

**AGENDA ITEM DETAILS**

**Subject:** Review, Discussion and Consideration of Proposed Fiscal Year 2021 Fees for TexFlex Program – (Action)

---

**RECOMMENDED ACTION:**

Move that the Board of Trustees of the Employees Retirement System of Texas approve an FY21 administrative fee holiday for the TexFlex program applicable to those participants enrolled in the Flexible Spending Health Care Reimbursement and Dependent Care Reimbursement plans, and continue the \$3.00 per month (or \$36 per year) employee-paid fee for the Commuter Spending Account.

**Background/Analysis:**

*TexFlex Background*

The state provides employees with TexFlex, the voluntary State of Texas flexible spending account program. Funded by participant pre-tax salary contributions, the TexFlex program offers accounts that can be used to reimburse participants for qualified eligible expenses according to the rules set by the Internal Revenue Service (IRS).

- **TexFlex Program Flexible Spending Accounts**

Texas Administrative Code Title 34, Part IV, Chapter 85 (Chapter 85) provides the rules that govern this TexFlex program. These rules constitute the Plan document. Chapter 85 stipulates that the TexFlex program is intended to be qualified under the Internal Revenue Code § 125; and will continue as long as it qualifies under § 125 and is advantageous to state and institutions of higher education employees. Accounts are maintained by the contracted plan administrator, WageWorks.

- **Flexible Spending: Health Care Reimbursement Account**

The health care reimbursement plan is a plan under the Internal Revenue Code § 125 designed to reimburse account holders for eligible out-of-pocket health care expenses. The maximum annual tax-deferred contribution amount is determined by the IRS and is currently set at \$2,650.

Under the TexFlex health care reimbursement plan, a participant can choose to contribute a set amount from their paycheck to a health care reimbursement account (HCRA). The account contribution is made pre-tax so that it lowers the participant's taxable compensation amount. A participant can then use his/her credited HCRA funds to pay for eligible out-of-pocket health care expenses such as copays, coinsurance and other eligible expenses not reimbursed from any other source, including insurance. The entire annual contribution amount is available to the participant at the beginning of each fiscal year. Consistent with IRS maximum employee contribution limits, the FY21 maximum annual contribution amount will increase by \$50 to \$2,750.

- **Flexible Spending: Limited Reimbursement Account**

The limited reimbursement account is a plan under the Internal Revenue Code designed to provide payment or reimbursement for eligible vision and dental care out-of-pocket expenses

only. This plan is available only to employees enrolled in the Consumer Directed HealthSelect<sup>SM</sup> plan. The maximum annual tax-deferred contribution amount is determined by the IRS and is currently set at \$2,700.

As with the HCRA, pre-taxed member contributions are credited to a participant-specific limited reimbursement account (LRA), which is maintained by the plan administrator. A participant is then able to use the credited amount from his/her specific LRA to fund only eligible vision and dental care out-of-pocket expenses such as copays, coinsurance and eligible expenses which are not reimbursed by any other source, including insurance. The entire annual contribution amount is available to the participant at the beginning of each fiscal year. Consistent with IRS maximum contribution limits, the FY21 maximum annual contribution will increase by \$50 to \$2,750.

- **Flexible Spending: Dependent Care Reimbursement**

The dependent care reimbursement plan is designed to provide payment or reimbursement for dependent day care expenses (not health care expenses). The maximum annual tax-deferred contribution amount is determined by the IRS and is currently set at \$5,000.

A participant can choose to contribute a set amount pre-tax from his/her paycheck to a dependent care reimbursement account (HCRA). The account contribution is pre-tax so that it lowers the participant's taxable compensation amount. A participant is then able to use the contributions from his/her specific DCRA as allowed by the IRS to pay day care expenses for qualifying adults or children under the age of 13, reimbursable as expenses are incurred and paid.

- **Enrollment and Contributions**

Participation in the TexFlex plan is voluntary. Enrollment occurs during the annual enrollment period and also throughout the year if an employee experiences a Qualifying Life Event (QLE). TexFlex, per federal law, is not available to retirees.

**TexFlex § 125 Flexible Spending Program  
Health Care Reimbursement and Dependent Care Reimbursement Plans  
Enrollment and Contribution Elections  
Fiscal Years Beginning 2019 and 2020**

Account Type	Enrollment (#)			Contribution Elections (\$)		
	FY19 Enrollment	FY20 Enrollment	Change in Enrollment (%)	FY19 Contribution Elections**	FY20 Contribution Elections**	Change in Elections** (%)
Health Care Reimbursement Plan	46,820	45,096	-3.7%	\$ 59,197,049	\$ 57,860,382	-2.3%
Dependent Care Reimbursement Plan	3,631	3,544	-2.4%	\$ 13,768,603	\$ 13,311,700	-3.3%
Participation in Both Plans	-2,344	-2,248	-4.1%			
<b>TOTAL* (Participants)</b>	<b>48,107</b>	<b>46,392</b>	<b>-3.6%</b>	<b>\$ 72,965,652</b>	<b>\$ 71,172,082</b>	<b>-2.5%</b>

\*Total enrollment is not equal to the sum of health care and dependent care enrollment because some members are enrolled in both plans.

