned notice of election will not be deemed received by TRS for purposes of determining whether a valid election has been exercised.

(2) Timing of the receipt of the notice of election. A notice of election otherwise valid must be received by TRS on or prior to the tenth (10th) business day before the first day of the enrollment period established under §41.36 of this title for the entity seeking to join TRS-ActiveCare.

(3) Time of the receipt of a notice of revocation. In order to revoke a valid election to participate in TRS-ActiveCare, a written notice of revocation, signed by the entity that filed the valid election, must be received by TRS no later than the tenth (10th) business day before the first day of the enrollment period established under §41.36 of this title for the entity. There is no particular form required for a written notice of revocation. However, an unsigned notice of revocation will not be deemed received by TRS for purposes of determining whether a valid revocation has been exercised.

(4) Discontinuance of participation. Entities that participate in TRS-ActiveCare may not discontinue participation unless authorized by Chapter 1579, Insurance Code, and by appropriate rule or resolution adopted by the TRS Board of Trustees.

(b) School districts with 500 or fewer employees. Pursuant to §1579.151(a), Insurance Code, school districts with 500 or fewer employees as of January 1, 2001 were required to participate effective September 1, 2002 in TRS-ActiveCare, except that certain of these school districts were authorized to delay or opt out of participation by specified election deadline dates. With regard to a school district that opted out of participation in TRS-ActiveCare pursuant to either §1579.151(b) or §1579.153(c), Insurance Code, as those provisions existed at the time the school district opted out, subsection (h) of this section provides the method for such a school district to change its election.

(c) School districts with 501 or more employees but not more than 1000 employees. School districts with 501 or more employees but not more than 1000 employees at any time during the 2001 school year, as reflected on any report received by TRS for a reporting period during that school year may elect to participate in TRS-ActiveCare in the manner prescribed in subsection (h) of this section.

(d) School districts with 1001 or more employees. A school district with 1001 or more employees at any time during the 2001 school year, as reflected on any report received by TRS for a reporting period during that school year, may elect to participate in TRS-ActiveCare by filing a notice of election in compliance with subsection (a) of this section, in which event the school district will become a participating entity on the later of the first day of the month following six (6) months from the date on which TRS receives the notice of election or a preferred date specified by the school district in its notice of election. Alternatively, the district will become a participating entity effective on the date approved by the Executive Director, if applicable, as described in subsection (i) of this section.

(e) Educational districts. Pursuant to §1579.151(c), Insurance Code, educational districts whose employees are members of TRS are required to participate effective September 1, 2002 in TRS-ActiveCare, except that educational districts with 500 or fewer employees on January 1, 2001 were allowed to opt out of participation. September 1, 2001 was the deadline for such an educational district to file its notice of election with TRS to opt out of participation in TRS-ActiveCare. Subsection (h) of this section provides the method for an educational district to change its election.

(f) Charter schools. Pursuant to §1579.154, Insurance Code, an open-enrollment charter school established under Chapter 12, Subchapter D, Education Code, ("charter school") may elect to participate in TRS-ActiveCare by complying with both paragraphs (1) and (2) of this subsection. Only an eligible charter school under the Act may elect to participate.

(1) Pursuant to §1579.154(a), Insurance Code, to be eligible, a charter school must agree to inspection of all records of the school relating to its participation in TRS-ActiveCare by TRS, by the administering firm as defined in §1579.002(1), Insurance Code, by the commissioner of education, or by a designee of any of those entities, and further must agree to have its accounts relating to participation in TRS-ActiveCare annually audited by a certified public accountant at the school's expense. The agreement of the charter school shall be evidenced in writing and shall constitute a part of a notice of election prescribed by TRS pursuant to subsection (a) of this section.

(2) Eligible charter schools may elect to participate in TRS-ActiveCare by filing a notice of election in compliance with subsection (a) of this section, in which event:

(A) the charter school will become a participating entity on the later of the first day of the month following six (6) months from the date on which TRS receives the notice of election or a preferred date specified by the charter school in its notice of election; or

(B) alternatively, the eligible charter school will become a participating entity effective on the date approved by the Executive Director, if applicable, as described in subsection (i) of this section.

(g) Regional education service centers. Pursuant to §1579.151(a), Insurance Code, each regional education service center established under Chapter 8, Education Code, is required to participate effective September 1, 2002 in TRS-ActiveCare.

(h) School districts that opted out of participation in TRS-ActiveCare as described in subsection (b) or (c) of this section and educational districts that opted out of participation in TRS-ActiveCare as described in subsection (e) of this section may elect to participate in TRS-ActiveCare by filing a notice of election in compliance with subsection (a) of this section, in which event the school district will become a participating entity on the later of the first day of the month following six (6) months from the date on which TRS receives the notice of election or a preferred date specified by the school district in its notice of election. Alternatively, the district will become a participating entity effective on the date approved by the ~~E~~xecutive ~~D~~irector, if applicable, as described in subsection (i) of this section.

(i) An entity that will become a participating entity in TRS-ActiveCare on the first day of the month following six (6) months after the date on which TRS receives the entity's notice of election but desires to become a participating entity on an earlier date may include in its notice of election a request that the ~~E~~xecutive ~~D~~irector consider an exception to the notice requirement. The notice of election must include the earlier date on which the entity desires its coverage to begin. The ~~E~~xecutive ~~D~~irector will grant the exception if, in his or her sole discretion, upon considering the following criteria, he or she finds that an exception is in the best interest of TRS-ActiveCare:

- (1) the impact on the requesting entity's employees and dependents;
- (2) the impact on the health plan administrator of TRS-ActiveCare;
- (3) the impact on the provider network of TRS-ActiveCare;
- (4) the number of potential enrollees that would be coming into TRS-ActiveCare for the first time on the same date; and
- (5) the impact on TRS-ActiveCare as a whole, taking into account any recommendations and observations of TRS's health care consultant.

Source Note: The provisions of this §41.30 adopted to be effective January 1, 2002, 26 TexReg 11035; amended to be effective March 12, 2003, 28 TexReg 2114; amended to be effective June 18, 2003, 28 TexReg 4560; amended to be effective March 8, 2007, 32 TexReg 1092; amended to be effective April 1, 2011, 36 TexReg 2001

RULE § 41.33. Definitions Applicable to the Texas School Employees Uniform Group Health Coverage Program

The following words and terms when used in this subchapter or in connection with the administration of Chapter 1579, Insurance Code, shall have the following meanings unless the context clearly indicates otherwise.

- (1) ~~Unmarried~~ Dependent--Only those individuals described by §1579.004, Insurance Code, and an ~~unmarried~~ individual under 2526 years of age ("child") who is described by any one of the following subparagraphs (A), (B), or (C) at all times during which the child is receiving coverage under TRS-ActiveCare.

(A) A child under the legal guardianship of a full-time or part-time employee;

(B) A full-time or part-time employee's grandchild whose primary residence is the household of that full-time or part-time employee if the grandchild is a dependent of the full-time or part-time employee for federal income tax purposes for the reporting year in which coverage of the grandchild is in effect; or

(C) A child in a regular parent-child relationship with a full-time or part-time employee, meaning that the child's primary residence is the household of that full-time or part-time employee, the full-time or part-time employee provides at least 50% of the child's support, neither of the child's natural parents reside in that household, and the full-time or part-time employee has the legal right to make decisions regarding the child's medical care.

(D) For clarification and without intending to identify all persons who are not a Dependent for purposes of coverage, even though the individual may be in a dependent relationship with a full-time or part-time employee, the following are not included in the definition of Dependent in this section:

(i) Other than the spouse of a full-time or part-time employee, a Dependent does not include an individual who is a "participating member" as defined in paragraph (5) of this section.

(ii) A Dependent does not include a parent or grandparent of a full-time or part-time employee.

