

**AGENDA ITEM DETAILS**

- Subject:** Consideration of Consent Agenda – (Action)
- Minutes to the March 20, 2024 Audit Committee Meeting
  - Minutes to the March 20, 2024 Board of Trustees Meeting
  - Minutes to the March 20, 2024 Joint Meeting of the Board of Trustees and Investment Advisory Committee
  - Status of Audit Recommendations
  - Proposed Fiscal Year 2025 Fees for TexFlex Program
  - Quarterly TexaSaver Investment Performance
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**RECOMMENDED ACTION:**

Move that the Board approve all items on the Consent Agenda as presented.

The Board may approve all items on the Consent Agenda through one motion. Trustees should review the materials related to the Consent Agenda prior to the meeting, and any trustee may request that an item be removed from the Consent Agenda in order to allow for full discussion of the item. Once there is a motion to approve the items on the Consent Agenda, trustees may ask simple questions, request clarification, or engage in brief dialogue regarding any item before voting. The Consent Agenda includes the following agenda items as presented below:

**Minutes to the March 20, 2024 Audit Committee Meeting**

The minutes to the Employees Retirement System of Texas Audit Committee Meeting held on March 20, 2024 are included with this agenda item as **Exhibit A**.

**Minutes to the March 20, 2024 Board of Trustees Meeting**

The minutes to the Employees Retirement System of Texas Board of Trustees meeting held on March 20, 2024 are included with this agenda item as **Exhibit B**.

**Minutes to the March 20, 2024 Joint Meeting of the Board of Trustees and Investment Advisory Committee**

The minutes to the Employees Retirement System of Texas Joint Meeting of the Board of Trustees and Investment Advisory Committee held on March 20, 2024 are included with this agenda item as **Exhibit C**.

**Status of Audit Recommendations**

Internal Audit (IA) has completed procedures to monitor and report on the status of management action plans (MAPs) to address open audit recommendations.

Implementation status was based on management's self-assessment and IA's review of supporting documentation to corroborate the self-assessment. Supporting documentation included, but was not limited to, revised documented policies/procedures, worksheets, management status reports and reconciliations. Audit work was not performed to verify the effectiveness of management actions implemented to determine if controls were working as intended. Future audit engagements in these areas will confirm the effectiveness of the controls implemented.

## **Proposed Fiscal Year 2025 Fees for TexFlex Program**

### **Staff Recommendation:**

Staff recommends the Board waive the TexFlex<sup>SM</sup> flexible spending account program (TexFlex FSA) administrative fee for employees who enroll in a health or dependent care flexible spending account in Plan Year 2025.

### **Administrative Fee:**

The State of Texas does not provide funding for TexFlex program operations. The third party Administrator (TPA) charges a monthly administration fee for each employee enrolled in TexFlex FSA.

Prior to Plan Year 2016, employees who participated in a TexFlex FSA paid the monthly administrative fee. Beginning with Plan Year 2016, ERS enacted an administrative fee holiday and ceased charging the monthly administrative fee. Since that time, prior year forfeited account balances have been sufficient to cover TexFlex administrative costs. Use of forfeited account balances to subsidize administrative costs for all enrolled in the program is an allowable expense, according to federal regulations.

### **Background/Analysis:**

#### ***TexFlex FSA Background***

TexFlex FSA is a voluntary flexible spending account program offered by the State of Texas as an optional benefit for active employees at state agencies and GBP-participating higher education institutions. Participants elect to contribute money, before taxes, from their pay to an account that can be used to pay eligible out-of-pocket expenses tax-free if they are not reimbursed by any other source. The Internal Revenue Service (IRS) determines eligible expenses.

#### **TexFlex Flexible Spending Account Program**

Texas Administrative Code Title 34, Part IV, Chapter 85 (Chapter 85) governs the TexFlex flexible spending account (FSA) 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 a tax advantage for employees. Inspira, formerly PayFlex, is contracted as the third party administrator, whose responsibilities include maintaining the accounts, issuing debit cards, and reimbursing claims.

#### **1. TexFlex Health Care FSA**

The TexFlex health care FSA and limited-purpose FSA reimburse account holders for eligible out-of-pocket health care expenses, including pharmacy and medical (health care FSA only), vision and dental. The IRS determines the maximum annual contribution amount. The current employee contribution allowed amount is \$3,050 for Plan Year 2024.

Under the HealthSelectShoppERS<sup>SM</sup> rewards program, employees can also earn up to \$500 in additional funds each plan year to be credited to their health care FSA or limited-purpose FSA. HealthSelectShoppERS rewards are in addition to the employee contribution and do not affect the employee contribution plan year maximum.

An employee chooses the amount they wish to contribute from their paycheck to the health care FSA or limited-purpose FSA. The entire employee annual contribution amount is available to the participant at the beginning of each fiscal year.

#### **2. TexFlex Limited-Purpose FSA**

Under the Internal Revenue Code, the TexFlex limited-purpose FSA is designed to provide payment or reimbursement only for eligible vision and dental out-of-pocket expenses not reimbursed by another source. This account is available only to employees enrolled in the Consumer Directed HealthSelect<sup>SM</sup> plan.

