

TITLE 34. PUBLIC FINANCE
PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS
CHAPTER 29. BENEFITS

SUBCHAPTER A. RETIREMENT

34 TAC §29.9

SUBCHAPTER D. PLAN LIMITATIONS

34 TAC §29.56

The Teacher Retirement System of Texas (TRS) proposes amendments to §29.9 (relating to Survivor Benefits) of Chapter 29, Subchapter A, in Title 34, Part 3, of the Texas Administrative Code and §29.56 (relating to Minimum Distribution Requirements) of Chapter 29, Subchapter D, in Title 34, Part 3, of the Texas Administrative Code.

BACKGROUND AND PURPOSE

In TRS' adopted four-year rule review published in the *Texas Register* on August 12, 2022 (47 TexReg 4859-4860), TRS identified §29.9 and §29.56 as rules for future amendment. Based on that review, TRS now proposes to amend these rules.

The proposed amendments to §29.9 simply clarify that the beneficiary designated to receive survivor benefits by a retiree is the beneficiary eligible to receive benefits payable under Government Code §824.501.

The proposed amendments to §29.56 update the rule to conform with federal law, primarily the changes made in the Secure Act and Secure Act 2.0 that were passed by Congress in 2019 and 2022, respectfully. The primary change from both pieces of legislation was to increase the age that retired participants must begin receiving required minimum distributions. Under the Secure Act, the age increases from age 70 1/2 to age 72 for participants born after Jan. 1, 1949 and before Jan. 1, 1951. Secure Act 2.0 increases the age from 72 to age 73 for participants that were born after Jan. 1, 1951 and before Jan. 1, 1960 and increases from 73 to 75 for plan participants that were born on or after Jan. 1, 1960. The proposed amendments to §29.56 also include other minor updates and nonsubstantive changes to terminology and citations in the rule.

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amendments.

PUBLIC COST/BENEFIT

For each year of the first five years the proposed amendments will be in effect, Mr. Green also has

determined that the public benefit anticipated as a result of adopting the proposed amendments will be to ensure that TRS administers the TRS retirement plan in accordance with applicable federal law and that TRS' rules have updated clarity in their requirements. Mr. Green has also determined that there is no economic cost to entities or persons required to comply with the proposed amendments. The amendments are either minor, nonsubstantive clarifications that impose no new requirements, or the amendments add requirements relating to changes in federal law that TRS must adopt into its plan terms in order to maintain its status as a qualified plan and that TRS must comply with in order to comply with Government Code §825.506.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed amendments. Therefore, no local employment impact statement is required under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed amendments will be in effect the proposed amendments will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not require an increase or decrease in fees paid to TRS; will not create a new regulation; will not expand, limit, or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not affect the state's economy.

TAKINGS IMPACT ASSESSMENT

TRS has determined that since there are no private real property interests affected by the proposed amendments, a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed amendments because the proposed amendments do not impose a cost on regulated persons.

REQUEST FOR COMMENTS AND COST/BENEFIT INFORMATION

TRS requests written comments regarding the proposed amended rules. The comments may include information related to the costs, benefits, or effects of the proposed amended rules,

including any applicable data, research, or analysis, from any person required to comply with the proposed amended rules or any other interested person.

Comments and information regarding the cost, benefit, and effect of the rules may be submitted in writing to Brian Guthrie, TRS Executive Director, PO Box 149676, Austin, Texas 78714-0185. Written comments and cost/benefit information must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

SUBCHAPTER A. RETIREMENT

34 TAC §29.9

STATUTORY AUTHORITY

The amendments to §29.9 are proposed under the authority of Government Code §825.102 which authorizes the TRS Board of Trustees to adopt rules for the eligibility for membership, the administration of the funds of the retirement system, and the transaction of business of the board; and Government Code §824.101, which provides requirements relating to the designation of beneficiaries in the TRS retirement system and provides that TRS may adopt rules to administer that section.

CROSS-REFERENCE TO STATUTE

The proposed amendments to §29.9 implement Subchapter B (concerning Beneficiaries) of Chapter 824 of the Government Code.

§29.9. Survivor Benefits

~~[In addition to any of these retirement annuity payments, the]~~ The person designated by a retiree to receive survivor benefits payable after the retiree's death ~~[designated beneficiary of any retired member]~~ is eligible to receive ~~[survivor]~~ benefits as stated in Government Code §824.501. When multiple beneficiaries are named and two or more beneficiaries are eligible for monthly payments, the monthly payment will be split in equal portions. When only one beneficiary named is eligible for monthly payments, the entire monthly payment will be made to that beneficiary.

