

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) by adding a new Chapter 76 (Cash Balance Benefit) consisting of §76.1 (Definitions), §76.2 (Custodial Officer Service), §76.3 (Proportionate Service Purchases), §76.4 (Optional Retirement Program), §76.5, (Factor Tables), §76.6 (Optional Cash Balance Retirement Benefits), §76.7 (Change in Annuity Selection), §76.8 (Partial Lump-Sum Option), §76.9 (Annual Interest Rate), §76.10 (Gain Sharing Interest Rate), §76.11 (Return of Excess Contributions); and §76.12 (Uniformed Services Employment and Reemployment Rights Act).

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 Tex. Admin. Code, §§61.1 *et seq.*

In 2021, the Texas Legislature passed SB 321, a law that created a cash balance retirement benefit for state employees hired on or after September 1, 2022. Chapter 820 of the Texas Government Code establishes the new benefit. ERS proposes the new Chapter 76 for Title 34 in order to describe and clarify the cash balance benefit.

Section 76.1 provides definitions used in the proposed new chapter. Section 76.2 clarifies that certain custodial officers described by Tex. Gov't Code §813.506(b) are also entitled to the enhanced benefit and must make the required employee contributions necessary to receive that benefit under the cash balance retirement benefit. Section 76.3 clarifies the procedure for individuals participating in the Proportionate Retirement Program under Tex. Gov't Code Chapter 803. Section 76.4 describes how the optional retirement program under Tex. Gov't Code Chapter 830 applies to the cash balance retirement benefit. Section 76.5 describes the actuarial factors related to the cash balance benefit.

Sections 76.6, 76.7, and 76.8 align certain retirement benefits and procedures in the cash balance benefit – such as optional retirement benefits, a partial lump sum retirement benefit, and the method of selecting or amending such a benefit – with existing benefits and procedures for current employees. Sections 76.9 and 76.10 prescribe the methods for calculating interest and applying it to the accounts of members and retirees. Section 76.11 clarifies how ERS will pay a lump-sum death benefit under the new cash balance benefit, and §76.12 describes how the federal Uniform Services Employment and Reemployment Rights Act will apply to cash balance benefit members to the same extent that it applies to any system member.

GOVERNMENT GROWTH IMPACT STATEMENT

ERS has determined that during the first five-year period the amended rules 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 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 rules' 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 rules are in effect, there will be no fiscal implication for state or local government or local economies as a result of enforcing or administering the rules; and small businesses, micro-businesses, and rural communities will not be affected.

The proposed amendments align with the eligibility and benefit standards for employees participating in the current plans. 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 rules 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 rules are in effect, the public benefit anticipated as a result of adopting and complying with the rules would be that the proposed amendments align the cash balance benefit with the eligibility and benefit standards for employees participating in the current plans.

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*. The deadline for receiving comments is August 8, 2022, at 10:00 a.m.

The amendments are proposed under Tex. Gov't Code §815.102, which authorizes 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.

CHAPTER 76. CASH BALANCE BENEFIT.

§76.1. Definitions.

For purposes of this chapter:

(1) "Cash balance benefit" means the retirement benefit established by Tex. Gov't Code Chapter 820.

(2) "Annuitant" means an individual who is receiving a cash balance annuity established by Tex. Gov't Code Chapter 820, including, but not limited to, a retiree, a beneficiary under §76.6 of this chapter, and an alternate payee under a Qualified Domestic Relations Order.

§76.2. Custodial Officer Service.

To be creditable as custodial officer service, service performed by a cash balance group member must be performed as a parole officer or caseworker or must meet the requirements of the rules adopted under Tex. Gov't Code §813.506(a) and be performed by persons in one of the job categories described by Tex. Gov't Code §813.506(b).

§76.3. Proportionate Service Purchases.

An individual participating in the Proportionate Retirement Program under Tex. Gov't Code Chapter 803 who did not establish and maintain ERS membership prior to September 1, 2022, may purchase previously established service credit in an amount equal to withdrawn member contributions but only for the purpose of establishing service credit and making a deposit under Tex. Gov't Code Chapter 820. The system shall receive an employer matching contribution for any individual purchasing previously established service credit under this section.

§76.4. Optional Retirement Program.

For the sole purpose of determining eligibility to receive a cash balance retirement annuity, the system shall consider service performed as a participant in the optional retirement program under Tex. Gov't Code Chapter 830 as if it were service for which credit is established in the system. Each full or partial month of service shall count as one-twelfth of a year of creditable service.

§76.5. Factor Tables.

The board shall adopt actuarial assumptions, mortality tables, reduction factors, and other factors applicable to cash balance group members and may adjust them from time to time as provided by Tex. Gov't Code §815.105.

