

# **TEXAS ADMINISTRATIVE CODE**

## **TITLE 34. PUBLIC FINANCE**

### **PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM**

- CHAPTER 101. General Rules and Procedure Regarding Claims
- CHAPTER 105. Calculations or Types of Benefits
- CHAPTER 105. Creditable Services
- CHAPTER 107. Miscellaneous Rules
- CHAPTER 109. Domestic Relations Order
- CHAPTER 111. Termination of Participation: Employer
- CHAPTER 113. Texas County and District Retirement System
  - Qualified Replacement Benefit Arrangement

This reproduction of the TCDRS Administrative Code is current as of January 8, 2026.  
It is provided by TCDRS as an information resource for county and district officials.

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# **TEXAS ADMINISTRATIVE CODE**

## **TITLE 34. PUBLIC FINANCE**

### **PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM**

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# **TEXAS ADMINISTRATIVE CODE**

## **TITLE 34. PUBLIC FINANCE**

### **PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM**

The provisions of this Part V issued under Acts 1967, 60<sup>th</sup> Leg., p. 240, ch. 127, effective May 5, 1967, as amended (Texas Civil Statutes, Article 6228g, §8), unless otherwise noted.

#### **CHAPTER 101. GENERAL RULES AND PROCEDURE REGARDING CLAIMS**

##### **§101.1. Definitions.**

As used in rules adopted by the Board of Trustees of the Texas County and District Retirement System:

- (1) Act - The provisions of the Government Code, Title 8, Subtitle F, as amended from time to time;
- (2) Board - Board of trustees of TCDRS;
- (3) Director - Executive Director of TCDRS;
- (4) Document - Applications, beneficiary designations, administrative elections, petitions, claims, complaints, replies, statements, affidavits, subpoenas, or any other pleading under the Act or this title;
- (5) Electronic filing and electronic transfer – These terms will have the meanings assigned under Section 845.116(a) of the Act;
- (6) Employer - A subdivision, as defined in Section 841.001(17) of the Government Code participating in TCDRS;
- (7) Internal Revenue Code - The Internal Revenue Code of 1986, as amended, (and corresponding provisions of any subsequent federal tax laws) and the regulations thereunder.
- (8) Medical board - Group of physicians designated by the Board in accordance with Section 845.204 of the Government Code;
- (9) SOAH - State Office of Administrative Hearings;
- (10) Retirement Plan or Plan –The plan established in accordance with the Act and qualified under Section 401(a) of the Internal Revenue Code;
- (11) TCDRS or system -- Texas County and District Retirement System;

- (12) Proportionate retirement system -- A public retirement system other than TCDRS that participates in the Proportionate Retirement Program described by this title and Chapter 803 of the Government Code; and
- (13) Signature - Includes any symbol executed or adopted by a person with present intention to authenticate a writing, including an electronic signature.

The provisions of this §101.1 adopted to be effective July 27, 1976, 1 TexReg 1929; amended to be effective May 1, 1993, 18 TexReg 2415; amended to be effective January 27, 2000, 25 TexReg 389; repealed effective January 8, 2026, 51 TexReg 156; the provisions of this new §101.1 adopted to be effective January 8, 2026, 51 TexReg 157.

## **§101.2. Scope and Application.**

- (a) These rules govern the procedures of TCDRS and the administration of such other matters as are set forth under this Part 5 of Title 34, Administrative Code. They shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of TCDRS or the substantive rights of any person.
- (b) Subject to the limitation described in subsection (a) of this section, the Director is authorized to suspend, modify or grant an exception to the operation of a rule under this title in individual cases as equity and fairness require to avoid undue hardship, where to do so will not prejudice TCDRS or cause delay or inconvenience in its management or administration, or cause harm or injury to another party, or cause an impermissible suspension, modification, or exception to a mandatory qualification requirement under Section 401(a) of the Internal Revenue Code, and is not contrary to applicable statutes.
- (c) The decision to suspend, modify or grant an exception to the operation of a rule in an individual case is within the sole and exclusive discretion of the Director. A determination by the Director to grant or deny relief is final and not appealable by any person. A determination by the Director to grant relief to any person does not create a right or privilege in any other person to an exception, suspension or modification to a rule, or excuse a failure to comply with a rule in all of its particulars.

The provisions of this §101.2 adopted to be effective July 27, 1976, 1 TexReg 1929; amended to be effective July 27, 2005, 30 TexReg 4213; repealed effective January 8, 2026, 51 TexReg 156; the provisions of this new §101.2 adopted to be effective January 8, 2026, 51 TexReg 157.

## **§101.3. Filing of Documents.**

- (a) Subject to Subsection (b) of this section, documents must be filed with TCDRS in a format prescribed by the Director and may be required to be filed electronically in accordance with Section 845.116(b) of the Government Code and instructions provided by the Director.
- (b) If a proceeding becomes a contested case, documents thereafter shall be filed in accordance with applicable SOAH rules and statute.

- (c) A document requiring certification by an Employer that is filed in the format prescribed by the Director is considered to have been certified as to the truth and correctness of the information provided by the Employer. A document that is filed by an individual in the format prescribed by the Director is considered to have been certified as to the truth and correctness of the information provided by the individual.
- (d) An electronically filed document and an electronic transfer are received by TCDRS and considered filed when the time receipt is recorded by TCDRS' electronic system. For purposes of meeting a filing deadline, an electronically filed document and an electronic transfer must be received by TCDRS before 11:59 p.m. Central Standard Time of the deadline.
- (e) Documents that are not required to be electronically filed under Subsection (a) of this section shall be filed with the Director at TCDRS' physical office in Austin. Such documents shall be deemed filed only when received by TCDRS.
- (f) For purposes of clarity, if an individual who completes and executes a beneficiary designation or application for benefits dies before TCDRS receives such documentation, such application or designation will not be accepted or considered valid, regardless of how or when it is filed or received by TCDRS.

The provisions of this §101.3 adopted to be effective July 27, 1976, 1 TexReg 1929; amended to be effective January 27, 2000, 25 TexReg 389; amended to be effective December 30, 2012, 37 TexReg 10248; repealed effective January 8, 2026, 51 TexReg 156; the provisions of this new §101.3 adopted to be effective January 8, 2026, 51 TexReg 157.

#### **§101.4. Computation of Time.**

- (a) In computing any period of time prescribed or allowed by this title, by order of the Board, or by any applicable statute, the period shall begin on the day after the act, event, or default in controversy and conclude on the last day of such computed period, unless it be a Saturday, Sunday, or legal holiday. Subject to Subsection (b) of this section, if the last day of the computed period is a day other than a business day, the period is extended until the next day business day. For purposes of this subsection, a business day has the meaning defined in Section 552.0031 of the Government Code.
- (b) The computation of a time period in an appeal of an administrative decision that has been referred to SOAH is governed by the applicable SOAH rules and statute.

The provisions of this §101.4 adopted to be effective July 27, 1976, 1 TexReg 1929; amended to be effective January 27, 2000, 25 TexReg 389; repealed effective January 8, 2026, 51 TexReg 156; the provisions of this new §101.4 adopted to be effective January 8, 2026, 51 TexReg 157.

#### **§101.5. Time for Filing of Retirement Applications and First Annuity Payments.**

- (a) An application for retirement must be signed and dated by the individual seeking the retirement benefit or that individual's authorized representative and must specify an

effective retirement date on which the individual will have satisfied all requirements for retirement as such requirements existed on the effective retirement date.

- (b) The date specified as the effective date for retirement must be the last day of a calendar month falling within the period that is no more than six months before the date TCDRS receives the retirement application and may not precede the first anniversary of the effective date of participation of the Employer in the Plan.
- (c) A member must have terminated from employment on or before the effective retirement date designated on the application. If the member is applying for:
  - (1) service retirement, the date specified as the effective date of retirement with respect to an Employer may not be a date preceding the termination of the member's employment with the Employer from which the member wishes to retire.
  - (2) disability retirement, the date specified as the effective date of retirement may not be prior to the later of the date the member terminated employment with all participating Employers or the date the member became disabled.
- (d) If the specified effective retirement date is prior to the date TCDRS receives the retirement application, the retirement annuity shall be calculated under the Plan provisions in effect on the effective retirement date but with the options selected and beneficiaries designated on the application. All unpaid annuity payments attributable to the period from the effective date of retirement through the date the retirement application is processed by TCDRS will be accumulated and paid, without interest, as a single sum.
- (e) An annuity approved by TCDRS is payable beginning on the last day of the first month following the effective date of retirement.

The provisions of this §101.5 adopted to be effective July 27, 1976, 1 TexReg 1929; amended to be effective January 27, 2000, 25 TexReg 389; repealed effective January 8, 2026, 51 TexReg 156; the provisions of this new §101.5 adopted to be effective January 8, 2026, 51 TexReg 157.

## **§101.6. Supporting Documents to be Submitted.**

The Director is authorized to require submission of documents reasonably related to establishment of a claimed right to benefits. These documents include but are not limited to drivers licenses; birth certificates; marriage licenses; divorce decrees; letters of guardianship; letters testamentary or letters of administration; proof of authority to act on behalf of a member including a power of attorney; death certificates; relevant court orders; sworn statements of witnesses and attending physicians; autopsy reports; and sworn statements of the claimant or of others having personal knowledge of relevant facts. Except upon good cause being shown, as determined by the Director, failure to submit all required documents within 30 days of the date specified by the member as his or her effective retirement date will invalidate the application for retirement (service or disability) for all purposes. Thereafter, a new application must be submitted and a new retirement date chosen in accordance with Section 101.5 of this chapter (relating to Time for Filing of Retirement Applications and First Annuity Payments).

The provisions of this §101.6 adopted to be effective July 27, 1976, 1 TexReg 1929; amended to be effective May 1, 1993, 18 TexReg 2415; amended to be effective January 10, 1996, 21 TexReg 134; amended to be effective December 31, 1999, 24 TexReg 9300; amended to be effective July 27, 2003, 28 TexReg 5660; amended to be effective October 12, 2007, 32 TexReg 7264; amended to be effective March 25, 2010, 35 TexReg 2313, amended to be effective October 23, 2016, 41 TexReg 8205; repealed effective January 8, 2026, 51 TexReg 156; the provisions of this new §101.6 adopted to be effective January 8, 2026, 51 TexReg 157.

### **§101.7. Service Retirement Benefits Approved by Director.**

If the Director finds from the records of TCDRS and from the documents supporting the application that the applicant is entitled to a service retirement benefit, unless a contest has been filed under Section 101.12 of this chapter (relating to Board Consideration and Action) the Director may approve the retirement, calculate the amount of the benefit and place it into effect without further hearing. On the request of the chairman or vice-chairman, any benefit approved by the Director shall be reported to the Board.

The provisions of this §101.7 adopted to be effective July 27, 1976, 1 TexReg 1929; amended to be effective January 10, 1996, 21 TexReg 134; amended to be effective January 27, 2000, 25 TexReg 389; repealed effective January 8, 2026, 51 TexReg 156; the provisions of this new §101.7 adopted to be effective January 8, 2026, 51 TexReg 157.

### **§101.8. Disability Retirement Applications Referred to Medical Board.**

- (a) Except as provided in Subsection (b) of this section, applications for disability retirement shall be referred by the Director to the medical board. The medical board shall investigate all essential statements and certificates by or on behalf of the member in connection with the application for disability retirement and shall pass upon, conduct, or cause to be conducted, all medical examinations which in its opinion are necessary to determine the cause, extent, and permanence of the member's disability. The medical board shall make and file with the Director a written report of its conclusions and recommendations.
- (b) The Director may approve a disability retirement application without referral to the medical board under Subsection (a) of this section if a member indicates in his or her application that he or she has applied for and has been approved for disability benefits provided by the Social Security Act and submits with the application the award letter issued by the Social Security Administration.

The provisions of this §101.8 adopted to be effective July 27, 1976, 1 TexReg 1929; amended to be effective January 27, 2000, 25 TexReg 389; amended to be effective July 20, 2003, 28 TexReg 5539; amended to be effective July 12, 2007, 32 TexReg 4229; repealed effective January 8, 2026, 51 TexReg 156; repealed effective January 8, 2026, 51 TexReg 156; the provisions of this new §101.8 adopted to be effective January 8, 2026, 51 TexReg 157.

### **§101.9. Disability Retirement Benefits Approved by Director.**

If the findings and conclusions of the medical board, as stated in its report, are such as in the Director's opinion entitle the member under the terms of the Act to the disability retirement benefit applied for, the Director may approve the retirement, calculate the amount of the benefit, and place it into effect. On the request of the chairman or vice-chairman, any benefit approved by the Director shall be reported to the Board.

The provisions of this §101.9 adopted to be effective July 27, 1976, 1 TexReg 1929; repealed effective January 8, 2026, 51 TexReg 156; the provisions of this new §101.9 adopted to be effective January 8, 2026, 51 TexReg 157.

### **§101.10. Summary Disposition by the Director.**

- (a) Applications for benefits under the Act not specified above, including claims for refund of deposits, may be granted by the Director without formal hearing if not contested by any party and if the Director is satisfied upon the basis of the application and supporting documents that the applicant is entitled to the action requested.
- (b) An Employer's request under Section 843.503 of the Government Code that certain employees be granted credited service in TCDRS for service performed as an employee of the immediate predecessor of the Employer may be granted by the Director. The Director may require submission of documents reasonably related to such a request.

The provisions of this §101.10 adopted to be effective July 27, 1976, 1 TexReg 1929; amended to be effective July 20, 2003, 28 TexReg 5540; amended to be effective July 12, 2007, 32 TexReg 4229; repealed effective January 8, 2026, 51 TexReg 156; the provisions of this new §101.10 adopted to be effective January 8, 2026, 51 TexReg 157.