SUBCHAPTER D. PLAN LIMITATIONS

34 TAC §29.56

STATUTORY AUTHORITY

The amendments are proposed under the authority of Government Code §825.102 which authorizes the TRS Board of Trustees to adopt rules for the eligibility for membership, the

administration of the funds of the retirement system, and the transaction of business of the board, and Government Code §825.506, which provides that TRS' pension plan shall be administered as a qualified plan under §401(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401); that TRS shall administer the plan in a manner that satisfies the required minimum distribution provisions of Section 401(a)(9), Internal Revenue Code of 1986; and that TRS may adopt rules to administer these requirements.

CROSS-REFERENCE TO STATUTE

The proposed amendments implement §825.506, Texas Government Code (relating to Plan Qualification).

§29.56. Minimum Distribution Requirements

(a) General Rules and Definitions.

(1) Intent. This rule is intended to comply with a reasonable and good faith interpretation of the requirements of 26 U.S.C. §401(a)(9), as applicable to a governmental plan within the meaning of 26 U.S.C. §414(d).

(2) Plan Qualification and §401(a)(9) compliance. Pursuant to Tex. Gov't Code §825.506(a) and (c), this section modifies the TRS retirement plan to the extent necessary for the plan to be a qualified plan and comply with 26 U.S.C. §401(a)(9) and prevails over any inconsistent provision of the plan.

(3) Requirements of Treasury Regulations Incorporated. All distributions required under this section will be determined in accordance with 26 C.F.R. §§1.401(a)(9)-1 through 1.401(a)(9)-9 of the Internal Revenue Service, U.S. Department of Treasury regulations.

(4) Definition of Participant. In this section, a TRS member or TRS retiree.

(5) Definition of Designated Beneficiary. In accordance with 26 U.S.C. § 401(a)(9)(E) and §1.401(a)(9)-4(a)&(b) of the Treasury regulations, the [The] individual who is designated as the beneficiary under applicable plan provisions or by the participant's affirmative election [and who is the designated beneficiary under 26 U.S.C. § 401(a)(9) and § 1.401(a)(9)-1, Q&A-4, of the Treasury regulations].

(6) Definition of Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before a participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year that contains the participant's required beginning date. For distributions beginning after a participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to subsection (b)(3) [(b)(2)] of this section.

(7) Definition of Life Expectancy. For purposes of this rule, life expectancy means life

expectancy as computed by use of the Single Life Table in §1.401(a)(9)-9(b) [~~§1.401(a)(9)-9~~] of the Treasury regulations.

(8) Definition of Required Beginning Date. The date specified in subsection (b)(1) of this section.

(b) Time and Manner of Distribution.

(1) Required Beginning Date.

(A) Required beginning date means April 1 of the calendar year following the later of:

(i) the calendar year in which the participant attains the applicable age within the meaning of 26 U.S.C. § 401(a)(9)(C)(v) [~~70½~~], or

(ii) the calendar year in which the participant terminates employment with a TRS-covered employer.

(B) A participant is required to take distribution of the participant's entire interest, or to begin to take a distribution of the entire interest, no later than the participant's required beginning date.

(2) Applicable Age.

(A) In the case of a participant born before July 1, 1949, the applicable age is 70 1/2;

(B) In the case of a participant born on or after July 1, 1949, and before January 1, 1951, the applicable age is 72;

(C) In the case of a participant born on or after January 1, 1951, and before January 1, 1960, the applicable age is 73;

(D) In the case of a participant born on or after January 1, 1960, the applicable age is 75;
or

(E) The age set forth in 26 U.S.C. §401(a)(9)(C)(v), as amended from time-to-time.

(3) Death of Participant Before Distributions Begin. If a participant [~~member~~] dies before distributions begin, the participant's [~~member's~~] entire interest is required to be distributed, or begin to be distributed, no later than described in subparagraphs (A)-(D) of this paragraph. For purposes of this paragraph and subsection (e) of this section, distributions are considered to begin on the participant's [~~member's~~] required beginning date (or, if subparagraph (D) of this paragraph applies, the date distributions are required to begin to the surviving spouse under subparagraph (A) of this paragraph). If annuity payments irrevocably commence to the participant [~~member~~] before the participant's [~~member's~~] required beginning date (or to the participant's [~~member's~~] surviving spouse before the date distributions are required to begin to

the surviving spouse under subparagraph (A) of this paragraph), the date distributions are considered to begin is the date distributions actually commence.

(A) If the ~~[member's surviving spouse is the member's]~~ sole designated beneficiary is the participant's surviving spouse, then distributions after the participant's death to the surviving spouse are required to begin by December 31 of the calendar year immediately following the later of:

(i) the calendar year in which the participant ~~[member]~~ died; ~~[;]~~ or

(ii) ~~[by December 31 of]~~the calendar year in which the deceased participant ~~[member]~~ would have attained the applicable age ~~[70 1/2, if later]~~.

