

December 2019

GUIDING PRINCIPLES

Policy Committee Meeting



Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas
78701-2698

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

(Committee Chair and Members are Subject to Change at the December Board Meeting)

*All or part of the December 12, 2019, meeting of the TRS Policy Committee and Board of Trustees may be held by telephone or video conference call as authorized under Sections 551.130 and 551.127 of the Texas Government Code. The Board intends to have a quorum and the presiding officer of the meeting physically present at the following location, which will be open to the public during the open portions of the meeting: **1000 Red River, Austin, Texas 78701 in the TRS East Building, 5th Floor, Boardroom.***

The open portions of the December 12, 2019, Board meeting are being broadcast over the Internet. Access to the Internet broadcast of the Board meeting is provided at www.trs.texas.gov.

AGENDA

**December 12, 2019 – 1:00 p.m.
TRS East Building, 5th Floor, Boardroom**

1. Call roll of Committee members.
2. Consider the approval of the proposed minutes of the September 2019 committee meeting – Chair.
3. Consider recommending to the Board proposed amendments to the Proxy Policy and Procedures – Joel Hinkhouse.
4. Consider recommending to the Board proposed amendments to Commission Credits Policy – Sylvia Bell.
5. Consider recommending to the Board proposed amendments to the Board of Trustees External Communications Policy – Rob Maxwell.
6. Consider authorizing for publication in the Texas Register notice of proposed amendments of the TRS rules in Chapters 41 and 43 of Title 34, Part 3 of the Texas Administrative Code – Carolina de Onis, Clarke Howard, and Kevin Wakley.
 - A. Amended §41.51 Appeals Relating to Eligibility
 - B. Amended §43.1 Administrative Review of Individual Requests;
 - C. Amended §43.3 Definitions;
 - D. Amended §43.5 Request for Adjudicative Hearing;
 - E. Amended §43.6 Filing of Documents;

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 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.

- F. Amended §43.8 Extensions;
- G. Amended §43.9 Docketing of Appeal for Adjudicative Hearing and Dismissal for Failure to Obtain Setting;
- H. Amended §43.10 Authority to Grant Relief; and
- I. Amended §43.12 Form of Petitions and Other Pleadings.

**Minutes of the Policy Committee
September 19, 2019**

The Policy Committee of the Board of Trustees of the Teacher Retirement System of Texas met on Thursday, September 19, 2019, in the boardroom located on the Fifth Floor in the East Building of TRS' offices located at 1000 Red River Street, Austin, Texas, 78701.

Committee members present:

Mr. David Corpus, Chairman
Mr. Joe Colonna
Mr. John Elliott
Mr. Jarvis V. Hollingsworth
Ms. Nanette Sissney

Other TRS Board Members present:

Dr. Greg Gibson
Mr. Chris Moss
Mr. Dick Nance
Ms. Dolores Ramirez

Others present:

Brian Guthrie, TRS	Ann Fickel, TCTA
Andrew Roth	Nick Arnold, Humana
Don Green, TRS	Chi Lee, Perkins and Will
Rebecca Merrill, TRS	
Carolina de Onis, TRS	
Jerry Albright, TRS	
Jase Auby, TRS	
Barbie Pearson, TRS	
Rebecca Merrill, TRS	
Katy Hoffman, TRS	
Heather Traeger, TRS	
James Neild, TRS	
LaTresa Stroud, TRS	
Katherine Farrell, TRS	
Tiffany Reeves, Reinhart Boerner Van Deuren s.c.	
Steve Voss, Aon Hewitt	

Policy Committee Chairman, Mr. David Corpus, called the meeting to order at 10:02 a.m.

1. Call roll of Committee members.

Ms. Farrell called the roll. A quorum was present.

2. Consider the approval of the proposed minutes of the July 2019 committee meeting – Chair David Corpus.

On a motion by Mr. Elliott, seconded by Mr. Colonna, the committee voted to approve the proposed minutes for the April 25, 2019, Policy Committee meeting as presented with Ms. Sissney abstaining.

3. Consider recommending to the Board adoption of the proposed amendments to the Investment Policy Statement – Katy Hoffman, Heather Traeger and James Nield.

Ms. Katy Hoffman provided an overview of the recommended changes as presented in July at the Investment Management Committee. She noted the proposed changes are associated with implementing the strategic asset allocation with one additional recommended change to include the executive director as a person who can request a prudence letter for items that come before the IIC. She reported currently any member of the Board or the CIO could request a prudence letter.

Mr. Steve Voss, referencing his memo, made general comments regarding the importance of the policy. He said they fully reviewed the document and were supportive of the recommendations put forward. In response to Mr. Hollingsworth's inquiry, Mr. Voss stated TRS was not an outlier in any respect. He noted recently TRS reduced some of the needs for prudence letters but that the control of having any Board member, the CIO or now ED to call for a prudence letter at any point in time as a good control procedure.

Dr. Keith Brown reiterated the importance of the policy and how it is the Board's marching orders to staff. He referenced his memo and noted the remarkable job IMD has done of discussing leverage for the past two or three years prior to including it in the policy.

Ms. Tiffany Reeves noted how TRS is a leader in terms of internal investment expertise.

On a motion by Ms. Sissney, seconded by Mr. Hollingsworth, the Committee unanimously voted to recommend to the Board adoption of the proposed resolution amending the investment policy statement as presented by staff.

TEACHER RETIREMENT SYSTEM OF TEXAS BOARD RESOLUTION
September 19-20, 2019
RESOLUTION ADOPTING
THE INVESTMENT POLICY STATEMENT
Consider Proposed Changes to the Investment Policy Statement

WHEREAS, Section 825.103, Government Code, provides that the Board of Trustees ("Board") of the Teacher Retirement System of Texas ("TRS"), is the trustee of all assets of the retirement system;

WHEREAS, Section 825.301, Government Code, requires the Board to develop written investment objectives for the investment of pension trust assets to address desired rates of return, risks involved, investment time frames, and any other relevant considerations;

WHEREAS, Under Section 1.6 of the existing Investment Policy Statement (IPS) the Investment Management Division (IMD) assisted the Board in a strategic asset allocation (SAA) study to review asset classes, return-risk assumptions, and the correlation of returns with applicable benchmarks and across asset classes;

WHEREAS, The Board approved the new SAA asset class target allocations in the July 2019 Board meeting and authorized the IMD to revise the strategic asset allocation plan in the IPS to reflect the approved revisions, and to present to the Policy Committee the revised IPS for Board consideration at the its September 2019 meeting, with a targeted effective date of October 1, 2019;

Resolved, That the Board of Trustees (Board) hereby adopts the proposed revised Investment Policy Statement (IPS) to be effective as of October 1, 2019 as recommended for adoption by the Policy Committee, as presented by the IMD.

Resolved, That the IPS adopted above supersedes in all respects all prior versions of the IPS as of its effective date of October 1, 2019.

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

Ms. Rebecca Merrill presented the updated Policy Review Schedule noting it is the work plan for the Policy Committee, laying out the rotation by which the Committee reviews policies that are adopted by the Board of Trustees.

On a motion by Mr. Colonna, seconded by Mr. Hollingsworth, the Committee unanimously approved the Policy Review Schedule as presented by staff.

5. Review and consider recommending to the Board amendments to the TRS Mission Statement – Brian Guthrie.

Mr. Brian Guthrie presented the TRS Mission Statement as it currently exists: “Improving the retirement security of our members by prudently investing and managing the Trust assets and delivering benefits that make a positive difference in their lives.” He noted this was the start of the review process and would bring any recommended changes to the December meeting.

6. Consider recommending to the Board adoption of the following proposed repeal of TRS rules in Chapter 53 of Title 34, Part 3 of the Texas Administrative Code – Rebecca Merrill:

- A. §53.1, Definitions**
- B. §53.2, Applicability**
- C. §53.3, Maximum Fees, Costs, and Penalties**
- D. §53.4, Qualifications for Certification by Companies Offering Qualified Investment Products and Investment Options that are Annuity Contracts**
- E. §53.5, Qualifications for Certification by Companies Offering Qualified Investment Products and Investment Options Other than Annuity Contracts**
- F. §53.6, Application and Fee for Certification**
- G. §53.7, Listing of Certified Companies**
- H. §53.8, Product and Investment Option Registration Requirements**
- I. §53.9, Application and Fee for Approval to Register Products and Investment Options**
- J. §53.10, Registration and Listing of Products and Investment Options**

- K. §53.11, Ongoing Company Responsibilities Regarding Certification and TRS Registered Products and Investment Options**
- L. §53.12, TRS Actions Regarding Certification and TRS Registered Products and Investment Options**
- M. §53.13, Coordination with Regulatory and Enforcement Agencies**
- N. §53.14, Suspension or Revocation of Certification**
- O. §53.15, Notice to Potential Purchaser of Annuity Contracts**
- P. §53.16, Electronic Signature**
- Q. §53.17, Administrative Service Providers**

Ms. Rebecca Merrill stated recent legislation, House Bill 2820, repealed the rules associated with the 403(b) program. She noted the proposed repeal was published in the *Texas Register* and ripe for Board adoption. In response to Mr. Moss' inquiry, Mr. Guthrie noted the trust fund for the 403(b) program will retain enough money to close out the program. If there are any additional monies left over, the Comptroller will sweep those amounts into the General Revenue Fund.

On a motion by Mr. Hollingsworth, seconded by Ms. Sissney, the committee approved recommending to the Board the adoption of the repeal of TRS Rules in Chapter 53 of Title 34, Part 3 of the Texas Administrative Code as presented by staff.

- 7. Consider recommending to the Board adoption of proposed new TRS rules in Title 34, Part 3 of the Texas Administrative Code – Don Green and LaTresa Stroud:**
 - A. New § 51.14, relating to Enhanced Contract Monitoring Procedures; and**
 - B. New § 51.15, relating to Contract Monitoring Roles and Responsibilities.**

Ms. LaTresa Stroud presented the proposed rules for adoption noting the rules implement Senate Bill 65 requirements for enhanced contract monitoring. She reported that the rules were published in the *Texas Register*.

On a motion by Mr. Hollingsworth, seconded by Mr. Colonna, the committee approved recommending to the Board adoption of the new TRS rules in Chapter 51 of Title 34, Part 3 of the Texas Administrative Code, as presented by staff.

The Policy Committee adjourned at 10:32 a.m.

