

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) Chapter 71, concerning Creditable Service, by amending §71.2 (Membership Waiting Period for Employee Class), §71.5 (Credit Previously Transferred from Teacher Retirement System (TRS) and Credit Transferred from TRS Pursuant to the Government Code, Title 8), §71.14 (Payments to Establish or Reestablish Service Credit), §71.17 (Credit for Unused Accumulated Leave), §71.19 (Transfer of Service between the Teacher Retirement System of Texas (TRS) and the Employees Retirement System of Texas (ERS)), §71.29 (Purchase of Additional Service Credit), and §71.31 (Credit Purchase Option for Certain Waiting Period Service).

ERS is a constitutional trust fund established as set forth in Article XVI, §67, Texas Constitution, and further organized pursuant to Title 8, Tex. Gov't Code, as well as 34 TAC §§61.1 *et seq.*

ERS proposes to amend §§ 71.2, 71.5, 71.14, 71.17, 71.19, 71.29, and 71.31 in order to clarify the rule's interaction with the new cash balance benefit established in 2021 by SB 321 and set forth in Chapter 820 of the Texas Government Code.

#### GOVERNMENT GROWTH IMPACT STATEMENT

ERS has determined that during the first five-year period the amended rule will be in effect:

- (1) the proposed amendments will not create or eliminate a government program;
- (2) implementation of the proposed amendments will not require the creation of new employee positions or eliminate existing employee positions;
- (3) implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed amendments will not require an increase or decrease in fees paid to the agency;
- (5) the proposed amendments will not create a new rule or regulation;
- (6) the proposed amendments will not expand, limit, or repeal an existing rule or regulation;
- (7) the proposed amendments will not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) the proposed amendments will not positively or adversely affect the state's economy.

Ms. Robin Hardaway, Director of Customer Benefits has determined that for the first five-year period the rule is in effect, there will be no fiscal implication for state or local government or local economies as a result of enforcing or administering the rule; and small businesses, micro-businesses, and rural

communities will not be affected.

The proposed amendments to the rule reflect clarifications of the rule's interaction with the new cash balance benefit. The proposed amendments do not constitute a taking. Ms. Hardaway has also determined that, to her knowledge, there are no known anticipated economic effects to persons who are required to comply with the rule as proposed, and the proposed amendments do not impose a cost on regulated persons.

Ms. Hardaway also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of adopting and complying with the rule is to clarify the rule's interaction with the new cash balance benefit.

Comments on the proposed amendments may be submitted to Cynthia C. Hamilton, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Hamilton at [general.counsel@ers.texas.gov](mailto:general.counsel@ers.texas.gov). The deadline for receiving comments is Monday, August 8, 2022, at 10:00 a.m.

The amendments are proposed under Tex. Gov't Code §815.102, which provides authorization for the ERS Board of Trustees to adopt rules necessary for the administration of the funds of the retirement system and regarding the transaction of any other business of the board, and Tex. Gov't Code §820.004, which authorizes the board to adopt rules necessary to implement the cash balance benefit.

No other statutes are affected by the proposed amendments.

*§71.2. Membership Waiting Period for Employee Class.*

(a) In determining the date of eligibility for membership in the employee class for an employee who was subject to the waiting period, the following provisions apply:

(1) the system shall count the date of employment as the first day of the ~~[90-day]~~ waiting period;

(2) the date of employment means the date on which an individual began to perform service or hold office.

(b) Service credit for service performed during the ~~[90-day]~~ waiting period described by this section may be established at the actuarial present value as provided in §71.31 of this chapter and Tex. Gov't [Texas Government] Code §813.514, if applicable.

(c) Waiting periods prior to September 1, 1973 are considered membership service not previously established and may be established as provided in §71.14 of this chapter.