(iii) A Dependent does not include a brother or a sister of a full-time or part-time employee unless the brother or sister is an unmarried individual under [2526](#) years of age who is either:

(I) under the legal guardianship of a full-time or part-time employee; or

(II) in a regular parent-child relationship with a full-time or part-time employee, meaning that the brother or sister's primary residence is the household of that full-time or part-time employee, the full-time or part-time employee provides at least 50% of the brother or sister's support, neither of the brother or sister's natural parents reside in that household, and the full-time or part-time employee has the legal right to make decisions regarding the brother or sister's medical care.

(2) Full-time employee--A participating member who:

(A) is currently employed by a participating entity;

(B) is employed in a position that is eligible for membership in the Teacher Retirement System of Texas ~~based on current full-time services as described by §25.1 of this title (relating to Full-Time Service), or based on current employment as a bus driver as described by §25.2 of this title (relating to Bus Drivers);~~ and

(C) is not receiving coverage as an employee or retiree from a uniform group insurance or health benefits program under the Texas Employees Group Benefits Act (Chapter 1551, Insurance Code) or the State University Employees Uniform Insurance Benefits Act (Chapter 1601, Insurance Code) or the Texas Public School Retired Employees Group Benefits Act (Chapter 1575, Insurance Code, also known as TRS-Care).

(3) HMO--A health maintenance organization holding a valid certificate of authority issued by the Texas Department of Insurance and approved by TRS to provide health care benefits to eligible full-time and part-time employees and their eligible dependents.

(4) Participating entity--An entity participating in TRS-ActiveCare including a school district; another educational district whose employees are members of the retirement system; a regional education service center; and a charter school that meets the requirements of Chapter 1579, Insurance Code. An entity is considered to be participating in TRS-ActiveCare on and after the first date coverage becomes effective for its employees.

(5) Participating member--A person defined by §822.001 and §822.002, Government Code, whose membership in the retirement system has not been terminated as described by §§822.003 - 822.006, Government Code, and who is required to contribute currently contributing to the Teacher Retirement System of Texas pension trust fund in accordance with §825.403, Government Code.

(6) Part-time employee--An individual who:

(A) is currently employed by a participating entity for 10 hours or more each week; ~~and:~~

(A) is not a full-time employee; (B) is employed in a position that is not eligible for membership in the Teacher Retirement System of Texas;

(CB) is not a retiree who waived coverage under the health benefits program under the Texas Public School Retired Employees Group Benefits Act, Chapter 1575, Insurance Code, also known as TRS-Care; and

(DE) is not receiving coverage as an employee or retiree from a uniform group insurance or health benefits program under the Texas Employees Group Benefits Act (Chapter 1551, Insurance Code) or the State University Employees Uniform Insurance Benefits Act (Chapter 1601, Insurance Code) or the Texas Public School Retired Employees Group Benefits Act (Chapter 1575, Insurance Code, also known as TRS-Care).

(7) Plan year--A plan year begins on the first day of September and ends on the last day of the following August.

(8) TRS-ActiveCare--The health benefits program under the Texas School Employees Uniform Group Health Coverage Act, Chapter 1579, Insurance Code.

(9) Trustee or TRS--The Teacher Retirement System of Texas acting in its capacity as trustee under Chapter 1579, Insurance Code.

Source Note: The provisions of this §41.33 adopted to be effective August 26, 2002, 27 TexReg 7970; amended to be effective January 28, 2003, 28 TexReg 743; amended to be effective March 8, 2007, 32 TexReg 1092; amended to be effective April 1, 2011, 36 TexReg 2001

RULE § 41.34. Eligibility for Coverage under the Texas School Employees Uniform Group Health Coverage Program

The following persons are eligible to be enrolled in TRS-ActiveCare under terms, conditions and limitations established by the trustee unless expelled from the program under provisions of Chapter 1579, Insurance Code:

(1) A full-time employee as defined in §41.33 of this chapter (relating to Definitions Applicable to the Texas School Employees Uniform Group Health Coverage Program).

(2) A part-time employee as defined in §41.33 of this chapter.

(3) Dependents, as defined in §41.33 of this chapter pursuant to §1579.004, Insurance Code. A child defined in §1579.004(3), Insurance Code, who is 2526 years of age or older, is eligible for coverage only if, and only for so long as, such child's mental disability or physical incapacity is a medically determinable condition that prevents the child from engaging in self-sustaining employment as determined by TRS.

(4) Individuals employed or formerly employed by a participating entity, and their dependents, who are eligible for, or participating in, continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272), through a group health benefit plan sponsored by the individual's employer on the first day that employer becomes a participating entity if such individuals or their dependents would have met the requirements for eligibility in paragraph (1), (2), or (3) of this section on the individual's last day of employment with the participating entity. Notwithstanding the foregoing, the individual is eligible to participate in TRS-ActiveCare only for the duration of the individual's eligibility for COBRA continuation coverage.

(5) An individual who qualifies for coverage pursuant to §41.38(b) of this chapter (relating to Termination Date of Coverage), and their dependents.

(6) Full-time or part-time employees as defined in §41.33 of this chapter and their eligible dependents may participate in an approved HMO if they reside, live, or work in the approved service area of the HMO and are otherwise eligible to participate in the HMO under the terms of the TRS contract with the HMO.

(7) Individuals who become eligible as determined by TRS for continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272), through their participation in TRS-ActiveCare.

(8) As a result of a special enrollment event that occurs on or after September 1, 2011, individuals who become 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)).

(9) As a result of a special enrollment event that occurs on or before August 31, 2011, individuals who become eligible for coverage under the special enrollment provisions of TRS-ActiveCare.

(10) Any other individuals who are required to be covered under applicable law.

Source Note: The provisions of this §41.34 adopted to be effective August 26, 2002, 27 TexReg 7970; amended to be effective January 28, 2003, 28 TexReg 743; amended to be effective October 27, 2003, 28 TexReg 9289; amended to be effective March 8, 2007, 32 TexReg 1092; amended to be effective April 9, 2008, 33 TexReg 2825; amended to be effective April 1, 2011, 36 TexReg 2001; amended to be effective September 1, 2011, 36 TexReg 5380

RULE § 41.36. Enrollment Periods for TRS-ActiveCare

(a) A full-time or part-time employee who becomes employed in an eligible capacity with a participating entity has an initial enrollment period of 31 days, beginning on the first day that the full-time or part-time employee becomes employed in an eligible capacity with a participating entity and ending at 11:59 p.m. Austin Time on the 31st day thereafter.

(b) A full-time or part-time employee whose employer becomes a participating entity has an initial enrollment period beginning no later than 31 days prior to the date on which the employer becomes a participating entity and ending on the last calendar day of the month immediately preceding the date on which the employer becomes a participating entity ("end date"). Notwithstanding the preceding sentence, a large school district, as defined hereafter, that becomes a participating entity after September 1, 2003, may recommend an initial enrollment period of not less than 31 days that closes before the end date. A recommended initial enrollment period that closes before the end date is subject to approval by TRS. As used in this section, a large school district shall mean a school district that had 1001 or more employees at any time during the 2001 school year, as reflected on any report received by TRS from that school district for a reporting period in that school year.

(c) A full-time or part-time employee's eligible dependents, if covered, must be enrolled in the same coverage plan as the full-time or part-time employee under whom they qualify as a dependent. Except as otherwise provided under applicable state or federal law, an eligible full-time or part-time employee may not change coverage plans or add dependents during a plan year.

(d) On or after September 1, 2011, the enrollment period for an individual who becomes eligible for coverage due to a special enrollment event, as described in §41.34(8) of this chapter (relating to Eligibility for Coverage under the Texas School Employees Uniform Group Health Coverage Program), shall be the 31 calendar days immediately after the date of the special enrollment event. To make an effective election, a completed enrollment form must be received by a participating entity or the health plan administrator of TRS-ActiveCare within this 31-day period.