Approved by the Policy Committee of the Board of Trustees of the Teacher Retirement System of Texas on December 12, 2019.

Katherine H. Farrell
Secretary of the TRS Board of Trustees

Date

TAB 4



Memorandum

To: TRS Policy Committee
Brian Guthrie, Executive Director
Jerry Albright, Chief Investment Officer

From: Sylvia Bell, Chief Operating Officer
Heather Traeger, Chief Compliance Officer & Deputy General Counsel

Date: November 19, 2019

Re: Commission Credits Policy

Background

Commission Credits refers to the use of a portion of brokerage commissions incurred for securities or futures trade execution to obtain goods, services or research through an approved vendor. The Commission Credits Policy outlines general principles and guidelines that are rooted in fiduciary prudence, and are based on the applicable guidance and safe harbor under the federal securities laws.¹ These principles and guidelines include ensuring that: (1) best efforts are made to obtain optimal trade execution; (2) incurred commission credits are reasonable in light of the goods or services obtained; (3) trades are not undertaken solely to generate commission credits; (4) purchases using commission credits support the investment decision-making function of TRS; and (5) commission credit arrangements are properly documented and reviewed by Legal & Compliance, General Accounting and the Investment Division, as applicable.

Types of Arrangements

TRS uses two types of commission arrangements, commission recapture agreements (CRA) and commission sharing arrangements (CSA). In both arrangements, credits are generated on eligible internally and externally traded equities and futures, which are then remitted to State Street Bank (SSB) by TRS execution brokers, futures commission merchants, and external investment managers.

Recommended Changes to Commission Credits Policy

No substantive changes are being recommended. The Investment Division is recommending to improve clarity in the document by taking out a reference to a specific form no longer in use and to remove a few outdated process steps. In order to provide procedural flexibility as processes and forms change, the Investment Division is not recommending replacing the outdated information in the policy.

Budget and Expenditure Process

Below are the CRA and CSA budget and expenditures for FY 2019 and FY 2020. Budgets are approved annually by the Board and are based on expected trading volumes and projected expenses. In no case can TRS expend more than the available credits in our State Street Bank accounts. CRA and CSA expenditures must follow the same TRS procurement policies and procedures and approval processes as those for the Operating Budget. These budgets and expenditures are recorded in the TRS General Ledger to ensure full

¹ TRS looks to the Securities and Exchange Commission's "safe harbor" for guidance on the use of Commission Credits. Notwithstanding the guidance, all expenditures that TRS makes, regardless of the source of funds, must be for the benefit of the pension plan, as opposed to unrelated clients.



Memorandum

transparency. In addition, State Street Bank must also approve all CRA and CSA expenditures prior to payment. Reconciliations of expenditure activity are performed on a monthly basis. TRS Internal Audit also performs periodic audits of the program and also performs quarterly compliance audits to ensure TRS is meeting policy and regulatory requirements.

Expenditure Type	Commission Credits Budget & Expenditures		
	FY2019 Approved Budget	FY2019 Expended	FY2020 Approved Budget
Data Subscription & Other Operating	\$14,730,626	\$11,816,353	\$16,346,600
Professional Fees and Services	3,060,100	427,146	2,200,000
Software Purchase and Maintenance	1,769,221	54,250	2,073,900
Subscription & Reference Information	1,091,715	768,320	1,010,000
Dues, Fees and Staff Development	80,000	51,119	25,000
Furniture & Equipment	35,000	19,322	5,000
	\$20,766,662	\$13,136,510	\$21,660,500




DEPARTMENT OF FINANCE
THE UNIVERSITY OF TEXAS AT AUSTIN

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MEMORANDUM

To: Board of Trustees
The Teacher Retirement System (TRS) of Texas

From: Keith C. Brown 
Advisor to the TRS Board

Re: Proposed Changes to the TRS Commission Credits Policy Statement

Date: November 15, 2019

I have reviewed the changes to the Commission Credits policy that are being proposed by the Investment Management Division (IMD). *Overall, I endorse these modifications and recommend their adoption.*

The suggested changes to the policy are actually quite trivial, consisting only of correcting a few typos and removing a reference to a form that is no longer in use. So, the best way to think of what is *actually* being proposed is that IMD recommends there be *no change* in how the TRS commission credits program is managed.

Guided by the three-year history of the way in which the program has been run since this policy was last updated, I support this “no changes needed” recommendation. In my 2016 Board memo associated with the last formal review, the only substantive issue I raised was a need for the Board to be comfortable that sufficient monitoring was in place to insure that the policy’s principles are being realized in practice (cf. Section 3.1.c of the proposed document). While this sort of diligence is always a sound exercise, all indications are that TRS’ commission credits program is currently being managed in a prudent and appropriate manner.



Memo

To Board of Trustees, Teacher Retirement System of Texas (“TRS”)

From Steve Voss; Mike McCormick

Date November 22, 2019

Re 2019 Review of Commission Credits Policy

Introduction

The ongoing review of the TRS Investment Policy and the ancillary policies represents an important responsibility of the Board, and an area where we spend a considerable amount of time. These policies govern TRS investment activities and are a critical component of good governance. The TRS Investment Policy and the ancillary policies are reviewed on a reoccurring basis, and the policies can be revisited at any time deemed appropriate.

Proposed Changes

We are comfortable with the proposed changes to the Commission Credits Policy (Policy) and recommend the Board adopt them as presented by the Investment Management Division (IMD). We see none of the proposed changes as substantive. These changes, while modest in the current review, are based on thorough discussion and debate and include feedback and comments from fiduciary counsel, TRS Legal and Compliance, and the Board’s investment consultant and advisor. The following section outlines our views of the program, and the changes being proposed for the Policy.

Background

In past Policy memos we have expressed concerns regarding the soft dollar (commission credit) industry. We believe that conflicts can exist relating to inefficient resource allocation among other concerns and potential for misuse. That said such programs give investors flexibility with budgetary issues. And importantly, TRS has taken steps to ensure commission credits are properly monitored and used for the benefit of TRS. Section 3.3 of the Policy describes the budgeting, accounting, controls, and reporting in place for the soft dollar program which will help ensure these assets are used to the further benefit of the investment program at TRS.

IMD monitors execution quality on an ongoing basis utilizing the services of three independent transaction cost providers.



Modification 1: Removal of reference to Form TRS 146 Section 3.3.c,

During discussions with IMD we were made aware that this form is no longer used, and therefore reference to the form is no longer appropriate. We are comfortable with this language being removed.

Remaining Modifications

The remaining modifications to the Policy represent administrative edits.

We look forward to discussing the proposed policy modifications with you at the next Board meeting.

Suzanne M. Dugan
(202) 408-4600
sdugan@cohenmilstein.com

December 3, 2019

Board of Trustees
Teacher Retirement System of Texas
1000 Red River Street
Austin, TX 78701

Re: Proposed Revisions to Commission Credits Policy

Dear Trustees:

At the Board's December 2019 meeting, TRS staff will present proposed changes to the Commission Credits Policy for the Board's consideration and approval. No substantive changes are being recommended, although there are suggested edits to improve clarity and remove outdated references.

In my capacity as Fiduciary Counsel to the Board of TRS, I reviewed the proposed revisions to the Commission Credits Policy and met with staff to discuss the proposed changes. Questions that I asked were fully answered by staff, including those with regard to the process for presentation of information to the Board pursuant to the Policy.

Fiduciaries are judged by the process undertaken to reach decisions, and establishment of a reasonable decision-making process and adherence to that process helps to demonstrate prudence. Documentation of process is an important part of demonstrating prudence. In this case, it appears to me that the process undertaken is procedurally prudent, and that the process has been sufficiently memorialized in order to demonstrate such prudence. As such, the Board will have demonstrated appropriate fiduciary oversight in its consideration and approval of the proposed revisions to the Commission Credits Policy.

Sincerely,



Suzanne M. Dugan



COMMISSION CREDITS POLICY

(rev. effective January 1, ~~2017~~2020)

1. Introduction

The Board hereby approves the expenditure of commissions and credits (including soft dollars, commission sharing agreements, and cash recapture agreements (together “Commission Credits”) based on this Policy.

For purposes of this Policy, (a) “soft dollars” refers to the use of a credited portion of brokerage commissions incurred for securities or futures trade execution to obtain goods, services, or research through a securities or futures broker or futures commission merchant (each, a “broker”), (b) commission recapture arrangements (“CRAs”) refer to an institutional brokerage discount resulting from a negotiated rebate of commissions; and (c) “commission sharing arrangements” (“CSAs”) are a ~~category~~category of soft dollars that refers to the use of a cash account administered by a TRS custodian or broker which is funded from a portion of its brokerage commissions so that such custodian or broker may obtain, at TRS’ instruction, investment research services from such broker or custodian, an executing broker or other third parties.

Fiduciary prudence requires that TRS employees, when deciding whether to use Commission Credits, must determine in good faith that the commissions that will be incurred are reasonable in light of the value of the goods, services, and research (as applicable) that will be received under the arrangement and that TRS will realize their benefits. The generation of any Commission Credits shall be ~~incidental~~incidental to the brokerage transactions originating such credits.

2. General Principles

2.1. Background. Section 28(e) of the Securities Exchange Act of 1934 (“Section 28(e)”) provides a “safe harbor” for investment advisers who incur higher commissions for discretionary client accounts they manage in order to receive brokerage and research services that may or may not benefit those clients. Since Section 28(e) is a safe harbor, it cannot be violated. Although TRS invests only for its own account and does not manage accounts for others, it must still take care to receive best value and execution when trading securities and futures. Thus, Section 28(e) and SEC releases and publications under Section 28(e) provide useful guidance (see also Section 3.1(b)).

2.2. General Principles. Purchases using Commission Credits must support the investment decision-making function of TRS. Section 28(e) guidance provides examples of “brokerage and research services” that may qualify for the safe harbor. Under Section 28(e)(3), brokerage and research services generally include (see also Section 3.2):

- a. Analysis and advice, either directly or through publications or writings, as to the value of securities, the advisability of investing in or purchasing or selling securities, or the availability of securities or purchasers or sellers of securities;

- b. Analyses and reports concerning issuers, industries, securities, economic factors and trends, portfolio strategy and the performance of accounts; or
- c. Services affecting securities transactions and performing functions pertaining to securities transactions (such as clearance, settlement and custody) or required in connection with securities transactions by rules of the SEC or a self-regulatory organization such as a stock exchange.