(B) If the designated beneficiary ~~[member's surviving spouse]~~ is not the participant's surviving spouse ~~[member's sole designated beneficiary]~~, then distributions after the participant's death to the designated beneficiary ~~[are required to begin by December 31 of the calendar year immediately following the calendar year in which the member died]~~ must either:

(i) begin to be distributed no later than December 31 of the calendar year immediately following the year of the participant's death, payable over a period not to exceed the beneficiary's life expectancy; or

(ii) be distributed no later than December 31 of the calendar year containing the fifth anniversary of the participant's death.

(C) If there is no designated beneficiary as of September 30 of the year following the year of the participant's ~~[member's]~~ death, the participant's ~~[member's]~~ entire interest is required to be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's ~~[member's]~~ death.

(D) If the participant's ~~[member's]~~ surviving spouse is the participant's ~~[member's]~~ sole designated beneficiary and the surviving spouse dies after the participant ~~[member]~~ but before distributions to the surviving spouse begin, this paragraph, other than subparagraph (A) of this paragraph, will apply as if the surviving spouse were the participant ~~[member]~~, as described in §1.401(a)(9)-3(b)(3), (d) of the Treasury regulations.

(4)[3] Form of Distribution. As of the first distribution calendar year, distributions are required be made in accordance with subsections (c), (d), (e), (f), and (g) of this section.

(c) Determination of Amount to be Distributed Each Year.

(1) General Annuity Requirements. If the participant's interest is paid in the form of annuity distributions to the participant after retirement or to the participant's beneficiary before or after retirement of the participant, payments under the annuity will satisfy the following

requirements:

- (A) the annuity distributions will be paid in periodic payments made at monthly intervals;
- (B) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in the Treasury regulations;
- (C) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted; and
- (D) payments will either be non-increasing or will increase only as permitted in the Treasury regulations.

(2) Amount Required to be Distributed by Required Beginning Date.

(A) The amount that is required to be distributed on or before the participant's ~~[member's]~~ required beginning date (or, if the participant ~~[member]~~ dies before distributions begin, the date distributions are required to begin to a beneficiary under subparagraph (A) or (B) of subsection (b)(3) ~~[(b)(2)]~~ of this section) is the payment that is required for one month. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. All of the participant's ~~[member's]~~ benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for months ending on or after the participant's ~~[member's]~~ required beginning date. For a retiree receiving a distribution of a partial lump sum option (PLSO) payment or a deferred retirement option plan (DROP) payment in conjunction with a monthly annuity payment due for a month beginning on or before the participant's ~~[member's]~~ required beginning date, the minimum distribution requirement of this section is satisfied by the annuity payment required to be made for that month.

(B) In the case of a refund to a participant ~~[member]~~ of the participant's ~~[member's]~~ entire accumulated contributions, the amount that is the required minimum distribution for the distribution calendar year (and thus is not eligible for rollover under 26 U.S.C. §402(c)) is determined by treating the single sum distribution as a distribution from an individual account plan and treating the amount of the single sum distribution as the participant's ~~[member's]~~ account balance as of the end of the relevant valuation calendar year. The minimum amount required to be distributed for each distribution calendar year is equal to the quotient obtained by dividing the account by the applicable distribution period using the Uniform Lifetime Table in A-2 of Treasury regulation §1.401(a)(9)-9. If the refund is being made in the calendar year containing the required beginning date and the required minimum distribution for the participant's ~~[member's]~~ first distribution calendar year has not been distributed, the portion of the single sum distribution that represents the required minimum distribution for the participant's ~~[member's]~~ first and second distribution calendar year is not eligible for rollover.

(d) Requirements For Distributions of Retirement Annuity Payments ~~[to Retiree or Beneficiary]~~

(1) Option 1 or 5 Retirement Payment Plan With Non-spousal Beneficiary. If the participant's interest is to be distributed in the form of an Option 1 or 5 annuity and the participant designated a nonspouse beneficiary, annuity payments to the designated beneficiary after the participant's ~~[retiree's]~~ death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the participant ~~[retiree]~~ using the table set forth in §1.401(a)(9)-6(b)(2)(iii) ~~[Q&A-2 of § 1.401(a)(9)-6]~~ of the Treasury regulations. An Option 1 or 5 payment plan that would result in a payment to a designated nonspouse beneficiary above the applicable percentage shall not be available to the participant.

(2) Option 3 and 4 Retirement Payment Plans.