### **§101.11. Appeal of Administrative Decision.**

- (a) An administrative decision of the Director is final and conclusive unless an appeal is filed in writing with TCDRS in accordance with Section 845.506(a) of the Government Code.
- (b) The appeal request must include the following:
  - (1) the name of the party filing the appeal;
  - (2) a concise statement of the facts relied upon by the party and a statement of disagreement with the decision;
  - (3) a request stating the type of relief, action, or order desired by the party;
  - (4) the signature of the person filing the appeal or of their representative; and
  - (5) a certificate of service showing that a true copy of the same was served on the party whose claim is being contested, if known.
- (c) The Director may refer an appeal of an administrative decision to SOAH for a hearing in accordance with Section 845.506 of the Act.

- (d) An appeal under this section is a contested case under Chapter 2001 of the Government Code in accordance with Section 845.506 of the Government Code and will be performed in accordance with Chapter 2001 of the Government Code and the SOAH rules.
- (e) If no appeal is timely made of an administrative decision of the Director, such administrative decision will be final and unappealable.

The provisions of this §101.11 adopted to be effective July 27, 1976, 1 TexReg 1929; repealed effective January 8, 2026, 51 TexReg 156; the provisions of this new §101.11 adopted to be effective January 8, 2026, 51 TexReg 157.

### **§101.12. Board Consideration and Action.**

- (a) The final decision in contested cases pursuant to an appeal under Section 101.11 of this chapter (relating to Appeal of Administrative Decision) shall be made by the Board, normally on the basis of a proposal for decision, of exceptions to the proposal, and briefs supporting and opposing the proposal for decision. The Board, in exceptional cases, on its own motion or on request of a party, may allow oral argument, may make its decision on the record, or may order the hearing to be conducted before the Board sitting as a body.
- (b) The case will be considered by the Board, normally at its next regular meeting after time has expired for filing of exceptions to the proposal for decision, or any extension of time granted for filing such exceptions, or briefs in support of or against exceptions.
- (c) A decision of the Board is final in the absence of a timely motion for rehearing and is final and appealable on the date of rendition of an order overruling the motion for rehearing, or on the date the motion is overruled by operation of law.

The provisions of this §101.12 adopted to be effective July 27, 1976, 1 TexReg 1929; amended to be effective January 27, 2000, 25 TexReg 389; repealed effective January 8, 2026, 51 TexReg 156; the provisions of this new §101.12 is adopted to be effective January 8, 2026, 51 TexReg 157.

### **§101.13. Proceedings for Review, Suspension, or Revocation of Disability Benefits.**

- (a) The Director, either on the Director's own motion, on recommendation of the medical board, or upon sufficient written complaint, may order any person (the "retiree") who is receiving a disability retirement benefit under the Act and who is less than 60 years of age:
  - (1) to undergo a medical examination by one or more physicians designated by the Director, at such time and place as the Director by letter may order; or

- (2) to furnish answers, in writing under oath, to such questions concerning the person's present and previous employment as may be propounded by the Director in writing.
- (b) If a disability retiree fails or refuses to submit to a medical examination as ordered by the Director, the Director shall suspend the retiree's annuity payments until the retiree submits to an examination. The Director at the time of suspension shall notify the retiree of this action. If the retiree thereafter fails to make arrangements with the Director, or the Director's designee, for a time for such a medical examination, or fails to submit to such an examination, for a period of one year from the date of initial failure to submit to such a medical examination, the Director shall order the annuity discontinued, and shall give notice of such actions to the retiree by written letter of notification.
- (c) If the retiree submits to a medical examination, the report of the examining physician shall be submitted to the medical board; if the medical board certifies that the retiree is no longer mentally or physically incapacitated, or is able to engage in a gainful occupation, the Director may order the disability annuity discontinued, and the Director shall give written notice of such action to the retiree.
- (d) In the event the Director finds that a disability retiree is engaged in a gainful occupation, the Director shall order the disability annuity discontinued, and in that event the Director shall give written notice to the retiree of the Director's actions.
- (e) The Director may require a person who is receiving a disability retirement annuity under the Act and who is less than 60 years of age to file an annual report on such form as the Director prescribes concerning receipt by the retiree of income, along with copies of such federal tax forms as the Director may designate. The Director shall give notice of the requirements to the person affected, and shall fix a date within which the information is to be furnished.
- (f) In the event that a person subject to such an order fails to furnish the required information within the period specified by the Director, the Director shall suspend the annuity until such time as the required information is furnished, and shall notify the person of the Director actions.
- (g) If the person affected by the Director's action in discontinuing a disability retirement annuity desires to contest the same, the person may file an appeal pursuant to Section 101.11 of this chapter (relating to Appeal of Administrative Decision). If no appeal is timely filed, the action of the Director in discontinuing the disability retirement annuity shall be final and unappealable.

The provisions of this §101.13 adopted to be effective July 27, 1976, 1 TexReg 1929; amended to be effective January 27, 2000, 25 TexReg 389; repealed effective January 8, 2026, 51 TexReg 156; the provisions of this new §101.13 adopted to be effective January 8, 2026, 51 TexReg 157.

#### **§101.14. Exclusive Purpose.**

The Board shall hold the assets of the system in trust for the exclusive purpose of providing benefits to participants and paying reasonable expenses of administration. It shall be impossible at any time prior to the satisfaction of all liabilities to members and beneficiaries covered by the trust, by operation of the system, by termination, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by other means, for any part of the corpus or income of the trust, or any funds contributed thereto, to inure to the benefit of any employer or otherwise be used for or diverted to purposes other than providing benefits to members and beneficiaries and defraying reasonable expenses of administering the system.

The provisions of this §101.14 adopted to be effective July 27, 1976, 1 TexReg 1929; amended to be effective January 27, 2000, 25 TexReg 389; repealed effective January 8, 2026, 51 TexReg 156; the provisions of this new §101.14 adopted to be effective January 8, 2026, 51 TexReg 157.

#### **§§101.15. - 101.23. [Repealed].**

The provisions of this §101.15 adopted to be effective July 27, 1976, 1 TexReg 1929; amended to be effective January 27, 2000, 25 TexReg 389; repealed effective January 8, 2026, 51 TexReg 156.

#### **§101.24. [Repealed].**

The provisions of this §101.19 adopted to be effective July 27, 1976, 1 TexReg 1929; amended to be effective January 27, 2000, 25 TexReg 389; repealed effective January 8, 2026, 51 TexReg 156.

#### **§101.25. [Repealed].**

The provisions of this §101.19 adopted to be effective July 27, 1976, 1 TexReg 1929; repealed effective January 8, 2026, 51 TexReg 156.

#### **§101.26. [Repealed].**

The provisions of this §101.19 adopted to be effective July 27, 1976, 1 TexReg 1929; amended to be effective January 27, 2000, 25 TexReg 389; repealed effective January 8, 2026, 51 TexReg 156.

## **CHAPTER 103. CALCULATIONS OR TYPES OF BENEFITS**

### **§103.1. Actuarial Tables.**

- (a) Service retirement benefits and disability retirement benefits for which the first benefit payment is payable before January 1, 2018, shall be calculated under the following rules:
  - (1) The annuity purchase rate is calculated on the basis of the UP-1984 table with an age setback of five years for retirees and an age setback of 10 years for beneficiaries, with a 30% reserve refund assumption for the standard benefit.
  - (2) Annuity purchase rates are based on the respective retiree's and beneficiary's attained ages in years.
- (b) For benefits payable on or after January 1, 2018, service retirement benefits and disability retirement benefits shall be calculated under the following rules:
  - (1) The annuity purchase rate for the portion of the benefit that is associated with service credit and any prior service credit that accrued before January 1, 2018, and all future interest earned and employer matching attributable to this portion shall be calculated based on the assumptions described in Subsection (a)(1) of this section.
  - (2) The annuity purchase rate for the portion of the benefit that is associated with service credit that accrues on or after January 1, 2018 and is not included in amounts described in (b)(1) above shall be calculated on a generational mortality basis using the RP-2000 Combined Mortality Table, with a one-year set forward for males and no set forward for female, projected to 2014 using Scale AA and for projections after 2014 using 110% of MP-2014 Ultimate Projection Scale, with a 32.79% reserve refund assumption for the standard benefit. Mortality assumptions for these calculations are blended 50% male and 50% female for retirees, and blended 30% male and 70% female for beneficiaries.
  - (3) The annuity purchase rates are based on the respective retiree's and beneficiary's attained age in years and months regardless of when the service credit was accrued.
  - (4) For purposes of this rule, service credit means the monetary credits allowed a member for service for a participating employer as defined in Section 841.001(16) of the Government Code.

The provisions of this §103.1 adopted to be effective July 27, 1976, 1 TexReg 1929; amended to be effective July 25, 1977, 2 TexReg 2654; amended to be effective October 7, 1981, 6 TexReg 3599; amended to be effective October 24, 1985, 10 TexReg 3977; amended to be effective October 23, 1991, 16 TexReg 5781; amended to be effective January 10, 2016, 41 TexReg 487; amended to be effective January 8, 2026, 51 TexReg 158.

### **§103.2. Additional Optional Retirement Annuities.**

- (a) A member entitled to retirement may elect to receive, in lieu of a standard retirement benefit, one of the following optional annuities, each of which is a reduced

monthly annuity that is the actuarial equivalent of the standard retirement benefit, payable during the lifetime of the retiree, but with the provision that:

- (1) after the retiree's death, one hundred percent of the reduced annuity is payable throughout the life of an individual designated by the retiree;
- (2) after the retiree's death, three-fourths of the reduced annuity is payable throughout the life of an individual designated by the retiree;
- (3) after the retiree's death, one-half of the reduced annuity is payable throughout the life of an individual designated by the retiree;
- (4) after the retiree's death, one hundred percent of the reduced annuity is payable throughout the life of an individual designated by the retiree, except that if the designated individual predeceases the retiree, the annuity payable throughout the remaining life of the retiree is the annuity that would be payable if the retiree had originally chosen a standard retirement annuity;
- (5) if the retiree dies before 120 reduced monthly annuity payments have been made, the remainder of the 120 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's spouse, or if no surviving spouse exists, to the retiree's estate; or
- (6) if the retiree dies before 180 reduced monthly annuity payments have been made, the remainder of the 180 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's spouse, or if no surviving spouse exists, to the retiree's estate.

(b) If payments under a standard or optional retirement annuity cease before the sum of all such payments equals or exceeds the amount of accumulated contributions in the individual account in the employees saving fund at the time of retirement of the member on whose service the annuity was based, a lump-sum benefit equal to the amount by which the accumulated contributions exceed the sum of all such payments made under the annuity is payable in the manner described in Section 844.402 of the Government Code.

The provisions of this §103.2 adopted to be effective July 27, 1976, 1 TexReg 1929; amended to be effective August 28, 1989, 14 TexReg 3352; amended to be effective May 1, 1993, 18 TexReg 2415; amended to be effective July 27, 2005, 30 TexReg 4213, amended to be effective January 1, 2008, 32 TexReg 7265; amended to be effective January 8, 2026, 51 TexReg 158.

### **§103.3. Beneficiary Designations and Payment Elections Requiring Spousal Consent.**

- (a) A member eligible for retirement must certify to the current marital status of the member on any withdrawal or retirement application filed with TCDRS.
  - (1) A member eligible for retirement who is married may not select a form of payment of a retirement benefit other than as a qualified joint-and-survivor annuity unless the member's spouse consents to the selection.

- (2) A member eligible for retirement who is married may not withdraw from membership and receive a refund unless the member's spouse consents to the refund.
- (3) A member who is unmarried may designate any beneficiary and select any form of payment of a retirement benefit permitted under the Act.
- (b) The consent required by Subsection (a) of this section is not required if it is established to the satisfaction of TCDRS that:
  - (1) there is no spouse;
  - (2) the spouse cannot be located;
  - (3) the spouse has been judicially declared incompetent in which case the consent may be given by the guardian or other ad litem;
  - (4) a duly licensed physician has determined that the spouse is not mentally capable of managing his or her own affairs and the Director is satisfied that a guardianship of the estate is not necessary;
  - (5) the spouse and the member will have been married for less than one year as of the date the member files a valid application for a refund of the member's accumulated deposits, or as of the effective retirement date designated by the member on the member's valid application for retirement; or
  - (6) no service performed by the member as an employee of a participating Employer and credited in TCDRS was performed during the marriage of the member and the spouse.
- (c) For the purposes of this section, the term "qualified joint-and-survivor annuity" means a retirement annuity for the life of the member with a survivor annuity for the life of the member's spouse which is not less than 50% of the amount of the annuity which is payable during the joint lives of the member and spouse.
- (d) TCDRS and employees of TCDRS may rely upon the certification of the member filed under this section, and are not liable to any person for making payments of any benefits in accordance with the certification even though the certification is later shown to have been untrue on the date of execution.

The provisions of this §103.3 adopted to be effective August 28, 1989, 14 TexReg 3352; amended to be effective January 10, 1996, 21 TexReg 134; amended to be effective December 31, 1999, 24 TexReg 9301; amended to be effective March 27, 2007, 32 TexReg 1749; amended to be effective July 26, 2012, 37 TexReg 5488; amended to be effective January 8, 2026, 51 TexReg 158.

#### **§103.4. Certification of Prior Service and Average Prior Service Compensation.**

- (a) Pursuant to Sections 843.101 – 843.104 of the Government Code, an Employer must certify to TCDRS the service performed by employees of the Employer before the

Employer's participation in TCDRS became effective and must also certify the average prior service compensation of those members.

- (b) The Employer must certify each member's prior service by calculating one month of credited service for each calendar month during which the member performed at least one day of service for the Employer other than as a temporary employee, prior to the month that includes the Employer's effective participation date. The certification must be submitted in accordance with the instructions provided by TCDRS.
- (c) An Employer must certify the prior service and average prior service compensation of all eligible members no later than 90 days after the Employer's effective date of participation. In the case of a member eligible for prior service credit under Section 843.102(a)(2) of the Government Code, the Employer must make the certification no later than 90 days after the six month period of re-employment. Calculations of prior service credit are governed by the law in effect at the time of the calculation. TCDRS may extend the time periods set forth in this subsection.
- (d) If, under Section 843.201 of the Government Code, an Employer has acquired a public facility or assumed a governmental function, the date of acquisition or assumption shall be the effective date of participation for purposes of calculating the prior service and average prior service compensation of those members eligible under that section.