3. COMMISSION CREDITS GUIDELINES

3.1. Requirements

- a. Commission Credits acquisitions must be budgeted in separate items in an addendum to the TRS annual budget or in a budget amendment adopted by the Board of Trustees, unless the Board provides otherwise by resolution.
- b. In determining what purchases may be made using Commission Credits, the investment staff shall be mindful of SEC guidance under Section 28(e). Legal Services will assist in analyzing specific questions regarding eligibility under SEC guidance. Departures from the SEC guidance with respect to Commission Credits from securities transactions are permitted only when they are consistent with fiduciary requirements and the best interests of TRS, applicable law, and TRS policies and procedures. In addition, TRS will apply Section 28(e) guidance to futures transactions, with any appropriate adjustments.
- c. Trades may not be created solely to generate Commission Credits and best trade execution must not be sacrificed with respect to Commission Credits. Employees must use their best efforts to ensure that all TRS transactions are executed in such a manner that the total cost or proceeds (including market impact costs and the value of any research to be acquired) in each transaction is the most favorable under the circumstances and benefits TRS. When selecting brokers, employees must take into account trade characteristics, the full range and quality of the broker's services, including but not limited to the broker's execution capabilities, the value of the research, services or goods to be acquired (if any), commission rates, financial responsibility, and the broker's responsiveness to TRS.
- e. Commission Credit arrangements will be documented and approved in accordance with policies, guidelines and procedures approved by the Executive Director or his designee. Commission Credits allocations and disbursements shall be made in accordance with internal guidelines and procedures approved by the Chief Financial Officer (or, in the absence of the CFO, the Executive Director or his designee). The Investment Division shall provide copies of the internal guidelines and procedures for Commission Credits to the Board as part of TRS's annual budget process.
- f. Whenever possible, any acquisition using Commission Credits for which TRS normally employs competitive procedures will be handled using the procedures that will ensure that TRS will obtain the best value, taking all factors into account, including trade execution.
- g. All Commission Credits expenditures shall be documented in written agreements consistent with contracting guidelines.

3.2. Examples of Eligible Research, Goods and Services

Notwithstanding any other provision of this Policy, Commission Credits may be expended for any eligible research, goods, or services under this Policy, including the following:

- a. **Investment Research:** furnished either directly by a broker's investment research department, through subscription-based publications, or by an independent research or advisory firm. Investment research includes advice as to the value of securities or futures; the advisability of investing in, purchasing or selling securities or futures; the availability of securities or futures or purchasers or sellers of securities or futures; and analyses and reports concerning issuers, industries, securities, futures, economic factors and trends, portfolio strategy, and portfolio performance.
- b. **Data Services, Magazines, Journals, Reference Materials:** subscriptions to electronic data feeds, exchanges, data services, databases, magazines (including popular magazines relevant to securities analysis), professional journals and reference materials.
- c. **Seminars/Conferences:** fee-paid attendance at investment seminars or conferences and other fees or study materials for investment staff, provided, that soft dollars may not be used for travel and lodging.
- d. **Portfolio Management Assistance, Professional Services, and Institutional Memberships:** third-party services or institutional memberships that support TRS investment processes and portfolio management by providing TRS with direct advice, assistance or support, including without limitation pricing or valuation services and performance measurement services.
- e. **Information Systems:** communications equipment or access (including high bandwidth services) that supports the investment decision-making process or portfolio management, including trading and investment accounting systems.
- f. Any other items useful in aiding in the investment decision-making process.

3.3. Annual Commission Credits Budget

- a. **Annual Budget:** An annual Commission Credits budget will be developed and presented to the Board for approval with the TRS annual budget. Soft dollar, CRA and CSA uses shall each be stated separately in the annual budget. The CSA and CRA budget line items may aggregate the total estimated amount to be expended for research during the applicable fiscal year.
- b. **Commission Credits Balances:** Credit balances may be used as needed in accordance with the annual Commission Credits budget. Only one CSA and one CRA account may be established to hold Commission Credits and to expend funds for eligible research, goods, or services authorized in accordance with this Policy. No other funds may be commingled with the CSA or CRA funds in the CSA or CRA account, nor may such funds be used for any other purpose.
- c. **Expenditure Internal Accounting & Control:** Commission Credit expenditures will be made under the same general internal controls as operating budget expenditures. ~~A Soft Dollar Approval form, and Purchase and Expenditure Authorization (form TRS-146), signed by the Chief Investment Officer or his designee and the appropriate Managing Director in the Investment Division, will be forwarded to the TRS General Accounting~~

~~Department. The appropriate employee in the General Accounting Department will issue a purchase order that will be the broker's authorization to provide and pay for the goods and services.~~ The broker or account administrator must forward copies of invoices for the goods and services acquired and a monthly statement of account including commissions received, expenditures made, and the commission allocations balance to the Investment Division.

- d. **Reporting and Disclosure:** The custodian or administrator of the CSA or CRA account or an authorized TRS broker shall deliver monthly and annual statements to the Investment Division and the Investment Accounting group indicating the account balance, deposits and disbursements since the last statement, and an aging report of past-due deposits. A report of expenditures will be included with all financial and budget information presented to the Board. The Comprehensive Annual Financial Report will disclose fiscal year Commission Credits expenditures.



COMMISSION CREDITS POLICY

(rev. effective January 1, 2020)

1. Introduction

The Board hereby approves the expenditure of commissions and credits (including soft dollars, commission sharing agreements, and cash recapture agreements (together “Commission Credits”) based on this Policy.

For purposes of this Policy, (a) “soft dollars” refers to the use of a credited portion of brokerage commissions incurred for securities or futures trade execution to obtain goods, services, or research through a securities or futures broker or futures commission merchant (each, a “broker”), (b) commission recapture arrangements (“CRAs”) refer to an institutional brokerage discount resulting from a negotiated rebate of commissions; and (c) “commission sharing arrangements” (“CSAs”) are a category of soft dollars that refers to the use of a cash account administered by a TRS custodian or broker which is funded from a portion of its brokerage commissions so that such custodian or broker may obtain, at TRS’ instruction, investment research services from such broker or custodian, an executing broker or other third parties.

Fiduciary prudence requires that TRS employees, when deciding whether to use Commission Credits, must determine in good faith that the commissions that will be incurred are reasonable in light of the value of the goods, services, and research (as applicable) that will be received under the arrangement and that TRS will realize their benefits. The generation of any Commission Credits shall be incidental to the brokerage transactions originating such credits.

2. General Principles

2.1. Background. Section 28(e) of the Securities Exchange Act of 1934 (“Section 28(e)”) provides a “safe harbor” for investment advisers who incur higher commissions for discretionary client accounts they manage in order to receive brokerage and research services that may or may not benefit those clients. Since Section 28(e) is a safe harbor, it cannot be violated. Although TRS invests only for its own account and does not manage accounts for others, it must still take care to receive best value and execution when trading securities and futures. Thus, Section 28(e) and SEC releases and publications under Section 28(e) provide useful guidance (see also Section 3.1(b)).

2.2. General Principles. Purchases using Commission Credits must support the investment decision-making function of TRS. Section 28(e) guidance provides examples of “brokerage and research services” that may qualify for the safe harbor. Under Section 28(e)(3), brokerage and research services generally include (see also Section 3.2):

- a. Analysis and advice, either directly or through publications or writings, as to the value of securities, the advisability of investing in or purchasing or selling securities, or the availability of securities or purchasers or sellers of securities;

- b. Analyses and reports concerning issuers, industries, securities, economic factors and trends, portfolio strategy and the performance of accounts; or
- c. Services affecting securities transactions and performing functions pertaining to securities transactions (such as clearance, settlement and custody) or required in connection with securities transactions by rules of the SEC or a self-regulatory organization such as a stock exchange.

3. COMMISSION CREDITS GUIDELINES

3.1. Requirements

- a. Commission Credits acquisitions must be budgeted in separate items in an addendum to the TRS annual budget or in a budget amendment adopted by the Board of Trustees, unless the Board provides otherwise by resolution.
- b. In determining what purchases may be made using Commission Credits, the investment staff shall be mindful of SEC guidance under Section 28(e). Legal Services will assist in analyzing specific questions regarding eligibility under SEC guidance. Departures from the SEC guidance with respect to Commission Credits from securities transactions are permitted only when they are consistent with fiduciary requirements and the best interests of TRS, applicable law, and TRS policies and procedures. In addition, TRS will apply Section 28(e) guidance to futures transactions, with any appropriate adjustments.
- c. Trades may not be created solely to generate Commission Credits and best trade execution must not be sacrificed with respect to Commission Credits. Employees must use their best efforts to ensure that all TRS transactions are executed in such a manner that the total cost or proceeds (including market impact costs and the value of any research to be acquired) in each transaction is the most favorable under the circumstances and benefits TRS. When selecting brokers, employees must take into account trade characteristics, the full range and quality of the broker's services, including but not limited to the broker's execution capabilities, the value of the research, services or goods to be acquired (if any), commission rates, financial responsibility, and the broker's responsiveness to TRS.
- e. Commission Credit arrangements will be documented and approved in accordance with policies, guidelines and procedures approved by the Executive Director or his designee. Commission Credits allocations and disbursements shall be made in accordance with internal guidelines and procedures approved by the Chief Financial Officer (or, in the absence of the CFO, the Executive Director or his designee). The Investment Division shall provide copies of the internal guidelines and procedures for Commission Credits to the Board as part of TRS's annual budget process.
- f. Whenever possible, any acquisition using Commission Credits for which TRS normally employs competitive procedures will be handled using the procedures that will ensure that TRS will obtain the best value, taking all factors into account, including trade execution.
- g. All Commission Credits expenditures shall be documented in written agreements consistent with contracting guidelines.

