

AGENDA ITEM DETAILS

Subject: Review, Discussion and Consideration of Proposed Fiscal Year 2022 Fees for TexFlexSM Program and termination of the Commuter Spending Account – (ACTION)

RECOMMENDED ACTION:

Move that the Board of Trustees of the Employees Retirement System of Texas approve a PY22 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 further move that the Commuter Spending Account terminate at August 31, 2021, with a runout period ending December 31, 2021, after which remaining eligible balances will be refunded to participants on a taxable basis.

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 participants can use to reimburse themselves 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) governs the 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, which is currently WageWorks. The Board awarded the administrative contract to PayFlex, effective September 1, 2021, at the March 2021 Board meeting.

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

The health care reimbursement account is provided under the Internal Revenue Code § 125 and is designed to reimburse account holders for eligible out-of-pocket health care expenses. The IRS determines the maximum annual tax-deferred contribution amount. The current allowed amount is \$2,750 for Calendar Year (CY) 2021.

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 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 out-of-pocket 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.

- **Flexible Spending: Limited Reimbursement Account**

The limited purpose 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 HealthSelectSM plan. The IRS determined maximum annual tax-deferred contribution amount is currently \$2,750.

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.

- **Flexible Spending: Dependent Care Reimbursement**

The dependent care reimbursement plan provides 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 subject to the plan's determined maximum annual contribution amount, 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.

- **Temporary Provisions**

Because many employees made their PY20 TexFlex benefit selections prior to the public health emergency, they were unable to use their FSA benefits as they originally intended. With this recent regulatory action, ERS was able to implement temporary provisions to the program to help address these challenges for participants in accordance with the provisions of the Consolidated Appropriations Act of 2021, which was signed into law on December 27, 2020. Those temporary provisions also affect Dependent Care Reimbursement Accounts.

- Removed FSA carryover limits for both 2020 and 2021 plan years.
- Adopted spend-down provisions for plan years ending 2020 and 2021, which allows those who leave the plan to submit claims up to the contribution amount for dates of service during the entire plan year. Currently, the only way to do this is through a COBRA election.
- Adopted the special carry forward rule for dependent care reimbursement where dependents aged out during the pandemic (An "eligible employee" may be reimbursed for an eligible dependent who is not yet age 14 [previously age 13] for purposes of determining the dependent care assistance which may be paid or reimbursed with respect to such employee under the dependent care reimbursement account).
- Allow prospective FSA elections for PY 2021 only without a qualifying life event (QLE)

Enrollment and Contributions

Participation in the TexFlex plan is voluntary. Enrollment occurs during the annual enrollment period and throughout the year subject to TexFlex rules. 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 2020 and 2021**

	Enrollment (#)			Contribution Elections (\$)		
	FY20 Enrollment	FY21 Enrollment	Change in Enrollment (%)	FY20 Contribution Elections**	FY21 Contribution Elections**	Change in Elections** (%)
Health Care Reimbursement Plan	45,096	42,635	-5.46%	\$57,261,588	\$54,371,256	-5.05%
Dependent Care Reimbursement Plan	3,544	2,443	-31.07%	\$12,656,099	\$8,642,710	-31.71%
Participation in Both Plans	(2,248)	(1,537)	-31.63%			
TOTAL* Participants)	46,392	43,541	-6.15%	\$69,917,687	\$63,013,966	-9.87%

**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, and is an IRS requirement.

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).

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

Total accumulated forfeitures are approximately \$23.8 million from plan inception date through Plan Year 2020. ERS will determine the forfeiture amount for Plan Year 2021 in June 2021 to allow time to account for residual claims exceptions following the conclusion of the run-out period, and the potential impact of the Consolidated Appropriations Act of 2021.

Tax Savings and Premium Conversion

Another important component of the TexFlex is premium conversion. Premium conversion allows participants to pay for insurance coverages on a pre-tax basis. Premium conversion is automatic for GBP members enrolled in a health insurance benefit plan who have any out-of-pocket premium costs, including spouse or dependent health insurance coverage. It also applies to other optional coverages, other than life insurance. Paying for these costs pre-tax lowers the employee's taxable salary and reduces the employer's 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 saved the State of Texas an estimated \$44.1 million in FICA taxes in FY20. The other TexFlex programs saved the state an additional \$5.3 million in FICA taxes. The money that the program saves for the State goes into general revenue.

Premium conversion saved participants \$130.5 million in FY20.

Commuter Spending Account

In Plan Year 2015, the state began offering a Qualified Transportation Fringe Benefit (Commuter Spending Account) 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.

Since inception, there is minimal utilization across both the parking and transit CSA accounts despite campaign efforts and direct mailings to members living and working in cities using mass transit. As of March 31, 2021, 0.001% of the total eligible population is participating in the CSA with 291 participants enrolled in the transit account and 60 enrolled in the parking benefit. Of that population, 49 continue to contribute to the transit benefit and 19 to the parking benefit.

Low enrollment and utilization are attributed to higher education institutions offering their own parking benefit, low usage of mass transportation, and reduced parking and mass transit needs in general. Together with the administrative challenges of the program and high cost to maintain, staff recommends the plan end at August 31, 2021 with a run-out period ending December 31, 2021.

Because the plan will end, staff further recommends a refund of remaining balances following the end of the run-out period and the payments will be taxable. Additional refund details will be provided at a later date.

TexFlex Administrative Fee Holiday

Prior to Plan Year 2016, employees who participated in TexFlex flexible spending accounts paid an administrative fee per account per month. Beginning with Plan Year 2016, the ERS enacted an administrative fee holiday and ceased charging a monthly administrative fee. Since that time, 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.

Staff Recommendation

Staff recommends continuing the TexFlex flexible spending account administrative fee holiday for FY22 and further recommends that the Commuter Spending Account terminate at August 31, 2021, with a runout period ending December 31, 2021, after which remaining eligible balances will be refunded to participants on a taxable basis.

ATTACHMENTS:

1. Slides - TexFlex Proposed Fiscal Year 2022 Fees