

**TEXAS ADMINISTRATIVE CODE**  
**TITLE 34. PUBLIC FINANCE**  
**PART 5. TEXAS COUNTY AND DISTRICT**  
**RETIREMENT SYSTEM**

Chapter 101.	Practice and Procedure Regarding Claims
Chapter 103.	Calculations or Types of Benefits
Chapter 105.	Creditable Service
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Chapter 113.	Texas County and District Retirement System Qualified Replacement Benefit Arrangement

**This reproduction of the TCDRS Administrative Code is current as of January 1, 2019. 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. PRACTICE AND PROCEDURE REGARDING CLAIMS

#### §101.1. Definitions.

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

- (1) the term “Act” means the Texas Government Code, Title 8, Subtitle F, as amended;
- (2) the term “board” means the board of trustees of the Texas County and District Retirement System;
- (3) the term “medical board” means the group of physicians designated by the board of trustees in accordance with §845.204;
- (4) the term “SOAH” means the State Office of Administrative Hearings; and
- (5) all other words, terms, and phrases as used in such rules and regulations shall have the meaning defined in the Act, unless the context plainly indicates a different meaning.

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.

#### §101.2. Scope and Application.

- (a) These rules shall govern the procedure for the institution, conduct, and determination of all claims arising under the Act, 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 the system or the substantive rights of any person.

- (b) Subject to the limitation described in subsection (a), the director is authorized to suspend, modify or grant an exception to the operation of a rule under this Part 5 of Title 34 in individual cases as equity and fairness require to avoid undue hardship, where to do so will not prejudice the system 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 §401(a) of the Internal Revenue Code of 1986.
- (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.

### **§101.3. Filing of Documents.**

All applications, beneficiary designations, administrative elections, petitions, complaints, replies, and other pleadings seeking to institute any claim, complaint, or other proceeding under the Act, relating to any such proceeding then pending (other than one that has become a “contested case”), or seeking to exercise a right or perform an administrative action under the Act shall be filed with the director at the offices of the system in Austin. Such instruments shall be deemed filed only when actually received, accompanied by the filing fee, if any, required by statute or by rules of the board. An instrument may be filed electronically in accordance with §107.9 of this title (relating to Electronic Filing of Documents). If a proceeding becomes a “contested case”, documents shall thereafter be filed in accordance with §§101.16 - 101.22 of this title.

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.

### **§101.4. Computation of Time.**

- (a) Computing time. In computing any period of time prescribed or allowed by these rules, 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.

- (b) Extensions. Unless otherwise provided by statute, the time for filing any application or other form may be extended by order of the director, upon written motion duly filed with the director prior to the expiration of the applicable period of time for the filing of the same, showing that there is good cause for such extension of time and that the need is not caused by the neglect, indifference, or lack of diligence of the movant. A copy of any such motion shall be served upon all other parties of record to the proceeding contemporaneously with the filing of the motion.

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.

**§101.5. Applications for Benefits or Asserting Other Claims.**

- (a) General. Any person who asserts any claim to any right or benefit under the act shall file written application with the director of the system at the office of the system at Austin.
- (b) Form, content, and signature of applications.
  - (1) Official forms for applications for certain benefits. Official forms for use in making application for service retirement benefits, for disability retirement benefits, and for refund of accumulated deposits on terminations prior to retirement are available at and may be obtained without charge from the office of the director of the system in Austin upon written request; normally, such forms are also available at, and can be obtained from, the county auditor of a participating county or from the officer in charge of payrolls for the participating subdivision by which the member is or was employed. All applications which are the subject of any official form shall contain the information, statements, and supporting documents designated in that official form and shall conform substantially to that official form.
  - (2) Contents of applications having no official form. All applications for which no official form is prescribed shall be typewritten or printed on white paper, 8 ½ inches wide by 11 inches long, and shall contain:
    - (A) the name of the party asserting the right or claim, his membership number in the system (if any), and his address;
    - (B) a concise statement of the facts relied on as giving rise to the right or claim asserted; and
    - (C) a prayer stating the type of relief, action, or order desired by the applicant.

- (3) Applications required to be signed. All applications for retirement or for retirement benefits must be personally signed in ink by the member seeking retirement unless there is a guardian of the person and estate of the member, in which event the application must be signed by the guardian. The original of all other applications shall be signed by the applicant or by the applicant's authorized representative. The director may require satisfactory proof of the authority of a representative to act for the member.

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.

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

- (a) An application for retirement must be signed and dated by the member or the member's authorized representative and must specify an effective retirement date on which the member had 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 the system receives the retirement application and may not precede the first anniversary of the effective date of participation of the subdivision.
- (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 a subdivision may not be a date preceding the termination of the member's employment with the subdivision 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 subdivisions or the date the member became disabled.
- (d) If the specified effective retirement date is prior to the date the system 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 incident to 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 the system will be accumulated and paid, without interest, as a single sum.
- (e) An annuity approved by the system is payable beginning on the last day of the first month following the effective date of retirement.

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.

**§101.7. 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 birth certificates; marriage licenses; divorce decrees; letters of guardianship; letters testamentary or letters of administration; 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, failure to submit all required documents within four months 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 §101.6 of this title (relating to Time For Filing of Retirement Applications).

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.