The provisions of this §103.4 adopted to be effective November 26, 2013, 38 TexReg 8447; amended to be effective January 8, 2026, 51 TexReg 158.

### **§103.5. Required Distribution.**

- (a) Required Distribution:

In accordance with Section 401(a)(9) of the Internal Revenue Code, a member must (1) withdraw all accumulated contributions credited to that member's individual account pursuant to Section 842.108 of the Government Code or (2) retire and begin receiving a benefit from TCDRS on or before the member's required distribution date.

- (1) Required distribution date means April 1 of the calendar year following the later of the calendar year in which the member attains the required distribution age, or the calendar year in which the member terminates employment with all Covered Employers. Required distribution age is the applicable age as prescribed by federal law under Section 401(a)(9)(C) of the Internal Revenue Code, and as amended from time to time.
- (2) Covered Employer for purposes of this Subsection includes all TCDRS participating Employers and all employers that participate with the public retirement systems included in the proportionate retirement program under Chapter 803 of the Government Code.

- (b) General Rules:

- (1) The remaining interest of a deceased retiree's benefit must continue to be distributed as rapidly as the method of distribution being used before the retiree's death.
- (2) The entire interest that becomes payable because of the death of a member who has a designated beneficiary as defined in regulations to Section 401(a)(9) of the Internal Revenue Code must be distributed over the life of the designated beneficiary or over a period not extending beyond the life expectancy of the designated beneficiary. Distributions shall begin no later than the applicable date specified in Section 401(a)(9) of the Internal Revenue Code.
- (3) The entire interest that becomes payable because of the death of a member who does not have a designated beneficiary must be distributed within five years of the death of the member.
- (4) For a distribution made by TCDRS to which Section 401(a)(9) of the Internal Revenue Code applies, TCDRS shall apply the minimum distribution requirements of Section 401(a)(9) of the Internal Revenue Code in a manner that complies with a reasonable good faith interpretation of Section 401(a)(9) of the Internal Revenue Code.

The provisions of this §103.5 adopted to be effective December 31, 1997, 22 TexReg 12538; amended to be effective December 31, 2002, 27 TexReg 12371; amended to be effective October 12, 2007, 32 TexReg 7265; amended to be effective July 21, 2009, 34 TexReg 4739; amended to be effective January 8, 2026, 51 TexReg 158.

#### **§103.6. Recalculation of Retirement Annuities to Include Post-Retirement Deposits.**

- (a) If a contribution that would otherwise be credited to the member's individual account in TCDRS is deposited after the member's effective retirement date, the retirement annuity shall be recalculated in accordance with this section.
- (b) A retirement annuity subject to this section will be recalculated as of the effective retirement date by taking into account the additional accumulated contributions and the related increases in current service credit and matching credit. The recalculated retirement annuity will be based on the age of the retiree (and the age of the beneficiary in the case of a joint and survivor option) as of the effective retirement date.
- (c) The recalculated retirement annuity is payable only prospectively beginning with the month following the month in which TCDRS receives the deposit.

The provisions of this §103.6 adopted to be effective November 1, 1998, 23 TexReg 10884; amended to be effective July 27, 2005, 30 TexReg 4214; amended to be effective January 8, 2026, 51 Tex Reg 158.

### **§103.7. Determination of Reestablished Credit.**

For purposes of determining the current service credit and multiple matching credit of the member under Section 843.003 of the Government Code, the amount deposited by the member (excluding any withdrawal charge) to reestablish credit in TCDRS shall be considered to be accumulated contributions made by the member to TCDRS during the calendar year of deposit. The percentage to be used for the determination of the multiple matching credit of the member with respect to such deposit is that percentage adopted by the governing board of the authorizing Employer and in effect during the month in which the deposit is made.

The provisions of this §103.7 adopted to be effective November 1, 1998, 23 TexReg 10885; amended to be effective July 18, 1999, 24 TexReg 5214; amended to be effective July 27, 2005, 30 TexReg 4214; amended to be effective January 8, 2026, 51 TexReg 158.

### **§103.8. Limit on Payments During the Limitation Year.**

- (a) The limitation year used by TCDRS for determining the maximum annual benefit which may be paid under Section 415(b) of the Internal Revenue Code is the calendar year. Notwithstanding anything to the contrary, TCDRS will make no payments of a retirement annuity with respect to a retiree in excess of the annual limit as determined in accordance with Section 415(b) of the Internal Revenue Code and the regulations thereunder.
- (b) If the benefit recipient is not a participant in the TCDRS Qualified Replacement Benefit Arrangement (34 TAC §§113.1, et seq), the maximum monthly amount of the retirement annuity payable with respect to the retiree during the limitation year shall be the lesser of:
  - (1) the amount determined under the provisions of Chapter 844 of the Government Code, without regard to the limitations of Section 844.008; or
  - (2) the amount determined by dividing the annual limit for the limitation year determined in accordance with Section 415(b) of the Internal Revenue Code, by the number of monthly payments scheduled to be paid with respect to the retiree during the limitation year.
- (c) If the benefit recipient is a participant in the TCDRS Qualified Replacement Benefit Arrangement, the maximum monthly amount of the retirement annuity payable with respect to the retiree shall be the amount determined under the provisions of Chapter 844 of the Government Code, without regard to the limitations of Section 844.008. TCDRS shall cease making monthly payments of the retirement annuity payable with respect to the retiree at that time during the limitation year that the total of payments made with respect to such limitation year equals the maximum annual benefit payable in accordance with Section 415(b) of the Internal Revenue Code.
- (d) In no event shall the total amount paid during the limitation year be less than the lesser of that amount payable with respect to the retiree as determined under the provisions of Chapter 844 of the Government Code without regard to Section

844.008; or the annual limit for the limitation year determined in accordance with Section 415(b) of the Internal Revenue Code.

- (e) TCDRS will make retroactive or prospective adjustments to any benefit payment as appropriate to comply with this section.

The provisions of this §103.8 adopted to be effective November 1, 1998, 23 TexReg 10885; amended to be effective January 6, 2006, .31 TexReg 170; amended to be effective January 8, 2026, 51 TexReg 158.

### **§103.9. Partial Lump-Sum Distribution on Service Retirement.**

- (a) An Employer participating in TCDRS may authorize a member to elect to receive a portion of the member's retirement benefit in the form of a single payment as authorized in Section 844.009 of the Government Code.
- (b) An application for a partial lump sum distribution is a document subject to the certification and spousal consent requirements of Section 103.3 (relating to Beneficiary Designations and Payment Elections Requiring Spousal Consent).
- (c) A member may revoke an application for a partial lump sum distribution or reduce the amount of the partial lump sum distribution at any time before the date the first annuity payment becomes due by filing written notice of the revocation or reduction with TCDRS. The amount of a partial lump sum distribution may not be increased except by the timely filing of a new application.
- (d) The portion of the partial lump sum distribution that is subject to taxation is a non-periodic distribution for income tax withholding purposes. A member or alternate payee receiving a partial lump sum distribution may elect to have the portion of the partial lump sum distribution that is an eligible rollover distribution transferred directly to a qualified plan, in accordance with the Internal Revenue Code.

The provisions of this §103.9 adopted to be effective December 31, 1999, 24 TexReg 9301; amended to be effective October 10, 2011, 36 TexReg 6769; amended to be effective January 8, 2026, 51 TexReg 158.

### **§103.10. Survivor Annuity.**

- (a) The beneficiary of a deceased member who had accumulated at least four years of credited service in TCDRS is eligible to apply for and receive a survivor annuity as described in this section.
- (b) The annuity payable under this section to an individual beneficiary shall be the actuarial equivalent, as defined in Section 841.001(1) of the Government Code, of the allocated shares of the member's individual account balance and total service credit standing to the credit of the member computed as of the last day of the month preceding the member's death.
- (c) An individual designated as beneficiary by the member, or an individual designated as beneficiary under the Act, may elect an annuity to be paid in the form of a life annuity

for the beneficiary's life but actuarially reduced to provide a guarantee that the total of all payments will equal or exceed:

- (1) the beneficiary's allocated share of the decedent's individual account balance; or
- (2) the equivalent of 120 monthly payments; or
- (3) the equivalent of 180 monthly payments.

(d) In lieu of an annuity, the beneficiary may elect a refund of the beneficiary's allocated share of the deceased member's individual account, unless the member elected to remove the withdrawal option.

(e) The annuity shall be calculated using the beneficiary's age on the last day of the month preceding the member's death and computed on the beneficiary's allocated shares of the deceased member's individual account balance and total service credit standing to the credit of the member as of the last day of the month preceding the member's death.

(f) In the event that multiple persons are designated as beneficiaries by the member, the deceased member's individual account balance and total service credit shall be prorated among all beneficiaries, and each individual beneficiary may select any payment form described in subsection (c) and (d) of this section, above computed on the shares allocated to that individual. A beneficiary designated by the member or designated under the Act that is not an individual will receive installment payments as described in Subsection (g) of this section.

(g) A designated beneficiary that is not an individual shall receive an amount equal to the allocated shares of the member's individual account balance and total service credit standing to the credit of the member as of the last day of the month preceding the member's death. The Board authorizes the Director, subject to the determination made in Subsection (k) of this section, to cause the amount to be paid in up to sixty (60) monthly installments, with the final payment made on or before the last day of the calendar year containing the fifth anniversary of the member's death. Notwithstanding Subsection (j) of this section, interest shall accrue on unpaid amounts at the rate provided under the plan beginning from the last day of the month in which all necessary documents and applications have been filed with and approved by TCDRS. A distribution payable under this subsection is not considered to be a service retirement and therefore is not subject to the immediate transfer requirements of Section 845.316 of the Government Code.

(h) A trustee of a trust having a single primary beneficiary may elect with TCDRS that the beneficiary of the trust be considered as a named beneficiary for purposes of selecting an annuity but such election shall be effective only if the beneficiary of the trust would be considered a named beneficiary for purposes of the rules and regulations of the Internal Revenue Code relating to required minimum distributions.

(i) An individual beneficiary who dies before filing an application for benefits or who fails to file an application within 90 days following notice from TCDRS that a benefit is payable shall be deemed to have selected the life annuity with the guarantee that the

total of all payments will equal or exceed the share of the deceased member's individual account balance allocable to the beneficiary.

- (j) No interest shall accrue on any benefit payable under this section.
- (k) If the Director determines that the payment under Subsection (g) of this section, of the total accrued benefit or of the unpaid balance of the benefit as a single sum will not harm or injure the funded status of the Employer's account or jeopardize its ability to pay all benefits as benefits become due, the Board authorizes the Director to cause the distribution of the total accrued benefit or the remaining unpaid balance as the case may be, to be paid as a single sum in full satisfaction of all amounts due under the plan.
- (l) All distributions under this section must comply with the laws and regulations of the Internal Revenue Code.

The provisions of this §103.10 adopted to be effective January 1, 2008, 32 TexReg 9731; amended to be effective October 11, 2009, 34 TexReg 7093; amended to be effective January 8, 2026, 51 TexReg 158.

### **§103.11. Group Term Life Benefit Based on Extended Coverage.**

- (a) A member of TCDRS who had coverage in the Group Term Life benefit program during the last month the member was required to make a contribution to TCDRS and who dies within 24 calendar months following that month, is considered to have received extended coverage in the Group Term Life benefit program provided that the member was unable to engage in gainful employment or was on leave of absence under the Family and Medical Leave Act of 1993 ("the FMLA") throughout the period beginning with the date of the member's last required contribution and ending on the date of the member's death.
- (b) The person making the claim for payment of a Group Term Life benefit based on extended coverage has the burden of establishing that the deceased member was unable to engage in gainful employment or was on leave under the FMLA throughout the entire period of extended coverage, and the claimant must provide evidence satisfactory to TCDRS.
- (c) The following are examples of documents relating to the member that may assist the claimant in meeting this burden of proof:
  - (1) copy of the decedent's death certificate;
  - (2) certified statements of attending physicians;
  - (3) certified statements of caregivers and custodians;
  - (4) certified statements of Employers regarding absences under the FMLA;
  - (5) certified statements of individuals having personal knowledge of the decedent's education, training and work experience;
  - (6) copies of the decedent's tax returns covering the period of extended coverage;

- (7) findings of the Social Security Administration, Workers Compensation Commission or other entities providing compensation for disability, illness or injury.
- (d) In its determination of a claim filed under this section, TCDRS may consider whether the impairment or incapacity affecting the decedent's ability to engage in gainful employment could have been safely diminished by the decedent with reasonable effort to the extent that the decedent would have been able to engage in gainful employment.

The provisions of this §103.11 adopted to be effective January 27, 2000, 25 TexReg 390; amended to be effective January 6, 2002, 26 TexReg 11036; amended to be effective December 30, 2012, 37 TexReg 10249; amended to be effective January 8, 2026, 51 TexReg 158.

## **CHAPTER 105. CREDITABLE SERVICE**

### **§105.1. Persons Employed by Multiple Employers.**

- (a) Any person who is concurrently employed by two or more participating Employers shall be considered a covered employee of each.
- (b) Each employee-member shall make monthly employee contributions at the rate specified in the participation order of the particular Employer upon all compensation paid that person by such Employer. Each Employer shall withhold the employee contributions required on account of the compensation paid such employee by such Employer.
- (c) The employee-member may receive only one month of credited service for any calendar month in which covered service was performed for two or more participating Employers. When determining an employee-member's retirement eligibility with respect to an Employer, the credited service for a calendar month in which the employee-member was also performing covered service for another participating Employer shall be counted as credited service performed for the Employer, for which retirement eligibility is being determined. When determining the retirement eligibility of an employee-member with respect to both Employers simultaneously, credited service is subject to the general rules of TCDRS for recognizing and combining service among the several Employers but in no event may credited service for any calendar month be counted twice.