3.2. Examples of Eligible Research, Goods and Services

Notwithstanding any other provision of this Policy, Commission Credits may be expended for any eligible research, goods, or services under this Policy, including the following:

- a. **Investment Research:** furnished either directly by a broker's investment research department, through subscription-based publications, or by an independent research or advisory firm. Investment research includes advice as to the value of securities or futures; the advisability of investing in, purchasing or selling securities or futures; the availability of securities or futures or purchasers or sellers of securities or futures; and analyses and reports concerning issuers, industries, securities, futures, economic factors and trends, portfolio strategy, and portfolio performance.
- b. **Data Services, Magazines, Journals, Reference Materials:** subscriptions to electronic data feeds, exchanges, data services, databases, magazines (including popular magazines relevant to securities analysis), professional journals and reference materials.
- c. **Seminars/Conferences:** fee-paid attendance at investment seminars or conferences and other fees or study materials for investment staff, provided, that soft dollars may not be used for travel and lodging.
- d. **Portfolio Management Assistance, Professional Services, and Institutional Memberships:** third-party services or institutional memberships that support TRS investment processes and portfolio management by providing TRS with direct advice, assistance or support, including without limitation pricing or valuation services and performance measurement services.
- e. **Information Systems:** communications equipment or access (including high bandwidth services) that supports the investment decision-making process or portfolio management, including trading and investment accounting systems.
- f. Any other items useful in aiding in the investment decision-making process.

3.3. Annual Commission Credits Budget

- a. **Annual Budget:** An annual Commission Credits budget will be developed and presented to the Board for approval with the TRS annual budget. Soft dollar, CRA and CSA uses shall each be stated separately in the annual budget. The CSA and CRA budget line items may aggregate the total estimated amount to be expended for research during the applicable fiscal year.
- b. **Commission Credits Balances:** Credit balances may be used as needed in accordance with the annual Commission Credits budget. Only one CSA and one CRA account may be established to hold Commission Credits and to expend funds for eligible research, goods, or services authorized in accordance with this Policy. No other funds may be commingled with the CSA or CRA funds in the CSA or CRA account, nor may such funds be used for any other purpose.
- c. **Expenditure Internal Accounting & Control:** Commission Credit expenditures will be made under the same general internal controls as operating budget expenditures.

The broker or account administrator must forward copies of invoices for the goods and services acquired and a monthly statement of account including commissions received, expenditures made, and the commission allocations balance to the Investment Division.

- d. **Reporting and Disclosure:** The custodian or administrator of the CSA or CRA account or an authorized TRS broker shall deliver monthly and annual statements to the Investment Division and the Investment Accounting group indicating the account balance, deposits and disbursements since the last statement, and an aging report of past-due deposits. A report of expenditures will be included with all financial and budget information presented to the Board. The Comprehensive Annual Financial Report will disclose fiscal year Commission Credits expenditures.

TAB 5



Memorandum

DATE: December 12, 2019

TO: Policy Committee of the Board of Trustees

FROM: Brian K. Guthrie, Executive Director
Carolyn Perez, Communications Director

COPY: Board of Trustees

RE: Proposed Changes to the Trustee External Communications Policy

The Communications Department is recommending minimal changes to the Trustee External Communications Policy. The proposed revisions are designed to better reflect internal practices, to streamline notification processes, and to provide additional clarity to the policy.

The proposed revisions would specify that the frequency of external communications training is for new trustees and on an as needed basis, instead of the current annual requirement. The revisions would also clarify that training content will consist of media protocol training. The determination to review the training requirement arose from a recent audit of the Communications Department conducted by TRS' Internal Audit Department.

The next set of proposed revisions would address how trustees notify TRS of public appearances. It would eliminate the requirement to notify the Communications Department of public appearances; instead, trustees would notify the Board Secretary. Trustees currently communicate with the Board Secretary on a number of items, including attendance or participation at events and travel to events. Shifting the notice requirement to the Board Secretary is designed to streamline communications for trustees. The Board Secretary will, in turn, notify the Communications Department, who will then work with the trustee on his or her external communication consistent with the policy.

Lastly, the proposed revisions to the policy seek to clarify the concept of "Individual Capacity" by defining the term within the policy. The definition is designed to help trustees distinguish between public appearances entered into in their official capacity for TRS versus those entered into in a personal or non-TRS business capacity. The definition derives from text in the policy as well as other TRS policies and guidelines.

Communications worked closely with Legal & Compliance in preparing the proposed revisions to the Trustee Ethics Policy. The Executive Division was provided drafts of the revisions and the opportunity to comment upon them.

Attached please find a red-lined version of proposed changes to the Trustee Ethics Policy (Exhibit A) and a clean copy of the Policy with proposed revisions (Exhibit B).

Board of Trustees External Communications

Purpose

To fulfill TRS's responsibility to provide accurate, consistent information (as authorized under the law) to governmental officials and external contacts, including members of the public.

References

- Tex. Gov't Code §§ 551.001 et seq. [Open Meetings Act]
- Tex. Gov't Code § 552.002 [Definition of Public Information]
- Tex. Gov't Code § 552.0038 [Public Retirement Systems Subject to Law (Confidentiality of Records)]
- Tex. Gov't Code § 821.008 [Purpose of Retirement System]
- Tex. Gov't Code § 825.315 [Prohibited Use of Assets]
- Tex. Gov't Code § 825.507 [Record Confidentiality]
- Tex. Gov't Code § 825.513 [Information for Publication]
- Tex. Ins. Code § 1575.456 [Confidentiality of Records]
- Tex. Ins. Code § 1579.005 [Confidentiality]

Definitions

External Communication: For the purposes of this policy, the term "external communication" refers to communication in any form (whether written, oral, electronic [including but not limited to: text messages, email, instant messaging, use of social media or telephone calls and voice messages], or in other form) that relates to TRS business or operations if the communication involves information that is available to the trustee as a result of his or her position as a member of the TRS Board of Trustees. Such communications are subject to disclosure under the Public Information Act.

For the purposes of this policy, external communication regarding TRS business does not include the following:

- Communication with a TRS employee or contract worker, or a third party retained by TRS, such as an agent, consultant, vendor, financial services provider, broker, or legal advisor;
- Communication related to fulfilling due diligence requirements regarding an existing or prospective investment;
- Communication related to fulfilling fiduciary duties in making a report to appropriate law enforcement authorities or investigative bodies;
- Communication compelled by a subpoena; or
- Communication related to the collaborative exchange of information with professional counterparts in government or public pension funds.

Governmental Official: For the purposes of this policy, a governmental official includes anyone appointed or elected to a position in state or federal government, including employees of governmental agencies, entities, or bodies.

Individual Capacity: For the purposes of this policy, individual capacity refers to those instances in which a trustee is not serving in his or her TRS capacity. For example, these instances may include when the trustee is acting on a personal interest or as an agent of their employer. In those cases, the trustee's connection to TRS would generally not appear in marketing materials regarding the speaking event.

During a public appearance, a trustee may need to clarify the capacity in which he or she is attending. The trustee may need to remind media representatives that the Board speaks only as a body through actions taken in open meetings and that the trustee is providing his or her own opinion (i.e., no individual trustee speaks for or binds the Board or retirement system).

Media Representative: For the purposes of this policy, a media representative includes anyone who identifies him- or herself as an employee of a news outlet, who is known by the trustee to be an employee of a news outlet, or who identifies him- or herself as involved with the preparation of material relating to TRS that could appear as a news release, newspaper, magazine, newsletter, journal, book, report, radio broadcast, television program, Web site, webcast, blog, podcast, message board or other method of mass communication.

Member Association: For the purposes of this policy, the term "member association" includes any educational or professional organization or group that comprises or represents:

- Plan participants (including retirees) or beneficiaries; or
- Reporting entities or employees, trustees, or agents of reporting entities.

Applies To

All TRS trustees

Policy

The members of the TRS Board of Trustees are committed to providing timely, accurate, and responsive information in all external communications. The TRS Board requires its members to act in accordance with this policy, consider their fiduciary duty, use professional judgment, and base external communications on information that TRS has released to the public (or information TRS has provided to trustees for the purpose of external communication). Trustees should not post comments on social media sites regarding official TRS business. Rather, they should contact the Communications department if they believe TRS should post such information. Trustees should discuss any potentially sensitive external communication or situation not addressed elsewhere in this policy with the Executive Director in advance.

Public Appearances

Trustees should coordinate public appearances through the TRS Board Secretary, who will notify the TRS Communications department, if the invitation is due to the individual's position as a TRS trustee or is on topics encompassed by the individual's responsibilities as a trustee. Public appearances include:

- Speaking engagements;
- Appearances at a public event;
- Presentations before a public body or member association; and
- Communication that occurs in any setting that may be reasonably expected to include a media representative.

Further, trustees are responsible for ensuring that their remarks in such settings:

- Comply with applicable law, their ethical obligations and TRS' contractual obligations;
- Are consistent with the established positions of the Board of Trustees; and
- Include only information that TRS has released to the public (or that TRS has provided to trustees for this purpose).

If the appearance or presentation is unscheduled or impromptu, trustees should follow the same protocol for their remarks and inform the TRS Board Secretary, who will notify the TRS Communications, department as soon as is feasible after the appearance.

If a trustee participates as a speaker or panel member in an individual capacity, any factual remarks related to TRS business or operations must be:

- Consistent with the trustee's fiduciary responsibilities; and
- Based on information that TRS has released to the public (or that TRS has provided to trustees for this purpose).

In such circumstances, any opinions the trustee expresses regarding TRS business or operations must be preceded by a statement that they are strictly those of the trustee in his or her individual capacity and do not represent official TRS opinion or policy.

Contact with Governmental Officials

The Executive Director handles contact with:

- Governmental officials;
- State and federal legislative offices; and
- State and federal agencies.

regarding the established positions or actions of the TRS Board of Trustees. When governmental officials request the presence of a member of the Board, the Chair of the Board (or in his or her absence, the Vice-Chair) will normally attend with the Executive Director, unless in the opinion of the Executive Director, another trustee would be better suited to the purpose of the meeting. If a

trustee has been specifically requested by a governmental official, he or she will attend with the Executive Director.

In the event a governmental official contacts a trustee directly about TRS business or operations, the trustee must inform the Executive Director to help ensure consistency and coherency of the information relayed to officials. When trustees provide factual information about TRS business or operations during such contacts, it should be that which TRS has previously released to the public (or that TRS has provided to trustees for this purpose). The Executive Director will communicate information regarding trustee contacts with governmental officials to other members of the board..

Media Relations

The office of the Director of Communications issues or arranges all agency responses to media inquiries, whether received by phone, email (or other electronic communication media) or in person. Trustees should direct all such requests from media representatives to the Director of Communications.

To ensure consistency and coherency of the information relayed to the media, any trustee who agrees to respond to or speak with a media representative regarding TRS business or operations should:

- Coordinate such contact with the TRS Communications department in advance;
- Arrange for a member of the Communications department to participate in the discussion with the media representative, if the Director of Communications believes it is advisable; and
- Base any factual comments on information that TRS has previously released to the public (or that TRS has provided to trustees for this purpose).