**§101.8. Service Retirement Benefits Approved by Director.**

If the director finds from the records of the system and from the documents supporting the application that the applicant is entitled to a service retirement benefit, unless a contest has been filed under §101.12 of this title (relating to Contest of Application: Form and Content), 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 §101.8 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.

**§101.9. Disability Retirement Applications Referred to Medical Board.**

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.

The provisions of this §101.9 adopted to be effective July 27, 1976, 1 TexReg 1929.

**§101.10. 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 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 §101.10 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.

**§101.11. Summary Disposition of Other Approved Applications.**

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.

The provisions of this §101.11 adopted to be effective July 27, 1976, 1 TexReg 1929.

**§101.12. Contest of Application: Form and Content.**

- (a) Any party other than the system desiring to contest any pending application for benefits shall file with the director a written answer, setting forth:
  - (1) the name and address of the party filing such answer who shall be designated as "contestant";
  - (2) the name of the party making the application or claim being contested;
  - (3) a concise statement of the facts relied on by the contestant as reasons why the contested application should be denied;
  - (4) any counterclaim asserted by the contestant; and
  - (5) a prayer specifying the action which the contestant desires the system to take.
- (b) The answer shall be signed by the contestant or by the contestant's duly authorized representative and must contain a certificate showing that a true copy of the same was served upon the applicant and the date and manner of such service.

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.

**§101.13. Notice of Prehearing Disposition.**

- (a) If an application for benefits is approved in whole or in part without hearing, the director, by letter of notification, shall inform the applicant in writing of the action taken.
- (b) If the director determines that an application for benefits cannot be approved, the director shall send a letter of notification, informing the applicant that the claim is denied, in whole or in part, and stating the reasons therefor.

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.

**§101.14. Procedure for Obtaining Hearing of Claim Denied in Whole or in Part by Director as Contested Case.**

- (a) A claimant who desires to contest the action of the director denying, in whole or in part, the claim to any right or benefit under the Act may obtain a hearing of the claim as a “contested case” pursuant to the Administrative Procedure Act (Chapter 2001, Government Code) and the following rules, by filing a written “Request for Hearing of Denied Claim” within 90 days after the date of the director’s letter of notification.
- (b) If no request under subsection (a) of this section is filed by the claimant within the 90 day period provided above, the prehearing disposition made by the director shall become final and unappealable.

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.

**§101.15. Hearing of Conflicting and Contested Claims.**

- (a) Where a party, pursuant to §101.12 of this title (relating to Contest of Application: Form and Content) has filed an answer to a pending application, the issues presented shall be heard as a “contested case” in accordance with the provisions of the Administrative Procedure Act (Chapter 2001, Government Code) and the following rules adopted by the board of trustees.
- (b) If different persons make claim to any benefit which the system concedes, or if a party challenges the competency or right of a member to dispose of such a benefit in accordance with the latest written designation executed by the member and filed with the system, the director may decline any decision on the issues between the opposing claimants and file an appropriate action in a court of competent jurisdiction making the opposing claimants parties and may tender payment through the court to the party adjudged entitled to it.
- (c) Upon a written request by a party or upon motion by the director or the board, the director may issue subpoenas addressed to the sheriff to require the attendance of witnesses and the production of books, records, papers, or other objects that may be appropriate for purposes of a deposition or hearing.

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.

**§101.16. Conduct of Contested Case Hearings.**

- (a) After the filing of a request for a contested case hearing pursuant to these rules, or after the filing of a third-party answer under Section 101.12 of this title (relating to Contest of Application: Form and Content), the director shall cause the contested case to be docketed in the State Office of Administrative Hearings (SOAH), by filing with the SOAH a “Request for Setting of Hearing” or a “Request for Assignment of Administrative Law Judge” as the director deems appropriate, along with a certified copy of the pleadings, orders, and other relevant documents in the System’s files at that time concerning the issues in dispute.
- (b) After the case has been docketed with the SOAH and an administrative law judge has been assigned, the director shall notify all parties to the proceeding of the actions taken. Thereafter, any amended pleading or any motion filed in connection with the case, including, but not limited to, motions for continuance, discovery, settings and other relief, shall be filed with the SOAH at its office in Austin, Texas, until such time as the proposal for a decision has been presented to the board of trustees as hereinafter provided.
- (c) At least 10 days prior to the hearing, the director shall give notice to all parties as required by §2001.051 of the Administrative Procedure Act (Chapter 2001, Government Code).
- (d) The hearing will be conducted by an administrative law judge assigned by the SOAH, and shall be conducted in accordance with the Administrative Procedure Act (Chapter 2001, Government Code), these rules, and the rules adopted by the SOAH. Hearings will be conducted in Travis County.
- (e) Parties to the hearing, including the system, may be represented by counsel. All parties, including the system, may introduce testimony of witnesses, records, documents, and other evidence relevant to the claim or matter which is the subject of the hearing. The administrative law judge shall have authority to administer oaths, examine witnesses, rule on the admissibility of evidence, recess the hearing from day to day, or to a specified date, and otherwise to regulate and conduct the hearing to the end that the issues may be presented fairly and with order and decorum.
- (f) The provisions of the Administrative Procedure Act (Chapter 2001, Government Code) shall govern the admissibility of evidence, but the system will take notice of any facts established by its records unless a party to the proceedings files a written protest of its validity.