The provisions of this §105.1 adopted to be effective July 27, 1976, 1 TexReg 1933; amended to be effective May 1, 1993, 18 TexReg 2416; amended to be effective October 18, 2007, 32 TexReg 7265; amended to be effective January 8, 2026, 51 TexReg 158.

### **§105.2. Combining Credited Service with Multiple Employers.**

- (a) A member must satisfy the retirement eligibility requirement of the particular Employer with which the member is applying for retirement.
- (b) All of a member's credited service in TCDRS, as defined in Section 841.001 of the Government Code, will be combined and recognized for purposes of determining eligibility for service and disability retirements with respect to each Employer, and eligibility for the survivor annuity.
- (c) All credited service described in Subsection (b) will be combined with all other credited service of the member recognized under the proportionate retirement program for purposes of determining eligibility for service retirement with respect to each Employer.
- (d) Credited service of the member recognized under the proportionate retirement program may not be combined with the member's credited service in TCDRS, as defined in Section 841.001 of the Government Code for purposes of determining eligibility for any disability retirement or survivor annuity.
- (e) When combining service for purposes of determining eligibility, only one month of credited service may be recognized for any particular calendar month.

The provisions of this §105.2 adopted to be effective January 1, 2008, 32 TexReg 9732; amended to be effective January 8, 2026, 51 TexReg 158.

### **§105.3. Credited Service for Active Duty Qualified Military Service.**

- (a) In this section:
  - (1) The term “credited service” means membership service for determining retirement eligibility only. Member contributions and monetary credits are not required or permitted with respect to credited service for qualified military service.
  - (2) The term “eligible member” means a member of an Employer who has established credited service in TCDRS for at least the minimum period required to receive a service retirement annuity from the Employer at age 60, who has performed active duty qualified military service, and who has been released from military duty under honorable conditions.
  - (3) The term “qualified military service” means active duty service in the uniformed services as defined in 38 U.S.C. Section 4303(13). It excludes that service which was performed in a month for which the member has received credited service in TCDRS under any other provision of the TCDRS Act or the Uniformed Services Employment and Reemployment Rights Act of 1994, and that service, credited by another retirement system, that is recognized by TCDRS under the proportionate retirement program. A member may not be credited with more than one month of service for any calendar month.
- (b) Subject to the limitations in Subsection (a), an eligible member may receive one month of credited service in TCDRS for each month of qualified military service performed while on active duty. An eligible member may not establish more than 60 months of credited service in TCDRS for qualified military service under this section.

The provisions of this §105.3 adopted to be effective April 9, 2000, 25 TexReg 3057; amended to be effective January 1, 2006, 30 TexReg 7887; amended to be effective October 18, 2007, 32 TexReg 7266, amended to be effective April 17, 2008, 33 TexReg 2959; amended to be effective November 26, 2013, 38 TexReg 8448; amended to be effective January 8, 2026, 51 TexReg 158.

### **§105.4. Credited Service Under The Uniformed Services Employment And Reemployment Rights Act.**

- (a) An eligible member may receive credited service for service in the uniformed services in accordance with the Uniformed Services Employment and Reemployment Rights Act (the USERRA) (38 U.S.C. Section 4301 et seq.). Notwithstanding any provision to the contrary, the rights and benefits of an eligible member under TCDRS shall not be less than those rights and benefits provided by the USERRA.
- (b) The following words and terms, when used in this section shall have the following meanings unless the context clearly indicates otherwise.

(1) Eligible member -- An employee of a participating subdivision who is or would be considered to be employed in a position eligible for membership but who leaves employment with that subdivision to perform service in the uniformed services; whose employer was notified of the obligation or intention of the employee to perform service in the uniformed services; who is released or discharged from such service on or after December 12, 1994 under honorable conditions; whose cumulative period of service in the uniformed services with respect to that participating subdivision does not exceed five years not including periods excluded under 38 U.S.C. Section §1412(c); who applies for reemployment with that participating subdivision within 90 days of release or discharge from the uniformed services, or after recovery from an illness or injury incurred in, or aggravated during, the performance of service in the uniformed services (but such recovery period does not exceed two years); and who is reemployed by the participating subdivision.

(2) Uniformed services -- The Armed Forces of the United States of America; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Service; and any other category of persons designated by the President in time of war or emergency.

(3) Service in the uniformed services -- The performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, and a period for which an employee is absent from a position of employment for the purpose of an examination to determine the fitness of the employee to perform such duty.

(4) Participating subdivision -- A subdivision that is participating in TCDRS at the time the eligible member leaves employment with the subdivision to perform service in the uniformed services; a subdivision that is not participating in TCDRS at the time the employee leaves employment with the subdivision to perform service in the uniformed services but commences participation during the period of the employee's performance of duty in a uniformed service; or a subdivision participating in TCDRS that is a successor in interest to the participating subdivision from which the eligible member left employment to perform service in the uniformed services.

(c) Certification of Eligibility by Participating Subdivision. An eligible member will be credited with current service in accordance with the USERRA upon certification by the participating subdivision on forms provided by TCDRS:

- (1) that the eligible member's reemployment application is timely;
- (2) that the eligible member has not exceeded the service limitations set forth in the USERRA;
- (3) that the eligible member was not released or discharged from the uniformed service under other than honorable conditions;

- (4) of the period in which the eligible member performed service in the uniformed services;
- (5) that the eligible member did not receive service credit for the period of uniformed service;
- (6) of the estimated compensation that the eligible member would have received from the subdivision but for the period of service in the uniformed services; and
- (7) of the eligible member's date of reemployment.

(d) Credited Service and Optional Contributions under the USERRA.

- (1) Provided the member has not received credited service for the same month under another provision of Government Code, Title 8, an eligible member shall be credited with one month of current service credit for each month or part of a month in which both of the following occur:
  - (A) the eligible member performed service in the uniformed services, and
  - (B) the participating subdivision participated in TCDRS.
- (2) On or before the last day of the fifth calendar year following the year in which the eligible member was reemployed, the eligible member may, but is not required to, deposit with TCDRS any or all employee contributions that would have been deposited to the member's individual account for each period during which the member performed service in the uniformed services if the eligible member had been employed with the participating subdivision during the period of uniformed service. Deposits under this provision are considered to be employee contributions made in the calendar year of deposit for purposes of employer matching and are subject to the following rules:
  - (A) The total deposits may not exceed the amount the eligible member would have been required to contribute had the eligible member remained continuously employed by the participating subdivision throughout the period of service in the uniformed services.
  - (B) The compensation upon which allowable deposits will be calculated is the estimated compensation that the eligible member would have received from the subdivision but for the period of service in the uniformed services.
  - (C) For purposes of determining the months of credited service and allowable deposits, months of uniformed service and estimated compensation shall be calculated from the later of the date the eligible member entered uniformed service or the date the participating subdivision commenced participation in TCDRS.
  - (D) Within the allowable period for making deposits and subject to the maximum total amount of deposits, an eligible member may make deposits at any time and in any amount.

- (E) Deposits may be paid directly to TCDRS by the eligible member or by the employer through payroll deduction. Optional deposits made under this section are employee contributions and may not be returned until the member terminates from employment with the participating employer.
- (F) Deposits will be allocated prospective interest only, and in the same manner as interest is allocated on member contributions to individual accounts.
- (G) An eligible member receiving credited service under this section for a specific month may not receive credited service for the same month under any other provision of the Government Code, Title 8.

The provisions of this §105.4 adopted to be effective December 31, 1997, 22 TexReg 12539; amended to be effective January 27, 2000, 25 TexReg 390, amended to be effective October 18, 2007, 32 TexReg 7266; amended to be effective January 8, 2026, 51 TexReg 158.

#### **§105.41. Credited Service and Survivor Benefits Under the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act).**

- (a) In accordance with Section 401(a)(37) of the Internal Revenue Code (Section 104(a) of the HEART Act), the survivors of a member who dies after December 31, 2006, while performing qualified military service under the USERRA, are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would have been provided under the employer's plan had the member resumed employment and then terminated employment on account of death.
- (b) A deceased member described above will receive credited service for the period of the deceased member's qualified military service for purposes of determining eligibility for a Survivor Annuity in accordance with Section 844.407 of the Government Code (but such period of qualified military service will not increase the deceased member's accrued benefit used to determine the amount of any survivor annuity for which the deceased member's survivors may or may not be eligible).
- (c) A deceased member described above will be included in the coverage of any Member Optional Group Term Life Program elected by the employer under Section 842.004 of the Government Code, with the death benefit based on the annualized regular rate of pay or regular salary paid the member in accordance with Section 844.503(c) of the Government Code during the most recent pay period of active employment prior to the commencement of qualified military service.
- (d) TCDRS does not adopt the permissive provisions of Section 104(b) of the HEART Act, as added by Section 414(u)(9) of the Internal Revenue Code relating to benefit accruals. However, pursuant to the authority granted the Board by Section 845.102 of the Government Code, and in conformance with 26 CFR Section 1.401(a)(4)-11(d)(3) relating to rules for imputing military service and periods of disability as credited service, any member who, after December 31, 2006, becomes disabled (based on the criteria set forth in subparagraphs (A) and (B) of Section 844.303(b)(2) of the Government Code) while performing the member's qualified military service under

the USERRA, is entitled to credited service in TCDRS for the period of qualified military service under the USERRA. However, such period of qualified military service will not increase the disabled member's accrued benefit used to determine the amount of any service, disability or survivor annuity for which the member or the member's survivors may or may not become eligible. The disabled member will be included in the coverage of any Member Optional Group Term Life program elected by the Employer under Section 842.004 of the Government Code and not terminated and will, subject to Section 844.502 of the Government Code, be eligible to receive extended coverage during the two years following the onset of disability, provided that sufficient evidence of the member's continuous disability and its date of onset is submitted to TCDRS on application for a death benefit based on the disabled member's compensation described in Subsection (c).

- (e) In accordance with Section 414(u)(12) of the Internal Revenue Code (Section 105(b) of the HEART Act), and effective as of January 1, 2009, amounts received by a member as a "differential wage payment" (within the meaning of the Internal Revenue Code) for any period that such member is not performing services for the employer by reason of qualified military service will be treated as "compensation" for purposes of benefit accruals under the Act and will be treated as compensation for purposes of the Internal Revenue Code to the extent so required.

The provisions of this §105.41 adopted to be effective October 10, 2011, 36 TexReg 6769; amended to be effective January 8, 2026, 51 TexReg 158.

## **§105.5. Correction of Errors by Employers: Record Adjustments.**

- (a) An Employer is responsible for the correction of an error arising from an act or omission of the Employer that results in a person contributing more or less than the correct amount to TCDRS or receiving more or less credited service, service credit or benefits than the person is rightfully entitled to receive under TCDRS.
- (b) If the error involves member contributions, the Employer may initiate the correction process directly via the employer portal on the TCDRS website as follows:
  - (1) The Employer must provide identifying information for the affected member or members, the time period during which the error occurred, and the amount of the correction to member contributions submitted by the Employer. The member contributions are determined according to the employee deposit rate in effect at the time that the error occurred.
  - (2) The Employer will also submit an employer contribution based on the sum total of the member contributions made in connection with the correction and the employer contribution rate in effect at the time that the correction is made by the Employer.
- (c) Depending on the nature of adjustment requested pursuant to this section, the Director may require that the application must be approved by the governing board of the Employer or by the county judge or chief operating officer of the Employer before it may be accepted by TCDRS.

- (d) Adjustments to service credits or benefits shall be considered as part of, and funded in the same manner as, any other pension liabilities of TCDRS.
- (e) A person seeking an adjustment to a record based on an act or omission of the Employer must apply to the Employer for a correction of the error. TCDRS will not receive applications for record adjustments from any person other than an Employer. If TCDRS receives information relating to a possible error from a person other than an Employer, TCDRS shall forward the information to the appropriate Employer.

The provisions of this §105.5 adopted to be effective July 20, 2004, 29 TexReg 6968; amended to be effective January 1, 2006, 30 TexReg 7887; amended to be effective December 30, 2012, 37 TexReg 10249; amended to be effective January 31, 2017, 41 TexReg 8205, amended to be effective January 3, 2019, 43 TexReg 8630; amended to be effective January 8, 2026, 51 TexReg 158.

#### **§105.6. Calculation of Current Service Credit.**

- (a) Except as otherwise provided by law or rules established by TCDRS, TCDRS shall credit a member with one month of current service for each calendar month for which contributions are made, reported, and certified by the Employer for purposes of determining length-of-service requirements and calculating benefits.
- (b) Except as otherwise provided by law or rules established by TCDRS, if an elected county or precinct official who is a member declines compensation pursuant to Section 152.052 of the Local Government Code, TCDRS shall credit such member with one month of credited service for each month worked without compensation that is reported and certified by the Employer for purposes of determining length-of-service requirements, but shall not credit such member with service credit (monetary credit) for months worked without compensation for purposes of calculating benefits.

The provisions of this §105.6 adopted to be effective July 22, 2013, 38 TexReg 4642; amended to be effective January 8, 2026, 51 TexReg 158.

#### **§105.7. Service Credit for Certain Public Employment.**

- (a) An Employer may by order authorize the establishment of credited service for service performed by employees of a governmental entity that subsequently:
  - (1) was merged, converted, or otherwise transferred into the Employer; or
  - (2) transferred the employment of the employees to the Employer.
- (b) A member eligible for credited service under this section pursuant to an order adopted under Subsection (a) is one who was employed by a governmental entity on the date that the governmental entity was merged, converted or otherwise transferred into the Employer or the date that such member's employment was transferred to the Employer.

- (c) If a member is eligible for proportionate service under Chapter 803 of the Government Code for the service for the governmental entity described by Subsection (a), then no additional credited service is available under this section.

The provisions of this §105.7 adopted to be effective October 23, 2016, 41 TexReg 8205; amended to be effective January 8, 2026, 51 TexReg 158.

### **§105.8. Employee Termination Date.**

An Employer must submit the date of termination of employment for each member who is enrolled in TCDRS. The termination date should be submitted to TCDRS as soon as practicable after the member's termination of employment.

