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# update

TEACHER RETIREMENT SYSTEM OF TEXAS →

## – Legislative update –

### Recently passed legislation:

#### TRS-Care changes take effect in the coming months

In order to sustain TRS-Care for current and future retirees, the 85<sup>th</sup> Texas Legislature recently passed legislation that changed the program's benefits structure and provided additional funding to further support the program. On June 2, 2017, the TRS Board of Trustees approved significant structural changes to TRS-Care. These changes reflect the recently passed legislation and will take effect Jan. 1, 2018.

The Texas Legislature is also considering additional funding to TRS-Care during the current special legislative session. Plan information on our website is accurate as of this time, but could change depending on what happens during the 30-day special session. TRS is monitoring the session closely and will communicate any changes.

You may have employees who plan to retire in the near future. Make sure that they stay up-to-date on changes to TRS-Care by asking them to visit the Health Care Benefits page of the TRS website, and asking them to subscribe to our new health care newsletter, *The Pulse*, by logging into *MyTRS* and accessing Email Subscriptions.

#### Senate Bill 1954 – ORP enrollment time period

A person who is eligible to participate in the Optional Retirement Program (ORP) must elect to participate before the 91<sup>st</sup> day after becoming eligible to participate. However, additional provisions have been passed by the 85<sup>th</sup> Texas Legislature in the event that the employer fails to inform the employee of his or her eligibility to participate in ORP on the date the person becomes eligible.

If the employer notifies the employee of his/her eligibility to participate in ORP after the first date of eligibility, but before the 91<sup>st</sup> day after the first day of eligibility, the employee must make his/her election before the later of the 91<sup>st</sup> day after the first day of eligibility or the 31<sup>st</sup> day after he/she was notified of eligibility.

If the employer fails to notify the person of his/her eligibility to participate in ORP before the 91<sup>st</sup> day after the first day the person becomes eligible to participate, but notifies the person before the 151<sup>st</sup> day after the first day the person becomes eligible, the person must make his/her election before the later of the 151<sup>st</sup> day after the first day of eligibility or the 31<sup>st</sup> day after he/she was notified of eligibility.

If the employer fails to notify the person of his/her eligibility to participate in ORP before the 151<sup>st</sup> day after the first day of eligibility, the person is not eligible to elect to participate in ORP and must remain a participant of the TRS retirement plan.

#### Senate Bill 1663 – reporting retirees during the first 12 months following the retiree's effective date of retirement

For purposes of employment after retirement, retirees are considered employees during the first 12 consecutive-calendar-months following retirement, if they are performing duties or providing services for an educational institution that an employee of the institution would otherwise perform, and waiving, deferring, or foregoing

compensation for those duties or services; working as independent contractors; or working as a volunteer but performing duties or providing services that the retiree performed immediately before retiring and has an agreement to perform or provide those same services or duties after the first 12 full, consecutive-calendar-months after retirement. Employers are required to report these retirees, as if they were employees, each month during the first 12 calendar months after the retiree's effective date of retirement. This change applies to a retiree who retires after Sept. 1, 2017 and a retiree who on Sept. 1, 2017 is within the first 12 consecutive-calendar-months following the effective date of retirement.

## **Recent legislation prompts changes to TRS reporting requirements:**

### **Student employment**

Effective with the start of the 2017-18 school year, a person employed in a Texas public college or university is not eligible for membership, service credit or compensation credit based on employment that is conditioned upon enrollment as a student. Compensation paid to the employee for work performed as a student employee is not subject to deductions for member contributions. Prior to the 2017-18 school year, student employment was eligible for TRS if combined with other eligible employment in the same report month. This change does not affect service or compensation credited for student employment prior to Sept. 1, 2017.

### **Monthly certified statement (for Employment after Retirement report)**

Beginning with the September 2017 report period, the required monthly Employment after Retirement (ER) report and all required surcharges will be due to TRS on the tenth of the month following the close of the calendar month for which the reports are prepared, with the exception of the August report cycle each year. The August report and all required surcharges for that month are due on Sept. 6 each year. If the tenth of the month (or Sept. 6 in the case of the August report) falls on a weekend or federal holiday, the required report and all required surcharges will be due on the last business day prior to the weekend or federal holiday.

The due date for the Regular Payroll (RP) report, and all corresponding contributions associated with the RP report, remains the sixth day of each month following the close of the calendar month for which the report is prepared. If the sixth day of the month falls on a weekend or federal holiday, the RP report, and all corresponding contributions associated with the RP report, are due on the last business day prior to the weekend or federal holiday.