(e) On or before August 31, 2011, the enrollment period for an individual who becomes eligible for coverage due to a special enrollment provision of TRS-ActiveCare, as described in §41.34(9) of this chapter, shall be the 31 calendar days immediately after the date of the special enrollment event. To make an effective election, a completed enrollment form must be

received by a participating entity or the health plan administrator of TRS-ActiveCare within this 31-day period.

(f) Eligible full-time and part-time employees and their eligible dependents who are enrolled in an HMO with a TRS contract that is not renewed for the next plan year may make one of the elections provided under this subsection. To make an effective election, a completed enrollment form must be received by a participating entity or the health plan administrator of TRS-ActiveCare during the plan enrollment period. Coverage under the elected option becomes effective on September 1 of the next plan year. One of the following elections may be made under this subsection:

(1) change to another approved HMO for which the full-time or part-time employee is eligible; or

(2) enroll in the TRS-ActiveCare preferred provider organization coverage plan, without preexisting condition exclusions.

(g) Eligible full-time or part-time employees and their eligible dependents who are enrolled in an HMO with a TRS contract that is terminated during the plan year may make one of the elections provided under this subsection. To make an effective election, a completed enrollment form must be received by a participating entity or the health plan administrator of TRS-ActiveCare within 31 calendar days after notice of the contract termination is sent to the eligible full-time or part-time employee by TRS or its designee. Coverage under the elected option becomes effective on a date determined by TRS. One of the following elections may be made under this subsection:

(1) change to another approved HMO for which the full-time or part-time employees and their eligible dependents are eligible; or

(2) enroll in the TRS-ActiveCare preferred provider organization coverage plan, without preexisting condition exclusions.

(h) Eligible full-time or part-time employees and their eligible dependents enrolled in an approved HMO whose eligibility status changes because the eligible full-time or part-time employee no longer resides, lives, or works in the HMO service area may make one of the elections provided under this subsection. To make an effective election, a completed enrollment form must be received by a participating entity or the health plan administrator of TRS-ActiveCare within 31 calendar days after the employee's change in eligibility status. Coverage under the elected option becomes effective on the first day of the month following the date the employee's eligibility status changed. One of the following elections may be made under this subsection:

(1) enroll in another approved HMO for which the full-time or part-time employee is eligible; or

(2) enroll in the TRS-ActiveCare preferred provider organization coverage plan, subject to applicable preexisting condition limitations.

(i) ~~On behalf of the trustee, the executive director or a designee by resolution~~ may prescribe open-enrollment periods and the conditions under which an eligible full-time or part-time employee and his eligible dependents may enroll during an open-enrollment period.

Source Note: The provisions of this §41.36 adopted to be effective August 26, 2002, 27 TexReg 7970; amended to be effective January 28, 2003, 28 TexReg 743; amended to be effective June 18, 2003, 28 TexReg 4560; amended to be effective August 18, 2003, 28 TexReg 6553; amended to be effective March 8, 2007, 32 TexReg 1092; amended to be effective April 9, 2008, 33 TexReg 2825; amended to be effective April 1, 2011, 36 TexReg 2001; amended to be effective September 1, 2011, 36 TexReg 5380

RULE § 41.37. Effective Date of Coverage

(a) Except as otherwise provided by §41.39 of this title (relating to Coverage for Individuals Changing Employers) coverage shall become effective as described in this subsection for eligible full-time employees and eligible part-time employees whose employer first becomes a participating entity after September 1, 2002, and who enroll no later than the last calendar day of the month immediately preceding the date their employer first becomes a participating entity or no later than the last day of an approved initial enrollment period for a large school district as provided by §41.36 of this title (relating to Enrollment Periods for TRS-ActiveCare). Coverage shall become effective for such individuals and their eligible dependents on the date the employer first became a participating entity.

(b) Except as otherwise provided by §41.39 of this title (relating to Coverage for Individuals Changing Employers) coverage shall become effective as described in this subsection for eligible full-time employees and eligible part-time employees who begin working for a participating entity in an eligible capacity after August 31, 2002, and who enroll no later than the 31st day after the first date they become eligible to enroll, ("Individuals"). Coverage shall become effective for such Individuals and their eligible dependents on one of the following dates as specified by the Individual on the application for coverage:

(1) The first day the Individual is employed in an eligible capacity with the participating entity; or

(2) The first day of the calendar month following the month in which the Individual is employed in an eligible capacity with the participating entity.

(c) For eligible full-time employees, eligible part-time employees and their eligible dependents who enroll during an open-enrollment period as prescribed established by resolution of the trustee, coverage shall become effective on the date specified by resolution of the trustee.

Source Note: The provisions of this §41.37 adopted to be effective August 26, 2002, 27 TexReg 7970; amended to be effective June 18, 2003, 28 TexReg 4560; amended to be effective August 18, 2003, 28 TexReg 6553; amended to be effective February 29, 2004, 29 TexReg 1670; amended to be effective March 8, 2007, 32 TexReg 1092

RULE § 41.38. Termination Date of Coverage

(a) Unless otherwise required by law or this section, coverage shall terminate at the earliest of:

(1) 11:59 p.m. Austin Time on the last calendar day of the month in which the covered individual's employer, or the employer of the individual under whom a dependent qualified for coverage, ceases to be a participating entity;

(2) 11:59 p.m. Austin Time on the last calendar day of the month in which a covered individual, or the individual under whom a dependent qualified for coverage, terminates employment as determined by the participating entity, except as otherwise provided under §41.39 of this title (relating to Coverage for Individuals Changing Employers);

(3) 11:59 p.m. Austin Time on the last calendar day of the month in which a covered individual, or the individual under whom a dependent qualified for coverage, is no longer eligible for coverage under TRS-ActiveCare under §41.34 of this title (relating to Eligibility for Coverage under the Texas School Employees Uniform Group Health Coverage Program);

(4) 11:59 p.m. Austin Time on the date specified by the trustee if the covered individual, or the individual under whom a dependent qualified for coverage, is expelled from the program;

(5) 11:59 p.m. Austin Time on the last calendar day of the month immediately preceding the month in which TRS receives a notification from a participating entity, in the form prescribed by TRS, that a covered individual failed to make a required monthly premium payment to the participating entity;

(6) 11:59 p.m. Austin Time on the last calendar day of the month in which a covered individual enters into active, full-time military, naval, or air service, except as provided under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) or other applicable law;

(7) 11:59 p.m. Austin Time on the last calendar day of the month in which the administering firm or TRS receives notice, in a form acceptable to TRS, that a covered individual, or the individual under whom a dependent qualified for coverage, has chosen to voluntarily drop coverage under TRS-ActiveCare;

(8) 11:59 p.m. Austin Time on the last day of the month for which TRS-ActiveCare received payment if the participating entity employing the covered individual, or the individual under whom a dependent qualified for coverage, has failed to make all premium payments due for a period of 90 days or longer; or

(9) the termination date and time that a health maintenance organization participating in TRS-ActiveCare provides for in its Evidence of Coverage for the reasons listed in that Evidence of Coverage.

