

UPDATE

HOUSE BILL 3 AND CREDITABLE COMPENSATION

In order to comply with House Bill 3 (HB 3), some reporting entities (REs) may have trouble finalizing budgets until after employment agreements have been executed for the upcoming school year. Please keep in mind that retroactive salary increases are generally not considered creditable compensation for TRS benefit calculation purposes. If an RE executes employment agreements and employees begin work under those agreements prior to the salary increases due to HB 3 being finally determined and incorporated into the agreements, an RE should do the following in order to minimize the risk that the salary increases provided will be excluded from employees' creditable compensation:

- Make a good faith effort to estimate the amount of the anticipated salary increase and minimize the discretion the school board may exercise in determining the amount of the salary increase after work commences. For example:
 - Identify the percentage of the additional funding that will be allocated toward salary increases for individual employees or individual classes of employees. As a result, the only variable remaining to calculate the amount of the salary increase for each employee or class of employee, is the amount of the increase in the RE's funding; or
 - Estimate the percentage increase of each employee's salary. Consider including that figure in the employment agreement and qualify it by stating the amount of the salary increase may change when the increase in funding to the RE is finally determined.
- Ensure the employees' entitlement to the additional compensation arising from the salary increase is earned regularly over time in proportion to the amount of work performed.
- Make every effort to finalize the employees' salary increases as soon as possible.
- A retroactive salary increase does not qualify as a "delayed payment of a lump-sum amount" as described in the TRS rules, because a delayed payment is compensation that the employee was legally entitled to at that time the work was performed. In contrast, a retroactive salary increase entitles an employee to extra compensation for work that has already been performed and for which the employee has already been compensated.
- TRS has been working with the Texas Education Agency (TEA) in an effort to ensure the guidance both agencies are providing on implementing the HB 3 salary increases is accurate.

Please Note: While TRS provides guidance to REs regarding creditable compensation, a final determination of each TRS member's creditable compensation is made based on Texas law, the TRS rules, and the specific facts and circumstances relating to the compensation received by each member.

REMINDER OF LEGISLATIVE CHANGES EFFECTIVE IN FISCAL YEAR 2019-20

As a reminder, the following changes are effective as of Sept. 1, 2019:

- The state contribution rate increases to 7.5 percent effective with any pay issued on or after Sept. 1, 2019.
- The Cost of Education Index (CEI) used by school districts to calculate the Adjusted State Minimum salary is no longer used.

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REMINDER OF LEGISLATIVE CHANGES EFFECTIVE IN FISCAL YEAR 2019-20 continued

- Charter schools are required to pay the state contribution on salary paid above the state minimum for members employed in positions that would be subject to the minimum salary if the person were employed in an Independent School District (ISD).
- All non-higher education REs are required to pay the Public Education Employers Contribution (formerly RE Payment for Non-OASDI Members Contribution) regardless of whether or not the RE pays social security on their TRS members.

REPORTING REQUIREMENTS FOR TRS ELIGIBILITY AFTER EARNING A YEAR OF SERVICE CREDIT

When a TRS member earns a year of creditable service within the current TRS fiscal year and then transitions into a less than half time position, they must be reported as TRS-eligible for the remainder of that fiscal year (which runs through Aug. 31). This applies to less than half time or temporary positions but does not apply to members who transfer into a position that is a substitute, per the TRS definition of that term.

Reporting a member as eligible through the end of a fiscal year will require a slightly different process than reporting other employees. The ED 40 posted when the employee transfers into the less than half time position should include the end date of the current year's work agreement. When the employee returns to work under a contract/work agreement for the new school year, if they continue to work in an ineligible position, the employee will require two ED 40s. One of the ED 40s will report the beginning date of their new contract/work agreement through August 31 of that year by marking TRS Eligible as 'Yes'. The second ED 40 will record the employee as TRS Eligible 'No' with a beginning date of contract/work agreement of Sept. 1 through the end of their actual work agreement.