### **Payroll report dates**

Currently, each employer that fails to remit all required member and employer contributions to TRS before the sixth day of the month following the close of the calendar month for which the reports are prepared, is required to pay penalty interest to TRS on the unpaid amounts in the amount provided in Section 825.408 of the Government Code. Effective Sept. 1, 2017, in addition to any deposits and penalty interest owed, TRS is authorized to require employers to pay a late fee for each business day that the reports fail to attain a completed status. The late fee cannot be more than \$1,000 per day and is capped at no more than \$25,000 per month. Although the late fee is authorized effective Sept. 1, 2017 TRS will not implement this requirement until later in the 2017-18 school year. We will communicate to all REs when TRS implements penalty fees for late reports.

## ***TRS-ActiveCare enrollment ends Aug. 22***

Annual Enrollment is the one time of year that your employees can make changes to their benefits without experiencing a major life event. If you have employees who want to make changes, ensure that they submit all changes prior to the due date. *If your employees would like to stay in TRS-ActiveCare, they don't need to do anything. They'll be re-enrolled automatically.*

Find plan resources and technical guides for enrollment and eligibility on the [Benefits Administrator website](#).

## ***IRS salary cap provision for the 2017-18 school year***

Some highly paid members may have their annual creditable compensation limited in accordance with Section 401(a)(17) of the Internal Revenue Code. This limit affects individuals who first became members of TRS on or after Sept. 1, 1996. Based on federal regulations, the annual limit is subject to indexing each plan year. Amounts excluded from creditable compensation under this law are not subject to member contributions and will not be used in calculating benefits.

Do not report a salary amount, in excess of the salary cap, to TRS for those members who joined TRS on or after Sept. 1, 1996.

The cap is based on the TRS plan year of Sept. 1 through Aug. 31 and not the member's contract/work agreement year. Once the member's reported salary, beginning with the September posting, reaches the salary cap for that year, no further salary is to be reported until the following September which is the beginning of the next plan year. However, creditable days must continue to be reported for these employees after they have reached the salary cap.

For the 2017-18 plan year, the IRS 401(a)(17) annual creditable compensation limit, for a person who first becomes a member of TRS on or after Sept. 1, 1996, is **\$270,000**.

### ***When surcharges are due for retirees working more than one-half time***

When a TRS retiree who retired after Sept. 1, 2005 works more than one-half time in the calendar month for a TRS-covered employer, the employer is required to pay surcharges to TRS. In the 2017-18 school year, the pension surcharge is 14.5 percent of the compensation paid to that retiree in that report month without regard to when the compensation was earned. The TRS-Care surcharge is a monthly amount of \$535. Please use the View Employee Information link in the RE Portal to determine if the retiree retired before or after Sept. 1, 2005, and if the TRS-Care surcharge applies for a particular retiree.

In an effort to help employers determine when surcharges are triggered each month throughout the school year, the table below illustrates:

- 1) The total number of workdays in each month.
- 2) The number of hours a retiree may work or be on paid leave under the one-half time or less exception, (four hours multiplied by the number of workdays in the calendar month). If a retiree's employment is measured in class hours or semester hours rather than clock hours, each hour of instruction in the classroom or lab counts as a minimum of two clock hours in order to reflect instructional time as well as preparation time.
- 3) The number of days a retiree, who is combining substitute and one-half time or less work in the same calendar month, may work or be on paid leave without the employer incurring the pension and TRS-Care surcharges.\*

\*Working any part of a day, including a Saturday or Sunday, counts as one of the days a retiree may work when combining substitute and other work in the same calendar month.

Month	Total Number of Workdays in Calendar Month	Number of Hours a Retiree Working One-Half Time or Less May Work Without Triggering Surcharges	Number of days a Retiree Combining Substitute and Other TRS-Covered Employment May Work Without Triggering Surcharges*
September 2017	21 days	84 hours	10 days
October 2017	22 days	88 hours	11 days
November 2017	22 days	88 hours	11 days
December 2017	21 days	84 hours	10 days
January 2018	23 days	92 hours	11 days
February 2018	20 days	80 hours	10 days
March 2018	22 days	88 hours	11 days
April 2018	21 days	84 hours	10 days
May 2018	23 days	92 hours	11 days
June 2018	21 days	84 hours	10 days
July 2018	22 days	88 hours	11 days
August 2018	23 days	92 hours	11 days

\* Working any part of a day, including a Saturday or Sunday, counts as a day worked.

If a TRS retiree has any questions regarding the amount of time he/she is allowed to work or be on paid leave without affecting his or her annuity, please refer the retiree to a TRS benefit counselor.