(b) Notwithstanding subsection (a) of this section, a covered individual who resigns his employment position with a participating entity effective after the last day of an instructional year and who is in "good standing" with TRS-ActiveCare at the time of the effective date of resignation, is entitled to automatically remain enrolled in TRS-ActiveCare, through [the earlier of \(1\) the first anniversary of the date participation in or coverage under TRS-ActiveCare was first made available to employees of that participating entity for the last instructional year in which the covered individual was employed by the participating entity, or \(2\) the last calendar](#)

day before the first day of the instructional year immediately following the last instructional year in which the employee was employed by the participating entity, provided none of the events described in provisions of subsection (a) of this section occur after the effective date of the covered individual's resignation. Consequently, if the employer of the covered individual became a participating entity in TRS-ActiveCare on or before the September 1st that immediately preceded the effective date of resignation by the covered individual, then the covered individual ~~mayshall~~ automatically be entitled to coverage through the August 31st that immediately follows the effective date of resignation, assuming termination does not sooner occur due to the occurrence of an event described in provisions of subsection (a) of this section after the effective date of the covered individual's resignation. Alternatively, if the employer of the covered individual became a participating entity in TRS-ActiveCare after the September 1st that immediately preceded the effective date of resignation by the covered individual, then the covered individual ~~mayshall~~ automatically be entitled to coverage through the end of the 12th month of that participating entity's participation in TRS-ActiveCare, assuming termination does not sooner occur due to the occurrence of an event described in provisions of subsection (a) of this section after the effective date of the covered individual's resignation. A dependent enrolled in TRS-ActiveCare under a covered individual who qualifies for continued coverage pursuant to this subsection is also automatically entitled to remain enrolled in TRS-ActiveCare only for such time as the covered individual remains enrolled in TRS-ActiveCare. For purposes of this subsection only, the following applies:

(1) A covered individual is in "good standing" with TRS-ActiveCare if, on the effective date of the individual's resignation:

(A) the covered individual has not been expelled from TRS-ActiveCare;

(B) TRS has not received a notification from the participating entity that employed the covered individual, in the form prescribed by TRS, that the covered individual failed to make a required monthly TRS-ActiveCare premium payment to the participating entity; and

(C) neither the participating entity that employed the covered individual, nor the covered individual under whom a dependent qualified for coverage, failed to make all premium payments due for a period of 90 days or longer.

(2) For each participating entity that provides instruction to students, the term "instructional year" shall be the locally established calendar period during which that participating entity holds classes, exclusive of summer school. In no event may this "instructional year" extend beyond June 30th.

(3) For each participating entity that does not provide instruction to students, the participating entity may establish an "instructional year" that begins no earlier than August 1st and does not extend beyond June 30th.

(4) If a participating entity does not establish an "instructional year," the "instructional year" shall be deemed to begin on September 1st and to extend through May 31st.

(5) Each participating entity shall have only one "instructional year," which shall be applicable to all covered individuals employed by the participating entity.

(c) For individuals receiving continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272) ("COBRA"), coverage shall terminate the earlier of:

(1) 11:59 p.m. Austin Time on the last calendar day of the month immediately preceding the date on which TRS fails to receive a timely and complete monthly premium payment from an individual receiving COBRA continuation coverage; or

(2) 11:59 p.m. Austin Time on the last calendar day of the month in which an individual's eligibility for COBRA continuation coverage expires or otherwise terminates.

Source Note: The provisions of this §41.38 adopted to be effective August 26, 2002, 27 TexReg 7970; amended to be effective December 26, 2002, 27 TexReg 12003; amended to be effective August 25, 2004, 29 TexReg 8134; amended to be effective March 8, 2007, 32 TexReg 1092; amended to be effective April 9, 2008, 33 TexReg 2825; amended to be effective April 1, 2011, 36 TexReg 2001

RULE § 41.39. Coverage for Individuals Changing Employers

(a) A full-time or part-time employee enrolled in TRS-ActiveCare who, on or after September 1, 2011, changes employment from one participating entity to another participating entity within the same plan year may not change coverage plans or add dependents unless:

(1) changes to add dependents are authorized due to a special enrollment event under provisions of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191, 110 Stat. 1936 (1996));

(2) an open-enrollment period exists on the first day of the new employment and the full-time or part-time employee makes such changes in compliance with open _-enrollment conditions prescribed by the trustee; or

(3) the new employment is with a participating entity that does not make available the option under which the individual was covered on the last date of previous employment, provided that options are offered under TRS-ActiveCare that are not applicable to all participating entities.

(b) A full-time or part-time employee enrolled in TRS-ActiveCare who, on or before August 31, 2011, changes employment from one participating entity to another participating entity within the same plan year may not change coverage plans or add dependents unless:

(1) changes to add dependents are authorized due to a special enrollment event under special enrollment provisions of TRS-ActiveCare;

(2) an open-enrollment period exists on the first day of the new employment and the full-time or part-time employee makes such changes in compliance with open _-enrollment conditions prescribed by the trustee; or

(3) the new employment is with a participating entity that does not make available the option under which the individual was covered on the last date of previous employment, provided

that options are offered under TRS-ActiveCare that are not applicable to all participating entities.

(c) No break in coverage will occur for a full-time or part-time employee enrolled in TRS-ActiveCare who changes employment from one participating entity to another participating entity within the same plan year if all the criteria set forth in paragraphs (1) - (3) of this subsection are met. The former employer participating entity shall determine the last date of employment for purposes of this subsection.

(1) The new employer makes available the same coverage option under which the full-time or part-time employee was enrolled on the last day of employment with the former employer;

(2) The individual is employed by the new participating entity no later than the last day of the next calendar month after the last date of employment with the former participating entity employer; and

(3) The individual promptly files an election to continue coverage with the new participating entity employer with coverage to be effective in the calendar month in which the individual is first employed with the new participating entity.

(d) Full-time or part-time employees who initially waive coverage under TRS-ActiveCare may enroll during any open enrollment period as prescribed by ~~resolution of~~ the trustee; however, they may not enroll due to a change in employment from one participating entity to another during the same plan year unless the change occurs during a concurrent open enrollment.

Source Note: The provisions of this §41.39 adopted to be effective August 26, 2002, 27 TexReg 7970; amended to be effective March 8, 2007, 32 TexReg 1092; amended to be effective April 9, 2008, 33 TexReg 2825; amended to be effective April 1, 2011, 36 TexReg 2001; amended to be effective September 1, 2011, 36 TexReg 5380

RULE § 41.50. Appeals Relating to Claims or Other Benefits

(a) For appeals that relate to claims or other benefits and that are received on or after September 1, 2011, the following procedures apply:

(1) A person enrolled in TRS-ActiveCare, other than a person enrolled in a health maintenance organization (HMO) participating in TRS-ActiveCare, who is denied payment of a claim or other benefit ("Claimant") may appeal the denial through a written request filed with the administering firm in accordance with procedures established by the administering firm.

(2) The final decision by the administering firm or by any external review organization, whichever occurs later, shall be the final decision on the appeal.

(b) For appeals that relate to claims or other benefits and that are received before September 1, 2011, the following procedures apply:

(1) A Claimant may appeal the denial through a written request filed with the administering firm in accordance with procedures established by the administering firm. All such procedures must be exhausted before the administering firm will issue a final decision.

(2) A Claimant may appeal the final denial of the claim or other benefit by the administering firm to the Teacher Retirement System of Texas (TRS), acting in its capacity as trustee of TRS-ActiveCare.

(3) An appeal made pursuant to paragraph (2) of this subsection must be submitted by the Claimant in writing and received by TRS before September 1, 2011 and no later than 60 days after the date of the letter from the administering firm finally denying the claim. The appeal shall be directed to the attention of the TRS-ActiveCare Grievance Administrator.

(4) An appeal made pursuant to paragraph (2) of this subsection shall state the nature of the claim and shall include copies of all relevant documents that were considered by the administering firm, including copies of the correspondence to and from the administering firm.

(5) The TRS Appeal Committee ("Committee") is responsible for review and determination of appeals made pursuant to paragraph (2) of this subsection. The Committee shall be appointed by the TRS Deputy Director or, if the position of the Deputy Director is vacant, the TRS Chief Financial Officer and shall serve at the discretion of the Deputy Director or, if the position of the Deputy Director is vacant, the Chief Financial Officer.

(6) The Committee shall apply the TRS-ActiveCare plan design and rules in effect on the date the first of the following events occurs:

(A) the date the claim was incurred; or

(B) the date the benefit was denied by the administering firm.

(7) If the Committee determines that the claim should be paid or a benefit allowed, it shall so inform the administering firm and the Claimant.

(8) If the Committee determines that the information submitted with the appeal supports the denial by the administering firm, the Committee shall provide a written decision, which shall include an explanation of the reasons for the decision, to the Claimant and to the administering firm. The written decision shall include information on how the Claimant may request an appeal conference or an appeal to the [Executive Director](#).