*§71.5. Credit Previously Transferred from Teacher Retirement System (TRS) and Credit Transferred from TRS Pursuant to the Government Code, Title 8.*

- (a) Credit for 4-1/2 months or more of service performed in a fiscal year under the Teacher Retirement Act prior to September 1, 1958, was transferred to the system [~~Employees Retirement System (ERS)~~] as one year of service credit. No credit was established for less than 4-1/2 months service in a fiscal year ending prior to September 1, 1958.
- (b) Service of nine or more months in a fiscal year beginning after August 31, 1958, was established as 12 months' credit. All other service performed under TRS after August 31, 1958, was transferred to the system [ERS] on a month-for-month basis.
- (c) Credit for military service transferred from [~~the~~] TRS is established in the system [ERS] only if that military service was eligible for credit under provisions of Tex. Gov't Code [~~the Government Code,~~] Title 8.
- (d) Credit for service transferred from [~~the~~] TRS to the system [ERS] pursuant to Tex. Gov't Code [~~the Government Code,~~] Title 8, shall be established in the system [ERS] on a month-for-month basis notwithstanding any other provision of this section.
- (e) Credit for service transferred from [~~the~~] TRS to the system [ERS] after August 1, 1993, shall be according to the rules adopted by [~~the~~] TRS for determining creditable service.
- (f) A cash balance group member, a beneficiary of a deceased cash balance group member, or a personal representative of a cash balance group member may not transfer service credit from TRS.

*§71.14. Payments to Establish or Reestablish Service Credit.*

- (a) A cash balance group member may not establish or reestablish service credit under this section except to the extent that §76.12 of this part allows the purchase of military service credit.
- (b) [~~(a)~~] A member or contributing member may purchase eligible service creditable in the [retirement] system in accordance with Tex. Gov't Code [~~the Government Code,~~] Chapter 813. The [~~retirement~~] system shall grant the applicable amount of service credit after each payment made under this section is equal to the amount required to establish one or more months of creditable service.
- (c) [~~(b)~~] Service credit that may be established or reestablished includes military service credit, service credit previously cancelled, and service credit not previously established.
- (d) [~~(c)~~] The system [ERS] shall develop procedures and forms to be used in connection with this

section.

(e) [(d)] A member who has contributed to both the Law Enforcement and Custodial Officer Supplemental Retirement (LECOS) fund and the ERS defined benefit plan will be allowed to purchase previously refunded Commissioned Peace Officer and Custodial Officer (CPO/CO) service and/or employee class service within the defined benefit plan. If a member purchases employee class service only and decides later to retire as a CPO/CO, the member must purchase the unpaid portion of service credit attributable to CPO/CO service, which will include any additional contribution to the LECOS fund plus interest, in order to receive creditable service and retire as a CPO/CO. If the member does not purchase the unpaid portion of the service credit attributable to CPO/CO service, then the service shall only be creditable for the employee class of membership.

*§71.17. Credit for Unused Accumulated Leave.*

(a) A cash balance group member may not receive credit for unused accumulated leave.

(b) [(a)] Unused accumulated leave is creditable only in the employee class of membership and only so long as the last day of employment occurs during the month in which the member dies or the member's retirement becomes effective.

(c) [(b)] Before the amount of service credit can be determined, an authorized state agency official must certify electronically or on a form prescribed by the system [Employees Retirement System of Texas (ERS)] the amount of unused accumulated leave accrued by [to the credit of] the member as of [(a)] the last day of employment.

(d) [(c)] Eligible leave credit will become effective as service credit only after retirement or death. Subject to that limitation and upon receipt of a certification pursuant to subsection (c) [(b)] of this section, the system [ERS] shall grant any service credit to which a retiree is thereby entitled. An increase in the computation of an annuity because of leave credit shall be effective from the time of certification.

(e) [(d)] Leave creditable as provided in this section includes only earned [annual] vacation leave [entitlement] and sick leave [entitlement]. A member transferring TRS service to the system [ERS] for the purpose of retirement will receive credit for leave as provided in this section only if the member holds a position in the employee class of membership in the system [ERS] during the effective month of retirement. The percentage value of all service creditable in the employee class of membership shall not exceed 100%.

*§71.19. Transfer of Service between the Teacher Retirement System of Texas (TRS) and the Employees Retirement System of Texas (ERS).*

(a) A cash balance group member may not transfer credit under this section.