Example 1: A teacher worked in a TRS-eligible position until March 15, 2019 and earned their creditable year of service. Effective March 18, 2019 the employee began a less than half time position and will continue working in that position in the upcoming school year as well. The staff return to work on Aug. 12, 2019 for the new school year.

TRS Fiscal Year	Position Code	TRS Eligibility Flag	Beginning Date of Contract/Work Agreement	Ending Date of Contract/Work Agreement
FY 2018-19	02	Yes	Sept. 1, 2018	March 15, 2019
FY 2018-19	03	Yes	March 18, 2019	June 7, 2019
FY 2018-19	03	Yes	Aug. 12, 2019	Aug. 31, 2019
FY 2019-20	03	No	Sept. 1, 2019	June 5, 2020

It can also be challenging to report on an employee who is transitioning from a TRS-eligible position to an ineligible position when it comes to creditable compensation. Many TRS REs pay in arrears, which causes the final compensation for the eligible position to be *paid* in the month after the position ended. The report-when-paid rule requires REs to report the compensation to TRS in the month it is paid. However, if the compensation was *earned* while the employee was working in a TRS-eligible position, then it must be reported as TRS-eligible compensation with contributions.

- If the employee in our example above concludes their TRS-eligible position at the end of August and continued their employment in the less than half-time position at the beginning of September, then the compensation for time worked in August is *paid* in September. Since the time worked for the eligible position was paid in September, the compensation is creditable compensation and contributions must be withheld. The September RP report may require a TRS override in this scenario.

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REPORTING REQUIREMENTS FOR TRS ELIGIBILITY AFTER EARNING A YEAR OF SERVICE CREDIT *continued*

Example 2: A teacher aide is paid \$1,500 in September for time worked Aug. 12, 2019 through Aug. 31, 2019. The \$1,500 is subject to member and employer contributions on the September 2019 RP report.

- If the same teacher in Example 1 receives compensation for their prior eligible position and for their new ineligible position in the same report month, and the position codes are the same, the current month RP record will include both payments. Compensation earned in the eligible position will be reported in Eligible TRS Gross Compensation. The Total Gross Compensation will include the compensation paid for both positions since this field is to report eligible *and* ineligible compensation. If the positions fall under separate position codes, two current month RP records must be reported.

Example 3: The teacher aide is paid \$1,500 in September for time worked Aug. 12, 2019 through Aug. 31, 2019 and \$500 for time worked Sept. 1, 2019 through Sept. 15, 2019. The \$1,500 is subject to member and employer contributions on the September 2019 RP report. The \$500 is not subjected to member and employer contributions; this amount should *only* be included on the Total Gross Compensation field of the RP 20 record for September 2019.

IRS SALARY CAP PROVISION FOR THE 2019-20 SCHOOL YEAR

Some highly paid members may have their annual creditable compensation limited in accordance with Section 401(a)(17) of the Internal Revenue Service Code. These limits affect individuals who joined TRS for the first time on or after Sept. 1, 1996. The annual limit is subject to change each plan year, based on federal regulations. Pay excluded from creditable compensation under this law is not subject to member contributions and will not be used in calculating benefits.

Do not report eligible salary in excess of the salary cap to TRS for those members who joined TRS on or after Sept. 1, 1996. Continue to report Total Gross Compensation and days and hours worked each report month.

The cap is based on the TRS plan year of September through August 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 2019-20 plan year, the IRS 401(a)(17) annual creditable compensation limit (for a person who first becomes a member of TRS after August 31, 1996) is **\$280,000**.