(9) The initial written decision of the Committee may be appealed by the Claimant to the Committee for an appeal conference. A request for an appeal conference must be submitted by the Claimant in writing and must be received by TRS no later than 45 days after the date of the initial written decision by the Committee. The request for an appeal conference shall be directed to the attention of the TRS-ActiveCare Grievance Administrator.

(10) Upon receipt of a timely request for an appeal conference, the TRS-ActiveCare Grievance Administrator shall schedule an appeal conference with the Committee. The Grievance Administrator shall notify the Claimant and the administering firm of the time, date, and manner of the conference, as well as the procedures applicable to the conference.

(11) At any time prior to the appeal conference, the Committee may decide to grant the appeal and will notify the Claimant of this determination without the necessity of an appeal conference. The Committee cannot deny a claim after an appeal conference has been requested without holding the conference, but the initial denial by the Committee shall stand until the conference is held.

(12) At the conference, the Committee shall consider the medical information previously submitted to the administering firm in support of the payment of the claim or benefit, as well as the administering firm's determination regarding medical issues. The Committee may request additional review by the administering firm on medical issues before the Committee issues a decision.

(13) The Committee shall decide the appeal and shall notify the Claimant and the administering firm of the decision in writing. The decision will include an explanation of the basis for the decision.

(14) The initial written decision of the Committee or the written decision by the Committee made pursuant to an appeal conference may be appealed by the Claimant to the TRS Executive Director. A request for an appeal to the Executive Director must be submitted by the Claimant in writing and must be received by TRS no later than 45 days after the date of the initial written decision by the Committee or no later than 30 days after the date of the written decision by the Committee made pursuant to an appeal conference. The request for an appeal to the Executive Director shall be directed to the attention of the TRS-ActiveCare Grievance Administrator. The appeal shall specifically describe why the Claimant alleges that the Committee's decision is erroneous. The Executive Director shall make a decision based on the written appeal and based on the written decision of the Committee, as well as any written documents reviewed by the Committee. Subject to paragraph (15) of this subsection and pursuant to the delegation of authority through this section, the decision of the Executive Director is the final decision of TRS.

(15) The Committee shall review an appeal made pursuant to paragraph (2), (9), or (14) of this subsection for timeliness and may deny an appeal that is not timely received by TRS. An appeal made pursuant to paragraph (2), (9), or (14) of this subsection that is denied because TRS did not timely receive the appeal is a final decision by TRS.

(c) For appeals that relate to claims or other benefits, persons enrolled in an HMO under contract with TRS-ActiveCare shall follow the appeal procedures set out by the HMO.

Source Note: The provisions of this §41.50 adopted to be effective December 26, 2002, 27 TexReg 12004; amended to be effective October 27, 2003, 28 TexReg 9289; amended to be effective April 28, 2004, 29 TexReg 3969; amended to be effective August 25, 2004, 29 TexReg 8134; amended to be effective March 8, 2007, 32 TexReg 1092; amended to be effective March 25, 2008, 33 TexReg 2556; amended to be effective April 1, 2011, 36 TexReg 2001; amended to be effective September 1, 2011, 36 TexReg 5380

RULE § 41.51. Appeals Relating to Eligibility

(a) A full-time or part-time employee ("Petitioner") whose application to enroll themselves and/or their dependents in TRS-ActiveCare is denied by either TRS, the administering firm, or a participating entity may appeal the denial to TRS.

(b) An appeal made pursuant to subsection (a) of this section shall be made in writing and must be received by TRS no later than 45 days after the date of denial. The appeal shall be directed to the TRS-ActiveCare Grievance Administrator. TRS may, at its sole discretion, provide a copy of the appeal to the administering firm or the participating entity that denied enrollment.

(c) An appeal made pursuant to subsection (a) of this section shall state the basis for appeal and shall include all relevant documents and correspondence that were considered by TRS, the administering firm, or a participating entity when the enrollment was denied. The administering firm or participating entity is required, upon request by TRS, to participate in the process.

(d) The TRS Appeal Committee ("Committee") is responsible for the review and determination of appeals made pursuant to subsection (a) of this section. The Committee shall be appointed by the TRS Deputy Director or, if the position of the Deputy Director is vacant, the TRS Chief Financial Officer and shall serve at the discretion of the Deputy Director or, if the position of the Deputy Director is vacant, the Chief Financial Officer.

(e) In determining eligibility for enrollment, the Committee shall apply the TRS-ActiveCare plan design and rules in effect for the plan year in which the Petitioner is seeking enrollment. If TRS finds that extraordinary circumstances constituting "good cause" prevented the Petitioner from complying fully with a deadline established by TRS under the TRS-ActiveCare plan design or rules, the appeal may be granted. For purposes of this subsection, "good cause" means that a person's failure to act was not because of a lack of due diligence the exercise of which would have caused a reasonable person to take prompt and timely action. A failure to act based on ignorance of the law or facts reasonably discoverable through the exercise of due diligence does not constitute good cause. If a person was reasonably prevented from complying with a deadline as a result of an unexpected natural disaster or sudden catastrophic event, that event may constitute "good cause" even though the event occurs on or near a deadline and arguably Petitioner could have met the deadline if Petitioner had acted sooner. Misinformation concerning a deadline provided to Petitioner by either TRS, the health plan administrator of TRS-ActiveCare, or a participating entity, and relied upon by Petitioner, may be grounds for "good cause" if the act of providing misinformation to Petitioner is documented or substantiated and a reasonable person would have relied on the information provided to Petitioner and reasonably would not have known the information provided to Petitioner was inaccurate.

(f) The Committee shall notify the Petitioner, the administering firm, and the participating entity of its decision in writing.

(g) If the Committee determines that the enrollment should be allowed, it shall inform the Petitioner, the administering firm, and the participating entity of the manner and effective date of enrollment by the Petitioner.

(h) The Petitioner may appeal the written decision of the TRS Appeal Committee relating to eligibility to the ~~TRS Executive Director~~. A request for an appeal to the ~~Executive Director~~ must be submitted by the Petitioner in writing and must be received by TRS no later than 30 days after the date of the initial written decision by the TRS Appeal Committee. The request for an appeal to the ~~Executive Director~~ shall be directed to the attention of the TRS-ActiveCare Grievance Administrator. Subject to subsection (i) of this section and pursuant to the delegation of authority through this section, the decision of the ~~Executive Director~~ is the final decision of TRS.

(i) The Committee shall review an appeal made pursuant to subsection (a) or (h) of this section for timeliness and may deny an appeal that is not timely received by TRS. An appeal made pursuant to subsection (a) or (h) of this section that is denied because TRS did not timely receive the appeal is a final decision by TRS.

Source Note: The provisions of this §41.51 adopted to be effective December 26, 2002, 27 TexReg 12004; amended to be effective March 8, 2007, 32 TexReg 1092; amended to be effective March 25, 2008, 33 TexReg 2556; amended to be effective April 1, 2011, 36 TexReg 2001

RULE § 41.52. Expulsion from TRS-ActiveCare

(a) The trustee, acting through the ~~TRS Executive Director~~, may expel from participation in TRS-ActiveCare a participant who submits or causes to be submitted a false or fraudulent claim or enrollment application, or who has defrauded or attempted to defraud, any health benefits plan or pharmacy benefits plan offered under TRS-ActiveCare.

(b) Upon receipt of a complaint or upon its own motion, the TRS staff may file a petition for expulsion with the ~~Executive Director~~. The ~~Executive Director~~ may docket the petition and refer the matter for an adjudicative hearing ~~before~~ the State Office of Administrative Hearings or otherwise as authorized by law. If a petition is docketed, the provisions of Chapter 43 of this title (relating to Contested Cases) shall apply to the proceeding.