The provisions of this §105.8 adopted to be effective January 31, 2017, 41 TexReg 8205; amended to be effective January 8, 2026, 51 TexReg 158.

### **§105.9. Notice By Employer of Certain Felony Convictions of Elected or Appointed Officers.**

- (a) An Employer must provide written notice on a form prescribed by TCDRS of the conviction of any member of TCDRS who was elected or appointed to a public office of the Employer and who is convicted of a qualifying felony committed while in office and arising directly from the official duties of that office.
- (b) "Qualifying felony" means any felony that is committed on or after June 6, 2017 involving one or more of the following:
  - (1) bribery;
  - (2) embezzlement, extortion, or other theft of public money;
  - (3) perjury;
  - (4) coercion of public servant or voter;
  - (5) tampering with governmental record;
  - (6) misuse of official information;
  - (7) conspiracy or the attempt to commit any of the offenses described in paragraphs (1) - (6) of this subsection; or
  - (8) abuse of official capacity.
- (c) An Employer must provide the notice required by Subsection (a) to TCDRS no later than the 30th day after the conviction of the member.
- (d) The notice should be on a form prescribed by TCDRS and must:
  - (1) clearly state the convicted member's name, title of public office, date of conviction, court of jurisdiction, case number, qualifying felony violation, date of offense, and an explanation of the connection of the qualifying felony to the member's performance of his or her official duties;

- (2) include a copy of the official conviction of the member entered by court, including the judge's affirmative finding of fact that the member is an elected or appointed holder of a public office of the Employer who committed a qualifying felony while in office and in the course of performing official duties of the office; and
- (3) if applicable, include a copy of the court's award of all or a portion of the member's service retirement annuity to the member's spouse pursuant to a just and right division upon the member's conviction or pursuant to a written agreement between the spouses entered into prior to the member's conviction as provided by Subchapter B, Family Code.

The provisions of this §105.9 adopted to be effective January 10, 2018, 43 TexReg 94; amended to be effective January 8, 2026, 51 TexReg 158.

## **CHAPTER 107. MISCELLANEOUS RULES**

### **§107.1. Payments by Members to Purchase Forfeited Benefits.**

- (a) Pursuant to Section 843.0031 of the Government Code, a member who has withdrawn accumulated contributions from TCDRS and is a contributing member with another participating Employer or again becomes a contributing member with any participating Employer may at any time before retirement pay to TCDRS for deposit to the member's individual account a lump-sum in any amount that does not exceed the amount withdrawn plus an amount equal to the Employer matching on the withdrawn amount that is applicable for the year the account is reinstated, which TCDRS deems as satisfying the requirements under Section 843.0031 of the Government Code.
- (b) An amount paid under subsection (a) of this section will be deposited to the member's individual account as accumulated contributions and credited with interest as allowed by Government Code, Title 8, Subtitle F.
- (c) The amount paid under subsection (a) of this section together with all accumulated interest attributable to that amount is not subject to Employer matching.

The provisions of this §107.1 adopted to be effective July 27, 1976, 1 TexReg 1929; amended to be effective May 1, 1993, 18 TexReg 2416; repealed effective January 8, 2026, 51 TexReg 159; the provisions of this new §107.1 adopted to be effective January 8, 2026, 51 TexReg 159.

### **§107.2. Direct Rollovers from TCDRS and Trustee-to-Trustee Transfers.**

- (a) TCDRS shall permit a distributee of an eligible rollover distribution to elect, at the time and in the manner prescribed by TCDRS, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (b) Definitions:
  - (1) Eligible Rollover Distribution -- An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, excluding any portion of the distribution that includes after tax contributions that are includable in gross income, except that an eligible rollover distribution does not include:
    - (A) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee (annuity payments);
    - (B) any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code (required minimum distribution).
  - (2) Eligible Retirement Plan -- An eligible retirement plan includes individual retirement accounts and retirement plans authorized under federal law including:
    - (A) an individual retirement account described in §408(a) of the Internal Revenue Code of 1986;

- (B) an individual retirement annuity described in §408(b) of the Internal Revenue Code of 1986;
- (C) a qualified trust described in §401(a) of the Internal Revenue Code of 1986 or an annuity plan described in §403(a) of the Internal Revenue Code of 1986 that accepts the eligible rollover distribution;
- (D) for distribution made on or after December 31, 2001, an annuity contract described in §403(b) of the Internal Revenue Code of 1986;
- (E) for distributions made on or after December 31, 2001, an eligible plan under §457(b) of the Internal Revenue Code of 1986 which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state which agrees to separately account for amounts transferred into such plan from this system; and
- (F) for distributions made on or after December 31, 2007, a Roth IRA described in §408A of the Internal Revenue Code of 1986;

(3) Distributee -- A distributee includes a member or former member. In addition, the member's or former member's surviving spouse and the member's or former member's spouse or former spouse who is the alternate payee under a domestic relations order, as defined in §109.2 of this title (relating to Definitions), are distributees with regard to the interest of the spouse or former spouse.

(4) Direct Rollover -- A direct rollover is a payment by the system to the eligible retirement plan specified by the distributee.

(c) The system shall, upon the request of a beneficiary of a deceased member who is not a distributee, within the meaning of subsection (c)(3) of this section, transfer a lump sum distribution to the trustee of an individual retirement account established under §408 of the Internal Revenue Code of 1986 (or for distributions after December 31, 2009, to the trustee of an individual retirement account established under § 408A of the Internal Revenue Code of 1986) in accordance with the provisions of §402(c)(11) of the Internal Revenue Code.

(d) Notwithstanding anything in this section to the contrary, a distribution shall not fail to be an eligible rollover distribution merely because a portion of the distribution consists of after-tax contributions which are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in Internal Revenue Code §408(a) or (b), or to a qualified plan described in Internal Revenue Code §401(a) or §403(a) that agrees to separately account for amounts so transferred, including separate accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(e) It is the responsibility of the distributee to determine that the retirement plan selected to receive the direct rollover is an eligible plan pursuant to this rule.

(f) TCDRS shall implement this section in a manner that causes TCDRS to be considered a qualified plan under Section 401(a) of the Internal Revenue Code.

The provisions of this §107.2 adopted to be effective July 27, 2005, 30 TexReg 4214; repealed effective January 8, 2026, 51 TexReg 159; the provisions of this new §107.2 adopted to be effective January 8, 2026, 51 TexReg 159.

### **§107.3. Bona Fide Termination of Employment.**

- (a) Distributions without a bona fide termination of employment are prohibited under Sections 842.110(a) and (b) of the Government Code. A distribution of benefits to a member before there has been a bona fide termination of employment under Section 842.110(a) Government Code, is an in-service distribution and an operational error which could lead to a plan disqualification under the Internal Revenue Code and results in the assessment of taxes, back taxes, interest and penalties against the subdivision and its participants.
- (b) The term “employment” under Section 842.110(a) of the Government Code includes service as an employee and service as an appointed or elected official.
- (c) A person who is employed by, or holds an elected or appointed position or office with an Employer is in active employment and is not separated from service for purposes of retirement eligibility and is not eligible to receive a distribution of benefits with respect to the Employer before a complete and bona fide termination of employment occurs. A member who has experienced a bona fide termination of employment is an inactive member.
- (d) Whether a termination of employment is a bona fide termination is dependent on the facts and circumstances surrounding the termination.
- (e) A termination is not a bona fide termination if there has not been a complete termination and severance of the employer-employee relationship. Failure to strictly follow the Employer’s termination policies, practices, processes and procedures regularly followed by the Employer suggests that the termination was not bona fide.
- (f) A termination is not a bona fide termination merely because the period of separation of employment from the Employer, or separation from service from elected or appointed office, is greater than one calendar month. The statutory requirement of a break in service of at least one calendar month is a further limitation upon the eligibility of a reemployed person to have received a distribution and is in addition to, and not in lieu of, the requirement that the termination of employment must be a bona fide termination of employment.
- (g) Notwithstanding strict adherence to the Employer’s regular employment termination policies, practices, processes and procedures or any other facts and circumstances, a termination is not a bona fide termination of employment if at the time of termination there is an expectation, understanding or agreement, whether express or implied, between the Employer or employee, or an agent of either, that the termination is or will be temporary or that the person will be rehired in the future, whether such rehire is:
  - (1) for the same position or a different position;

- (2) at a greater, lesser, or equivalent level of compensation;
- (3) in the same or any other division or department of the Employer;
- (4) as a full-time, part-time or temporary employee; or
- (5) as an independent contractor performing essentially the same services that the individual was performing as an employee.

The provisions of this §107.3 adopted to be effective May 1, 1993, 18 TexReg 2416; amended to be effective December 31, 2002, 27 TexReg 12371; amended to be effective July 21, 2009, 34 TexReg 4739; amended to be effective July 26, 2012, 37 TexReg 5488; repealed effective January 8, 2026, 51 TexReg 159; the provisions of this new §107.3 adopted to be effective January 8, 2026, 51 TexReg 159.

#### **§107. 4. No Cancellation of Valid Withdrawal Application.**

Once a valid withdrawal application is submitted to TCDRS, it may not be cancelled.

The provisions of this §107.4 adopted to be effective July 26, 2012, 37 TexReg 5489; repealed effective January 8, 2026, 51 TexReg 159; the provisions of this new §107.4 adopted to be effective January 8, 2026, 51 TexReg 159.

#### **§107.5. Electronic Transfer of Funds Relating to Employers.**

- (a) In this section:
  - (1) The term “ACH” (Automated Clearing House) means the legal framework of rules and operational procedures adopted by financial institutions for the electronic transfer of funds.
  - (2) The term “ACH Credit” means an ACH transaction initiated by an Employer for the electronic transfer of funds from the account of an Employer to the account of TCDRS.
  - (3) The term “ACH Debit” means an ACH transaction initiated by TCDRS for the electronic transfer of funds from the account of an Employer to the account of TCDRS.
  - (4) The term “electronic transfer of funds” means the transfer of funds, other than by check, draft or similar paper instrument, that is initiated electronically to order, instruct, or authorize a financial institution to debit or to credit an account. Amounts sent to TCDRS by electronic transfer of funds are received on the date the funds are credited to TCDRS’s account.
  - (5) The term “pre-authorized direct debit” means the method available to an Employer for electronically paying required contributions by granting a continuing authorization to TCDRS to initiate an ACH Debit each month for the electronic transfer of funds from the designated bank account of the Employer to the account of TCDRS in an amount equal to the contributions required to be paid based on the monthly report as filed.

- (6) The term “wire transfer” generally means a single transaction, initiated by an Employer, in which funds are electronically transferred to the account of TCDRS using the Federal Reserve Banking System rather than the ACH.
- (b) Monthly amounts required to be contributed to TCDRS in accordance with Chapter 845 of the Texas Government Code must be made by pre-authorized direct debits (ACH Debits), ACH Credits, or wire transfers.
- (c) An Employer may elect to use the pre-authorized direct debit method of payment by filing a signed authorization agreement with TCDRS in which the Employer has designated a single bank account from which all transfers will be made.
  - (1) The authorization agreement entered into for this purpose constitutes continuing authority for TCDRS to initiate a direct debit of the Employer’s designated bank account each month and shall be effective with respect to each payroll of the Employer.
  - (2) An authorization agreement shall remain in effect until TCDRS receives a valid new written agreement that designates a different bank account. A new authorization agreement must be filed if there is any change in the designated bank account. TCDRS, in its sole discretion, may terminate the authorization agreement by sending written notice to the Employer. Thereafter, the Employer must remit all contributions by ACH Credit or wire transfer.
  - (3) Following receipt of a payroll report filed under an unrevoked authorization agreement, TCDRS will initiate an ACH Debit in the amount required to be contributed for that month based on the report; however the actual transfer of funds from the Employer’s designated account will not occur prior to the due date of the report.
  - (4) An Employer that timely files payroll reports with TCDRS is considered to have submitted their required contributions provided that there are sufficient funds available for transfer from the Employer’s designated account on the later of the due date of the report or the date the report is received. An ACH Debit that is reversed by an Employer or that fails because sufficient funds are not available for transfer constitutes non-payment of the required contributions with respect to that monthly report and, thereafter, such required contributions will not be considered to have been received until the day the funds are actually credited to the account of TCDRS.
- (d) An Employer failing to timely file the required information or remit the required contributions by the due date of the report is subject to a penalty for late reporting in accordance with Section 845.407 of the Government Code (relating to Penalty for Late Contributions).

The provisions of this §107.5 adopted to be effective November 1, 1998, 23 TexReg 10885; amended to be effective January 6, 2002, 26 TexReg 11037; amended to be effective July 27, 2005, 30 TexReg 4215; repealed effective January 8, 2026, 51 TexReg 159; the provisions of this new §107.5 adopted to be effective January 8, 2026, 51 TexReg 159.

## **§107.6. Treatment of Ineligible Benefit Payments.**

- (a) In this section the term “ineligible benefit payment” means that portion of a payment or distribution, other than a Group Term Life benefit payment, made by TCDRS to, or on behalf of, a living or deceased person who was not legally entitled to the payment at the time it was made. An ineligible benefit payment is a receivable of TCDRS.
- (b) In this section the term “recipient” means the person or persons who, directly or indirectly, received an ineligible benefit payment.
- (c) If a repayment of an ineligible benefit payment issued from the Pension Trust Fund as described in Section 845.305(b) of the Government Code is not received by TCDRS, TCDRS may offset the amount of the ineligible benefit payment against benefit payments from the Pension Trust Fund otherwise due the recipient.
- (d) If the Director determines that an ineligible benefit payment issued from the Pension Trust Fund as described in Section 845.305(b) of the Government Code is not recoverable, the receivable shall be charged against the general reserves account of the endowment fund provided the ineligible benefit payment was not the result of an error or omission of a participating Employer. If the Director determines that an ineligible benefit payment made from the Group Term Life Fund is not recoverable, the receivable shall be charged against the Group Term Life Fund.
- (e) If the Director determines that the ineligible benefit payment issued from the Pension Trust Fund was the result of an error or omission of a participating Employer and determines that the payment is not recoverable, the receivable shall be charged against the Employer’s account in the Employer’s accumulation fund.
- (f) In making his or her determination, the Director may consider the amount of the ineligible benefit payment, the likelihood of repayment, the costs of recovery, and any other fact or circumstance which the Director considers to be relevant in finding that further efforts for the recovery of the payment are not in the best interests of TCDRS, its members and annuitants.