TIPS FOR YEAR-END PROCESSING

Year-end processing for TRS will soon be underway. As you are beginning a new school year, we are winding down our fiscal year. This time of year can certainly be hectic for everyone. The following is a list of short tips that we hope will help make things run more smoothly:

1. All August reports and TEXNET deposits are due by **8 p.m. CST on Friday, Sept. 6th**. This applies to both the RP report as well as the Employment after Retirement (ER) report.
 2. All RP reports for the entire 2018-2019 fiscal year **MUST** be at "Complete" status by **5 p.m. on Monday, Sept. 30th**. Failure to bring your RP report to "Complete" status by the deadline will result in incorrect annual statements for your employees.
 3. As mentioned, year-end processing is a very busy time at TRS. Your coach may not be able to respond to you immediately due to the volume of requests coming in. We ask that if you need assistance, please call **or** email your coach **only once**. If you do not receive a response within two business days or if you are unsure of who your coach is, email reporting@trs.texas.gov. Include your four-digit TRS number in any email or voice message.
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TIPS FOR NEW FISCAL YEAR PROCESSING

- Web Administrators: Please make sure to update RE Portal contacts. Delete the contact records for those employees who are no longer serving in that role and add any new contacts – including the head of your institution.
- Higher education REs are not required to report student employees on the RP report.
- Each report month is required to contain hours and days the employee worked in the report month and pay the employee received in the report month. The hours and days should not be based on the pay period. This applies to both the RP and ER reports.
- Reporting Employment After Retirement – ER employment dates for a school year are not based on the dates in the retiree's contract with the employer. Nor are all retirees required to be reported with employment dates of Sept. 1 through Aug. 31. Rather, REs should report the dates the retiree will be employed in a particular position and/or employment type during a fiscal year. The fiscal year is Sept. 1 through Aug. 31. For example, if an RE were to report a retiree's contract that ran from Aug. 20, 2018 – June 3, 2019, they should list the employment dates by fiscal year, or Aug. 20-31, 2018 and Sept. 1 – June 3, 2019.

The Employment Type Code reflects the type of work a retiree performed in that specific report month. A retiree that will be working full-time hours some months, and half-time or less hours in other months cannot be reported as working Full Time all fiscal year.

Additionally, if a retiree works as a substitute in multiple position codes throughout the month, do not report a separate record for each position code. Instead, combine all substitute work under their primary position code.

- Submit the ED 40 records for returning employees as they begin their new contract.
- Submit ED 90 records for all terminated employees.

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, the employer is required to pay surcharges to TRS. The pension surcharge for the 2019-20 school year is 15.2 percent of the compensation paid to that retiree in a given month. 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 September 1, 2005, and if the TRS-Care surcharge applies for a particular retiree.

In an effort help employers determine when the surcharges are triggered each month in the school year, the table on the following page illustrates:

- 1) the total number of workdays available each month;
- 2) The number of hours a retiree may work or be on paid leave under the one-half time or less exception, which is 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 in the same calendar month may work or be on paid leave without the employer incurring the pension and TRS-Care surcharges.

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WHEN SURCHARGES ARE DUE FOR RETIREES WORKING MORE THAN ONE-HALF TIME *continued*

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 Workdays Retiree Combining Substitute and Other TRS-Covered Employment May Work Without Triggering Surcharges
September 2019	21 days	84 hours	10 days
October 2019	23 days	92 hours	11 days
November 2019	21 days	84 hours	10 days
December 2019	22 days	88 hours	11 days
January 2020	23 days	92 hours	11 days
February 2020	20 days	80 hours	10 days
March 2020	22 days	88 hours	11 days
April 2020	22 days	88 hours	11 days
May 2020	21 days	84 hours	10 days
June 2020	22 days	88 hours	11 days
July 2020	23 days	92 hours	11 days
August 2020	21 days	84 hours	10 days

Please refer any TRS retiree with questions about the amount of time the retiree is allowed to work or be on paid leave without affecting his or her annuity to a TRS benefit counselor.

2019-20 TRS-ACTIVECARE ANNUAL ENROLLMENT IS UNDERWAY

Annual Enrollment for TRS-ActiveCare participants began on July 1, 2019 and will end on Aug. 23, 2019. This is the annual opportunity for your employees to make changes to their health benefits without experiencing a special enrollment event. Participants should consider all their options when choosing a plan. Here are some resources you can share with your employees:

- [TRS-ActiveCare Annual Enrollment Page](#)
- [ALEX](#)
- [What's New, What's Changing](#)
- [Plan Highlights](#)
- [Enrollment Guide](#)