The provisions of this §101.16 adopted to be effective July 27, 1976, 1 TexReg 1929; amended to be effective January 27, 2000, 25 TexReg 389; amended to be effective January 1, 2006, 30 TexReg 7886.

**§101.17. Proposals for Decision.**

- (a) The administrative law judge who conducted the hearing, or one who has read the record, shall prepare a written proposal for decision for action by the board of trustees. The proposal for decision shall contain findings of fact and conclusions of law, separately stated, and, if appropriate, a proposed order.
- (b) When a proposal for decision is prepared, a copy of the proposal shall be served forthwith by the State Office of Administrative Hearings on each party or the party's attorney, if any. Unless exceptions to the proposal for decision have been filed within the time prescribed by §101.18 of this title (relating to Filing of Exceptions to Proposal, Briefs, and Replies), the proposal for decision may be adopted at any date thereafter by written order of the board of trustees.

The provisions of this §101.17 adopted to be effective July 27, 1976, 1 TexReg 1929; amended to be effective January 27, 2000, 25 TexReg 389.

**§101.18. Filing of Exceptions, Briefs, and Replies.**

- (a) Any party to the proceeding may, within 20 days after date of service of a proposal for decision, file with the State Office of Administrative Hearings (SOAH) exceptions to the proposal and may submit briefs in support of such exceptions; replies to exceptions and reply briefs may be filed within 15 days after date for filing of such exceptions and briefs. A request for extension of time within which to file exceptions, briefs, or replies may be filed with the SOAH, and the SOAH shall promptly notify the parties of its action upon such requests.
- (b) Briefs, exceptions, and replies shall be of the size and shall conform as near as may be to the form prescribed for applications and other pleadings.
- (c) The administrative law judge may amend the proposal for decision pursuant to exceptions, briefs, and replies to exceptions and briefs, without the proposal for decision again being served on the parties.
- (d) The administrative law judge shall submit the proposal for decision to the board of trustees, with a copy to each party.

The provisions of this §101.18 adopted to be effective July 27, 1976, 1 TexReg 1929; amended to be effective January 27, 2000, 25 TexReg 389.

**§101.19. Board Consideration and Action.**

- (a) The final decision in contested cases shall be made by the board of trustees, 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.

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.

#### **§101.20. Final Decisions and Orders.**

All final decisions and orders of the board of trustees in contested cases shall be in writing and shall be signed by the director. The final decision shall include findings of fact and conclusions of law, separately stated. The date of rendition shall be stated in the decision or order. Parties shall be notified either personally or by mail of any decision or order. On written request, a copy of the decision or order shall be delivered or mailed to any party and to the party's attorney of record.

The provisions of this §101.20 adopted to be effective July 27, 1976, 1 TexReg 1929; amended to be effective January 27, 2000, 25 TexReg 389.

#### **§101.21. When Decisions Become Final.**

A decision of the board of trustees 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 §101.21 adopted to be effective July 27, 1976, 1 TexReg 1929; amended to be effective January 27, 2000, 25 TexReg 389.

#### **§101.22. Motions for Rehearing.**

A motion for rehearing is a prerequisite to judicial review. A motion for rehearing must be filed with the director within 15 days after the date of rendition of a final decision or order. Replies to a motion for rehearing must be filed with the system within 25 days after the date of rendition of the final decision or order, and system action on the motion must be taken within 45 days after the date of rendition of the final decision or order. If system action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date of rendition of the final decision or order. The director may by written order entered prior to the expiration of the 45-day period extend the period of time for filing the motions and replies and taking system action, except that an extension may not extend the period for system action beyond 90 days after the date of rendition of the final decision or order. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date of the final decision or order. The parties may by agreement, with the approval of the director, provide for a modification of the time provided in this section.

The provisions of this §101.22 adopted to be effective July 27, 1976, 1 TexReg 1929; amended to be effective January 27, 2000, 25 TexReg 389.

**§101.23. Rendering of Final Decision or Order.**

The final decision or order shall be rendered within 60 days after the date the hearing is finally closed. In a contested case heard by other than a majority of the board of trustees, the hearing is considered closed on the date of the board's consideration of the case, after preparation of the proposal for decision.

The provisions of this §101.23 adopted to be effective July 27, 1976, 1 TexReg 1929; amended to be effective January 27, 2000, 25 TexReg 389.

**§101.24. The Record.**

- (a) The record in a contested case shall include:
  - (1) all applications, answers, and other pleadings, and intermediate rulings;
  - (2) evidence received or considered;
  - (3) a statement of matters officially noticed;
  - (4) questions and offers of proof, objections, and rulings on them;
  - (5) proposed findings and exceptions thereto;
  - (6) any decision, opinion, or report by the officer presiding at the hearing; and
  - (7) all staff memoranda or data submitted to or considered by the hearing officer or members of the agency who are involved in making the decision.
- (b) Findings of fact will be based exclusively on the evidence presented and matters officially noticed.

The provisions of this §101.24 adopted to be effective July 27, 1976, 1 TexReg 1929.