The provisions of this §107.6 adopted to be effective December 31, 1999, 24 TexReg 9302; amended to be effective October 1, 2001, 26 TexReg 7576; amended to be effective October 3, 2010, 35 TexReg 8977; repealed effective January 8, 2026, 51 TexReg 159; the provisions of this new §107.6 adopted to be effective January 8, 2026, 51 TexReg 159.

## **§107.7. Payments Due or Suspended on Death of Person Entitled to Benefit.**

- (a) Payments that are due a deceased person entitled to a TCDRS benefit and have not been made, or have been made but are not negotiable after the person’s death are payable to the valid surviving beneficiary of the person on file with TCDRS on the date of the person’s death. If there is no surviving beneficiary, the payments are payable to the person’s spouse. If there is no surviving spouse, the payments are payable to the executor or administrator of the person’s estate.

(b) If the total value of the payments described above is not more than \$10,000, and there is no surviving beneficiary or spouse (or diligent efforts by TCDRS to discover, locate and correspond with a surviving beneficiary or spouse have proven fruitless); and no petition for the appointment of an administrator or executor is pending or has been granted, and a small estates affidavit has not been filed with TCDRS, then upon application, TCDRS may, but is not required to, issue payment (including any optional group term life benefit), in trust to a relative of the decedent who would have a right of inheritance assuming the decedent had died intestate without relatives of a closer degree.

The provisions of this §107.7 adopted to be effective December 31, 1999, 24 TexReg 9302; repealed effective January 8, 2026, 51 TexReg 159; the provisions of this new §107.7 adopted to be effective January 8, 2026, 51 TexReg 159.

#### **§107.8. Acceptance of Rollovers and Transfers.**

(a) If permitted under and subject to the provisions of federal law, TCDRS may accept an eligible rollover distribution from another eligible retirement plan in payment of all or a portion of any deposit a member is permitted under applicable law to make with TCDRS for service credit.

(b) If permitted under and subject to the provisions of federal law, TCDRS may accept a direct trustee-to-trustee transfer of funds from a plan described under Section 403(b) or Section 457(b) of the Internal Revenue Code in payment of all or a portion of any deposit a member is permitted to make with TCDRS for service credit.

(c) In order to authorize the rollover or transfer of funds described in this section, a member shall provide or cause to be provided to TCDRS information sufficient for TCDRS in its sole discretion to reasonably conclude that the contribution is a valid rollover or direct trustee-to-trustee transfer as permitted under federal tax law. If TCDRS later determines that a contribution was an invalid rollover or direct trustee-to-trustee transfer or otherwise not permitted under federal tax law, TCDRS may take any action appropriate, permissible or required by the Internal Revenue Code or regulations issued thereunder, including return of the invalid contribution and, if applicable, any earnings attributed thereto to the member within a reasonable time after the determination and cancellation of any credit purchased with the returned amounts.

(d) TCDRS shall construe and administer this section in a manner such that the plan will be considered a qualified plan under Section 401(a) of the Internal Revenue Code, (United States Code, Title 26, §401).

The provisions of this §107.8 adopted to be effective January 12, 2000, 25 TexReg 215; amended to be effective April 9, 2000, 25 TexReg 3058; amended to be effective October 10, 2011, 36 TexReg 6770; repealed effective January 8, 2026, 51 TexReg 159; the provisions of this new §107.8 adopted to be effective January 8, 2026, 51 TexReg 159.

### **§107.9. Annual Allocation of Net Investment Income or Loss.**

In accordance with the allocations prescribed in Section 845.315(a) of the Government Code, and pursuant to Section 845.315(a)(5), as of December 31 of each year, the Board shall allocate to the accounts of Employers positive or negative amounts as determined by the Board, to the January balances of that year. The allocation rule prescribed by this section shall not apply to the Employers described in Sections 845.315(a)(6) and (b) of the Government Code.

The provisions of this §107.9 adopted to be effective January 12, 2000, 25 TexReg 215; amended to be effective April 9, 2000, 25 TexReg 3058; amended to be effective October 18, 2007, 32 TexReg 7266; repealed effective January 8, 2026, 51 TexReg 159; the provisions of this new §107.9 adopted to be effective January 8, 2026, 51 TexReg 159.

### **§107.10. [Repealed].**

The provisions of this §107.10 adopted to be effective December 25, 2000, 25 TexReg 12812; amended to be effective January 1, 2006, 30 TexReg 7887; amended to be effective December 30, 2012, 37 TexReg 10250; repealed effective January 8, 2026, 51 TexReg 159.

### **§107.11. [Repealed].**

The provisions of this §107.11 adopted to be effective January 6, 2002, 26 TexReg 11037; repealed effective January 1, 2006, 30 TexReg 7888; repealed effective January 8, 2026, 51 TexReg 159.

### **§107.12. [Repealed].**

The provisions of this §107.12 adopted to be effective January 6, 2002, 26 TexReg 11038; amended to be effective January 1, 2006, 30 TexReg 7888; amended to be effective October 18, 2007, 32 TexReg 7266; repealed effective January 8, 2026, 51 TexReg 159.

### **§107.13. [Repealed].**

The provisions of this §107.13 adopted to be effective December 31, 2002, 27 TexReg 12371; repealed effective January 8, 2026, 51 TexReg 159.

### **§107.14. [Repealed].**

The provisions of §107.14 adopted to be effective July 20, 2004, 28 TexReg 5032; repealed effective January 8, 2026, 51 TexReg 159.

### **§107.15. [Repealed].**

The provisions of §107.15 adopted to be effective January 10, 2006, 31 TexReg 170; repealed effective January 8, 2026, 51 TexReg 159.

**§107.16. [Repealed].**

The provisions of §107.16 adopted to be effective July 21, 2009, 34 TexReg 4740; repealed effective January 8, 2026, 51 TexReg 159.

**§107.17. [Repealed].**

The provisions of this §107.17 adopted to be effective December 27, 2009, 34 TexReg 9474; repealed effective January 8, 2026, 51 TexReg 159.

**§107.18. [Repealed].**

The provisions of this §107.18 adopted to be effective April 30, 2015, 40 TexReg 2281; repealed effective January 8, 2026, 51 TexReg 159.

## **CHAPTER 109. DOMESTIC RELATIONS ORDERS**

### **§109.1. Definitions.**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Accumulated contributions--The contributions, other member deposits, and interest credited to a member's individual account in the employees saving fund. Accumulated contributions do not include employer matching or any employer-provided credits.
- (2) Actuarial present value--The value of a benefit that, as computed by TCDRS in its sole discretion, is consistent with Section 841.001(1) of the Government Code.
- (3) Alternate payee--A spouse, former spouse, child, or other dependent of a member or retiree who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable by TCDRS with respect to such member or retiree. The alternate payee's information is subject to the confidentiality provisions in Section 845.115 of the Government Code.
- (4) Benefits--Any of the payments or benefits described in Section 109.12.
- (5) Domestic relations order--Any judgment, decree, or order (including one which approves a property settlement agreement) which:
  - (A) relates to the provision of child support, temporary support, or marital property rights to a spouse, former spouse, child, or other dependent of a member or former member of TCDRS; and
  - (B) is made pursuant to the Texas Family Code or any other applicable domestic relations or community property law.
- (6) Participant--A member, former member of TCDRS who has sums of money on deposit with TCDRS or who is or may become entitled to receive any benefit from TCDRS based on membership in TCDRS, or a former member TCDRS who has commenced receiving a monthly benefit from TCDRS.
- (7) Parties--The participant and all alternate payees named in a domestic relations order.
- (8) Vested--A participant is vested when he or she has earned the right to receive a lifetime monthly benefit in the future under the terms of the Plan.

The provisions of this §109.1 adopted to be effective January 29, 1988, 13 TexReg 305; repealed effective January 8, 2026, 51 TexReg 160; the provisions of this new §109.1 adopted to be effective January 8, 2026, 51 TexReg 160.

### **§109.2. Notice Regarding Receipt of Order.**

Upon receiving a domestic relations order, TCDRS shall promptly send a notice to those persons listed in paragraphs (1) and (2) of this section, stating that TCDRS has received the domestic relations order and that it will be acted upon by TCDRS in accordance with the procedures set forth in this chapter. The persons who are to receive the notice are:

- (1) the participant or, if the participant is represented by an attorney (and TCDRS has been provided with the name and address of such attorney in connection with the domestic relations order), to such attorney or to such other person as may be designated in writing by the participant with regard to the domestic relations order; and
- (2) all alternate payees named in the domestic relations order if their names and addresses are provided in the order; or, if an alternate payee is represented by an attorney (and TCDRS has been provided with the name and address of such attorney in connection with the domestic relations order), to such attorney or to such other person as may be designated in writing by an alternate payee with regard to the domestic relations order.

The provisions of this §109.2 adopted to be effective January 29, 1988, 13 TexReg 305; amended to be effective January 1, 1990, 14 TexReg 6677; amended to be effective April 30, 2015, 40 TexReg 2282, amended to be effective January 1, 2018, 42 TexReg 2341, amended to be effective January 1, 2019, 43 TexReg 7182; repealed effective January 8, 2026, 51 TexReg 160; the provisions of this new §109.2 adopted to be effective January 8, 2026, 51 TexReg 160.

### **§109.3. Requirements for Qualified Domestic Relations Orders.**

A recital in a domestic relations order to the effect that it is a qualified domestic relations order is not sufficient to make it qualified under this chapter. To constitute an order as a qualified domestic relations order under this chapter, an order must be determined by TCDRS to meet the requirements set forth in this chapter and Section 109.5 (relating to Contents of Domestic Relations Order). In making that determination, the order itself, and any clarification order entered by a court of competent jurisdiction, and any affidavits or agreements between the parties that are filed with TCDRS may be considered.

The provisions of this §109.3 adopted to be effective January 29, 1988, 13 TexReg 305; amended to be effective January 10, 1996, 21 TexReg 135; repealed effective January 8, 2026, 51 TexReg 160; the provisions of this new §109.3 adopted to be effective January 8, 2026, 51 TexReg 160.

### **§109.4. Contents of Domestic Relations Order.**

- (a) A domestic relations order should clearly specify:
  - (1) the full name and address of the participant and each alternate payee covered by the order, and attached to the order must be a Statement of Confidential Information which includes their respective social security numbers, dates of birth, and other contact information;
  - (2) the alternate payee's interest in the Plan which, in the case of an active participant, must be stated as a percent of participant's accumulated contributions that accrued during the marriage, and which includes future interest earned on the portion of accumulated contributions awarded to the alternate payee. A domestic relations order that is entered after the participant

has retired under a service or disability retirement must clearly specify that the participant's annuity is divided into two single life annuities as described in Section 109.6, with one such life annuity being the alternate payee's interest in the Plan and the other life annuity being the participant's interest in the Plan; and

- (3) whether the order applies only to benefits under TCDRS or, if not, to what other plans the order applies, and in what manner.

(b) A domestic relations order does not meet the requirements of this chapter for qualified domestic relations orders if:

- (1) it purports to require TCDRS to provide any type or form of benefit, or any option, not otherwise authorized under the Act;
- (2) it purports to require TCDRS to make any payment of any benefit or portion thereof at a time not otherwise authorized under the Act;
- (3) it purports to require the payment of benefits to an alternate payee which are required (or purported to be required) to be paid to another alternate payee under another order previously determined by TCDRS to be a qualified domestic relations order under this chapter (including any such order so determined on an informal basis prior to adoption of this chapter); or
- (4) it is worded in a manner that does not advise TCDRS (taking into account the provisions of the Act, the wording of the order, and the provisions of this chapter) in clear and unambiguous language as to what portion of the benefits that otherwise might be or become payable to the participant (or to the participant's designee or estate) are to be paid to each alternate payee under the order.

The provisions of this §109.4 adopted to be effective January 29, 1988, 13 TexReg 305, amended to be effective January 1, 2019, 43 TexReg 7182; repealed effective January 8, 2026, 51 TexReg 160; the provisions of this new §109.4 adopted to be effective January 8, 2026, 51 TexReg 160.

## **§109.5. Approval of Order.**

If, upon receipt of a domestic relations order, TCDRS is of the opinion that it complies in all ways with the requirements for a qualified domestic relations order under this chapter, TCDRS shall so state in the notice to be sent under Section 109.3 (relating to Notice Regarding Receipt of Order).

The provisions of this §109.5 adopted to be effective January 29, 1988, 13 TexReg 305; amended to be effective April 30, 2015, 40 TexReg 2282; repealed effective January 8, 2026, 51 TexReg 160; the provisions of this new §109.5 adopted to be effective January 8, 2026, 51 TexReg 160.