### 3. TexFlex Dependent Care FSA

The TexFlex dependent care FSA provides payment or reimbursement for dependent day care expenses, not health care expenses. The IRS sets the maximum employee annual tax-deferred contribution amount, which is then subject to the plan's determined maximum annual contribution amount, currently \$5,000. An employee can use the contributions to the dependent care FSA to pay day care expenses for qualifying adults or children under the age of 13, as allowed by the IRS.

### 4. Enrollment and Contributions

Participation in a TexFlex FSA is voluntary. Enrollment occurs during the annual enrollment period and throughout the year subject to TexFlex rules. In accordance with federal law, the TexFlex FSA program is not available to retirees.

#### TexFlex Flexible Spending Program Enrollment and Employee Contribution Elections Plan Years Beginning 2023 and 2024

	Enrollment (#)			Employee Contribution Elections (\$)		
	PY23 Enrollment	PY24 Enrollment	Change in Enrollment (%)	PY23 Contribution Elections**	PY24 Contribution Elections**	Change in Elections** (%)
Health care & Limited-purpose FSA	41,814	42,658	2.02%	\$48,018,240	\$50,763,415	5.72%
Dependent Care FSA	2,467	2,637	6.89%	\$8,920,378	\$9,111,389	2.14%
Participation in Both Plans	(1,535)	(1,740)	13.36%			
<b>TOTAL* (Employees)</b>	<b>42,746</b>	<b>43,555</b>	<b>1.89%</b>	<b>\$56,938,618</b>	<b>\$59,874,804</b>	<b>5.16%</b>

\*Total enrollment is not equal to the sum of health care, limited-purpose and dependent care FSA enrollment because some members are enrolled in health care FSA or limited-purpose FSA and a dependent care FSA.

\*\* Employee contribution elections represent annual pledges into the program and are reported commitments for the applicable fiscal year.

#### Plan Forfeitures

Any unused contributed funds exceeding the \$500 carryover limit (health care FSA and limited-purpose FSA only) or unused funds remaining at the end of the dependent care FSA grace period, are forfeited to the TexFlex FSA program. Forfeited funds are applied to plan administrative costs and are not available for use by the employee. This forfeiture feature is commonly referred to as the "use it or lose it" rule, and is an IRS requirement.

Specific to the health care FSA and limited-purpose FSA only, employees can "carry over" up to \$500 in unused funds to the next plan year. To be eligible for the "carryover" balance, the member must be enrolled in the health care FSA or limited-purpose FSA on the last day of the previous plan year (August 31).

The Plan Year 2023 ending fund balance was \$34.9 million. This balance is the result of forfeitures accumulated over the years. ERS will determine the forfeiture amount for Plan Year 2023 in June 2024 to allow time to account for residual claims exceptions following the conclusion of the run-out period.

### **Tax Savings and Premium Conversion**

The TexFlex program also includes premium conversion which requires participants to pay for any out-of-pocket costs for their GBP coverage on a pre-tax basis. For those employees enrolled in a GBP health benefit plan with out-of-pocket premium cost (including spouse and/or dependent coverage), premium conversion is automatic. Paying for eligible monthly contribution costs on a pre-tax basis lowers the employee's taxable salary and reduces the employer's FICA tax, which is 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.

In FY23, premium conversion saved the State of Texas an estimated \$41.9 million in FICA taxes.

Premium conversion also saved participants \$124.0 million in FY23 by reducing the salary amount upon which their FICA tax is calculated.

### **Quarterly TexaSaver Investment Performance**

The State of Texas established the TexaSaver 401(k) / 457 Program to attract and retain state employees and officials by offering participants an opportunity to increase their retirement income through voluntary investments. Participation in the Program is voluntary and all investment decisions are directed by participants.

Since 2008, new state employees are automatically enrolled in the 401(k) plan at 1% of their salary, although they may opt out. Unless they make an investment election, participants are defaulted into a retirement target date fund, the vintage of which varies according to their projected retirement date at age 65.

Participants bear the investment risk associated with the products they select from the investment options offered within the Program's lineup. This includes the risk associated with asset allocation. The Board does not bear any investment risk, but has fiduciary responsibility for ensuring the Program is well managed and acting in the best interest of Program participants, as outlined within the Program's Investment Policy. Texas Government Code § 609.502(a) gives the ERS Board ultimate authority to determine which investment products are offered within the Program's lineup.

To ensure that investment offerings remain suitable for the Program, a committee reviews each product on a quarterly basis in accordance with its charter. The TexaSaver Product Review Committee includes three members of the Investment Advisory Committee along with staff members from the ERS Executive Office, Investments division, and Group Benefits division.

Each year, staff provides a detailed review of performance for the TexaSaver investment options at the Board meeting. In addition, each quarter a document summarizing investment performance is provided in the consent agenda. The document for the 1<sup>st</sup> Quarter of 2024 is attached in **Exhibit F**.

ATTACHMENTS:

1. Exhibit A – Minutes to the March 20, 2024 Audit Committee Meeting
2. Exhibit B – Minutes to the March 20, 2024 Board of Trustees Meeting
3. Exhibit C – Minutes to the March 20, 2024 Joint Meeting of the Board of Trustees and Investment Advisory Committee
4. Exhibit D – Status of Audit Recommendations
5. Exhibit E – TexFlex Flexible Spending Accounts for Active Employees [public webpage](#)
6. Exhibit F – Texa\$aver Performance Report as of March 31, 2024
7. Slides – Consent Agenda