When time does not permit trustees to coordinate with the Communications department in advance, trustees must provide information regarding the contact as soon as possible thereafter.

If a trustee speaks to a media representative in an individual capacity, any factual remarks related to TRS activities or operations must be based solely on information that TRS has released to the public (or that TRS has provided to trustees for this purpose).

When trustees express opinions in such circumstances, they must first state that the opinions expressed are strictly those of the trustee in his or her individual capacity and do not represent official TRS opinion or policy.

Written Material

All written materials distributed or provided by TRS must comply with state law, including specific confidentiality requirements under Government Code § 825.507, the State Pension Review Board requirements under Government Code § 825.513, and, as applicable, Public Information Act requirements.

Whenever possible, trustees should use official TRS publications for external communication purposes. If a trustee is preparing written material related to TRS for an external communication,

he or she should submit the material to the TRS Communications department prior to delivery or publication for the purposes of fact-checking and editing. By state law, trustees may not use TRS assets or resources to advocate benefit increases or changes to legislation.

Note: Any record of TRS (including email) may become subject to disclosure to a participant or the public under the Public Information Act.

Trustees are not required to submit written material that expresses only their individual opinion to the Communications department prior to delivery or publication. However, such material must be consistent with the trustee's fiduciary responsibilities, and if any reference is made to TRS business or operations, any factual remarks must be based on information that TRS has released to the public (or that TRS has provided to trustees for this purpose). Trustees should be mindful of the public's difficulty in separating the role of trustee from that of the individual. Trustees should submit courtesy copies of such material to the Executive Director for informational purposes.

Training

The Communications department develops and conducts media protocol training for new trustees and on an as needed basis regarding external communication.

This policy does not constitute a contract nor a guarantee of employment and may be modified, superseded, or eliminated by TRS without notice to the employee. This policy supersedes all previous policies on this subject.

TAB 6



Legal & Compliance

- Proposed Rule Amendments
- Ch. 41, 43
- Carolina de Onís, General Counsel
- Kevin Wakley, Assistant General Counsel
- Clarke Howard, Assistant General Counsel



December 12 & 13, 2019



What are the proposed revisions to the appeals process?

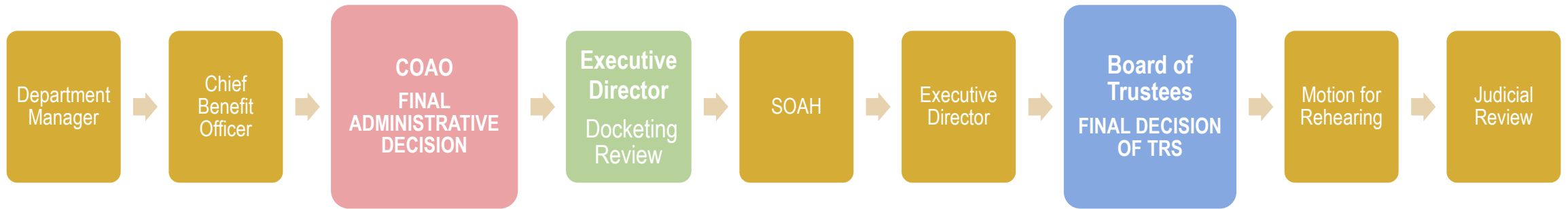
- Authorize the Chief Benefit Officer to issue the final administrative decision of TRS
- Authorize COAO to review petitions for adjudicative hearing for docketing
- Clarify appeals process for members appealing a decision of the Medical Board

Why does TRS need to revise the current appeals process?

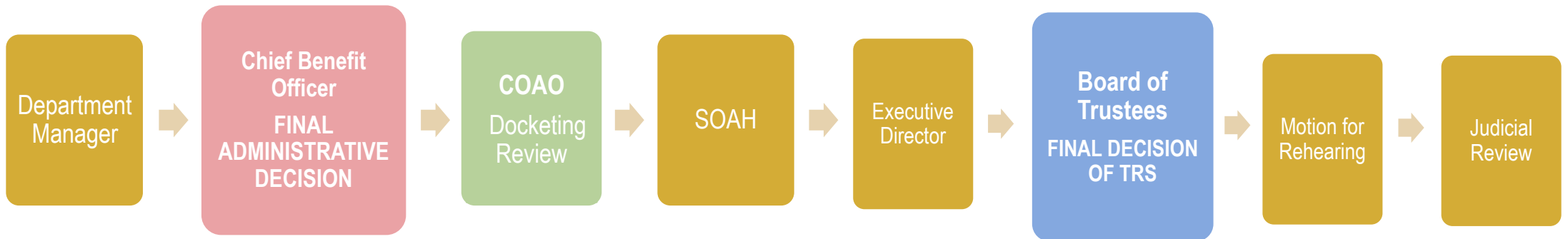
- The proposed revisions simplify and streamline TRS's current benefit appeals process.
- Minor modernizing updates to certain terminology and filing procedures

PROPOSED CHANGES TO BENEFIT APPEAL PROCESS

CURRENT BENEFIT APPEALS PROCESS (9 STEPS)



PROPOSED BENEFIT APPEALS PROCESS (8 STEPS)



IMPLEMENTING HB 2629

Proposed amendments to Rule 43.5

House Bill 2629, enacted by the 86th Texas Legislature, requires TRS to establish deadlines providing a member or retiree at least the same amount of time to file an appeal as TRS has to issue a final administrative decision. The new law applies to administrative appeals that TRS receives after January 1, 2020.

HB 2629 applies to decisions of the Chief Benefits Officer or Medical Board on pension appeals.

Proposed amendments to Rule 41.51

In the spirit of HB 2629, TRS Staff proposes amendments to Rule 41.51 to create a more enrollee-friendly rule by giving Petitioners the same amount of time to file an appeal as the TRS Appeal Committee took in issuing its determination concerning eligibility for TRS-ActiveCare.

Rule 41.51 applies to decisions of the TRS Appeal Committee, acting on behalf of TRS-ActiveCare.

Proposed Amended Rules	Description of Changes
43.5	Substantive change that modifies the deadline for members or retirees to appeal certain decisions in compliance with House Bill 2629, 86 th Leg.
41.51	Substantive change that, in the spirit of House Bill 2629, 86 th Leg, modifies the deadline for enrollees to appeal a decision of the TRS Appeal Committee.

Proposed rule amendments to Chapter 43

Proposed Amended Rules	Description of Changes
Rule 43.1	Clarify process for appealing a final administrative decision regarding the certification of disability; Change final administrative decision from COAO level to Chief Benefit Officer level; and describe requirements of final administrative decision.
Rule 43.5	Revise deadline to appeal a final administrative decision to conform with requirements of HB 2629.
Rule 43.9	Change docketing review of petitions for adjudicative hearing from Executive Director to COAO.
Rules 43.3, 43.6, 43.8, 43.10, and 43.12.	Conforming amendments and minor updates



Legal & Compliance

Memorandum

DATE: December 12, 2019

TO: Policy Committee of the Board of Trustees (“Policy Committee”)

FROM: Carolina de Onís, General Counsel

Through: Brian Guthrie, Executive Director

RE: Proposed Amended Rule: TRS Rule § 41.51 Appeals Relating to Eligibility

Requested Action

TRS Staff asks the Policy Committee to authorize publication in the *Texas Register* of proposed amended TRS Rule 41.15.

Background and Reasons for Proposed Amended Rule

TRS Staff proposes an amendment to TRS Rule 41.51 concerning appeals relating to eligibility in the Texas School Employees Group Health (TRS-ActiveCare). The proposed amendment implements House Bill 2629, which requires the Board, in adopting rules governing the appeal of a final administrative decision of TRS, to ensure that rules establishing deadlines for the filing of an appeal afford a member or retiree at least the same amount of time to file an appeal as TRS has to issue a decision. The new law applies to all appeals that TRS receives after January 1, 2020.

The proposed amendment is needed to ensure that TRS provides at least the same amount of time to appeal a final administrative decision as TRS has to issue a decision. Proposed Rule 41.51 provides that an appeal to the executive Director of the Committee relating to eligibility must be received by TRS by the later of: (i) 30 days after the date the initial written decision by the Committee is mailed; or (2) a number of days after the decision of the Committee is mailed equal to the number of days it took the Committee to make its decision. The proposed amendment additionally provides that the number of days it took the Committee to issue its decision is calculated from the date TRS received the Petitioner’s appeal to the date TRS mailed the Committee’s decision.

A redlined draft of the proposed new rule is attached as Attachment 1 and a clean version is attached as Attachment 2.

Conclusion

If the Policy Committee authorizes publication, the proposed amended rule will be published in the Texas Register for public comment for at least 30 days before presentation to the Policy Committee and Board of Trustees for final adoption.



Legal & Compliance

Memorandum

DATE: December 12, 2019

TO: Policy Committee of the Board of Trustees (“Policy Committee”)

FROM: Carolina de Onís, General Counsel

THROUGH: Brian Guthrie, Executive Director

RE: Proposed Amended Rules: TRS Rules §§ 43.1, 43.3, 43.5, 43.6, 43.8, 43.9, 43.10, and 43.12.

Requested Action

TRS Staff asks the Policy Committee to authorize publication in the *Texas Register* of the following proposed amended TRS Rules:

- § 43.1 (relating to Administrative Review of Individual Requests)
- § 43.3 (relating to Definitions)
- § 43.5 (relating to Request for Adjudicative Hearing)
- § 43.6 (relating to Filing of Documents)
- § 43.8 (relating to Extensions)
- § 43.9 (relating to Docketing of Appeal for Adjudicative Hearing and Dismissal for Failure to Obtain Setting)
- § 43.10 (relating to Authority to Grant Relief)
- § 43.12 (relating to Forms of Petitions and Other Pleadings)

Background and Reasons for Proposed Amended Rules

Staff proposes amendments to Rule 43.1 and 43.9 to streamline and simplify the benefit administrative appeals process, including authorizing the Chief Benefit Officer to make the final administrative decision of TRS, authorizing the Chief Operations and Administration Officer (“COAO”) to review petitions for adjudicative hearing for docketing, and clarifying the

administrative appeal process for members applying for disability retirement. In addition, the proposed amended Rule 43.5 implements House Bill 2629, enacted by the 86th Texas Legislature, which requires TRS to modify the deadline for members to appeal a final administrative decision of TRS. Lastly, TRS makes non-substantive conforming changes to the rule text in 43.3, 43.6, 43.8, 43.10, and 43.12.

