

# Update

February 2013

Vol. 32 No. 1

## TEACHER RETIREMENT SYSTEM OF TEXAS

### ***Do you have TRS retirees hired for the 2012-2013 school year through Educational Independent Contractors, L.L.C. that you are not reporting to TRS?***

If so, you must correct the monthly Employment of Retired Members reports and, if applicable, the Pension and TRS-Care Surcharge reports for the current school year. Report corrections must also be made for any retirees who were employed through an arrangement with this limited liability corporation in the **2011-2012** school year.

Educational Independent Contractors, L.L.C. (EIC) is considered a third-party entity for TRS purposes. Retirees employed by a third-party entity and working for a TRS-covered employer are considered employees of the TRS-covered employer and must be reported to TRS on the Employment of Retired Members Report. Contracting with the retiree as an independent contractor in an arrangement with EIC does not avoid the requirement to report the retiree as your employee. Retirees serving as teachers, superintendents, administrators, coaches, and support personnel are not independent contractors.

TRS has provided detailed information on these reporting requirements to all TRS-covered employers as follows:

- February 6, 2012, email
- August 7, 2012, email
- November 2012, Update publication, 2 related articles

An employer who knowingly is in noncompliance with these reporting requirements not only misleads the retiree into the loss of annuity payments for each month the retiree exceeds one-half time employment, but also runs the risk of committing an offense under Section 821.101(b), Texas Government Code.

If you disagree with TRS' characterization of the relationship between EIC and your employer or are uncertain whether such an arrangement must be reported to TRS, please contact TRS for a review and determination regarding specific circumstances. Do not rely on legal opinions provided by EIC or your school attorney. TRS is the entity authorized by law to make the determination regarding who is an employee of a TRS-covered employer.

### ***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, 2012 through Aug. 31, 2013 plan year is \$50,000 or 100% 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 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 \$200,000 for the 2012-2013 plan year, with lower limits applicable for retirement before age 62.

Because 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.

***New Web page for TEAM Communications “Live”***

All reporting entities and software vendors are encouraged to visit the new TEAM Program Communications Web Page for Employers. Through this section of the TRS website, you will find the latest information concerning progress on the development of the new reporting system to replace TRAQS.

The software vendors that we are aware of have been included in all communications regarding the TEAM program. If you find that your software vendor has not been included, please send the following contact information to reporting@trs.state.tx.us: contact name, vendor name, e-mail address of contact, and telephone number of your contact.

***Defining a standardized school year***

For school years 2013-2014 and forward, annual salary for TRS purposes will be the eligible salary payments reported to TRS from September 1 through August 31 of each year. In other words, rather than basing annual compensation on the amount earned during the contract, TRS will calculate benefits using eligible compensation reported to TRS on September 1 through August 31 monthly reports. This is in accordance with the implementation of the standardized school year. While TRS does not require employers to align employee contracts or the employer pay schedule with the standardized school year, it is important for employers and members to understand that salary credited by TRS in the 2013-14 school year and future school years may not be the contract amount for the employer’s instructional year. Further, if an employee retires at the end of the contract period, he or she may not receive credit for 12 months of salary in the final year before retirement. ***An employee who is paid any portion of his or her new contract (annual) salary prior to September 1 of each year is most likely to be affected by this change in salary application.***

The following examples will help determine if the annual salary for the year in which an employee retires will be affected by the standardized school year. These examples assume the employee has worked the required number of days in his or her contract or work agreement.

**Example 1:**

**10-Month Employee Reported on Sept 1 – Aug 31 Pay Cycle**

	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	Jul	Aug
Payment #			1	2	3	4	5	6	7	8	9	10	11	12

A **10-month employee** who begins work in August but whose employer reports salary to TRS from September through August will not likely be affected. If this employee retires at the end of his or her contract in May, the annual salary for the final year will contain 12 months of salary and will be used in the calculation of his or her retirement annuity if it is one of the highest annual salaries. In this example, because all of the pay has been earned by the time of this employee’s retirement and all of the pay for the final year is reported to TRS between September 1st and August 31st, TRS uses all 12 months of compensation for the annual compensation in the final year before retirement. If the annual compensation for the final year is one of the highest salaries, it will be used in the calculation of this employee’s retirement benefit.

**Example 2:**

**10-Month Employee Reported on Aug 1 – Jul 31 Pay Cycle**

	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	Jul	Aug
Payment #		1	2	3	4	5	6	7	8	9	10	11	12	

A **10-month employee** who begins work in August but whose employer reports new contract salary to TRS from August to July will only have 11 months of salary reported within the standardized school year if he or she retires at the end of the contract in May. As shown in the chart above, TRS will only use salaries reported from September to July in the final year before retirement. Because one of the months of salary was paid in August of the prior school year, this employee would not have 12 months of salary paid in his or her final year before retirement. As a result, it is unlikely that this last year will be one of the highest annual salaries. If so, the last year of salary will not be used in the calculation of this employee’s retirement annuity.

**Example 3:**

**11-Month Employee Reported Aug 1 – Jul 31 Pay Cycle**

	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	Jul	Aug
Payment #		1	2	3	4	5	6	7	8	9	10	11	12	

Likewise, an **11-month employee** with an August 1st through June 30th contract will also only have 11 months of salary reported to TRS in the final year before retirement if he or she retires in June at the end of the contract. This employee will only have 11 months of salary because the first month of salary under the new contract was paid and reported in August of the prior school year. Because he or she would not have 12 months of salary reported in the final year, it is unlikely that this year will be one of the highest annual salaries. Therefore this salary may not be used in the calculation of this employee’s retirement annuity.

**Example 4:**

**12-Month Employee Reported Jul 1 – June 30 Pay Cycle**

	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	Jul	Aug
Payment #	1	2	3	4	5	6	7	8	9	10	11	12		

A **12-month employee** with a July 1st through June 30th contract whose employer reports salary to TRS from July to June will only have 10 months of salary reported within the standardized school year if he or she decides to retire in June after performing all service required by the contract. Only 10 months of salary are reported in the final year before retirement because the salary for July and August was paid and reported to TRS in the prior school year. Since TRS would only use salary reported for September through June of the final year, it is unlikely that this year will be one of the highest annual salaries. Therefore this salary may not be used in the calculation of this employee’s retirement annuity.

**What does this mean for your employees?** The new definition of school year may affect the salary credited by TRS in the final year before retirement. If an employee received one of the highest salaries during the last year of employment, retirement benefits may not be based on the higher salary if 12 months of salary is not reported to TRS by the end of the contract period or by August 31st of the year he or she retires. However, if the employee works or receives paid leave for at least the full fall semester of the final year before retirement, he or she will receive a year of service credit for the final year of service which will increase the amount of retirement benefit, even if the full salary for the final contract year is not counted by TRS.