(c) Following a hearing, the ~~Executive Director~~ may expel a person from participation in TRS-ActiveCare for a period of time not to exceed five years if the ~~Executive Director~~ finds that the person submitted or caused to be submitted a false or fraudulent claim or enrollment application or has defrauded or attempted to defraud any health benefits plan or pharmacy benefits plan offered under TRS-ActiveCare. Pursuant to the delegation of authority through this section, the order of the ~~Executive Director~~ is the final decision of TRS.

Source Note: The provisions of this §41.52 adopted to be effective December 26, 2002, 27 TexReg 12004; amended to be effective March 8, 2007, 32 TexReg 1092

Subchapter D. Comparability of Group Health Coverages

RULE § 41.91. Certification of Insurance Coverage

(a) When used in this section, the term "school district" includes a school district, another educational district whose employees are members of the Teacher Retirement System of Texas (TRS), and an open-enrollment charter school established under Subchapter D, Chapter 12, Education Code that meets the requirements of Section 1579.154, Insurance Code.

(b) This section applies only to school districts that do not participate in the health benefits program offered under Chapter 1579, Insurance Code.

(c) Each school district shall determine the comparability of the group health coverage it offers to its employees to the coverage provided under the Texas Employees Group Benefits Act (Chapter 1551, Insurance Code). As required by the Education Code, §22.004, each district shall make available to its employees group health coverage provided by a risk pool established by one or more school districts under Chapter 172, Local Government Code, or under a policy of insurance or group contract issued by an insurer, a company subject to Chapter 842, Insurance Code, or a health maintenance organization under Chapter 843, Insurance Code. The coverage must meet the substantive coverage requirements of Chapter 1251, Subchapter A, Chapter 1364, and Subchapter A, Chapter 1366, Insurance Code, and any other law applicable to group health insurance policies or contracts issued in this state. The coverage must include major medical treatment but may exclude experimental diagnostic procedures. In this subsection, "major medical treatment" means a medical, surgical, or diagnostic procedure for illness or injury. The coverage may include managed care or preventive care and must be comparable to the basic health coverage provided under the Texas Employees Group Benefits Act (Chapter 1551, Insurance Code). In addition to these requirements, the following factors shall be considered by each school district in determining comparability:

- (1) the deductible amount for service provided inside and outside of the network;
- (2) the coinsurance percentages for service provided inside and outside of the network;
- (3) the maximum amount of coinsurance payments a covered person is required to pay;
- (4) the amount of the co-payment for an office visit;
- (5) the schedule of benefits and the scope of coverage;
- (6) the lifetime maximum benefit amount; and
- (7) verification that the coverage is issued by a provider licensed to do business in this state by the Texas Department of Insurance or is provided by a risk pool authorized under Chapter 172, Local Government Code, or that a district is capable of covering the assumed liabilities in the case of coverage provided through district self-insurance.

(d) Each school district shall be responsible for developing a methodology and criteria for comparison determination. This methodology will include an evaluation of relevant variables with respect to applicable factors stated in subsection (c) of this section.

(e) Each school district shall prepare a report by March 1 of each even-numbered school year, based on the district group health coverage plan in effect during that current plan year, that includes:

(1) appropriate documentation of:

(A) the school district's contract for group health coverage with a provider licensed to do business in Texas by the Texas Department of Insurance or a risk pool authorized under Chapter 172, Local Government Code; or

(B) a resolution of the board of trustees of the school district authorizing a self-insurance plan for school district employees and of the school district's review of its ability to cover the liability assumed;

(2) the schedule of benefits;

(3) the premium rate sheet, including the amount paid by the school district and employee;

(4) the number of employees covered by the health coverage plan offered by the school district;

(5) information concerning the ease of completing the report required in subsection (g) of this section; and

(6) the compliance statement required in subsection (g) of this section.

(f) By March 1 of each even-numbered school year, each school district shall make the report required under subsection (e) of this section available for review, together with the policy or contract for the group health coverage plan, at the central administrative office of each campus associated with or in the school district. By such date, each school district shall also post this report on the school district's Internet website, if the school district maintains a website; and, in lieu of delivering a copy of this report to TRS, the school district shall provide a copy of the report upon written request from TRS.

(g) Each school district shall report, using a uniform reporting form or method of reporting prescribed by TRS, the district's compliance with Education Code, §22.004, to the ~~E~~xecutive ~~D~~irector of TRS by March 1 of each even-numbered school year. This compliance statement must state whether or not the school district has complied with the requirements of Education Code, §22.004, specifically as to whether or not the school district:

(1) provides health coverage to its employees that is comparable to the basic health coverage provided under the Texas Employees Group Benefits Act (Chapter 1551, Insurance Code); and

(2) has complied with the other requirements of this section. ~~A school district's failure to make the completed report required in subsection (e) of this section available as required in subsection (f) of this section or to submit to TRS the required compliance statement, on or before March 1 of each even numbered year, may result in the TRS report to the legislature reflecting the school district's non-compliance with one or more of the requirements of this section.~~

Source Note: The provisions of this §41.91 adopted to be effective March 12, 2003, 28 TexReg 2114; amended to be effective March 8, 2007, 32 TexReg 1092; amended to be effective April 9, 2008, 33 TexReg 2827



Legal Services

Memorandum

DATE: November 3, 2014

TO: Policy Committee of the Board of Trustees

FROM: Rebecca M. Smith, Assistant General Counsel

COPY: Brian Guthrie, Executive Director
Ken Welch, Deputy Director
Carolina de Onís, General Counsel

RE: Four-Year Rule Review: 34 Texas Administrative Code, Chapter 47,
Qualified Domestic Relations Orders

Under §2001.039 of the Texas Government Code, the Board of Trustees is required to review the rules in the Texas Administrative Code, Chapter 47, and determine whether to readopt, readopt with revisions, or repeal the rules in this chapter. Chapter 47 addresses the requirements that a domestic relations order must meet in order to be a qualified order that requires TRS to make direct payment to the alternate payee of amounts awarded in the order. The rules also establish the method of calculating the annuity payment payable to the alternate payee under §804.005, Government Code. Under that section, an alternate payee may begin receiving his or her share of the actuarial equivalent benefit in the form of a life annuity when the member is at least age 62 and is eligible for normal retirement.

As required by §2001.039, staff reviewed the rules in Chapter 47 and concluded that 14 rules in this chapter should be readopted without changes and 1 rule readopted with changes; there are no rules recommended for repeal. The Policy Committee authorized public comment publication of the proposed amendments to the rule, which were published October 17, 2014, in the *Texas Register* (39 TexReg 8203). The proposed rule amendments will have been published for at least 30 days before the committee and board consider their adoption at the November meeting. To date TRS has not received any written comments regarding the proposed amendments. Any written comments that TRS receives after the date of this memorandum will be addressed in a separate document that will be available for your review at the November meeting.

Staff recommends that the rule in Chapter 47 with proposed changes be adopted as published and the remaining 14 rules in Chapter 47 be readopted without changes. A summary of the proposed changes to the rule in Chapter 47 are provided below. Marked rule text for the rule for which staff proposes amendments is also attached to this memorandum for your review.

§47.1- Payments by TRS (***Readopt without changes***)

§47.2- Submission of Orders (***Readopt without changes***)

§47.3- Review of Orders (***Readopt without changes***)

§47.4- Payment Pursuant to Qualified Orders (***Readopt without changes***)

§47.5- Orders Not Qualified (***Readopt without changes***)

§47.6- Determination That An Order Is Not Qualified Is Final (***Readopt without changes***)

§47.7- Submission of Amended Order (***Readopt without changes***)

§47.8- Orders Affecting Optional Retirement Program (***Readopt without changes***)

§47.9- Orders Affecting Benefits from More Than One Public Retirement System (***Readopt without changes***)

§47.10- Determination of Whether an Order is a Qualified Domestic Relations Order (***Changes recommended***)

Section 47.10 provides the detailed requirements of determining the status of a domestic relations order as a qualified order. TRS received legislative authority to require that the order be in a form prescribed by TRS. Staff proposes extending the effective date of the requirement to use the model order prescribed by TRS until January 1, 2015.