(b) [(a)] Purpose. These rules are intended to implement the provisions of Tex. Gov't Code [~~the Government Code,~~] Chapter 805[~~7~~] concerning the transfer of credit between TRS and ERS[~~7~~] and to provide a systematic method of funding the actuarial value of the annuity resulting from transferred service.

(c) [(b)] Forms.

(1) Applications for transfer shall [~~will~~] be made using forms prescribed by ERS.

(2) ERS shall [~~will~~] cooperate with TRS in an effort to make such application forms for ERS comparable to those used by TRS.

(d) [(c)] Notice.

(1) A person who elects to transfer service credit pursuant to these rules must file the appropriate form to make such transfer not more than 90 days prior to the person's retirement effective date[~~7~~] but not later than the [~~said~~] effective date.

(2) ERS shall [~~will~~] notify TRS of the pending transfer not later than 30 days following the [~~said~~] effective date.

(e) [(d)] Manner of transfer.

(1) Service credit and assets shall [~~will~~] be transferred through electronic and hard copy documentation pursuant to these rules, and ERS shall [~~will~~] maintain records of such transfers permanently.

(2) Any transfer of service credit to ERS shall [~~must~~] reflect years of credit, average salary, periods of service, method of calculation, and the manner used to calculate the time period involved, including any military credit purchased.

(3) Any transfer of service credit to ERS shall [~~must~~] include specific data regarding the pre-tax and after-tax contributions by the person, interest owed, earned interest, and any other dollar amount which will be part of the transfer.

(4) Assets to fund the portion of the annuity attributable to service with [~~the~~] TRS shall [~~will~~] be transferred to ERS pursuant to agreement with TRS.

(5) Service transferred from TRS shall [~~will~~] be established in an employee class account for the benefit of the member.

(f) [(e)] Transfer of funds. ERS and TRS agree on the following method of transferring funds.

Each system shall certify on a monthly basis the total dollar amount of annuities paid by the system which ~~is [are]~~ attributable to service transferred pursuant to Tex. Gov't Code [the Government Code,] Chapter 805. The amount certified shall exclude any portion of annuities paid consisting of post-retirement increases. Each system shall remit to the other system the amount certified within 30 days of receipt of such certification. It is recognized that adjustments will be made from month-to-month as a result of such things as administrative errors, the death of the annuitant or a beneficiary, return-to-work, and recovery from disability by an annuitant. The systems shall [will] jointly agree on the administrative and accounting procedures to be established in order to ensure the transfer of funds pursuant to this section.

~~(g) [ (f) ]~~ Purchase of refunded service.

(1) A member of TRS who canceled membership in ERS by taking a refund of an [his] individual account may repurchase the canceled [his] service credit for the purpose of making a transfer at any time prior to retirement. Such persons do not have to become ~~[a] contributing members[member]~~ of ERS in order to purchase such canceled service credit.

(2) A person who cancels membership in ERS by taking a refund of an [his] individual account must meet the general requirements for reinstatement or purchase of service credit in ERS.

~~(h) [ (g) ]~~ Military credit. Any transferred military service which would result in a member receiving service credit in excess of that permitted under ERS rules shall [will] not be accepted.

~~(i) [ (h) ]~~ Termination of membership. The transfer of ERS credit to TRS shall [will] terminate membership in ERS~~;~~ and shall [will] cancel all rights to benefits from ERS based on that service.

~~(j) [ (i) ]~~ Service in the month following retirement. In accordance with rules adopted by the retirement systems under Tex. Gov't Code [Texas Government Code,] Chapter 805, as applicable, a retirement shall be canceled, service credit transfer canceled, and membership reinstated if, during the month following retirement, an ERS retiree~~;~~ who transferred service from TRS and retired pursuant to this chapter~~;~~ holds a position covered by the retirement system at which the retiree was last employed ~~[during the month following retirement]~~. A retirement shall be canceled and membership reinstated if a retiring member has a commitment from the member's [his] present employer to be rehired. At the time of retirement, a retiring member must disclose to the retirement system any commitment ~~[from his present employer]~~ to be rehired.

