

AGENDA ITEM DETAILS

Subject: Consideration of Proposed Rules for the Implementation of the Cash Balance Benefit (Group 4) – (Action)

RECOMMENDED ACTION:

Move that the Board of Trustees adopt proposed amendments to Texas Administrative Code, Title 34, Part IV, Chapter 71 (Creditable Service) and Chapter 73 (Benefits) as detailed in **Exhibits A and B** to this agenda item.

Further move that the Board of Trustees adopt new Chapter 76 (Cash Balance Benefit) as detailed in **Exhibit C** to this agenda item.

Background:

The 87th Texas Legislature enacted Senate Bill 321 in an effort to return the ERS Pension Trust to long-term financial solvency and to initiate structural changes to mitigate future financial risk. SB 321 established an actuarially determined annual legacy payment to retire the Trust's unfunded liabilities by 2054. The legislation, which is codified in Texas Government Code Chapter 820, also created a cash balance benefit for employees, who do not have an existing retirement account with ERS and begin state service on or after September 1, 2022. This new retirement benefit is referred to as the "cash balance benefit," and those employees who participate in this benefit are known as "Group 4."

Group 4 implementation efforts have raised a number of policy considerations that are not specifically addressed in the governing statute. Staff from program and support divisions developed policies and procedures on interest calculations and benefits processing, among other topics, to address the administrative aspects of the cash balance benefit. Some of these policies and procedures necessitate new administrative rules to clarify and formalize administration of Group 4. Some existing administrative rules for current retirement group members (Groups 1, 2 and 3) who joined state service prior to September 1, 2022, also need revisions to clarify how they interact with the new cash balance benefit. The newly proposed and amended rules are provided in Exhibits A - D and are presented to the Board for consideration. Notice of the proposed amendments was provided to trustees, stakeholder groups and the general public in early July. Staff may need to present additional rules for Group 4 to the Board for consideration as ERS continues its implementation work.

Proposed Amendments to Chapter 71 (Creditable Service)

ERS proposes to amend §§ 71.2, 71.5, 71.14, 71.17, 71.19, 71.29, and 71.31 to clarify how the new cash balance benefit will interact with the existing rules regarding creditable service. The benefits payable under the cash balance benefit are primarily based on account balance and age at retirement. Factors such as service credit, final average salary, and a benefit multiplier do not factor into the calculation of benefits for a Group 4 member.

In alignment with statute, under the proposed amendments, Group 4 members are prohibited from transferring service credit to or from TRS, applying unused accumulated leave toward retirement eligibility or annuity calculation, and purchasing service such as additional service credit and waiting-period service credit. Most service purchases are excluded for members of Group 4. However, former ERS members may purchase previously withdrawn service credit for participation in the Proportionate Retirement Program and military service credit under limited circumstances.

Notice of the proposed amendments to Chapter 71 was published in the July 8, 2022 issue of the *Texas Register* (47 TexReg 3945) as required by statute. ERS did not receive any public comment regarding the proposed rules.

Proposed Amendments to Chapter 73 (Benefits)

ERS proposes to amend § 73.2 to clarify eligibility to participate in the various retirement groups based on the dates that state service begins and ERS membership commences. ERS proposes to amend § 73.11 to clarify that the supplemental retirement program established by Texas Government Code § 814.107 does not apply to Group 4 members and to make other clarifying changes. Proposed amendments to § 73.21 are intended to clarify the service periods to which the actuarial tables and factors described in this section apply and to make other clarifying changes. Finally, § 73.49 is proposed to clarify how the federal Uniform Services Employment and Reemployment Rights Act (USERRA) applies to members of Groups 1, 2, and 3.

Notice of the proposed amendments to Chapter 73 was published in the July 8, 2022 issue of the *Texas Register* (47 TexReg 3949) as required by statute. ERS did not receive any public comment regarding the proposed rules.

Proposed Rules under Chapter 76 (Cash Balance Benefit)

ERS proposes new Chapter 76 to describe and clarify the administration of the cash balance benefit established by Texas Government Code Chapter 820.

- Section 76.1 provides definitions for “cash balance benefit” and “annuitant,” two terms used throughout the proposed new rules in this chapter.
- Section 76.2 identifies the types of Group 4 custodial officers who are entitled to the enhanced benefit for law enforcement and custodial officers.
- Section 76.3 clarifies the procedure to purchase previously established service credit for individuals participating in the Proportionate Retirement Program under Texas Government Code Chapter 803.
- Section 76.4 describes how the optional retirement program under Texas Government Code Chapter 830 applies to the cash balance retirement benefit.
- Section 76.5 states that the Board shall adopt actuarial factor tables applicable to Group 4.
- Sections 76.6, 76.7 and 76.8 align certain Group 4 retirement benefits and procedures, including optional retirement benefits, partial lump-sum options, and the method for selecting or amending such benefits, with existing benefits and procedures for Groups 1, 2, and 3.
- Section 76.9 prescribes the method for calculating and applying annual interest to a Group 4 member’s accumulated account balance.
- Section 76.10 outlines the method for calculating and applying the gain sharing interest rate to Group 4 member accounts and retiree annuity payments.
- Section 76.11 clarifies how ERS will pay a lump-sum death benefit in the event of excess contributions following a Group 4 retiree’s death.
- Section 76.12 clarifies that USERRA applies to Group 4 members to the same extent it applies to any system member.

Notice of the new Chapter 76 was published in the July 8, 2022 issue of the *Texas Register* (47 TexReg 3953) as required by statute. ERS did not receive any public comment regarding the proposed rules.

Staff Recommendation:

Staff recommends that that the Board take the following action with regard to the Rules promulgated in Texas Administrative Code, Title 34, Part IV:

1. Adopt proposed amendments to Chapter 71 (Creditable Service), Chapter 73 (Benefits), and Chapter 75 (Hazardous Profession Death Benefits) as detailed in Exhibit A - C to this agenda item; and
2. Adopt new Chapter 76 (Cash Balance Benefit) as detailed in Exhibit D to this agenda item.

A proposed motion is included at the top of this agenda item for consideration.

ATTACHMENTS:

1. Exhibit A – Proposed Amendments to TAC 71
2. Exhibit B – Proposed Amendments to TAC 73
3. Exhibit C – Proposed Addition of TAC 76
4. Slides – Adoption of Group 4 Benefit Rules