§47.13- Benefits Resulting from Resumption of Membership and Reinstatement of Service Credit (***Readopt without changes***)

§47.14- Reinstatement of Service Credit (***Readopt without changes***)

§47.15- Death of an Alternate Payee (***Readopt without changes***)

§47.16- Effective Date of TRS Review of Orders (***Readopt without changes***)

§47.17- Calculation for Alternate Payee Benefits before a Member's Benefit Begins (***Readopt without changes***)

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 on January 1, 2015~~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 January 1, 2015~~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 ~~Government Code~~ §824.1012 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.



Legal Services

Memorandum

DATE: November 3, 2014

TO: Policy Committee of the Board of Trustees

FROM: Rebecca M. Smith, Assistant General Counsel

COPY: Brian Guthrie, Executive Director
Ken Welch, Deputy Director
Carolina de Onis, General Counsel

RE: Four-Year Rule Review: 34 Texas Administrative Code, Chapter 51,
General Administration

Under §2001.039 of the Texas Government Code, the Board of Trustees is required to review the rules in the Texas Administrative Code, Chapter 51, and determine whether to readopt, readopt with revisions, or repeal the rules in this chapter. Chapter 51 addresses a number of administrative matters, including the creation of the Medical Board and the Retirees Advisory Committee for health benefits. The rules also provide the procedure for vendor protests, dispute resolutions, and hearings. The characterization of the TRS vehicles as assets of the trust fund is confirmed in the rules and the Board also adopted the Comptroller's rules regarding Historically Underutilized Businesses by reference in the rules. These rules also capture the retirement eligibility requirements as they existed before September 1, 2005 and provide the process for obtaining a waiver of the deadline for employers to remit deposits and reports to TRS.

As required by §2001.039, staff reviewed the rules in Chapter 51 and concluded that 5 rules in this chapter should be readopted without changes and 1 rule readopted with changes; there are no rules recommended for repeal. The Policy Committee authorized public comment publication of the proposed amendments to the rule, which were published October 17, 2014, in the *Texas Register* (39 TexReg 8204). The proposed rule amendments will have been published for at least 30 days before the committee and board consider their adoption at the November meeting. To date TRS has not received any written comments regarding the proposed amendments. Any written comments that TRS receives after the date of this memorandum will be addressed in a separate document that will be available for your review at the November meeting.

Staff recommends that the rule in Chapter 51 with proposed changes be adopted as published and the remaining 5 rules in Chapter 29 be readopted without changes. A summary of the proposed changes to the rule in Chapter 51 is provided below. Marked rule text for the rule for which staff proposes amendments is also attached to this memorandum for your review.

§51.1- Advisory and Auxiliary Committees (*Readopt without changes*)

§51.2- Vendor Protests, Dispute Resolution, and Hearing (*Readopt without changes*)

§51.5- Waiver of Deadline to Remit Deposits and Documentation (*Changes recommended*)

Section 51.5 provides the process to be used by employers to obtain a one-time waiver of the deadline imposed by §825.408, Government Code, for submitting contributions owed to TRS and the reports related to those contributions. Staff proposed amendments to §25.28 relating to Payroll Report Dates that would authorize an employer to correct errors that occurred in the current school year as well as errors that occurred in the immediately preceding school year. Staff recommends referencing that section of the rules in this section to ensure consistent interpretation of the authority in §25.28.

§51.7- Assignment of TRS Vehicles (*Readopt without changes*)

§51.11- Historically Underutilized Businesses (*Readopt without changes*)

§51.12- Applicability of Certain Laws in Effect Before September 1, 2005 (*Readopt without changes*)

§51.13- Five-Year Service Credit Requirement Effective August 31, 2014 (*Readopt without changes*)

RULE §51.5 Waiver of Deadline to Remit Deposits and Documentation

(a) Except as provided in §25.28 of this title (relating to Payroll Report Dates), on written request by an employer-district, the Teacher Retirement System of Texas (TRS) may grant a one-time waiver for three months, of the deadline imposed by ~~Gov't Code~~ §825.408(a), Government Code, to remit all member and employer deposits and documentation of deposits before the seventh day after the last day of a month. In support of the request, an employer district is required to submit the reasons for a waiver and an explanation of corrective measures being taken by the employerdistrict toward compliance with Section 825.408(a), Government Code, and to pay the required interest on the unpaid and/or undocumented amounts. The employer shall also submit corrected reports for the months in question in the form and manner prescribed by TRS.

(b) Except as provided in §25.28 of this title (relating to Payroll Report Dates), TRS shall not consider additional requests for a waiver of the deadline except in the case of a catastrophic event affecting the district's financial or technological resources.

(c) This section does not apply to health insurance.

Teacher Retirement System of Texas Board of Trustees

ORDER

ADOPTING STATUTORY FOUR-YEAR REVIEW OF TRS RULES IN 34 TEX. ADMIN. CODE CHAPTERS 21-51 AND ADOPTING AMENDED RULES AS PART OF THE REVIEW

Section 2001.039 of the Texas Government Code provides as follows: that each rule shall be reviewed and considered for readoption not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date; that the review of a rule must include an assessment of whether the reasons for initially adopting the rule continue to exist; and that the rule shall be readopted, readopted with amendments, or repealed as a result of the review rule. The Teacher Retirement System of Texas (TRS) completed the previous statutory four-year review of its rules in Chapter 21 through 51 of Title 34, Part 3, of the Texas Administrative Code on December 28, 2010.

The Policy Committee of the TRS Board of Trustees authorized publication of a notice of intention to review (proposed review) for Chapters 21-51, which was published in the April 25, 2014 issue of the *Texas Register* (39 TexReg 3454). The notice informed the public of TRS' intention to consider readopting, readopting with changes, or repealing rules in Chapters 21-51 and asked for public comments on the rules under review. No comments were received in response to the notice of intention to review.

The board reviewed the rules in Chapters 21-51 and received recommendations on them from the staff and policy committee. As a result of the review, the board has determined that the reasons for initially adopting the rules continue to exist. In conducting the review, the board updated and improved certain rules. Consequently, the board readopts some rules in Chapters 25, 27, 29, 31, 39, 41, 47, and 51 with changes. As to the remaining rules in those chapters and in Chapters 21, 23, 33, 35, 43, and 49, the board has determined that they should be readopted without changes. The notice of readoption (adopted review) will be submitted to the *Texas Register* more than 30 days after publication of the notice of intention to review.

The Policy Committee or executive director authorized public comment publication of the proposed rule changes in Chapters 25, 27, 29, 31, 39, 41, 47, and 51 resulting from the review. The proposed rules were published in the October 17, 2014 issue of the *Texas Register* (39 TexReg 8176). No comments were received. The board considered adopting the proposed rule amendments more than 30 days after they were published. The amended rules are adopted without changes to the proposed text as published. Legal counsel has found the amended rules to be within the board's legal authority to adopt.

