

## Legislative Sessions Q&A

*Disclosure: The questions answered in this document are the answers provided in the legislative training sessions held on August 12<sup>th</sup>-13<sup>th</sup>, 2021. The information in the answers provided is based on the TRS Laws and Rules as of the 2021-2022 fiscal year*

### HB 1525 – TIA Compensation is considered salary and wages

**Question: If Teacher Incentive Allotment compensation is paid before 9/1/2021, do we need to submit our TIA plan to TRS for review?**

*Answer: If you have not already submitted your plan for review, then yes, this needs to be submitted to TRS for review.*

**Question: Does the TIA for 20/21 qualify for Stat Min?**

*Answer: Yes, since this is salary and wages, this would be included on the RP20 under TRS Eligible compensation and included in the calculation for Statutory Minimum Contribution.*

### SB 202 – No Passing of Surcharges to Retirees

**Question: If we do not base our compensation solely on years of service, and want to hire a retiree who has 23 years of service, can we pay them the starting teacher salary? We may adjust compensation in the second year based on employee performance.**

*Answer: Please reach out to TEA or your Service Center for guidance.*

**Question: Could paying the retiree a salary closer to the lower end of our salary range be interpreted as us recouping the pension surcharge from the employee.**

*Answer: If the intent of paying the retiree at a lower salary is to recover the cost of surcharges, then it will be prohibited under SB202. Employers cannot pass the cost of the surcharges to the retiree through payroll deduction, imposition of a fee or by any other means designed to recover the cost.*

**Question: We have a retire/rehire who is an 11-month employee. the district can still pass on the cost of the surcharges to the retiree for her August pay, in September the district would start paying the surcharges, correct?**

*Answer: Correct. SB 202 is effective 9/01/2021. In August, the RE can still recoup surcharges from the retiree but effective 9/01/2021 this can no longer be done and must be paid by the RE.*

### HB 1585 – 12 calendar month break date change to Jan 1, 2021

**Question: If a retiree is working in a full-time capacity as a Substitute only, will surcharges be assessed to the employer if the retiree sat out 12 consecutive months?**

*Answer: If a retiree is working as a true substitute only (TRS definition) the retiree does not risk forfeiture of their monthly TRS annuity. Surcharges will not be due from the employer for true substitute employment.*

**Question: Can a retiree work without limits if retired before 1/1/21 and not forfeit their TRS annuity?**

*Answer: A TRS Retiree can work without limit and not forfeit their monthly annuity if they retired prior to 1/01/2021. The employer will owe surcharges for employment that is more than half time for any retiree who retired after September 1, 2005. This applies to both Pension and TRS-Care surcharges, however not all retirees are subject to the TRS-Care Surcharge. This will need to be verified on the "View Employee Information" screen.*

## SB 288 – Surge Personnel

**Question: Can someone who retired 6/30/2021 work full time in a position added for the learning gap as well as work 6 hours a week for a higher education institution?**

*Answer: The retiree must have a one-month break in service before returning to work. If the position added for the learning gap meets the requirements for surge personnel, then they can work in this position without forfeiture of annuity or surcharges. The employment at the higher education institution will be subject to the standard EAR limits.*

**Question: Will a retiree who works as a true substitute in one school district, and as a surge personnel in another district generate surcharges?**

*Answer: No. Neither of these positions would be subject to surcharges.*

**Question: For the Surcharge Personnel Exception, can a retiree work full time and not lose their annuity? Can they work full time and the district not have to pay the surcharges if Surge Personnel is the only position they will fill?**

*Answer: Correct, for the “Surge Personnel Exception”, a retiree can work full-time in this employment and not lose their annuity and surcharges would not be due from the Employer. However, they must meet the Surge Personnel requirements.*

**Question: If a retiree is paid out strictly of ESSER funds for performing tutoring jobs, will they be subject to surcharges if they go over half-time hours? The position will be new to reduce the learning loss created by COVID.**