*§71.29. Purchase of Additional Service Credit.*

(a) A cash balance group member may not establish service credit under this section.

(b) [ ~~(a)~~ ] An eligible member may establish equivalent membership service credit authorized by Tex. Gov't Code §813.513, ~~Texas Government Code,~~ as provided in this section. The provisions of §71.14 of this chapter [~~title (relating to Payments to Establish or Reestablish Service Credit)~~] do not apply to credit established under this section.

(c) [ ~~(b)~~ ] A member is eligible to establish credit under this section in the membership class in which the member holds a position if the member:

- (1) has 120 months of service credit for one or more periods of time during which the member held a position in a membership class and the required contributions were made;
- (2) is actively contributing to the system at the time credit is established; and
- (3) is not eligible to establish other credit or service.

(d) [ ~~(c)~~ ] An eligible member shall deposit with the system in a lump sum a contribution in the amount determined by the system to be the actuarial present value of the benefit attributable to the credit established under this section. The tables recommended by the actuaries and adopted by the board shall be used by the system to determine the actuarial present value. [~~The additional service credit tables are adopted by reference and made a part of this rule for all purposes.~~] The 2009 additional service credit tables apply to service purchase calculations performed on or after September 1, 2009, and are those tables adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. The 2010 additional service credit tables apply only to those employees hired by the state of Texas on or after September 1, 2009, as defined in §73.2(c) of this title [~~(relating to Determination of Date of Hire for Retirement Benefit Eligibility)~~]. The 2010 additional service credit tables apply to service purchase calculations performed on or after September 1, 2010, and are those tables adopted by the board on February 23, 2010, based on legislative changes to the retirement plan effective September 1, 2009. The 2014 additional service credit tables apply to service purchase calculations performed on or after September 1, 2014, but before September 1, 2018, and are those tables adopted by the board on February 25, 2014, based on assumptions adopted by the board on February 26, 2013, and on legislative changes to the retirement plan effective September 1, 2013. For service purchase calculations performed prior to September 1, 2014, the previously adopted tables apply. [~~Copies of these tables are available from the System's executive director, Employees Retirement System of Texas at 200 E. 18th Street, P.O. Box 13207, Austin, Texas 78711-3207.~~] The actuarial present value shall be based on:

- (1) the member's age on the date of the deposit required by this subsection;
- (2) the earliest date on which the member will become eligible to retire and receive a

service retirement annuity after establishing credit under this section; and

(3) the future employment, compensation, investment and retirement benefit assumptions recommended by the actuaries and adopted by the board.

(e) [ ~~(d)~~ ] Credit shall be established in increments of 12 months of credit, except that a member who may become eligible to retire by establishing fewer than 12 months of credit may establish the minimum number of months of credit necessary for the member to meet retirement eligibility.

(f) [ ~~(e)~~ ] A member who establishes credit under this section shall certify that the member is not eligible to establish other credit or service and shall waive ~~any and~~ all rights ~~[right]~~ to establish such credit or service that the member had on the date of the deposit required by subsection (d) [ ~~(e)~~ ] of this section. This subsection does not apply to service credit transferred as authorized by Tex. Gov't Code Chapter 805, ~~Texas Government Code~~.

(g) [ ~~(f)~~ ] Credit established under this section may not be used to determine average monthly compensation for the purpose of computing an annuity.

(h) [ ~~(g)~~ ] A member who withdraws contributions and cancels credit established under this section may not reestablish such credit under Tex. Gov't Code §813.102, ~~Texas Government Code~~, but may again establish credit as provided in this section.

(i) [ ~~(h)~~ ] The provisions of Tex. Gov't Code §813.503, ~~Texas Government Code~~, do not apply to credit established under this section.

(j) [ ~~(i)~~ ] For a member establishing equivalent membership service credit authorized by Tex. Gov't Code §813.513, ~~Texas Government Code~~, on or after September 1, 2018, the tables used to determine the actuarial present value of the service credit are those adopted by the board and in effect on the date the service credit is established, ~~and~~ as adjusted from time to time as required by Tex. Gov't Code §815.105, ~~Texas Government Code~~, ~~in effect on the date the service credit is established. Copies of these tables are available from the System's executive director, Employees Retirement System of Texas at 200 E. 18th Street, P.O. Box 13207, Austin, Texas 78711-3207.~~

*§71.31. Credit Purchase Option for Certain Waiting Period Service.*

(a) A cash balance group member may not establish service credit under this section.