§76.6. Optional Cash Balance Retirement Benefits.

(a) A retiring cash balance group member may elect to receive an optional cash balance annuity instead of a standard cash balance annuity.

(b) A person who selects an optional lifetime cash balance annuity must designate, before the selection becomes effective, one person to receive the annuity on the death of the person making the selection. A person who selects an optional cash balance annuity payable for a guaranteed period may designate, before or after retirement, one or more persons to receive the annuity on the death of the person making the selection.

(c) A person eligible to select an optional cash balance annuity under this section may select an option which provides that:

(1) after the retiree's death, the reduced annuity is payable in the same amount throughout the life of the person designated by the retiree before retirement;

(2) after the retiree's death, one-half of the reduced annuity is payable throughout the life of the person designated by the retiree before retirement;

(3) if the retiree dies before 60 monthly annuity payments have been made, the remainder of the 60 payments are payable to one or more beneficiaries or, if one does not exist, to the retiree's estate;

(4) if the retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments are payable to one or more beneficiaries or, if one does not exist, to the retiree's estate; or

(5) after the retiree's death, three-fourths of the reduced annuity is payable throughout the life of the person designated by the retiree before retirement, subject to age adjustment factors that may be applicable under Treasury Regulation 1.401(a)(9)-6.

(d) If a beneficiary designated by a retiree under subsection (b) of this section predeceases the retiree and the retiree has elected an optional lifetime annuity, the reduced annuity shall be increased to the standard cash balance annuity that the retiree would have been entitled to receive if the retiree had not selected the optional annuity. The standard cash balance annuity shall be adjusted as appropriate for post-retirement increases in retirement benefits authorized by law since the date of retirement.

(e) Any increase in an annuity under subsection (d) begins with the payment for the month following the month in which the designated beneficiary dies, and the increased annuity is payable to the retiree for the remainder of the retiree's life.

(f) The computation of an optional cash balance annuity must be made without regard to the gender of the annuitant or designated beneficiary.

(g) Except as provided by Tex. Gov't Code §814.008(b), (c), or (d) or §76.7 of this chapter, a person who selected an optional cash balance annuity described by subsection (c)(1), (c)(2), or (c)(5) of this section may not change or revoke a beneficiary designation after the date of retirement.

(h) A beneficiary designation that names a former spouse as a beneficiary for a guaranteed optional cash balance annuity described by subsection (c)(3) or (c)(4) of this section is invalid unless the designation is made after the date of the divorce.

§76.7. Change In Annuity Selection.

(a) A person who retired and selected an optional cash balance annuity described by §76.6(c)(1), (c)(2), or (c)(5) of this chapter may change the optional annuity to a standard cash balance annuity only if:

(1) pursuant to a divorce decree, a court orders the change in the annuity to a standard cash balance annuity; or

(2) the retiree files with the system a request to change the annuity and, in connection with a divorce between the retiree and the beneficiary designated by the retiree under §76.6(b) of this chapter, the beneficiary has executed a written, notarized instrument that releases the system from any claim to the annuity by the beneficiary and transfers all of the beneficiary's interest in the annuity to the retiree.

(b) If a retiree complies with subsection (a) of this section, the system shall recompute the annuity as a standard cash balance annuity. The increase in the annuity under this section begins with the payment for the month following the month in which the request is filed.

(c) A retiree receiving an optional cash balance annuity may change the designated beneficiary in the same manner and subject to the same limitations provided by Tex. Gov't Code §814.008 for the change of a beneficiary after retirement.

§76.8. Partial Lump-Sum Option.

(a) A member who is eligible for an unreduced cash balance annuity may select a standard cash balance annuity or an optional cash balance annuity under §76.6 of this chapter, together with a partial lump-sum distribution.

(b) The amount of the lump-sum distribution under this section may not exceed the sum of 36 months of a standard cash balance annuity computed without regard to this section.

(c) The cash balance annuity selected by the member shall be actuarially reduced to reflect the lump-sum option selected by the member and shall be actuarially equivalent to a standard or optional cash balance annuity, as applicable, without the partial lump-sum distribution. The annuity and lump sum shall be computed to result in no actuarial loss to the system.

(d) The lump-sum distribution shall be made as a single payment payable at the time that the first monthly annuity payment is paid.

(e) The amount of the lump-sum distribution shall be deducted from any amount otherwise payable under §76.11 of this chapter.

(f) The partial lump-sum option under this section may be elected only once by a member and may not be elected by a retiree. A member retiring under the proportionate retirement program under Tex. Gov't Code Chapter 803 is not eligible for the partial lump-sum option.