**§101.25. 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's 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 obtain a hearing of the issue as a "contested case" pursuant to the Administrative Procedure Act (Chapter 2001, Government Code) and these rules, by filing with the director a written "request for hearing of discontinuance of benefit" within 90 days after the date of the director's letter of notification of discontinuance. If the request for a contested case hearing is timely filed, the contested case shall be docketed, heard, and disposed of in accordance with §§101.16 through 101.24 of this title. If no request for a contested case hearing is filed within the 90 day period provided in this paragraph, the action of the director in discontinuing the disability retirement annuity shall be final and unappealable.

The provisions of this §101.25 adopted to be effective July 27, 1976, 1 TexReg 1929; amended to be effective January 27, 2000, 25 TexReg 389.

**§101.26. Applicability to Pending Proceedings.**

The provisions of this chapter govern all proceedings pending at their effective date, except to the extent that the director or the board shall determine that their application in a particular pending proceeding would work an injustice or is otherwise unfeasible, in which event the procedures followed before adoption of this chapter will be permitted.

The provisions of this §101.26 adopted to be effective July 27, 1976, 1 TexReg 1929.

## 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 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 Texas 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.

### **§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, 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, 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 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 estate; or
  - (6) if the retiree dies before 180 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 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 Government Code §844.402.

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.

### **§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 the system.
  - (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 the system 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 subdivision and credited in the system 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) An unrevoked beneficiary designation on file with the system as of December 31, 1999, or filed thereafter remains valid until revoked by the member, or, if the member's spouse is a designated beneficiary, until the member and the spouse become divorced.
- (e) The system and employees of the system 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.

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

- (a) Pursuant to §§843.101 – 843.104 of the Texas Government Code, a subdivision must certify to the system the service performed by employees of the subdivision before the subdivision's participation in the retirement system became effective and must also certify the average prior service compensation of those members.
- (b) The subdivision 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 subdivision, other than as a temporary employee, prior to the month that includes the subdivision's effective participation date.
- (c) The subdivision must certify each member's average prior service compensation by multiplying the member's most recent annual rate of compensation as determined in subsection (d) of this section by .97, and dividing this product by twelve.
- (d) The most recent annual rate of compensation is determined based on the definition prescribed in §844.503 of the Texas Government Code concerning computation of current annual compensation for purposes of group term life insurance. The subdivision shall compute the most recent annual rate of compensation for a member by converting to an annual basis the regular rate of pay of the member for the most recent regular hour worked and proportionally reducing that annual basis figure if the member is not employed in a full time position. The most recent annual rate of compensation of a member who is exempt from the minimum wage and maximum hour requirements of the federal Fair Labor Standards Act (29 U.S.C. Section 201 et seq.) and who is paid on a salary basis is computed by converting to an annual basis the regular salary paid to the member for the most recent pay period of active employment.
- (e) The system shall provide the subdivision a worksheet for the subdivision to enter the data concerning the months of prior service worked as defined in subsection (b), to enter the data concerning the most recent rate of annual compensation as defined in subsection (d), and to calculate the average prior service compensation as described in subsection (c). The subdivision shall be responsible for entering the data, making the calculations, and then certifying the results to the system.
- (f) Upon receipt of the prior service certification and the average prior service compensation certification, the system will review the data, validate the calculations, and make any necessary corrections in the event of a discrepancy between the subdivision's certifications and the system's validation. If the calculation of average prior service compensation as mandated by this section is infeasible for any reason, the system may approve an alternate method to determine average prior service compensation as long as the calculation is reasonable and consistently applied.

- (g) A subdivision must certify the prior service and average prior service compensation of all eligible members no later than 30 days after the subdivision's effective date of participation. In the case of a member eligible for prior service credit under §843.102(a)(2) of the Texas Government Code, the subdivision must make the certification no later than 30 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. The system may extend the time periods set forth in this subsection (g).
- (h) If, under §843.201 of the Texas Government Code, a subdivision 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.

**§103.5. Benefit Distribution Requirements.**

- (a) The following words and terms, when used in this section shall have the following meanings unless the context clearly indicates otherwise.
  - (1) Proportionate retirement system -- A public retirement system other than the Texas County and District Retirement System (TCDRS) that participates in the Proportionate Retirement Program.
  - (2) Required distribution date -- March 31 of the year following the later of the year in which the member separates from service or the year in which the member attains age 70 and one-half.
  - (3) Separates from service -- The termination of employment with a subdivision participating in the TCERS.
- (b) General Rules:
  - (1) A member who has separated from service with a participating subdivision may receive a refund of the accumulated contributions in the member's individual account with respect to that subdivision at any time after separation from service and before retirement from that subdivision.
  - (2) A member must receive a refund of the accumulated contributions in the member's individual accounts or retire from the TCERS on or before the member's required distribution date.
  - (3) 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.
  - (4) The entire interest that becomes payable because of the death of a member who has a designated beneficiary as defined in regulations to §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. A distribution under this provision after December 31, 1995, must:

- (A) begin not later than the last day of the calendar year following the calendar year in which the member died, if payable to a person other than the decedent's spouse; or
  - (B) begin not later than the last day of the calendar year following the year in which the member died or the last day of the calendar year in which the decedent would have attained the age of 70 and one-half, if payable to the surviving spouse, unless the surviving spouse dies before payments begin, in which case the beginning of payments may not be deferred beyond the last day of the calendar year following the calendar year in which the surviving spouse dies.
- (5) 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.
  - (6) For a distribution made by the retirement system to which §401(a)(9) of the Internal Revenue Code applies, the system shall apply the minimum distribution requirements of §401(a)(9) of the Internal Revenue Code of 1986 in a manner that complies with a reasonable good faith interpretation of §401(a)(9).
- (c) Application:
    - (1) A member who is eligible to retire from the TCDRS, with or without combining the member's credited service with a proportionate retirement system, must receive a refund of the accumulated contributions in the member's individual account or retire on or before the member's required distribution date without regard to whether that member is actively participating in a proportionate retirement system.
    - (2) A member who is not actively participating in the TCDRS or a proportionate retirement system, and who is not eligible to retire from the TCDRS on the member's required distribution date must receive a refund of the accumulated contributions in the member's individual account on the member's required distribution date.

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.

**§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 the system is deposited after the member's effective retirement date, the retirement annuity shall be recalculated in accordance with this section.
- (b) The following deposits shall be treated as additional accumulated contributions for purposes of recalculating the retirement annuity:
  - (1) employee contributions attributable to compensation for services performed while a member of the system but deposited within 60 days after the effective retirement date of the member;

- (2) employee contributions attributable to compensation for services performed while a member of the system but deposited within 60 days after the death of a deceased member; and,
  - (3) employee contributions deposited as a result of a correction of a reporting error made in accordance with the Government Code, §842.112.
- (c) 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.
  - (d) The recalculated retirement annuity is payable only prospectively beginning with the month following the month in which the retirement system 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.

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

- (a) Except as provided in subsection (b) of this section, for purposes of determining the current service credit and multiple matching credit of the member under Texas Government Code, §843.403, the amount deposited by the member (excluding the withdrawal charge and the amounts described in subsection (b) of this section) after December 31, 1998, to reestablish credit in the retirement system shall be considered to be accumulated contributions made by the member to the retirement system 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 subdivision and in effect during the month in which the deposit is made. The multiple matching credit percentage may be increased by the governing board on the terms provided by the Government Code, Chapter 844, Subchapter H.
- (b) The portion of the member's deposit that is a repayment of the amount transferred from a local pension system to the member's individual account in this retirement system pursuant to a merger under Texas Government Code, §842.006 and the accumulated interest attributable to such transferred amount shall not be considered when determining the current service credit and multiple matching credit of the member under subsection (a) of this section unless the merger agreement provides otherwise.
- (c) For purposes of determining the interest to be credited to the member's individual account, a deposit made under this section that is received by the system on or before December 15, will be included in the member's account as accumulated contributions on the following January 1. A deposit received after December 15 will not be included as accumulated contributions in the determination of the interest to be credited to the member's individual account until January 1 of the next following year.

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.

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

- (a) The limitation year used by the retirement system for determining the maximum annual benefit which may be paid under §415(b) of the Internal Revenue Code of 1986 is the calendar year. Notwithstanding anything to the contrary, the system will make no payments of a retirement annuity with respect to a retiree in excess of the annual limit as determined in accordance with §415(b) of the Internal Revenue Code and the regulations thereunder.
- (b) If the benefit recipient is not a participant in the Texas County and District Retirement System 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, Government Code, without regard to the limitations of §844.008; or
  - (2) the amount determined by dividing the annual limit for the limitation year determined in accordance with §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 Texas County and District Retirement System 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, Government Code, without regard to the limitations of §844.008. The system 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 IRC §415(b).
- (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, Government Code without regard to §844.008; or the annual limit for the limitation year determined in accordance with IRC §415(b).
- (e) The system 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

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

- (a) The following words and terms, when used in this section shall have the following meanings unless the context clearly indicates otherwise.
- (1) Act--Subtitle F, Title 8, Government Code as amended.
  - (2) Subdivision--A subdivision participating in the retirement system that is subject to the provisions of §844.009 of the Act, authorizing a member to elect to receive a portion of the member's retirement benefit in the form of a single payment.
  - (3) Basic annuity--An annuity payable from the Current Service Annuity Reserve Fund and actuarially determined from the sum of the member's individual account balance and current service credit, as provided under the Act. A retired member receives a separate basic annuity for credited service with each subdivision.
  - (4) Eligible rollover distribution--The portion of the partial lump sum distribution that is eligible to be rolled over to a qualified plan in accordance with the Internal Revenue Code.
  - (5) Individual account--The account maintained by the retirement system in the name of a member reflecting monetary credit and which consists of the contributions deducted from the compensation the member received from the subdivision, the deposits the member made to the account, and interest credited to the account, as provided under the Act. A member has a separate individual account with respect to each subdivision with which the member has credited service.
  - (6) Member--A member of the retirement system who is eligible to apply for and receive a service retirement annuity based on service credited with a subdivision subject to §844.009 of the Act.
  - (7) Retirement account--The reserves on which the member's retirement benefit is determined and which consists of the sum of the member's individual account balance, current service credit, prior service credit, and multiple matching credit, as provided in the Act. A retired member has a separate retirement account with respect to each subdivision with which the member has credited service.
  - (8) Partial Lump Sum Distribution--The portion of the member's retirement benefit elected by the member to be paid to the member or to the alternate payee in the form of a single payment at the time of service retirement of the member. A partial lump sum distribution may not exceed 100 percent of the balances of the member's individual accounts with all subdivisions from which the member will retire.
- (b) To be eligible to receive a partial lump sum distribution on service retirement, a member must file:
- (1) an application for service retirement in accordance with the provisions of the Act; and