NOW, THEREFORE, BE IT

ORDERED, That the Board of Trustees of the Teacher Retirement System of Texas has reviewed its rules in Texas Administrative Code, Title 34, Part 3, Chapters 21, 23, 25, 27, 29, 31, 33, 35, 39, 41, 43, 47, 49, and 51 under section 2001.039 of the Government Code and determined that the reasons for initially adopting the rules continue to exist;

ORDERED, That, for purposes of the four-year rule review, the board readopts certain rules in Chapters 25, 27, 29, 31, 39, 41, 47, and 51 with amendments to update and improve them and readopts the remaining rules in those chapters without changes;

ORDERED, That the board adopts the proposed rule amendments in Chapters 25, 27, 29, 31, 39, 41, 47, and 51 without changes to the proposed text as published in the October 17, 2014 issue of the *Texas Register* (39 TexReg 8176-8205) but for amended § 25.25 and § 25.26;

ORDERED, That the board adopts amended § 25.25 with clarifying changes and amended § 25.26 without certain proposed amendments regarding the calculation of retirement benefits to further consider them;

ORDERED, That, for purposes of the four-year rule review, the board readopts the rules in Chapters 21, 23, 33, 35, 43, and 49 without changes;

ORDERED, That the board completes the review of its rules in Texas Administrative Code, Title 34, Part 3, Chapters 21, 23, 25, 27, 29, 31, 33, 35, 39, 41, 43, 47, 49, and 51 and authorizes publication of a related notice of readoption (adopted review) in the *Texas Register*;

ORDERED, That the board authorizes TRS staff to prepare and to file with the Secretary of State's Office in proper form this Order, the adopted-rule preambles, and the adopted rule texts, including preparing and filing the necessary documents as required for publication in the *Texas Register* or Texas Administrative Code or both, as appropriate;

ORDERED, That the board authorizes TRS staff to work with the *Texas Register* staff in filing the adopted rule and rule review documents and amended rules and to make any technical changes needed for submission or publication;

ORDERED, That the board adopts by reference and makes a part of this Order the following: the adopted rule texts; the board and committee meeting materials and deliberations considered in the adoption of the amended rules and readoption of the chapters reviewed; and the proposed and adopted rule preambles and notices of intention to review (proposed review) and readoption (adopted review) as published in the *Texas Register*;

ORDERED, That the board certifies that legal counsel has reviewed the adoption of the amended rules and has found it to be a valid exercise of the board's legal authority; and

ORDERED, That the board chairman is authorized to sign this Order on behalf of the board.

ISSUED THIS ____ DAY OF NOVEMBER 2014.

R. David Kelly, Chairman
TRS Board of Trustees

ATTEST:

Brian K. Guthrie
TRS Executive Director

Carolina de Onís
TRS General Counsel

Tab 5



Legal Services

Memorandum

DATE: November 6, 2014

TO: Policy Committee of the Board of Trustees

FROM: Rebecca M. Smith, Assistant General Counsel

COPY: Brian Guthrie, Executive Director
Ken Welch, Deputy Director
Carolina de Onís, General Counsel

RE: Authorization to Publish Proposed Amendments to §25.26 (Annual Compensation Creditable for Benefit Calculation)

Under §2001.039 of the Texas Government Code, the Board of Trustees is required to review the rules in the Texas Administrative Code, Chapter 25, and determine whether to readopt, readopt with revisions, or repeal the rules in this chapter. As required, staff reviewed the rules in Chapter 25 and concluded that the rules in this chapter should be readopted as they are or readopted with changes; there were no rules recommended for repeal. Proposed changes to the rules in Chapter 25 were previously published for public comment; however, after the proposed changes to §25.26 were published, staff determined that application of the proposed changes at an earlier date would better serve the business needs of TRS. In order to complete the review in a timely manner and to ensure proper notice and effective adoption of the amended rule, staff requested that the committee recommend adoption of §25.26 with changes to the published text by deleting subsection (f) and the reference in subsection (b) to the implementation date in subsection (f).

Staff now recommends and requests that the Policy Committee authorize publication of the proposed additional amendments to §25.26, as more fully described below and reflected in the text attached to this memorandum, in the *Texas Register* for public comment. The public will have at least 30 days to comment on the proposed amendments. After the public comment period, the proposed rules may be considered for adoption.

§25.26- Annual Compensation Creditable for Benefit Calculation (*Changes recommended*)

Section 25.26 establishes how TRS will determine a member's annual compensation for benefit calculation purposes. The most basic requirement is that it is the sum of 12 months of compensation paid from September 1 through August 31 for 12 months of work. This rule describes the "standard" school year now used by TRS to determine annual compensation and service credit. The rule as currently adopted requires TRS to compare salaries using the standard

school year with salaries using the member's contract year. Experience with the rule has proven the comparison to be complex and to substantially increase the amount of time required to manually prepare the member's retirement estimate. TRS originally adopted the subsection to minimize the impact on annual compensation caused by the change to a standard school year. In some instances the TRS rule effectively results in a higher final average salary and a higher annuity than before the law change. Staff proposes to limit the comparison to the 2012-2013 school year which is the year of transition to the standard school year to reduce the administrative burden of manually comparing prior contract year salaries and standard school year salaries for school years prior to the 2012-2013 school year. Specifically, staff proposes adding subsection (f) to limit the comparison of salaries required in §25.26(b) to only the 2012-2013 school year rather than to all prior years. The proposed rule change will apply to the calculation of benefits for retirements and deaths occurring after March 31, 2015. The comparison will continue to be made for retirements and deaths occurring prior to April 1, 2015.

RECOMMENDATION

Staff recommends that the Policy Committee authorize publication of the proposed amended rule §25.26 in the *Texas Register* for public comment.

RULE §25.26 Annual Compensation Creditable for Benefit Calculation

(a) Except as provided in subsection (b) of this section, for the purpose of computing the amount of a retirement benefit or a death benefit under §824.402, Government Code, annual compensation means creditable compensation for service paid to a member of the retirement system during a 12-month period beginning September 1 and ending August 31 of the next calendar year for service rendered during no more than a 12-month period. For the school year in which the member retires and except as provided in §25.24(e) of this title (relating to Performance Pay), creditable annual compensation earned by the date of retirement but not yet paid at the date of retirement shall be included in the annual compensation for that year. If due to an error of the employer, compensation earned by the retiree in the final school year before retirement is not paid and/or not reported before the first annuity payment is issued, upon notice to TRS and the submission of all required corrected reports and member and employer contributions on the compensation, TRS shall adjust its records. If the additional compensation results in increased benefits payable on behalf of the retiree, the adjusted benefit shall be paid beginning in the month TRS receives the additional contributions and the corrected reports. In no event may an error be corrected under this subsection after the end of the school year following the school year in which the member retired.

(b) For the purpose of computing the amount of a retirement benefit or a death benefit under §824.402, Government Code, for retirements or deaths before April 1, 2015 annual compensation paid prior to September 1, 2012 is the greater of:

(1) the amount of creditable compensation for service paid to a member of the retirement system during a 12-month school year as defined in §25.133(a) of this title (relating to School Year); or

(2) the amount of creditable compensation paid to the member during a 12-month period beginning September 1 and ending August 31 of the next calendar year.

(c) Unless otherwise provided by law or this chapter, a member shall receive credit only for annual compensation actually received.

(d) Compensation from which deductions for an Optional Retirement Program annuity were made shall not be included in annual compensation for benefit calculation purposes.

(e) If as a result of the requirement in §25.28(c) to report compensation in the month that it is paid rather than the month it is earned a member has only 11 months of salary credited by TRS in the 2014-2015 school year and that year of compensation would have been one of the years of compensation used in calculating the member's highest average salary for benefit calculation purposes, TRS will attribute an additional month of salary in the 2014-2015 school year for purposes of benefit calculation.

(f) For the purpose of computing the amount of retirement benefit or a death benefit under §824.402, Government Code, for retirements or deaths after March 31, 2015, annual compensation shall be calculated as follows:

(1) for the 2013-2014 school year and thereafter, annual compensation is the amount of creditable compensation for service paid to a member of the retirement system during a 12-month period beginning September 1 and ending August 31 of the next calendar year;

(2) for the 2012-2013 school year, annual compensation is the greater of:

(A) the amount of creditable compensation for service paid to a member of the retirement system during the 12-month school year as defined in §25.133(a) of this title (relating to School Year); or

(B) the amount of creditable compensation paid to the member during a 12-month period beginning September 1, 2012 and ending August 31, 2013.

(3) for school years prior to the 2012-2013 school year annual compensation shall be the amount of creditable compensation for service paid to a member of the retirement system during the 12-month school year as defined in §25.133(a) of this title (relating to School Year).