## **§109.6. Order Appearing Not To Qualify.**

- (a) If, upon receipt of a domestic relations order, TCDRS is of the opinion that the order does not comply in all ways with the requirements for a qualified domestic relations order under this chapter TCDRS shall so state (in the notice to be sent under Section 109.3 (relating to Notice Regarding Receipt of Order) and notify the parties that unless they commence action within 90 days to bring the order into compliance with the provisions of this chapter relating to qualified domestic relations orders the order will be determined not to be a qualified domestic relations order. If 60 days have elapsed and neither party has submitted documentation to TCDRS reflecting that action has been commenced to bring the order into compliance, TCDRS will again notify each party that unless documentation has been submitted to TCDRS showing that action has been commenced before the expiration of the 90-day period the order will be determined not to be a qualified domestic relations order and TCDRS will pay to the participant any sums that have been withheld up to that date, and shall thereafter make payment of benefits as if no order had been received by TCDRS.
- (b) If TCDRS has made an initial determination under this section that the order does not appear to qualify, TCDRS nonetheless may (but shall not be required to) pay to the participant all or any portion of any benefits to which the participant appears entitled under the order. Any benefits not paid under this subsection shall be retained by TCDRS until they are paid under one of the remaining subsections of this section.
- (c) In the event that, in the opinion of TCDRS, the order is subsequently brought into compliance with the requirements of this chapter for qualified domestic relations orders, TCDRS so notify the parties in writing, and TCDRS will thereafter pay the sums payable under the order in the manner set forth in the order, unless such order is subsequently set aside or modified by a court of competent jurisdiction.
- (d) In the event that either party has timely commenced action in accordance with Subsection (a) of this section and TCDRS determines after the expiration of 90 days from the date of the notice under Section 109.3 (relating to Notice Regarding Receipt of Order) that the order has not been brought into compliance with the requirements of this chapter for qualified domestic relations orders, the order is not a qualified domestic relations order. TCDRS shall so notify the parties in writing, and TCDRS will pay to the participant any sums that have been withheld hereunder after the expiration of six months from the date the notice under Section 109.3 (relating to Notice Regarding Receipt of Order) was provided (provided that upon good cause being shown prior to the expiration of such six-month period, the time for bringing the order into compliance may be extended for up to two additional six-month periods), and shall thereafter make payment of benefits as if no order had been received.
- (e) Upon receipt of a subsequent order that TCDRS determines qualifies under this chapter, TCDRS will make payment as therein described.
- (f) Upon the expiration of 18 months from the date the domestic relations order was received, if the issue of whether or not the order is a qualified domestic relations order has not been resolved within that period of time, TCDRS will pay to the

participant all sums that have been withheld hereunder up to that date, and shall thereafter make payment of benefits as if no order had been received by TCDRS.

(g) In accordance with Section 841.009 of the Government Code, neither TCDRS nor any officials to TCDRS shall be liable for making any payment under this section.

The provisions of this §109.6 adopted to be effective January 29, 1988, 13 TexReg 305; amended to be effective January 10, 1996, 21 TexReg 135; amended to be effective December 30, 2012, 37 TexReg 10250; amended to be effective April 30, 2015, 40 TexReg 2282, repealed to be effective January 1, 2018, 42 TexReg 2341; the provisions of this new §109.6 adopted to be effective January 8, 2026, 51 TexReg 160.

## **§109.7. Payments to Alternate Payees.**

(a) At any time after a pre-retirement qualified domestic relations order is filed and approved by TCDRS the alternate payee may withdraw in a lump sum the accumulated contributions attributable to the interest awarded to the alternate payee by the qualified domestic relations order. By withdrawing contributions, the alternate payee forfeits all employer-provided credits and the right to commence a life annuity or any other benefit.

(b) The alternate payee may commence a life annuity calculated in accordance with the terms of the Plan and based on the interest awarded in a pre-retirement qualified domestic relations order to such alternate payee at such time when the participant:

- (1) is eligible to retire;
- (2) commences a disability retirement;
- (3) dies and was eligible for a survivor death benefit under Section 844.407 of the Government Code; or
- (4) has attained the age at which the participant would have been eligible to retire, if the participant withdrew his or her account and was vested at the time of withdrawal.

(c) An alternate payee may commence an annuity under Subsection (b)(1) even if the participant has not retired or under Subsection (b)(4) even if the participant is not eligible for an annuity benefit.

(d) If the participant dies before commencing a benefit, and the participant was eligible for a survivor annuity under Section 844.407 of the Government Code, then the alternate payee may commence an annuity under Subsection (b)(3) or withdraw the accumulated contributions awarded under the qualified domestic relations order.

(e) The alternate payee must commence a distribution when the participant attains the required minimum distribution age under federal law. If the participant is still a depositing member and not vested, then the alternate payee is not required to commence an annuity or take a withdrawal. If the participant is vested when a mandatory distribution is required, the alternate payee is eligible for an annuity benefit.

- (f) If the alternate payee dies before commencing a benefit, and the participant is eligible for a survivor annuity benefit under Section 844.407 of the Government Code or has commenced a disability retirement, then the alternate payee's beneficiary must commence a survivor annuity pursuant to Section 844.407 that is actuarially equivalent to the deceased alternate payee's benefit awarded under the qualified domestic relations order.
- (g) If the alternate payee dies before commencing a benefit and the participant is not eligible for a survivor benefit under Section 844.407 of the Government Code, then the alternate payee's beneficiary is eligible for a benefit equal to the accumulated contributions awarded to the alternate payee at the time of the alternate payee's death.
- (h) If the alternate payee dies after commencing a life annuity, then the alternate payee's beneficiary may be eligible for a lump sum payment equal to the difference of the aggregate annuity payments made to the alternate payee, less the accumulated contributions associated with the interest awarded to the alternate payee, if any. If no valid beneficiary exists, or if the alternate payee dies without having a designated valid beneficiary, the benefit that would have otherwise been payable to the beneficiary of the deceased alternate payee is payable to the deceased alternate payee's surviving spouse, or if no surviving spouse, to the deceased alternate payee's estate.
- (i) Subsections (a)-(h) of this section will apply to all pre-retirement domestic relations orders approved in accordance with this chapter after January 1, 2018, and to such domestic relations orders approved prior to that date that are construed to provide for such an annuity or withdrawal.
- (j) If a qualified domestic relations order is received by TCDRS after the participant begins receiving a retirement annuity, TCDRS shall divide the annuity into two single life annuities; one payable to the alternate payee and the other payable to the participant in accordance with the order and the rules of the Plan. TCDRS shall compute the two single life annuities by determining the actuarial present value of participant's current annuity as of the date that TCDRS has approved the order, and creating an annuity payable to the alternate payee based on the actuarial present value of participant's current annuity awarded under the order to the alternate payee and creating a second life annuity payable to participant based on the remaining actuarial present value of participant's current annuity. Payments to the participant and to the alternate payee cease upon their respective deaths.
- (k) If a qualified domestic relations order is received by TCDRS after the participant begins receiving a retirement annuity under which the participant chose a dual life option, or a guaranteed term option and the term has not expired, and designated a person other than the alternate payee as beneficiary, then TCDRS, in computing the two single life annuities to be paid to the participant and the alternate payee respectively, shall first calculate the actuarial present value of the participant's current annuity that is not attributable to the beneficiary as of the date that TCDRS has approved the order. The interest of the beneficiary in the participant's current retirement annuity will not be affected by the division of benefits. The actuarial present value of the participant's current annuity that is not attributed to the

beneficiary is then divided into two single life annuities. The single life annuity payable to the alternate payee is based on the actuarial present value of the participant's current annuity not attributable to the beneficiary awarded under the order to the alternate payee, and the participant's single life annuity is computed based on the remaining actuarial present value of the participant's current annuity not attributable to the beneficiary.

- (l) The mortality assumption for alternate payees for determining the actuarial equivalent of a benefit payable to an alternate payee shall be the same as the mortality assumption for beneficiaries as set forth in §103.1 of this title (relating to Actuarial Tables) with regard to service retirements.
- (m) If the participant's employer grants a cost of living adjustment pursuant to the terms of the Plan, and if the alternate payee has commenced an annuity, then the alternate payee is eligible to receive a cost of living adjustment to his or her annuity.
- (n) Notwithstanding any other provision of this chapter, all distributions made under this chapter must be determined and made in accordance with Section 401(a) of the Internal Revenue Code, including but not limited to Section 401(a)(9); and Section 415.

The provisions of this §109.7 adopted to be effective January 29, 1988, 13 TexReg 305; amended to be effective January 10, 1996, 21 TexReg 135; amended to be effective April 30, 2015, 40 TexReg 2282; repealed effective January 8, 2026, 51 TexReg 160; the provisions of this new §109.7 adopted to be effective January 8, 2026, 51 TexReg 160.

### **§109.8. Form of Qualified Domestic Relations Order.**

TCDRS has prescribed forms that are pre-approved by TCDRS as meeting the requirements of state law for a qualified order. The prescribed forms are available on TCDRS' website, and are also available upon request. The prescribed forms incorporate by reference the provisions of this chapter. TCDRS may reject any domestic relations order submitted to TCDRS that does not utilize the applicable prescribed form.

The provisions of this §109.8 adopted to be effective January 29, 1988, 13 TexReg 305; amended to be effective January 10, 1996, 21 TexReg 135; repealed to be effective April 30, 2015, 40 TexReg 2283; the provisions of this new §109.8 adopted to be effective January 8, 2026, 51 TexReg 160.

### **§109.9. Provisions Incorporated by Reference.**

An order on the form set forth in Section 109.13 (relating to Form of Qualified Domestic Relations Order) expressly incorporates all of the following by reference.

- (1) The order shall not be interpreted in any way to require the Plan to provide any type or form of benefit or any option not otherwise provided under the Plan.
- (2) The order shall not be interpreted in any way to require the Plan to provide increased benefits determined on the basis of actuarial value.

- (3) The order shall not be interpreted in any way to require the Plan to pay any benefits to an/any alternate payee named in the order which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.
- (4) If the Plan provides for a reduced benefit upon “early retirement,” the order shall be interpreted to require that, in the event of the participant’s retirement before normal retirement age, the benefits payable to the alternate payee shall be reduced in a proportionate amount.
- (5) The order shall not be interpreted to require the designation of a particular person as the recipient of benefits in the event of the participant’s death, or to require the selection of a particular benefit payment plan or option.
- (6) In the event that, after the date of the order, the amount of any benefit otherwise payable to the participant is increased as a result of amendments to the law governing the Plan, alternate payee shall receive a proportionate part of such increase unless such an order would disqualify the order under the rules the Plan has adopted with regard to qualified domestic relations orders.
- (7) In the event that, after the date of the order, the amount of any benefit otherwise payable to the participant is reduced by law, the portion of benefits payable to alternate payee shall be reduced in a proportionate amount.
- (8) If, as a result of the participant’s death after the date of the order, a payment is made by the Plan to the participant’s estate, surviving spouse, or designated beneficiaries, which payment does not relate in any way to the participant’s length of employment or accumulated contributions with the Plan, but rather is purely a death benefit payable as a result of employment or retired status at the time of death, no portion of such payment is community property, and the alternate payee shall have no interest in such death benefit.
- (9) If the Board of the Plan has by rule provided that, in lieu of paying an alternate payee the interest awarded by a qualified domestic relations order, the Plan may pay the alternate payee an amount that is the actuarial equivalent of an annuity payable in equal monthly installments for the life of the alternate payee, or a lump sum, then and in that event the Plan is authorized to make such a payment under the order.
- (10) All payments to alternate payee under the order shall terminate upon the alternate payee’s death, and alternate payee’s beneficiary may be entitled to a benefit under Section 109.12.
- (11) All benefits payable under the Plan, other than those payable to the alternate payee as provided in a qualified domestic order, shall be payable to the participant in such manner and form as the participant may elect in his/her sole and undivided discretion, subject only to the Plan requirements.
- (12) The alternate payee must report any retirement payments received on any applicable income tax return, and must promptly notify the Plan of any changes in the alternate payee’s mailing address. The Plan is authorized to issue a Form 1099R on any direct payment made to the alternate payee.

- (13) The participant is designated a constructive trustee for receiving any retirement benefits under the Plan that are due to the alternate payee but paid to the participant. The participant must pay the benefit defined in this paragraph directly to the alternate payee within three days after receipt by the participant. All payments made directly to the alternate payee by the Plan shall be a credit against this order.
- (14) The Court retains jurisdiction to amend the order so that it will constitute a qualified domestic relations order under the Plan even though all other matters incident to this action or proceeding have been fully and finally adjudicated.

The provisions of this §109.9 adopted to be effective January 29, 1988, 13 TexReg 305; amended to be effective January 10, 1996, 21 TexReg 135; repealed effective January 8, 2026, 51 TexReg 160; the provisions of this new §109.9 adopted to be effective January 8, 2026, 51 TexReg 160.

#### **§109.10. [Repealed]**

The provisions of this §109.10 adopted to be effective January 29, 1988, 13 TexReg 305; amended to be effective January 10, 1996, 21 TexReg 135; Repealed to be effective April 30, 2015, 40 TexReg 2283; repealed effective January 8, 2026, 51 TexReg 160.

#### **§109.11. [Repealed]**

The provisions of this §109.11 adopted to be effective January 29, 1988, 13 TexReg 305, Repealed to be effective April 30, 2015, 40 TexReg 2283; repealed effective January 8, 2026, 51 TexReg 160.

#### **§109.12. [Repealed].**

The provisions of this §109.12 adopted to be effective January 1, 1990, 14 TexReg 6677; amended to be effective April 15, 1996, 21 TexReg 2669; amended to be effective July 27, 2005, 30 TexReg 4215; amended to be effective July 21, 2009, 34 TexReg 4740; amended to be effective April 30, 2015, 40 TexReg 2282; amended to be effective January 1, 2018, 42 TexReg 2342, amended to be effective January 1, 2019, 43 TexReg 7182; repealed effective January 8, 2026, 51 TexReg 160.

#### **§109.13. [Repealed].**

The provisions of this §109.13 adopted to be effective January 10, 1996, 21 TexReg 135; amended to be effective April 30, 2015, 40 TexReg 2282; repealed effective January 8, 2026, 51 TexReg 160.

**§109.14. [Repealed].**

The provisions of this §109.14 adopted to be effective January 10, 1996, 21 TexReg 135; amended to be effective January 1, 2018, 42 TexReg 2343; repealed effective January 8, 2026, 51 TexReg 160.

## **CHAPTER 111. TERMINATION OF PARTICIPATION: EMPLOYERS**

### **§111.1. Notice of an Employer's Intent to Terminate Participation.**

An Employer other than a county desiring to terminate its participation in TCDRS must provide at least 90 days advance written notice to TCDRS. The notice must include a proposed timeline that includes reasonable time for the development of a mutually developed termination agreement pursuant to Section 842.052 of the Government Code and that allows time for approval by the Board.