- (2) an application for a partial lump sum distribution on or after the date the member files an application for service retirement and before the date the first annuity payment becomes due.
- (c) An application for a partial lump sum distribution is a document subject to the certification and spousal consent requirements of §103.3 of this title (relating to Beneficiary Designations and Payment Elections Requiring Spousal Consent).
- (d) 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 the system. The amount of a partial lump sum distribution may not be increased except by the timely filing of a new application.
- (e) 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.
- (f) A member, or an alternate payee, receiving a partial lump sum distribution under this section may make, change, modify or revoke a rollover election, provided all checks issued by the system relating to the partial lump sum distribution paid to the member, or to the alternate payee, are returned and received by the system within 30 days of the date on which the retirement system mailed the check or checks.
- (g) The reserves available to provide the member's basic annuity shall be reduced by the amount of the partial lump sum distribution
- (h) The amount of the partial lump sum distribution attributable to a retirement account is considered to be an annuity payment for purposes of determining whether the amount in the member's individual account at retirement exceeds the total amount of annuity payments made from the retirement account.
- (i) No portion of the benefit awarded to an alternate payee under a qualified domestic relations order may be distributed in the form of a partial lump sum distribution under this section, except that a member and the alternate payee may agree in writing that instead of all or a portion of the benefits awarded to the alternate payee under the qualified domestic relations order the alternate payee should receive all or a portion of the partial lump sum distribution elected by the member under this section.
- (j) The direct payment by the system to an alternate payee of a partial lump sum distribution elected by the member under this section and in accordance with the written agreement between the member and the alternate payee is full payment and in complete satisfaction of the portion of the alternate payee's marital property rights and interest in the member's benefit as set forth in the written agreement. The direct payment to the alternate payee of a partial lump sum distribution under this section is a non-periodic payment made directly to a

former spouse for purposes of taxation, withholding requirements and rollover eligibility under 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.

**§103.10. Survivor Annuity.**

- (a) The beneficiary of a deceased member who had accumulated at least four years of credited service in the system 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 §841.001(1) of the Act, 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.
- (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) An individual designated as beneficiary by the member, or an individual designated as beneficiary under the Act, may not renounce, repudiate, or disclaim the benefit provided under this section, if in doing so the benefit would then become payable to the estate of the deceased member by default rather than by designation, except that in lieu of an annuity, an individual beneficiary may apply for a refund of that beneficiary's share of the deceased member's individual account balance.
- (g) 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) 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 (h) of this section.

- (h) 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 (l) 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 (k) 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 the system. 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 Government Code, Section 845.316.
- (i) A trustee of a trust having a single primary beneficiary may elect with the system 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.
- (j) An individual beneficiary who dies before filing an application for benefits or who fails to file an application within 90 days following notice from the system 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.
- (k) No interest shall accrue on any benefit payable under this section.
- (l) If the director determines that the payment under subsection (h) 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 subdivision'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.
- (m) 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.

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

- (a) A member of the retirement system, who had coverage in the Group Term Life benefit program during the last month the member was required to make a contribution to the retirement system 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 the retirement system of that fact.
- (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 subdivisions 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, the retirement system 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.

## **CHAPTER 105. CREDITABLE SERVICE**

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

- (a) Any person who is concurrently employed by two or more participating subdivisions 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 employing subdivision upon all compensation paid that person by such employer. Each employing subdivision shall withhold the employee contributions required on account of the compensation paid such employee by such subdivision.
- (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 subdivisions. When determining an employee-member's retirement eligibility with respect to an employing subdivision, the credited service for a calendar month in which the employee-member was also performing covered service for another participating subdivision shall be counted as credited service performed for the employing subdivision for which retirement eligibility is being determined. When determining the retirement eligibility of an employee-member with respect to both subdivisions simultaneously, credited service is subject to the general rules of the system for recognizing and combining service among the several subdivisions 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.

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

- (a) A member must satisfy the retirement eligibility requirement of the particular subdivision with which the member is applying for retirement.
- (b) All of a member's credited service in this system, as defined in §841.001(7) of the Act, will be combined and recognized for purposes of determining eligibility for service and disability retirements with respect to each subdivision, and eligibility for the survivor annuity.
- (c) All credited service described in subsection (b) of this section 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 subdivision.
- (d) Credited service of the member recognized under the proportionate retirement program may not be combined with the member's credited service in this system as defined in §841.001(7) of the Act 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.
- (f) A member eligible for disability retirement under §844.302(a) of the Act, is eligible for disability retirement from all subdivisions with which the member has service credit.

The provisions of this §105.2 adopted to be effective January 1, 2008, 32 TexReg 9732.