(g) Before a retiring member receives a partial lump-sum distribution under this section, the system shall provide written notice to the member of the amount by which the member's annuity will be reduced because of the selection, and the member must acknowledge receipt of the notice in writing.

(h) This section does not apply to a disability retirement annuity.

§76.9. Annual Interest Rate.

(a) The annual interest rate established by Tex. Gov't Code §820.102 shall be applied to a cash balance group member's accumulated account balance, adjusted for compounding, at the beginning of each month before any contribution is deposited.

(b) The system shall not recalculate any annuity based on annual interest.

§76.10. Gain Sharing Interest Rate.

(a) Under Tex. Gov't Code §820.103, the system shall calculate the gain sharing interest rate based on the investment returns of the total combined ERS retirement trust fund as of August 31 of each of the applicable fiscal years, using the Global Investment Performance Standards for calculating and reporting investment performance. The total combined ERS retirement trust fund does not include amounts associated with the State Employees Group Benefits Program or the Texa\$aver program.

(b) Each fiscal year, the system shall apply the gain sharing interest rate as follows:

(1) for a cash balance group member, the rate shall be multiplied by the member's accumulated account balance as of the end of the preceding fiscal year;

(2) for a cash balance annuitant, the rate shall be multiplied by the amount of the annuitant's cash balance annuity payment as of the end of the preceding fiscal year; and

(3) for an annuitant who retired after August 31 but before the application of the gain sharing interest rate, the rate shall be multiplied by the amount of the annuitant's initial cash balance annuity payment.

(c) A person may not receive gain sharing interest as both a cash balance group member and a cash balance annuitant during the same fiscal year.

(d) The gain sharing interest rate shall be applied no earlier than December 1.

§76.11. Return of Excess Contributions.

(a) Except as provided by subsection (c) of this section, when a person who receives a cash balance or disability retirement annuity dies, a lump-sum death benefit is payable from the retirement annuity reserve account in the amount, if any, by which the balance in the retiree's individual account in the employees saving account at the time of service retirement exceeds the total of annuity payments payable before the retiree's death.

(b) The benefit provided by subsection (a) of this section is payable to a person designated by the retiree at the time of retirement in a signed and witnessed document filed with the system. If a retiree does not designate a beneficiary or if the beneficiary does not survive the retiree, the benefit is payable to the retiree's estate.

(c) A death benefit may not be paid under subsections (a) and (b) of this section if the retiree selected an optional cash balance annuity under §76.6 of this chapter.

(d) If the person designated as the beneficiary of an optional cash balance annuity, other than one selected under §76.6(c)(3) or §76.6(c)(4) of this chapter, predeceases the retiree, a lump-sum death benefit is payable from the retirement annuity reserve account in the amount, if any, by which the balance in the retiree's individual account in the employees saving account at the time of service retirement exceeds the sum of annuity payments payable to the retiree before death.

(e) The benefit provided by subsection (d) of this section is payable to the deceased retiree's estate.

(f) If a beneficiary dies while receiving an optional cash balance annuity, other than one selected under §76.6(c)(3) or §76.6(c)(4) of this chapter, a lump-sum death benefit is payable from the retirement annuity reserve account in the amount, if any, by which the balance in the retiree's individual account in the employees saving account at the time of service retirement exceeds the sum of annuity payments payable to the retiree and the beneficiary before the beneficiary's death.

(g) If a beneficiary dies while receiving a cash balance annuity selected under Tex. Gov't Code §814.302 as described in §76.6(c)(1) of this chapter, or Tex. Gov't Code §814.304(a), a lump-sum death benefit is payable from the retirement annuity reserve account in the amount, if any, by which the balance in the member's individual account in the employees saving account at the time of death exceeds the sum of annuity payments payable to the beneficiary before the beneficiary's death.

(h) The benefits provided by subsections (f) and (g) of this section are payable to the deceased beneficiary's estate.

(i) A beneficiary designation that names a former spouse as beneficiary is invalid unless the designation is made after the date of the divorce.

§76.12. Uniformed Services Employment and Reemployment Rights Act.

To the extent that the Uniformed Services Employment and Reemployment Rights Act (USERRA) applies to system members, a cash balance group member:

(1) Shall be entitled to contributions, benefits, and credited service for the period of qualified military service to the extent required by USERRA; Internal Revenue Code §414(u); and effective January 1, 2007, Internal Revenue Code §401(a)(37); and

(2) May claim service credit for military service not previously established by paying a contribution for each month of service credit in an amount equal to the greater of:

(a) The amount that the member contributed for the first full month of membership service that is after the member's date of release from active military duty and that is credited in the system; or

(b) \$18.