The provisions of this §111.1 adopted to be effective January 6, 2006, 31 TexReg 171; repealed effective January 8, 2026, 51 TexReg 160; the provisions of this new §111.1 adopted to be effective January 8, 2026, 51 TexReg 161.

### **§111.2. Notice by TCDRS to Members of Terminated Plans.**

After the Board approval of a voluntary or involuntary termination of participation under Subchapter A-1 of Chapter 842 of the Government Code, TCDRS must provide written notice to all impacted members of their rights to benefits under the terms of the termination. Notice must be issued no later than 10 business days after the Board approval of the termination.

The provisions of this §111.2 adopted to be effective January 6, 2006, 31 TexReg 171; repealed effective January 8, 2026, 51 TexReg 160; the provisions of this new §111.2 adopted to be effective January 8, 2026, 51 TexReg 161.

### **§111.3. [Repealed].**

The provisions of this §111.3 adopted to be effective January 6, 2006, 31 TexReg 171; repealed effective January 8, 2026, 51 TexReg 160.

### **§111.4. [Repealed].**

The provisions of this §111.4 adopted to be effective January 6, 2006, 31 TexReg 171; repealed effective January 8, 2026, 51 TexReg 160.

## **CHAPTER 113. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM QUALIFIED REPLACEMENT BENEFIT ARRANGEMENT**

### **§113.1. Purpose.**

The Board of TCDRS hereby establishes a qualified governmental excess benefit program in accordance with Section 415(m) of the Internal Revenue Code and as authorized under Section 845.504 of the Government Code. The program entitled as the “Texas County and District Retirement System Qualified Replacement Benefit Arrangement” is maintained solely for the purpose of providing for the payment of that portion of the annual retirement benefits that had been accrued by and would otherwise be payable with respect to a member of TCDRS but for the limitation on the payment of benefits under Section 415(b) of the Internal Revenue Code.

The provision of this §113.1 adopted to be effective January 6, 2006, 31 TexReg 171; amended to be effective January 8, 2026, 51 TexReg 161.

### **§113.2. Definitions.**

When used in this chapter the following words have the following meanings.

- (1) Arrangement – the TCDRS Qualified Replacement Benefit Arrangement, as set forth herein and as amended from time to time.
- (2) Benefit Recipient – any individual who receives a retirement benefit from TCDRS as a Retiree or as a surviving beneficiary of a deceased Member or Retiree. The term may include an alternate payee of a deceased Member or Retiree.
- (3) Benefit – a retirement benefit accrued under the provisions of the Act.
- (4) Effective Date – January 1, 2006, the effective date of the Arrangement.
- (5) Eligible Member – a Retiree or a deceased Member or Retiree with respect to an Employer, from and after the date the Employer adopts the Arrangement.
- (6) Restricted Benefit – the maximum Benefit permitted to be paid to a Benefit Recipient under the Retirement Plan of the Employer, as limited by Internal Revenue Code Section 415, in accordance with Section 844.008 of the Government Code.
- (7) Member means any individual who accrues or has accrued a Benefit under the Act.
- (8) Participant – any Benefit Recipient with respect to an Employer who is eligible to participate in the Arrangement in accordance with Section 113.3 of this chapter.
- (9) Retiree – a Member who receives a Benefit under the Act with respect to an Employer.
- (10) Unrestricted Benefit – the benefit that would be payable to a Benefit Recipient under the Retirement Plan of the Employer if the limits of Section 415 of the Internal Revenue Code were not applicable in accordance with Section 844.008 of the Government Code.

The provisions of this §113.2 adopted to be effective January 6, 2006, 31 TexReg 171; amended to be effective January 8, 2026, 51 TexReg 161.

### **§113.3. Eligibility and Payments.**

- (a) Eligibility to Receive Payments. If, at the time an Eligible Member becomes a Retiree or dies or at any time thereafter, the Unrestricted Benefit of the Benefit Recipient under the Retirement Plan of the Employer exceeds the Restricted Benefit payable to the Benefit Recipient at that time, the Benefit Recipient shall become a Participant and shall be entitled to receive payments under this Arrangement, in accordance with the terms hereof, and may not waive or defer the receipt of such payments. A Benefit Recipient shall in no event become a Participant until the later of:
  - (1) January 1, 2006, the Effective Date of the Arrangement, or
  - (2) the effective date of the applicable Employer's adoption of the Arrangement.
- (b) Amount of Payments. A Participant shall receive payments under this Arrangement equal to the difference between the Participant's Unrestricted Benefit and his or her Restricted Benefit, provided that the amount of payments so determined shall be subject to change and to such adjustments as TCDRS deems appropriate, from time to time. In no event shall a Participant be entitled to receive a payment under this Arrangement if such payment, when combined with other payments under this Arrangement and under the Retirement Plan of the Employer, would result in the Participant receiving total payments in excess of the Participant's Unrestricted Benefit.
- (c) Form and Timing of Payments. Payments under this Arrangement shall be paid by the applicable Employer to each Participant at the time and in the form and manner as TCDRS may direct. Any election made by an Eligible Member with regard to the distribution of Benefits under TCDRS, including the designation of a named beneficiary, as defined in Section 841.001(4) of the Government Code, shall be equally applicable to and binding on such Eligible Member and on all persons who at any time have or claim to have any interest in connection with payments under this Arrangement.
- (d) Effect on TCDRS. Any Benefit payable under the Retirement Plan of the Employer established under TCDRS shall be paid solely in accordance with the terms and provisions thereof and shall be subject to Section 415 of the Internal Revenue Code and other applicable tax limitations; nothing in this Arrangement shall operate or be construed in any way to modify, amend or affect the Benefits payable thereunder.
- (e) Tax Withholding. All payments under this Arrangement shall be subject to and reduced by applicable federal, state and local income, payroll and other tax withholding requirements and all other applicable deductions required by this Arrangement or by law.
- (f) Participation Determined Annually. Participation in the Arrangement shall be determined annually for each plan year. In any plan year, benefits shall only be paid under the Arrangement to a Participant after the date in the plan year that the benefits paid to such person from TCDRS under the Retirement Plan of the Employer have reached the maximum annual benefit that can be paid by TCDRS under Internal Revenue Code Section 415 for that plan year. The date the maximum annual benefit

payment from TCDRS is reached is the beginning date of participation by the Participant for that plan year. The beginning date of a Participant's participation in the Arrangement may change from plan year to plan year as the amount payable under this Arrangement is redetermined. An individual's participation in the Arrangement will cease for any plan year or portion of a plan year for which the individual's Benefit is not limited by Internal Revenue Code Section 415.

(g) **No Election to Defer Compensation.** No election shall be provided at any time to a Participant or any other individual, directly or indirectly, to defer compensation under the Arrangement.

The provisions of this §113.3 adopted to be effective January 6, 2006, 31 TexReg 171; amended to be effective January 8, 2026, 51 TexReg 161.

#### **§113.4. Administration.**

(a) **Administrator.** TCDRS shall be the Administrator of the Arrangement and shall be responsible for the supervision and control of the operation and administration of the Arrangement, except as otherwise provided herein. Subject to the authority of the Board, TCDRS shall have the exclusive right and full discretion to construe and interpret the Arrangement, to establish rules and procedures for its operation and administration, and to decide any and all questions of fact, actuarial valuation, interpretation, definition or administration arising under or in connection with the administration of the Arrangement. The interpretation and construction of any provisions of the Arrangement by the Administrator and its exercise of any discretion granted under the Arrangement shall be binding and conclusive on all persons who at any time have or claim to have any interest whatever under this Arrangement.

(b) **Contributions and Payments.**

- (1) As soon as administratively feasible and before the receipt of Employer contributions, TCDRS shall calculate the portion of the Employer's contributions necessary to make the payments due to Participants of that Employer for the next payment period and for any applicable expenses under this Arrangement. Before depositing its contributions with TCDRS, the Employer shall deduct the calculated amounts and make payments directly to its Participants; and directly to TCDRS for any applicable expenses under the Arrangement. Notwithstanding the foregoing, if TCDRS determines, in its sole discretion, that the allocation of contributions to the Arrangement would jeopardize the actuarial soundness of the Retirement Plan of the Employer, TCDRS shall terminate the Arrangement and shall notify the participating Employer and Participants.
- (2) Amounts deducted for payments and expenses under the Arrangement shall be separately accounted for and shall be used exclusively for payments and expenses under the Arrangement.
- (3) The Employer from whom the Eligible Member retired or died while a Member with respect to such Employer shall be solely responsible for paying any amounts

due to the Participant under the terms of the Arrangement. TCDRS shall have no obligation to pay any amounts due under the terms of the Arrangement.

- (4) The Employer shall be responsible for satisfying all tax withholding, payroll tax payments, other applicable tax payments and reporting requirements applicable to the Arrangement, if any, and shall be responsible for administering all payments due under the Arrangement.
- (c) Plan Unfunded. This Arrangement shall at all times be entirely unfunded within the meaning of the federal tax laws. Nothing contained herein shall be construed as providing for assets to be held in trust for the Participants. No Participant or any other person shall have any interest in any assets of TCDRS or any Employer by reason of the right to receive a payment under the Arrangement. Nothing contained herein shall be construed as a guarantee by TCDRS, any Employer, or any other entity or person that the assets of the Employer will be sufficient to pay any benefit hereunder.
- (d) Appeal Procedure. In the event a dispute arises between the Employer and the Administrator relating to the determination of the Administrator or the interpretation, operation or administration of this Arrangement, the Administrator's decision shall be final, conclusive and binding unless the Employer submits an appeal directly to the Director in accordance with Section 101.11.

The provisions of this §113.4 adopted to be effective January 6, 2006, 31 TexReg 171; amended to be effective December 26, 2008, 33 TexReg 10505; amended to be effective January 8, 2026, 51 TexReg 161.

### **§113.5. Amendment and Termination.**

- (a) Amendment and Termination of the Arrangement. The Board reserves the right, in its sole discretion, to amend or terminate the Arrangement at any time and from time to time. By way of example, and not limitation, the Arrangement may be amended or terminated to eliminate all payments with respect to any Member or other individual who has not become eligible to participate in the Arrangement as of the date of such amendment or termination by reason of retirement or death in accordance with Section 113.3(a) of this chapter. In addition, an amendment or termination may be retroactive to the extent that the Board deems such action necessary, in its sole discretion, to maintain the tax-qualified status of TCDRS or the status of this Arrangement as a qualified governmental excess benefit arrangement as defined in Internal Revenue Code Section 415(m) or to avoid jeopardizing the actuarial soundness of the Retirement Plan of the Employer.
- (b) Termination of Employer's Participation.
  - (1) An Employer may terminate its participation in the Arrangement at any time with the consent of and on terms established by the Administrator.
  - (2) The Administrator may terminate the participation of an Employer if the Employer fails to comply with the rules established by the Board for the administration of the Arrangement as from time to time amended or modified,

or fails to perform in accordance with the adoption agreement. The determination of an Employer's failure to comply and subsequent involuntary termination of participation is within the sole discretion and authority of the Administrator. The Administrator's decision is final, conclusive and binding unless timely appealed directly to the Board in accordance with Section 113.4(d) of this chapter.

- (c) Participants. If an Employer's participation in the Arrangement is voluntarily or involuntarily terminated, then any person who is a Benefit Recipient with respect to that Employer and who is a Participant in the Arrangement shall immediately cease such participation and shall be entitled to no benefits under this Arrangement and no benefits shall be paid or due to such Participant on or after the date of such termination. On the termination of an Employer in the Arrangement, the Employer shall have sole and complete responsibility and liability for paying any benefits that would otherwise be payable under the Arrangement with respect to its Participants, and TCDRS and all other participating Employers shall have no responsibility or liability for any such benefits.

The provisions of this §113.5 adopted to be effective January 6, 2006, 31 TexReg 172; amended to be effective January 8, 2026, 51 TexReg 161.

## **§113.6. General Provisions.**

- (a) Applicable Law.
  - (1) All questions pertaining to the validity, construction and administration of the Arrangement shall be determined in conformity with the laws of the State of Texas, except to the extent federal law preempts state law.
  - (2) If any provision of the Arrangement or the application thereof to any circumstance or person is invalid, the remainder of the Arrangement and the application of such provision to other circumstances or persons shall not be affected thereby.
- (b) Indemnification. To the extent allowed by law, an Employer electing to participate in the Arrangement must agree to indemnify, defend, and hold harmless TCDRS, the employees of TCDRS, the Board, and all other Employers participating in the Arrangement from and against any and all direct or indirect liabilities, demands, claims, losses, costs and expenses, including reasonable attorney's fees, arising out of or resulting from the Employer's participation in the Arrangement and/or the Employer's voluntary or involuntary termination of participation in the Arrangement. The agreement of the Employer to indemnify, defend and hold harmless survives the termination of the Employer's participation in the Arrangement and the termination of the Arrangement.
- (c) Nonalienation. Benefits under this Arrangement shall not be subject to alienation or legal process, except to the extent permitted under Government Code, Chapter 804.
- (d) No Enlargement of Employment Rights. The establishment of the Arrangement shall not confer any legal rights upon any employee or other person for a continuation of

employment, nor shall it interfere with the rights of the Employer to discharge any employee and to treat the employee without regard to the effect which that treatment might have upon the employee as a Participant in the Arrangement.

- (e) **Information Required By Arrangement.** Benefit Recipients, other individuals and Employers shall furnish to the Administrator such evidence, data and information as the Administrator considers necessary or desirable for the purpose of administering the Arrangement.
- (f) **Paying Benefits, Costs and Expenses from TCDRS Assets is Prohibited.** No assets of TCDRS shall be used directly or indirectly to pay benefits under the Arrangement or to pay any costs or expenses of administering the Arrangement. Expenses of administering the Arrangement may include expenses for professional, legal, accounting, and other services, and other necessary or appropriate costs of administration.

The provisions of this §113.6 adopted to be effective January 6, 2006, 31 TexReg 172; amended to be effective January 8, 2026, 51 TexReg 161.