**§105.3. Optional 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 established after December 31, 1999.
  - (2) The term “eligible member” means a member of an eligible subdivision who has established credited service in the retirement system for at least the minimum period required to receive a service retirement annuity from the subdivision 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. §4303(13). It excludes that service which was performed in a month for which the member has received credited service in this retirement system under any other provision of the TCDRS Act or the Uniformed Services Employment and Reemployments Rights Act of 1994, and that service, credited by another retirement system, that is recognized by this system 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) of this section, an eligible member may receive one month of credited service in the retirement system 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 the retirement system 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.

**§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. §4301 et seq.). Notwithstanding any provision to the contrary, the rights and benefits of an eligible member under the Texas County and District Retirement System (the System) 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. §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 the Texas County and District Retirement System 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 the System 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 the System 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 the System:
- (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 Texas 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 the System.

- (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 the System 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 the System.
  - (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 the System 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 Texas 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.

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

- (a) In accordance with §401(a)(37) of the Internal Revenue Code (§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 §844.407 of the Act (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 §842.004 of the Act, with the death benefit based on the annualized regular rate of pay or regular salary paid the member in accordance with §844.503(c) of the Act during the most recent pay period of active employment prior to the commencement of qualified military service.
- (d) The System does not adopt the permissive provisions of §104(b) of the HEART Act, as added by §414(u)(9) of the Internal Revenue Code relating to benefit accruals. However, pursuant to the authority granted the Board by §845.102 of the Act, and in conformance with 26 CFR §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 §844.303(b)(2) of the Act) while performing the member's qualified military service under the USERRA, is entitled to credited service in the retirement system 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 §842.004 of the Act and not terminated and will, subject to §844.502 of the Act, 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 the retirement system on application for a death benefit based on the disabled member's compensation described in subsection (c) of this section.

- (e) In accordance with §414(u)(12) of the Internal Revenue Code (§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.

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

- (a) The sponsoring 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 the system or receiving more or less credited service, service credit or benefits than the person is rightfully entitled to receive under the system.
- (b) If the error involves member contributions, the employer may initiate the correction process directly via the employer portal on the retirement system 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 the system.
- (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 the employer.
- (e) A person seeking an adjustment to a record based on an act or omission of the subdivision must apply to the sponsoring employer for a correction of the error. The system will not receive applications for record adjustments from any person other than an employer. If the system receives information relating to a possible error from a person other than an employer, the system shall forward the information to the appropriate employer.
- (f) The following words and terms, when used in this section, shall have the following meanings:
  - (1) "Accepted" means approved by the system for making adjustments to a person's record in accordance with the terms of the application.
  - (2) "Credited service" means months of service recognized for purposes of retirement eligibility.
  - (3) "Employer" means a subdivision participating in the retirement system.

- (4) "Employer portal" means the online application maintained by the retirement system in which employers administer their plan, report payroll information, and make contributions.
- (5) "Individual account" means the separate account maintained for a member consisting of the member's contributions, deposits and accumulated interest credited to the account for the benefit of the member.
- (6) "Record" means all information and amounts relating to the person and the person's beneficiary and includes information and amounts relating to the person's individual account, contributions, deposits, credited service, service credit and benefits.
- (7) "Service credit" means the monetary credits granted to a member who performs service for a participating 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).

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

- (a) Except as otherwise provided by law or rules established by the System, the System shall credit a member with one month of current service for each calendar month for which contributions are made, reported, and certified by the employing subdivision for purposes of determining length-of-service requirements and calculating benefits.
- (b) Except as otherwise provided by law or rules established by the System, if an elected county or precinct official who is a member declines compensation pursuant to §152.052 of the Texas Local Government Code, the System shall credit such member with one month of credited service for each month worked without compensation that is reported and certified by the employing subdivision 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

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

- (a) A participating subdivision 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 participating subdivision; or
  - (2) transferred the employment of the employees to the participating subdivision.
- (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 participating subdivision or the date that such member's employment was transferred to the participating subdivision.

- (c) If a member is eligible for proportionate service under Chapter 803 of the Texas 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

**§105.8. Employee Termination Date.**

A participating subdivision must submit the date of termination of employment for each member who is enrolled in the retirement system. The termination date should be submitted to the retirement system within 15 days of the member's termination of employment, or as soon as practicable.

The provisions of this §105.8 adopted to be effective January 31, 2017, 41 TexReg 8205

**§105.9. Notice By Participating Subdivision of Certain Felony Convictions of Elected or Appointed Officers.**

- (a) A participating subdivision must provide written notice on a form prescribed by the Texas County and District Retirement System (the "system") of the conviction of any member of the system who was elected or appointed to a public office of the participating subdivision 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) A participating subdivision must provide the notice required by subsection (a) of this section to the system no later than the 30th day after the conviction of the member.
- (d) The notice should be on a form prescribed by the system 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 participating subdivision 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

## **CHAPTER 107. MISCELLANEOUS RULES**

### **§107.1. Confidentiality of Board Records.**

The director is the custodian of records of the Texas County and District Retirement System. The confidentiality of information about members, retirees, annuitants, or beneficiaries of the system is governed by the Texas Government Code, §845.115.

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.