### ***Important information for employers with qualified retirement plans***

Employers that sponsor qualified retirement plans of their own should be aware that state law establishes the TRS retirement plan as the primary plan when there is more than one plan covering employees. This law is important to the administration of an employer-sponsored plan because it could affect the benefits payable **from** the employer's qualified defined benefit plan or the annual contributions that may be **made to** the employer's qualified defined contribution plan.

Contributions made to TRS for service credit purchase *and* made to an employer's qualified defined contribution plan *must be aggregated to determine whether the total annual contributions are within federal tax law limits.* See TRS rule 34 TAC §29.51. The general contribution limit for the Sept. 1, 2017 through Aug. 31, 2018 plan year is \$54,000 or 100 percent of compensation, whichever is less. If aggregated contributions would exceed the applicable limit, TRS members may be able to use installment payments or rollovers for service purchases to keep aggregated annual contributions within the limits. However, if aggregated contributions exceed the applicable limit, then contributions to the employer plan may need to be reduced.

For employers with defined benefit plans, Section 825.506 Texas Government Code, states that an employer may not provide employee retirement or deferred benefits that, when considered together with TRS benefits as required by federal law, would result in the TRS plan failing to meet federal qualification standards as applied to public pension plans. The benefit limits in Section 415(b) of the Internal Revenue Code are part of the standards that TRS must meet to maintain plan qualification and favorable tax treatment, such as deferral of federal income tax on salary contributions to TRS until benefits are paid.

Section 415(b) establishes limits on annual benefit payments by qualified defined benefit plans. *When an employee who retires will receive benefits from more than one qualified defined benefit plan covering the same employment, the limits apply to the aggregated benefits.* The Section 415(b) limit is \$215,000 for the 2017-18 plan year, with lower limits applicable for retirement before age 62.

Since state law establishes the TRS defined benefit plan as primary, TRS compares only a member's TRS benefits to the federal limits to determine whether the benefits will be within the federal benefit limits at and during

retirement. If an employer's own defined benefit plan also pays benefits to a retired employee, then, under Section 825.506, the employer must take into account the TRS benefits to be sure that the aggregated benefits do not exceed the Section 415(b) limits.

To determine whether an employer's plan is affected by the limits on benefits or annual contributions, the employer should contact the plan administrator or the tax advisor for the plan. TRS maintains no information on employer plans. Also, due to confidentiality requirements, any individual TRS contribution amounts or benefit amounts that an employer's plan administrator may need to consider in comparison to the applicable limits, must be obtained directly from the covered employee.

## ***Plan ahead***

Due to the implementation of Phase 1 of our new pension line of business system, TRS members may experience a slight delay in the processing of certain requests, such as refunds, retirement estimates, direct deposit banking changes, and updates to member accounts. Our goal is to provide reliable service throughout the implementation process by making sure all requests received by Aug. 31, 2017 are processed before implementation of the new system. Although requests received Sept. 1 – 22 will be processed in a timely manner, please note that these requests may not be processed until October. If a member's retirement date is on or before July 31, 2017, and we have everything needed to process the paperwork, our highest priority will be to ensure that the member receives his/her first annuity check on time.

A friendly reminder to our members: Planning ahead is the key to minimize delays in receiving the service you need. Please keep the following dates in mind:

### Sept. 25 – 28, 2017

TRS will not be able to update member accounts, process refunds or create retirement estimates. Benefit counselors will be able to provide information over the phone and/or send forms to members.

### Sept. 29 – Oct. 1, 2017

During this timeframe, TRS online services will be closed. We will not have access to account information as we prepare to switch over to the new pension line of business system.

### Oct. 1 – 31, 2017

TRS employees will be processing September requests as well as any additional requests received during the month.

During the first weeks of October, counselors will be available to answer questions. Members can expect longer hold times during this time period as counselors adjust to using the new system. If your employees have a *MyTRS* account, they may also send their questions through our [website](#). A counselor will send a secure response.

Despite our best efforts, members may experience processing delays with the following types of requests: retirement estimates, refunds, direct deposit banking changes, and address changes. Again, while our goal is for the implementation to be seamless to our members, it may take a little longer to serve them while we adjust to the new system.

## ***Submission of MD40 and MD90 records on the July and August 2017 reports***

For July and August 2017 reports, REs should take the following actions in TRAQS to help ease the transition into the new reporting system:

1. Submit MD40s for all contracts that begin in July or August no later than the August 2017 Member Data Report. In the past, REs have been allowed to submit MD40 records for the new fiscal year with the September Member Data Report. However, to properly migrate contract information to the new system, these MD40s need to be submitted no later than the August 2017 Member Data Report.