Proposed amended rules 43.1 and 43.9 make substantive changes to the benefit administrative appeal process. The proposed amendments to Rule 43.1 eliminate one level of review by providing for the chief benefit officer to make the final administrative decision followed by the COAO determining whether the appeal should be docketed at SOAH. Proposed amended Rule 43.1 also clarifies the disability appeal process by permitting a member to appeal a denial of a request for reconsideration by the Medical Board to the COAO for a docketing decision. The proposed amendments to 43.9 pertain to the COAO's process for making docketing decisions.

The proposed amendment to Rule 43.5 implements House Bill 2629, which requires the Board, in adopting rules governing the appeal of a final administrative decision of TRS, to ensure that deadlines for the filing of an appeal afford a member or retiree at least the same amount of time to file an appeal as TRS has to issue a decision. The new law applies to all appeals that TRS receives after January 1, 2020. The proposed amendment is needed to comply with the recently enacted law and ensures that TRS provides at least the same amount of time to appeal a final administrative decision as TRS has to issue a decision.

The changes to Rules 43.3, 43.6, 43.8, 43.10 and 43.12 make minor modernizing updates to certain terminology and filing procedures as well as conforming text to the amendments above.

Redlined drafts of the proposed new rules are attached as Attachment 1 and clean versions are attached as Attachment 2.

Conclusion

If the Policy Committee authorizes publication, the proposed amended rules will be published in the *Texas Register* for public comment for at least 30 days before presentation to the Policy Committee and Board of Trustees for final adoption.

ATTACHMENT 1

TITLE 34
PART 3
CHAPTER 43
RULE §43.1

PUBLIC FINANCE
TEACHER RETIREMENT SYSTEM OF TEXAS
CONTESTED CASES
Administrative Review of Individual Requests

(a) Organization. ~~TRS [The Teacher Retirement System of Texas (TRS)]~~ is divided into administrative divisions, which are further divided into departments, for the efficient implementation of its duties. Any person who desires any action from TRS must consult with the proper department within TRS and comply with all proper requirements for completing forms and providing information to that department.

(b) Final administrative decision by ~~chief benefit officer [deputy director]~~. In the event that a person is adversely affected by a determination, decision, or action of department personnel, the person may ~~appeal the determination, decision, or action [make a request]~~ to the appropriate manager within the department, ~~and~~ then to the chief ~~benefit~~ officer ~~of TRS [of the division, and then to the deputy director]~~. The ~~chief benefit officer [deputy director]~~ shall mail a final written administrative decision, which shall include:

~~(1) The chief benefit officer's determination regarding the person's appeal and reasons for denying the appeal, if applicable; and~~

~~(2) a statement that if the person is adversely affected by the decision, the person may request an adjudicative hearing to appeal the decision [to the executive director] and the deadline for doing so.~~

~~(c) A person adversely affected by a decision of the chief benefit officer [deputy director] may request an adjudicative hearing to appeal the decision of the chief benefit officer [to the executive director of TRS] as provided in §43.5 of this chapter (relating to Request for Adjudicative Hearing). The deputy [executive] director shall determine whether the appeal should be docketed and set for a contested case hearing pursuant to §43.9 of this chapter (relating to Docketing of Appeal for Adjudicative Hearing and Dismissal for Failure to Obtain Setting).~~

~~(d) [(e)] Final administrative decision by Medical Board. In the event that the Medical Board does not certify disability of a member under Government Code, §824.303(b), or the Medical Board certifies that a disability retiree is no longer mentally or physically incapacitated for the performance of duty under Government Code, §824.307(a), the member or retiree may request reconsideration and submit additional information to the Medical Board. The Medical Board shall consider a request for reconsideration and additional information and make a determination on the disability of the member or retiree. If a request for reconsideration has been denied, a member or retiree may appeal the decision [an adverse final administrative decision of the Medical Board to the TRS Board of Trustees] by requesting an adjudicative hearing as provided in §43.5 of this chapter (relating to Request for Adjudicative Hearing). [A final administrative decision of the Medical Board shall include a statement of whether the member or retiree may request additional reconsideration or may appeal the decision to the board, as well as the deadline for doing so.] The deputy [executive] director shall [is authorized to] determine~~

whether the [an] appeal [of a Medical Board decision] should be docketed and set for a contested case hearing pursuant to §43.9 of this chapter (relating to Docketing of Appeal for Adjudicative Hearing and Dismissal for Failure to Obtain Setting) [and to make other procedural decisions relating to such an appeal].

(e) [(d)] Applicability. The procedures of this chapter apply only to administrative decisions, appeals, and adjudicative hearings relating to the TRS pension plan, unless rules relating to other programs specifically adopt by reference the provisions of this chapter.

TITLE 34
PART 3
CHAPTER 43
RULE §43.3

PUBLIC FINANCE
TEACHER RETIREMENT SYSTEM OF TEXAS
CONTESTED CASES
Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

~~(1) Adjudicative hearing--An evidentiary hearing in a contested case, as provided by Government Code, §2001.051 and paragraph (5) of this section.~~

(1[2]) Administrative law judge--An individual appointed to conduct the adjudicative hearing in a contested case. The deputy director ~~[Executive Director]~~ may refer an appeal to be heard by an administrative law judge employed by the State Office of Administrative Hearings or may employ, select, or contract for the services of another administrative law judge or hearing examiner to conduct a hearing.

(2[3]) Appeal--A formal request to the executive director or board, as applicable under this chapter, to reverse or modify a final administrative decision by the chief benefit officer ~~[deputy director]~~ or the Medical Board on a matter over which TRS has jurisdiction and authority to grant relief and the relief sought does not conflict with the terms of the pension plan.

(3[4]) Board--The Board of Trustees of ~~[the Teacher Retirement System of Texas (]TRS[)]~~.

(4) Chief Benefit Officer – the Chief Benefit Officer of TRS or person acting in that position.

(5) Contested case--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by TRS after an opportunity for adjudicative hearing on a matter over which TRS has jurisdiction and authority to grant relief and the relief sought does not conflict with the terms of the pension plan.

(6) Deputy Director – the Deputy Director of TRS or person acting in that position.

(7[6]) Executive director--The executive director of TRS or person acting in that position; when the executive director determines that a need exists, the executive director at his or her discretion may designate a person to accomplish the duties assigned in this chapter to the executive director.

(8[7]) Final administrative decision--An action, determination, or decision by the chief benefit officer ~~[deputy director]~~ or the Medical Board, as applicable, based on review of a person's request on an administrative basis (i.e., without an adjudicative hearing).

(9[8]) Final decision of TRS--A decision that may not be appealed further within TRS, either because of exhaustion of all opportunities for appeal within TRS or because of a failure to appeal the decision further within TRS in the manner provided for in this chapter.

~~[(9) Hearing--The trial-like portion of the contested case proceeding that is handled by an administrative law judge after the Executive Director of TRS docket an appeal.]~~

(10) Medical board--The medical board appointed by the TRS board of trustees under Government Code, §825.204.

(11) Member--A person who is a member, retiree, or beneficiary of TRS.

(12) Order--The whole or a part of the final disposition of an appeal, whether affirmative, negative, injunctive, or declaratory in form, of the executive director, deputy director, or the board in a contested case.

(13) Party--Each person named or admitted in a contested case.

(14) Person--Any natural person or other legal entity.

(15) Pleading--A written document that is submitted by a party, by TRS staff, or by a person seeking to participate in a case as a party and that requests procedural or substantive relief, makes claims or allegations, presents legal arguments, or otherwise addresses matters involved in a contested case.

(16) SOAH--The State Office of Administrative Hearings.

(17) State Office of Administrative Hearings--The state agency established by Chapter 2003, Government Code, which may serve as the forum for the conduct of an adjudicative hearing upon referral of an appeal by TRS.

(18) Third party respondent or petitioner--A person joined as an additional party to a proceeding; a party shall be designated as either a third party respondent or third party petitioner based on whether the person opposes the action requested in the petition or supports it or whether the person's interests are aligned with petitioner or respondent.

(19) TRS--The Teacher Retirement System of Texas.

(20) Trustee--One of the members of the board.

(21) With prejudice--Barring a subsequent contested case on the same claim, allegation, or cause of action.

TITLE 34	PUBLIC FINANCE
PART 3	TEACHER RETIREMENT SYSTEM OF TEXAS
CHAPTER 43	CONTESTED CASES
RULE §43.5	Request for Adjudicative Hearing

(a) On a matter over which TRS has jurisdiction and authority to grant relief that does not conflict with the terms of the pension plan, a person [~~party~~] may appeal a final administrative decision by filing a petition for adjudicative hearing with the deputy [~~executive~~] director [~~no later than 45 days after the date the final administrative decision is mailed~~]. The petition shall conform to the requirements of §43.12 of this chapter (relating to Form of Petitions and Other Pleadings).

(b) A petition for adjudicative hearing must be filed by the later of:

(1) 45 days after the date the final administrative decision is mailed; or

(2) a number of days after the final administrative decision is mailed equal to the number of days it took TRS to issue the final administrative decision.

(c) The number of days it took TRS to issue the final administrative decision is calculated from the date TRS received the person's appeal of the department manager's decision to the date TRS mailed the final administrative decision.

TITLE 34	PUBLIC FINANCE
PART 3	TEACHER RETIREMENT SYSTEM OF TEXAS
CHAPTER 43	CONTESTED CASES
RULE §43.6	Filing of Documents

All documents relating to any appeal of a final administrative decision [~~pending or to be instituted before the executive director or the board~~] shall be filed with the deputy [~~executive~~] director at TRS, 1000 Red River Street, Austin, Texas 78701-2698. A document may be filed with TRS by hand-delivery, courier-receipted delivery, facsimile transmission, or regular, certified, or registered mail. A document is deemed filed when mailed if it is received by TRS within a timely manner under Texas Rule of Civil Procedure 5 and the sender provides adequate proof of the mailing date. If the deputy [~~executive~~] director has docketed an appeal and referred it for an adjudicative hearing, documents shall be filed with the administrative law judge and a copy provided to the TRS docket clerk during the time the matter is pending before the administrative law judge.