*Answer: This position may meet the requirements of Surge Personnel. We would need to know if the position is expected to end on or before 12/31/2024. If so, then this would be meet the Surge Personnel requirement and their employment would not be subject to forfeiture or surcharges.*

**Question: If district 1 hires a retiree under the surge personnel exception and district 2 hires the same retiree under a full-time non-profit tutor position. Will surcharges be divided between both districts, or will district 2 be responsible for surcharges since the retiree exceeds monthly limits in that position?**

*Answer: Only District 2 would be subject to surcharges.*

**Question: Would surcharges apply if a retiree is filling a long-term sub position for a surge personnel vacancy?**

*Answer: The retiree can sub in this position for 20 days in the surge personnel vacancy. Once they exceed the 20 days, then they are no longer considered a substitute. If they are hired into surge personnel position and meet all the requirements, surcharges would not be due. However, if the retiree does not meet the requirements for surge personnel and continues to work in the vacant position, then surcharges may apply if they exceed the EAR limits.*

**Question: We have a growth position in an elementary school we are filling with a retired employee. We are paying with ESSER funds, would this qualify as a surge personnel exception? It is not an existing position. We are adding a teacher because of enrollment.**

*Answer: The surge personnel must be in addition to normal staffing levels (cannot be existing position). If this position is being added due to growth in the district, and the position is expected to be permanent, the position would not qualify as a Surge Personnel position.*

**Question: Does the surge exception apply to all types of positions throughout the district? For example, if additional administrative personnel are needed to handle the additional work created due to the implementation of the ESSER programs, can they be reported under the surge exceptions?**

*Answer: Intention is to aide with the learning loss recovery. The Employer will need to determine if other administrative positions that are added in response to the increase employees would meet the surge personnel exception.*

**Question: To Clarify, the only employees that we use the "E" Employment type on are retirees that qualify for surge personnel exception, it cannot be used for active employees.**

*Answer: Correct., Employment type "E" will be used for retirees only.*

**Question: How will we be certifying that they are in a surge position each month?**

*Answer: Employers will submit a certification in the RE Portal each month a retiree is reported under the Surge Personnel employment type.*

**Question: New employment codes (E), Is this something that we must get with our Software Providers?**

*Answer: TRS sent communication to all software providers we have listed. If the new Employment Code is not added by your software by the time September reports are due, the workaround will be to manually enter the new codes in the portal.*

## SB 1356 – Non-Profit Tutor

**Question: To clarify, the Tutor Exception would be employment through a 3rd party, not a direct hire?**

*Answer: After review from legal, it has been determined that the employment does not specifically need to be through a 3<sup>rd</sup> party if the retiree is affiliated with the non-profit tutor agency. However, please send all documentation to TRS for review and final determination.*

**Question: Is a Non-Profit Tutor the same as a regular tutor?**

*Answer: Essentially the duties are probably the same, however there are requirements specifically outlined in Section 33.913 of the Education Code for non-profit tutor.*

**Question: To verify, for the Tutor exception, if we have a tutor not affiliated with a non-profit org, they do not qualify for the tutor exception.**

*Answer: Correct. The retiree must be affiliated with the non-profit tutor agency in order to meet the requirements of Section 33.913 of the Education Code*

**Question: So, you can't hire a retired teacher and say they are Tutor fulltime and not pay surcharges. If you hire a retired teacher fulltime as your employee, they would not qualify for the Tutor?**

*Answer: Correct. For Non-profit Tutor, they are still subject to the surcharges. If they are hired by your RE and associated with a Non-profit organization, then we would need to review the agreement and tutor program information so we can determine how they should be reported. If they are not affiliated with Non-profit organization then they would just be reported as a full-time retiree by your RE and would be subject to surcharges.*

**Question: Can you please elaborate on what a non-profit tutor is and who qualifies? Are there funding requirements?**

*Answer: No funding requirement. Any TRS retirees can qualify, however they must meet requirements outlined in Section 33.913 of the Education Code. We would need to review the agreements you have with the retirees so that we can determine if they meet the requirements.*