2. Submit MD90 Termination Records during the summer months for all employees who resign, terminate or retire during this time frame. Even if an employee completes his/her contract, submitting an MD90 will help prevent certain errors at go-live. The MD90 record should be submitted the same month that the final transaction for the member is reported on the RP report.

### **Clarification on TRS creditable compensation**

TRS has recently received questions regarding whether certain types of irregular compensation should be reported to TRS. The pay types include:

- delayed payments,
- mid-year increases in compensation,
- corrective payments, and
- retroactive salary increases.

Please review the following information to ensure that your employer properly reports these types of compensation.

#### **Delayed Payments**

Delayed payments are, for TRS purposes, “delayed payments of lump-sum amounts which by law or contract should have been paid at fixed intervals and which otherwise meet the requirements of subsection (b) of this section provided the amounts are credited to the payroll period in which they are earned.” See § 25.21(c)(4), Title 34, Texas Administrative Code, Part 3. Subsection (b) requirements include that the payments are for services rendered, the right to receive the payments must be earned or accrue proportionately as the work is performed, and the payments are usually paid at fixed intervals. In some cases, an employee who has a July 1 – June 30 contract may be delayed in receiving a salary increase that was approved prior to the work required under the contract beginning but due to the fiscal budget process of the employer, the raise was not implemented until a later date after performance under the contract had commenced. This increase would be creditable compensation because it was approved prior to work under the contract commencing.

In contrast, retroactive pay increases are not delayed payments. Payments authorized after work has commenced are not delayed payments because they were not required by law or contract to be paid at the time the work commenced; the increase in compensation was not approved until after the work has been performed in part.

#### **Mid-year increases**

Generally, mid-year increases are allowed if a member’s new contract begins after the beginning of the school year, or if there is an addendum to the existing contract that authorizes the increase in pay for services rendered after the increase is authorized and that indicates the date in which the school board approved the increase. The salary increase would not be eligible if reported in any month(s) prior to the date the contract or addendum was signed.

#### **Corrective payments**

When a member is underpaid in a prior school year, or school years, and the employer issues a lump sum payment to correct the error in an amount equal to the additional amount the member should have received in previous months, the corrective payment is creditable for TRS purposes, provided the underlying compensation is creditable. Beginning with the 2015-16 school year, the payment must be reported and credited as compensation for the report month in which the lump sum was paid to the employee, rather than the month(s) it should have been paid. See Rule 25.46(b). For example, if an employer discovers that a member was paid under the wrong salary step for prior school years then corrects the error in the following school year by including in one of the member’s monthly salaries the total compensation due to correct the underpayment, this corrective payment would be eligible compensation provided the underlying compensation was creditable. However, based on the compensation limits described in Rule 25.31, the total annual salary may be adjusted by TRS if the salary exceeds the allowable compensation limit of no more than the greater of \$10,000 or 10 percent increase in compensation in the final years before retirement.

## **Retroactive Salary Increases**

Article III, Section 53 of the Texas Constitution prohibits the grant of “extra compensation, fee or allowance to a public officer, agent, servant or contractor, after service has been rendered, or a contract has been entered into, or performed in whole or in part.” For this reason, a pay increase given retroactively after work has commenced under the contract or work agreement, is excluded as creditable compensation for TRS purposes. Examples of retroactive payments include:

- Granting a pay increase after performance under the contract has commenced and then backpaying the increase to the beginning of the contract in a lump sum and applying the increase to future payments. Here, the retroactive payment is the lump-sum “catch-up” payment for prior months and that payment is not creditable for TRS purposes.
- Granting a pay increase after performance under the contract has commenced and then increasing the remaining payments under the contract to an amount needed to ensure that the annual increase is received by the end of the contract. In this example the amount of the increase in future payments under the contract that represents the “catch-up” amounts are excluded but the prorata share of the annual increase for the remainder of the contract year is creditable, i.e., 1/12 of the increase for each of the remaining months of the contract is creditable.

These examples assume that the underlying compensation is creditable compensation.

## ***Proposed changes to 403(b) rules***

TRS is reviewing the rules related to 403(b) certification and product registration. Substantive changes have been proposed to the maximum fees that may be charged on 403(b) products and investment options. The proposed rule amendments would lower the allowable surrender or withdrawal charge, reduce the allowable loan initiation fee and eliminate front and back-end sales loads. The proposed rule amendments also lower the maximum allowable annual asset-based fee and restructure the fee by asset class. Finally, the proposed rules aim to provide more fee transparency by capturing product and investment option asset class information and a breakout of product administrative fees and expense ratio fees.

The TRS Board of Trustees will receive an update on proposed rule amendments at its August meeting and take final action in fall 2017. For more information on the proposed rule amendments, visit the TRS [website](#).