\*\* Contribution Elections are pledges into the program and are reported commitments for the applicable fiscal year.

## **Plan Forfeitures**

Any unused contributed funds exceeding the \$500 carry over limit (Health Care FSA only) or at the end of the Dependent Care Reimbursement grace period, are forfeited to the TexFlex Program. Forfeited funds are applied to plan administrative costs and are not available for use by the program participant. This forfeiture feature is commonly referred to as the "use it or lose it" rule.

Specific to the TexFlex Health Care account only, members can "carry over" up to \$500 in unused funds to the next plan year. To be eligible for the "carry over" balance, the member must be a TexFlex Health Care FSA or Limited Reimbursement participant on the last day of the previous plan year (August 31).

Total accumulated forfeitures are approximately \$17.5 million from plan inception date through Plan Year 2018. The forfeiture amount for Plan Year 2019 will be finalized in June 2020 due to the time needed to allow for residual claims exceptions following the conclusion of the run-out period. While the September 2014 change to allow a \$500 carryover specific to the Health Care Reimbursement plan reduced forfeitures, it has not eliminated them.

Forfeitures cannot be used to pay Commuter Spending Account administrative expenses, consistent with IRS regulations.

## **Tax Savings and Premium Conversion**

Pre-tax contributions (premium conversion) are an important part of the TexFlex program. Premium conversion is automatic for GBP members enrolled in a health insurance benefit plan available through the Texas Employees Group Benefits Plan. Any out-of-pocket coverage costs (other than life insurance) are paid by the employee on a pre-tax basis. Paying for these costs pre-tax reduces the employee's taxable salary and also reduces the employer's Federal Insurance Contributions Act (FICA) tax based on taxable salary. Life insurance contributions are paid on a post-tax basis so that any benefits paid will not be taxable to the beneficiary.

Premium conversion for health insurance saved the State of Texas an estimated \$39.0 million in FICA taxes in FY19. The other TexFlex programs saved the state an additional \$5.6 million in FICA taxes. The money that the program saves for the State goes into general revenue.

Premium conversion saved participants \$132.0 million in FY19.

## ***Commuter Spending Account***

In Plan Year 2015, the state began offering a Qualified Transportation Fringe Benefit to eligible active employees who commute to work on mass transit and/or incur parking expenses. Enrollment into the program began on January 1, 2016 with a benefit start date of March 1, 2016. Unlike most other optional benefits, participants have the ability to enroll or dis-enroll on a monthly basis and are not required to wait until Summer Enrollment or a QLE. Like the other TexFlex programs, the State does not provide any funding for program operations. The monthly cost for participation in the program is \$3 per month or \$36 per year paid entirely by the participant.

Currently, 34 participants elected to participate in the parking benefit and 149 participants elected to participate in the transit benefit.

## **Administration Fee**

The CSA program has a \$3.00 monthly administrative fee that is deducted from the participant's CSA account balance.

Consistent with IRS requirements, forfeited account balances from the health care and dependent care flexible spending accounts cannot be used to pay the \$3.00 Commuter Spending Account monthly administrative fee.

### ***TexFlex Administrative Fee Holiday***

Prior to Plan Year 2016, employees who participated in TexFlex flexible spending accounts were charged an administrative fee per account per month. Beginning with Plan Year 2016, the Employees Retirement System of Texas (ERS) enacted an administrative fee holiday during which the \$1.00 monthly account administration fee was waived for participants. With the enactment of the administrative fee holiday, the TexFlex program administrative cost is covered by the previous year's forfeited account balances. Use of forfeited account balances to subsidize administrative costs for all participants is an allowable expense per federal regulations.

Another component of the TexFlex program is the TexFlex Commuter Spending Account program. Administrative fees are charged for that program. Group Benefits will have a recommendation for that program later in this agenda item. Chapter 85 provides the rules that govern the TexFlex Commuter Spending Account program, which align with the requisites provided under § 132.

### ***Staff Recommendation:***

Staff recommends continuing the administrative fee holiday for FY21 for the TexFlex flexible spending accounts and continuing the \$3.00 per month (or \$36 per year) employee-paid fee to participants in the Commuter Spending Account.

ATTACHMENTS:

.