**Question: Can you clarify the non-profit requirement, given the text: "Sec. 33.913. TUTORING PROGRAM. (a) A member of a nonprofit teacher organization or a person who is not a member but meets the requirements under Subsection (b) may participate in a tutoring program..."**

*Answer: We have the same information that you have stated here. We would need to review the agreements you have with the retirees so that we can determine if they meet the requirements. As we see more agreements, we will be able to share more information of how these should be reported.*

**Question: To rephrase my question, how should we report retirees working under SB1356 who are "not a member [of a nonprofit teacher organization]" but meet the requirements?**

*Answer: The requirement is that they must be a member of a Non-profit organization. If they are not meeting that requirement then they would be reported as an employee with one of the other employment types. Please make sure to also review the position to see if it meets the requirements for surge personnel exception. If not, then would need to be reported as substitute/ half-time or less/ more than half-time employment based on what the retiree is working.*

**Question: Can you define non-profit?**

*Answer: The only one that we are aware of right now is TRTA, but we anticipate others will be created since this legislation has passed.*

**Question: Non-Profit Tutor Program is the tutor paid by that organization? Our district has always hired part time tutors as employees, so those individuals are reported as part time employees.**

*Answer: If the requirements outlined in Section 33.913 of the Education Code for non-profit tutor are being met, the retiree would not need to be paid through a 3<sup>rd</sup> party. It is our understanding that the retiree can be hired directly through the employer and be paid directly from the employer but TRS would need a copy of the agreement as final review to confirm all the requirements are being met and the individuals employment qualifies as a non-profit tutor.*

## Other Questions

**Question: On the (Employment After Retirement) EAR Limits for FY 2022 calendar it says there will be pending TRS rule changes November 2021- August 2022., do you know what this is referring to?**

*Answer: A proposed rule change for a flat limit of 92 hours and 11 days for each month. This will be reviewed in the September 2021 Board Meeting and we anticipate the adoption of the rules will be effective with the November 2021 reporting. This has been published with the pending rule change until it has been fully adopted, once adopted we will send communication out to the RE's.*

**Question: Can retirees' salaries and surcharges be paid out of ESSER III Funds?**

*Answer: Please check with TEA, as TRS cannot advise how these funds can be used. However, if they can be paid out of those funds, they will be meeting one of the requirements for Surge Personnel.*

**Question: If an employee at a Higher Education institution wants to retire December 31st, will they receive a year of service credit? The academic fall semester ends December 10th.**

*Answer: There is a rule that allows a member to work the full fall semester to earn a year of service. This rule only applies in the year of their retirement. Make sure to complete TRS7 with the accurate semester dates for the campus where the employee is working.*

**Question: Will there be any trainings specific to ESSER reporting?**

*Answer: We do not have any training scheduled specifically for ESSER funding. From the schools' side, they will need to identify what is supplanted and what is supplemental. If Supplemental, they will need to determine how much eligible salary has been paid out of those funds, as this will need to be reported as Compensation paid from Federal Funds/Private Grants and subject to the Federal Funds/Private Grant Contribution. The supplanted portion is State funds and not subject to Federal Funds/Private Grant contribution reporting.*

**Question: Can you repeat the ESSER reporting you went over?**

*Answer: We have sent communication about these funds through email. The most confusing is the ESSER II, since this is a combination of supplanted and supplemental. ESSER III appears to be all supplemental and any eligible compensation paid from this fund would need to be reported as Compensation paid from Federal Funds/Private Grants and subject to the Federal Funds/Private Grant Contribution. ESSER II funds need to be reviewed by the reporting employer and if any are supplemental then any eligible compensation paid from the supplemental portion of the funding would need to be reported as Compensation paid from Federal Funds/Private Grants on the RP20 and would be subject to the contributions.*