TITLE 34	PUBLIC FINANCE
PART 3	TEACHER RETIREMENT SYSTEM OF TEXAS
CHAPTER 43	CONTESTED CASES
RULE §43.8	Extensions

Unless otherwise provided by statute, the time for filing pleadings or other documents may be extended, upon the filing of a motion, prior to the expiration of the applicable period of time, showing that there is good cause for such extension of time and that the need for the extension is not caused by the neglect, indifference, or lack of diligence of the party making the motion. A copy of any such motion shall be served upon all other parties of record to the proceeding contemporaneously with its filing. In the case of filings that initiate a proceeding or that are made before an appeal has been referred for an adjudicative hearing, the deputy [executive] director will determine whether good cause exists and whether an extension should be granted. In the case of filings made in a proceeding after TRS has referred the appeal for an adjudicative hearing, rules governing hearings before SOAH will control so long as the matter is before SOAH. If a matter is referred for an adjudicative hearing to a hearing official not affiliated with SOAH, then the rules of this chapter shall apply to the conduct of the hearing while pending before the hearing official. For matters returned by an administrative law judge or hearing examiner to TRS, either through dismissal from the adjudicative hearing docket or through issuance of a proposal for decision, the executive director may determine whether good cause exists and whether an extension should be granted. The executive director is authorized to rule on motions for extensions on matters directed to the Board if no Board meeting is scheduled before the expiration of the applicable period of time.

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CHAPTER 43	CONTESTED CASES
RULE §43.9	Docketing of Appeal for Adjudicative Hearing and Dismissal for Failure to Obtain Setting

(a) On an appeal over which TRS has jurisdiction, authority to grant relief, in which the relief requested is consistent with the terms of the plan, and that otherwise complies with this chapter, the deputy [executive] director shall assign the petition a TRS docket number, provide all parties notice of the docket number, and refer the matter for an adjudicative hearing before the State Office of Administrative Hearings or otherwise as authorized by law.

(b) The deputy [executive] director may decline to docket an appeal over which TRS has no jurisdiction or no authority to grant relief, that seeks relief that is inconsistent with the terms of the pension plan, that is not timely filed, or that otherwise fails to comply with this chapter. ~~[The executive director may also decline to docket a matter for which a contested case hearing is not required by law or for which other available procedures are more appropriate.]~~ The deputy [executive] director's decision declining to docket an appeal is the final decision of TRS when the circumstances described in §2001.144, Government Code, are met. A person may not appeal such decision to the executive director or the board.

(c) Prior to docketing an appeal, the deputy [executive] director ~~[or his designee]~~ may review the request [petition] filed with TRS to determine the sufficiency. If the petition does not materially comply with this chapter, the deputy [executive] director shall return the petition to the person who filed it, along with reasons for the return. The person shall be given a reasonable time (not to exceed 90 days) to file a corrected petition. If the petition is not corrected to substantially comply with this chapter within the time given, the deputy [executive] director may decline to docket the appeal.

(d) If a contested case is referred to the SOAH [State Office of Administrative Hearings (SOAH)] for adjudicative hearing, then during the period of time the case is before SOAH, the adjudicative hearing rules for SOAH (1 TAC Chapter 155) shall apply unless inconsistent with applicable statutes or constitutional provisions. If a matter is referred for an adjudicative hearing to a hearing official not affiliated with

SOAH, then the rules of this chapter shall apply to the conduct of the hearing while pending before the hearing official.

(e) A party that files an appeal and causes a matter to be docketed and referred to for adjudicative hearing shall have the responsibility of prosecuting the appeal within a reasonable time period. TRS may seek dismissal with prejudice of an appeal if a responsible party fails to obtain a setting for a hearing on the merits within two years of referral of the matter for an adjudicative hearing.

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RULE §43.10	Authority to Grant Relief

At any time before an appeal is referred for adjudicative hearing, the deputy [executive] director or, in the matter of certification for disability retirement, the Medical Board may grant the relief sought by the petitioner and dismiss the appeal, provided that the interest of other individual parties are not adversely affected and the relief does not conflict with the terms of the pension plan. If a matter has been referred to SOAH, the SOAH administrative law judge may dismiss the case from the SOAH docket in accordance with SOAH rules. If a matter is referred for an adjudicative hearing to a hearing official not affiliated with SOAH, then the rules of this chapter shall apply to the dismissal of the case.

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CHAPTER 43
RULE §43.12

PUBLIC FINANCE
TEACHER RETIREMENT SYSTEM OF TEXAS
CONTESTED CASES
Form of Petitions and Other Pleadings

(a) Petitions, briefs, and other pleadings shall be typed [~~typewritten~~] or printed on paper not to exceed 8 1/2 inches by 11 inches with an inside margin of at least one inch width. Annexed exhibits shall be folded to the same size. Only one side of the paper shall be used. Copies [~~Reproductions~~] may be used, provided they [~~all copies~~] are clear and permanently legible.

(b) The pleadings shall state their object and shall contain a concise statement of the supporting facts. The petition appealing a final administrative decision and requesting an adjudicative hearing shall specify the action desired from TRS and shall be filed with TRS, directed to the attention of the deputy [~~executive~~] director.

(c) The original of any pleading filed with TRS shall be signed [~~in permanent ink~~] by the party filing it or by his authorized representative. Pleadings shall contain the address, [~~and~~] telephone number, and email address of the party filing the documents or the name, business address, telephone number, email address, and fax [~~faesimile~~] number [~~, and business address~~] of counsel.

(d) The original petition for an adjudicative hearing should also include the name, address, [~~and~~] telephone number, and email address of petitioner and the name, address, telephone number, email address, and, if known, the tax number of any member whose interest or whose beneficiary's interest may be involved in the case. In lieu of the tax number, the petition may include other information sufficient to identify the member or beneficiary whose interest may be involved in the case. The petition should further identify all persons who may have a material interest in the outcome of the case, the basis for that interest, and such person's last known address, [~~and~~] telephone number, and email address. If such information is not provided on the original petition, the executive director, board of trustees, or administrative law judge may require submission of such information before proceeding with the hearing.

(e) Pleadings should be styled: "Petition of (Name of Petitioner)." If a TRS, SOAH, or other adjudicative hearing docket number has been assigned, pleadings shall contain the docket number.

(f) All pleadings shall contain the following:

- (1) the name of the party filing the pleading;
- (2) a concise statement of the facts relied upon by the party;
- (3) a request stating the type of relief, action, or order desired by the party;
- (4) a certificate of service conforming to subsection (g) of this section; and

(5) any other matter required by statute.

(g) Written pleadings [~~other than the original petition~~] may be served by hand-delivery, courier-receipted delivery, fax [~~facsimile transmission~~], or regular, certified, or registered mail upon all other known parties of record, and a certification of such service should be submitted with the original copy of the pleading filed with TRS. If a party is represented by an attorney, service may be made upon a party by serving the attorney of record. The following form of certification will be sufficient: "I hereby certify that I have this _____ day of _____, 20___, served copies of the foregoing pleading upon all other parties to this proceeding, by (state the manner of service). Signature."

(h) A party may object to the form or sufficiency of a pleading by filing the objections in writing at least 15 days before the hearing date. If the objections are sustained, the administrative law judge shall allow a reasonable time for amendment.

ATTACHMENT 2

TITLE 34
PART 3
CHAPTER 43
RULE §43.1

PUBLIC FINANCE
TEACHER RETIREMENT SYSTEM OF TEXAS
CONTESTED CASES
Administrative Review of Individual Requests

(a) Organization. TRS is divided into administrative divisions, which are further divided into departments, for the efficient implementation of its duties. Any person who desires any action from TRS must consult with the proper department within TRS and comply with all proper requirements for completing forms and providing information to that department.

(b) Final administrative decision by chief benefit officer. In the event that a person is adversely affected by a determination, decision, or action of department personnel, the person may appeal the determination, decision, or action to the appropriate manager within the department, and then to the chief benefit officer of TRS. The chief benefit officer shall mail a final written administrative decision, which shall include:

(1) The chief benefit officer's determination regarding the person's appeal and reasons for denying the appeal, if applicable; and

(2) a statement that if the person is adversely affected by the decision, the person may request an adjudicative hearing to appeal the decision and the deadline for doing so.

(c) A person adversely affected by a decision of the chief benefit officer may request an adjudicative hearing to appeal the decision of the chief benefit officer as provided in §43.5 of this chapter (relating to Request for Adjudicative Hearing). The deputy director shall determine whether the appeal should be docketed and set for a contested case hearing pursuant to §43.9 of this chapter (relating to Docketing of Appeal for Adjudicative Hearing and Dismissal for Failure to Obtain Setting).

(d) Final administrative decision by Medical Board. In the event that the Medical Board does not certify disability of a member under Government Code, §824.303(b), or the Medical Board certifies that a disability retiree is no longer mentally or physically incapacitated for the performance of duty under Government Code, §824.307(a), the member or retiree may request reconsideration and submit additional information to the Medical Board. The Medical Board shall consider a request for reconsideration and additional information and make a determination on the disability of the member or retiree. If a request for reconsideration has been denied, a member or retiree may appeal the decision by requesting an adjudicative hearing as provided in §43.5 of this chapter (relating to Request for Adjudicative Hearing). The deputy director shall determine whether the appeal should be docketed and set for a contested case hearing pursuant to §43.9 of this chapter (relating to Docketing of Appeal for Adjudicative Hearing and Dismissal for Failure to Obtain Setting).

(e) Applicability. The procedures of this chapter apply only to administrative decisions, appeals, and adjudicative hearings relating to the TRS pension plan, unless rules relating to other programs specifically adopt by reference the provisions of this chapter.

TITLE 34
PART 3
CHAPTER 43
RULE §43.3

PUBLIC FINANCE
TEACHER RETIREMENT SYSTEM OF TEXAS
CONTESTED CASES
Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Administrative law judge--An individual appointed to conduct the adjudicative hearing in a contested case. The deputy director may refer an appeal to be heard by an administrative law judge employed by the State Office of Administrative Hearings or may employ, select, or contract for the services of another administrative law judge or hearing examiner to conduct a hearing.

(2) Appeal--A formal request to the executive director or board, as applicable under this chapter, to reverse or modify a final administrative decision by the chief benefit officer or the Medical Board on a matter over which TRS has jurisdiction and authority to grant relief and the relief sought does not conflict with the terms of the pension plan.