(b) [ ~~(a)~~ ] An eligible employee class member may establish service credit for service performed during the waiting period as authorized by Tex. Gov't Code §813.514, ~~Texas Government Code~~, and as provided in this section. The provisions of §71.14 of this chapter ~~[title (relating to Payments to Establish or Reestablish Service Credit)]~~ do not apply to service credit established under this section.



(c) [ (b) ] An employee class member is eligible to establish service credit under this section if the member:

(1) has completed the waiting period;

(2) has made a retirement contribution in accordance with Tex. Gov't Code §813.201[~~7~~, ~~Texas Government Code~~]; and

(3) makes application for the establishment of service credit and payment of the required contributions in accordance with procedures developed by ERS.

(d) [ (e) ] An eligible member shall deposit with the system in a lump sum a contribution in the amount determined by the system to be the actuarial present value of the benefit attributable to the service credit established under this section. The tables recommended by the system's actuary and adopted by the board shall be used to determine the actuarial present value. The waiting period service credit tables are adopted by reference and made a part of this rule for all purposes. The 2009 waiting period service credit tables apply to service purchase calculations performed on or after September 1, 2009, and are those tables adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. The 2010 waiting period service credit tables apply only to those employees hired by the state of Texas on or after September 1, 2009, as defined in §73.2[(e)] of this title [(relating to Determination of Date of Hire for Retirement Benefit Eligibility)]. The 2010 waiting period service credit tables apply to service purchase calculations performed on or after September 1, 2010, and are those tables adopted by the board on February 23, 2010, based on legislative changes to the retirement plan effective September 1, 2009. The 2014 waiting period service credit tables apply to service purchase calculations performed on or after September 1, 2014, but before September 1, 2018, and are those tables adopted by the board on February 25, 2014, based on assumptions adopted by the board on February 26, 2013, and on legislative changes to the retirement plan effective September 1, 2013. For service purchase calculations performed prior to September 1, 2014, the previously adopted tables apply. [Copies of these tables are available from the System's executive director, Employees Retirement System of Texas at 200 E. 18th Street, P.O. Box 13207, Austin, Texas 78711-3207.]

(e) [ (d) ] Actuarial present value shall be based on:

(1) the member's age on the date of the deposit required by this subsection;

(2) the earliest date on which the member will become eligible to retire and receive a service retirement annuity after establishing service credit under this section; and

(3) the future employment, compensation, investment and retirement benefit assumptions recommended by the system's actuary and adopted by the board.

(f) [ ~~(e)~~ ] Waiting period service credit shall be established in increments of one month.

(g) [ ~~(f)~~ ] This section does not apply to service credit transferred as authorized by Tex. Gov't Code [ ~~Texas Government Code,~~ ] Chapter 805.

(h) [ ~~(g)~~ ] A member who withdraws contributions and cancels service credit established under this section may not reestablish such credit under Tex. Gov't Code §813.102 [ ~~Texas Government Code,~~ ] but may again establish credit only as provided by this section.

(i) [ ~~(h)~~ ] Credit established under this section may not be used to determine average monthly compensation for the purpose of computing an annuity.

(j) [ ~~(i)~~ ] For a member establishing service credit for service performed during the waiting period as authorized by Tex. Gov't Code §813.514 [ ~~Texas Government Code,~~ ] on or after September 1, 2018, the tables used to determine the actuarial present value of the service credit are those adopted by the board, [ ~~and~~ ] as adjusted from time to time as required by Tex. Gov't Code §815.105, [ ~~Texas Government Code,~~ ] in effect on the date the service credit is established. [ ~~Copies of these tables are available from the System's executive director, Employees Retirement System of Texas at 200 E. 18th Street, P.O. Box 13207, Austin, Texas 78711-3207.~~ ]