(A) If the participant's spouse is not the sole designated beneficiary, the participant may not select an Option 3 or 4 retirement payment plan if the period certain for an annuity distribution commencing during the participant's ~~[retiree's]~~ lifetime would exceed the applicable distribution period for the participant ~~[retiree]~~ under the Uniform Lifetime Table set forth in §1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the participant ~~[retiree]~~ reaches age 70, the applicable distribution period for the participant ~~[retiree]~~ is the distribution period for age 70 under the Uniform Lifetime Table set forth in §1.401(a)(9)-9 of the Treasury regulations plus the excess of 70 over the age of the participant ~~[retiree]~~ as of the participant's ~~[retiree's]~~ birthday in the year that contains the annuity starting date.

(B) If the participant's spouse is the sole designated beneficiary, the participant may not select an Option 3 or 4 retirement payment plan if the period certain would exceed the longer of the participant's ~~[retiree's]~~ applicable distribution period, as determined under this paragraph, or the joint life and last survivor expectancy of the participant and the participant's spouse as determined under the Joint and Last Survivor Table set forth in §1.401(a)(9)-9 of the Treasury regulations, using the participant's and spouse's attained ages as of the participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

(e) Requirements for Minimum Distributions Where Participant ~~[Member]~~ Dies Before Date Distributions Begin.

(1) Participant Survived by Designated Beneficiary. If the participant ~~[member]~~ dies before the date that distribution of his or her interest begins (as described in subsection (b)(3) ~~[(b)(2)]~~ of this section) and there is a designated beneficiary, the entire interest payable with respect to the participant ~~[member]~~ is required to be distributed, beginning no later than the time described in subparagraph (A) or (B) of subsection (b)(3) ~~[(b)(2)]~~ of this section, over the life of the designated beneficiary or over a period certain not exceeding:

(A) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the

participant's [~~member's~~] death; or

(B) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

(2) No Designated Beneficiary. If the participant [~~member~~] dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the participant's [~~member's~~] death, distribution of the participant's [~~member's~~] entire interest is required to be completed by December 31 of the calendar year containing the fifth anniversary of the participant's [~~member's~~] death.

(3) Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. If the participant [~~member~~] dies before the date distribution of his or her interest begins, the participant's [~~member's~~] surviving spouse is the participant's [~~member's~~] sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this subsection will apply as if the surviving spouse were the member, as described in §1.401(a)(9)-3(b)(3), (d) of the Treasury regulations, except that the time by which distributions must begin will be determined without regard to subsection (b)(3)(A) [~~(b)(2)(A)~~] of this section.

(f) Election To Apply 5-Year Rule to Distributions to Designated Beneficiaries. Notwithstanding subsection (e) of this section, if the participant [~~member~~] dies before distributions begin and there is a designated beneficiary entitled to a lump sum distribution, distribution of the lump sum to the designated beneficiary is not required to begin by the date specified in subsection (e)(1) of this section, if the participant's [~~member's~~] entire interest is distributed to the designated beneficiary by December 31 of the calendar year containing the fifth anniversary of the participant's [~~member's~~] death. If the participant's [~~member's~~] surviving spouse is the participant's [~~member's~~] sole designated beneficiary and the surviving spouse dies after the member but before distributions to either the participant [~~member~~] or the surviving spouse begin, this provision will apply as if the surviving spouse were the participant [~~member~~], as described in §1.401(a)(9)-3(b)(3), (d) of the Treasury regulations.

(g) Requirements for Minimum Distributions Where Participant Dies After Distributions Begin. If a participant dies after retirement benefits have commenced, benefits must continue to be distributed to the beneficiary at least as rapidly as provided for under the option elected by the participant pursuant to §29.8 of this title (relating to Retirement Payment Plans).

(h) An eligible participant [~~member~~] who has applied for service or disability retirement and who dies on or after the retirement date will be considered to have retired and commenced distributions.

(i) A participant or beneficiary is required to initiate and complete appropriate TRS processes to take distributions in accordance with this section. A participant or beneficiary who fails to take distributions in accordance with this section is subject to federal tax law establishing an additional tax on minimum distributions that are required but not taken.

(j) Grandfather Provisions. Notwithstanding any provision of this section to the contrary, with respect to any annuity option or other plan provision as in effect on April 17, 2002, TRS will apply a reasonable and good faith interpretation of the requirement of Internal Revenue Code §401(a)(9). TRS is exercising the authority granted to governmental plans in the Pension Protection Act of 2006 in establishing this section as its good faith interpretation of the requirements of Internal Revenue Code §401(a)(9). The provisions of this section, including subsections (d) and (e) of this section, affecting payment options otherwise available under the TRS plan are applicable to retirements with an effective date after December 31, 2007, or to a benefit payable as a result of the death of a participant after December 31, 2007.

CERTIFICATION

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.