(3) Board--The Board of Trustees of TRS.

(4) Chief Benefit Officer – the Chief Benefit Officer of TRS or person acting in that position.

(5) Contested case--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by TRS after an opportunity for adjudicative hearing on a matter over which TRS has jurisdiction and authority to grant relief and the relief sought does not conflict with the terms of the pension plan.

(6) Deputy Director – the Deputy Director of TRS or person acting in that position.

(7) Executive director--The executive director of TRS or person acting in that position; when the executive director determines that a need exists, the executive director at his or her discretion may designate a person to accomplish the duties assigned in this chapter to the executive director.

(8) Final administrative decision--An action, determination, or decision by the chief benefit officer or the Medical Board, as applicable, based on review of a person's request on an administrative basis (i.e., without an adjudicative hearing).

(9) Final decision of TRS--A decision that may not be appealed further within TRS, either because of exhaustion of all opportunities for appeal within TRS or because of a failure to appeal the decision further within TRS in the manner provided for in this chapter.

(10) Medical board--The medical board appointed by the TRS board of trustees under Government Code, §825.204.

(11) Member--A person who is a member, retiree, or beneficiary of TRS.

(12) Order--The whole or a part of the final disposition of an appeal, whether affirmative, negative, injunctive, or declaratory in form, of the executive director, deputy director, or the board in a contested case.

(13) Party--Each person named or admitted in a contested case.

(14) Person--Any natural person or other legal entity.

(15) Pleading--A written document that is submitted by a party, by TRS staff, or by a person seeking to participate in a case as a party and that requests procedural or substantive relief, makes claims or allegations, presents legal arguments, or otherwise addresses matters involved in a contested case.

(16) SOAH--The State Office of Administrative Hearings.

(17) State Office of Administrative Hearings--The state agency established by Chapter 2003, Government Code, which may serve as the forum for the conduct of an adjudicative hearing upon referral of an appeal by TRS.

(18) Third party respondent or petitioner--A person joined as an additional party to a proceeding; a party shall be designated as either a third party respondent or third party petitioner based on whether the person opposes the action requested in the petition or supports it or whether the person's interests are aligned with petitioner or respondent.

(19) TRS--The Teacher Retirement System of Texas.

(20) Trustee--One of the members of the board.

(21) With prejudice--Barring a subsequent contested case on the same claim, allegation, or cause of action.

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RULE §43.5	Request for Adjudicative Hearing

(a) On a matter over which TRS has jurisdiction and authority to grant relief that does not conflict with the terms of the pension plan, a person may appeal a final administrative decision by filing a petition for adjudicative hearing with the deputy director. The petition shall conform to the requirements of §43.12 of this chapter (relating to Form of Petitions and Other Pleadings).

(b) A petition for adjudicative hearing must be filed by the later of:

(1) 45 days after the date the final administrative decision is mailed; or

(2) a number of days after the final administrative decision is mailed equal to the number of days it took TRS to issue the final administrative decision.

(c) The number of days it took TRS to issue the final administrative decision is calculated from the date TRS received the person's appeal of the department manager's decision to the date TRS mailed the final administrative decision.

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PART 3

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RULE §43.6

PUBLIC FINANCE

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Filing of Documents

All documents relating to any appeal of a final administrative decision shall be filed with the deputy director at TRS, 1000 Red River Street, Austin, Texas 78701-2698. A document may be filed with TRS by hand-delivery, courier-receipted delivery, facsimile transmission, or regular, certified, or registered mail. A document is deemed filed when mailed if it is received by TRS within a timely manner under Texas Rule of Civil Procedure 5 and the sender provides adequate proof of the mailing date. If the deputy director has docketed an appeal and referred it for an adjudicative hearing, documents shall be filed with the administrative law judge and a copy provided to the TRS docket clerk during the time the matter is pending before the administrative law judge.

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PART 3	TEACHER RETIREMENT SYSTEM OF TEXAS
CHAPTER 43	CONTESTED CASES
RULE §43.8	Extensions

Unless otherwise provided by statute, the time for filing pleadings or other documents may be extended, upon the filing of a motion, prior to the expiration of the applicable period of time, showing that there is good cause for such extension of time and that the need for the extension is not caused by the neglect, indifference, or lack of diligence of the party making the motion. A copy of any such motion shall be served upon all other parties of record to the proceeding contemporaneously with its filing. In the case of filings that initiate a proceeding or that are made before an appeal has been referred for an adjudicative hearing, the deputy director will determine whether good cause exists and whether an extension should be granted. In the case of filings made in a proceeding after TRS has referred the appeal for an adjudicative hearing, rules governing hearings before SOAH will control so long as the matter is before SOAH. If a matter is referred for an adjudicative hearing to a hearing official not affiliated with SOAH, then the rules of this chapter shall apply to the conduct of the hearing while pending before the hearing official. For matters returned by an administrative law judge or hearing examiner to TRS, either through dismissal from the adjudicative hearing docket or through issuance of a proposal for decision, the executive director may determine whether good cause exists and whether an extension should be granted. The executive director is authorized to rule on motions for extensions on matters directed to the Board if no Board meeting is scheduled before the expiration of the applicable period of time.

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CHAPTER 43 CONTESTED CASES
RULE §43.9 Docketing of Appeal for Adjudicative Hearing and Dismissal for
Failure to Obtain Setting

(a) On an appeal over which TRS has jurisdiction, authority to grant relief, in which the relief requested is consistent with the terms of the plan, and that otherwise complies with this chapter, the deputy director shall assign the petition a TRS docket number, provide all parties notice of the docket number, and refer the matter for an adjudicative hearing before the State Office of Administrative Hearings or otherwise as authorized by law.

(b) The deputy director may decline to docket an appeal over which TRS has no jurisdiction or no authority to grant relief, that seeks relief that is inconsistent with the terms of the pension plan, that is not timely filed, or that otherwise fails to comply with this chapter. The deputy director's decision declining to docket an appeal is the final decision of TRS when the circumstances described in §2001.144, Government Code, are met. A person may not appeal such decision to the executive director or the board.

(c) Prior to docketing an appeal, the deputy director may review the request filed with TRS to determine the sufficiency. If the petition does not materially comply with this chapter, the deputy director shall return the petition to the person who filed it, along with reasons for the return. The person shall be given a reasonable time (not to exceed 90 days) to file a corrected petition. If the petition is not corrected to substantially comply with this chapter within the time given, the deputy director may decline to docket the appeal.

(d) If a contested case is referred to the SOAH for adjudicative hearing, then during the period of time the case is before SOAH, the adjudicative hearing rules for SOAH (1 TAC Chapter 155) shall apply unless inconsistent with applicable statutes or constitutional provisions. If a matter is referred for an adjudicative hearing to a hearing official not affiliated with SOAH, then the rules of this chapter shall apply to the conduct of the hearing while pending before the hearing official.

(e) A party that files an appeal and causes a matter to be docketed and referred to for adjudicative hearing shall have the responsibility of prosecuting the appeal within a reasonable time period. TRS may seek dismissal with prejudice of an appeal if a

responsible party fails to obtain a setting for a hearing on the merits within two years of referral of the matter for an adjudicative hearing.

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RULE §43.10	Authority to Grant Relief

At any time before an appeal is referred for adjudicative hearing, the deputy director or, in the matter of certification for disability retirement, the Medical Board may grant the relief sought by the petitioner and dismiss the appeal, provided that the interest of other individual parties are not adversely affected and the relief does not conflict with the terms of the pension plan. If a matter has been referred to SOAH, the SOAH administrative law judge may dismiss the case from the SOAH docket in accordance with SOAH rules. If a matter is referred for an adjudicative hearing to a hearing official not affiliated with SOAH, then the rules of this chapter shall apply to the dismissal of the case.

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PUBLIC FINANCE
TEACHER RETIREMENT SYSTEM OF TEXAS
CONTESTED CASES
Form of Petitions and Other Pleadings

(a) Petitions, briefs, and other pleadings shall be typed or printed on paper not to exceed 8 1/2 inches by 11 inches with an inside margin of at least one inch width. Annexed exhibits shall be folded to the same size. Only one side of the paper shall be used. Copies may be used, provided they are clear and permanently legible.

(b) The pleadings shall state their object and shall contain a concise statement of the supporting facts. The petition appealing a final administrative decision and requesting an adjudicative hearing shall specify the action desired from TRS and shall be filed with TRS, directed to the attention of the deputy director.

(c) The original of any pleading filed with TRS shall be signed by the party filing it or by his authorized representative. Pleadings shall contain the address, telephone number, and email address of the party filing the documents or the name, business address, telephone number, email address, and fax number of counsel.

(d) The original petition for an adjudicative hearing should also include the name, address, telephone number, and email address of petitioner and the name, address, telephone number, email address, and, if known, the tax number of any member whose interest or whose beneficiary's interest may be involved in the case. In lieu of the tax number, the petition may include other information sufficient to identify the member or beneficiary whose interest may be involved in the case. The petition should further identify all persons who may have a material interest in the outcome of the case, the basis for that interest, and such person's last known address, telephone number, and email address. If such information is not provided on the original petition, the executive director, board of trustees, or administrative law judge may require submission of such information before proceeding with the hearing.

(e) Pleadings should be styled: "Petition of (Name of Petitioner)." If a TRS, SOAH, or other adjudicative hearing docket number has been assigned, pleadings shall contain the docket number.

(f) All pleadings shall contain the following:

- (1) the name of the party filing the pleading;
- (2) a concise statement of the facts relied upon by the party;
- (3) a request stating the type of relief, action, or order desired by the party;
- (4) a certificate of service conforming to subsection (g) of this section; and

(5) any other matter required by statute.

(g) Written pleadings may be served by hand-delivery, courier-receipted delivery, fax, or regular, certified, or registered mail upon all other known parties of record, and a certification of such service should be submitted with the original copy of the pleading filed with TRS. If a party is represented by an attorney, service may be made upon a party by serving the attorney of record. The following form of certification will be sufficient: "I hereby certify that I have this _____ day of _____, 20__, served copies of the foregoing pleading upon all other parties to this proceeding, by (state the manner of service). Signature."

(h) A party may object to the form or sufficiency of a pleading by filing the objections in writing at least 15 days before the hearing date. If the objections are sustained, the administrative law judge shall allow a reasonable time for amendment.