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

- (a) Pursuant to Government Code, §843.0031, a member who has withdrawn accumulated contributions from the system and is a contributing member with another participating subdivision or again becomes a contributing member with any participating subdivision may at any time before retirement pay to the system for deposit to the member's individual account a lump-sum in any amount that does not exceed the actuarial present value of the additional benefits that would have been attributable to the withdrawn contributions.
- (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 and will be excluded from the determination of the member's current service credit and multiple matching credits.
- (d) For purposes of determining the interest to be credited to the amount paid under subsection (a) of this section, a payment that is received by the system on or before December 15, will be included in the member's account as accumulated contributions on the following January 1. A payment received after December 15 will not be included as accumulated contributions in the determination of the interest to be credited to the member's individual account until January 1 of the next following year.

The provisions of this §107.2 adopted to be effective July 27, 2005, 30 TexReg 4214.

### **§107.3. Direct Rollovers and Trustee-to-Trustee Transfers.**

- (a) The retirement system may establish procedures for the acceptance of an eligible rollover distribution, including a direct trustee-to-trustee transfer, from an eligible retirement plan for the payment of any portion of the deposit a member is permitted to make for the purchase of types of credit in the retirement system, except that the system may not accept the distribution if the system is to separately account for the amounts.

- (b) Effective January 1, 1993, a distributee may elect, at the time and in the manner prescribed by the system, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (c) 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, 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 or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more;
    - (B) any distribution to the extent such distribution is required under §401(a)(9) of the Internal Revenue Code of 1986.
  - (2) Eligible Retirement Plan -- An eligible retirement plan is:
    - (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.
- (d) 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.
- (e) 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.
- (f) The retirement system shall implement this section in a manner that causes the retirement system to be considered a qualified plan under §401(a) of the Internal Revenue Code of 1986. It is the responsibility of the distributee or beneficiary to determine that the transferee plan is an eligible plan for receiving a transfer pursuant to this rule.

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.

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

- (a) Distributions without a bona fide termination of employment are prohibited under Texas Government Code, §842.110(a) and (b). A distribution of benefits to a member before there has been a bona fide termination of employment under Texas Government Code, §842.110(a) 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 Texas Government Code §842.110(a) 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 in, a subdivision 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 subdivision 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) With respect to employees of a subdivision, 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 §107.4 adopted to be effective July 26, 2012, 37 TexReg 5489.

**§107.5. Termination of Membership on Withdrawal; Cancellation of Withdrawal Application.**

- (a) If a member files an application to withdraw all accumulated contributions credited to a member's individual accounts in the employees saving fund pursuant to §842.108(b), Government Code, the date shown on the first check the system sends or causes to be sent as payment of any portion of the member's accumulated contributions is the date on which the person's membership in the system terminates under §842.109 of that code as a result of that payment.
- (b) If a person files an application for withdrawal of accumulated contributions, the accounts that are the subject of the application will be closed as of the date shown on the first check which the system sends or causes to be sent as payment of any portion of the accumulated contributions.

- (c) An application for withdrawal of accumulated contributions may be cancelled and the accounts that were the subject of the application reinstated retroactive to the date of closure provided no check issued by or on behalf of the system with respect to the application has been cashed or deposited and all such checks are returned to the system within 60 days of the date shown on the first check sent as payment of any portion of the accumulated 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.

**§107.6. Penalty for Late Reporting; Waiver of Penalty.**

- (a) In this section “report” means the combination of all information and contributions required to be provided to and deposited with the system for each month of participation, in accordance with Chapter 845, Subchapter E, Government Code.
- (b) A due date of a monthly report that is a Saturday, Sunday, or legal holiday is extended to the first day that is not a Saturday, Sunday, or legal holiday, but the dates provided by §845.407(c) for eligibility for an exemption from a penalty assessment are not extended if they fall on a Saturday, Sunday, or legal holiday. The penalty for a past-due report consists of an administrative fee in the amount provided by §845.407(a), Government Code, plus interest on the past-due amounts for each day past due computed at an annual rate provided by that subsection.
- (c) If a report is past due, the system shall notify each member of the county commissioners’ courts or the chief employee of the subdivision stating the due date of the report, that the report was not received by the due date, that unless the subdivision submits proof satisfactory to the system that the report was sent in compliance with §845.407(c), Government Code, the subdivision is subject to a penalty for late reporting in accordance with §845.407(a), Government Code, and that the amount of the penalty will be computed and assessed on receipt of the report. If applicable, the notice shall also state that the subdivision is eligible for a waiver of the late reporting penalty under subsection (g) of this section.
- (d) After the system receives the past-due report, a notice shall be mailed to each member of the county commissioners’ court or the chief employee of the subdivision stating that a penalty has been assessed for late reporting in accordance with §845.407, Government Code, and indicating the date the report was received by the system, the number of days the report was past due, the amount of contributions on which interest was charged, the accumulated interest and the administrative fee. The notice shall inform each member of the county commissioners’ court or the chief employee that if the penalty is not paid within the period provided by §845.407(a), Government Code, the penalty shall be deducted from the subdivision’s account in the Subdivision Accumulation Fund and credited to other funds of the system in accordance with that subsection.

- (e) The amount of the penalty stated in the notice described by subsection (d) of this section becomes fixed and final on the tenth business day following the date of the notice and may not be modified thereafter for any reason.
- (f) For purposes of §845.407, Government Code, approved same-day or overnight delivery services are:
  - (1) Federal Express;
  - (2) United Parcel Service;
  - (3) Lone Star Overnight;
  - (4) United States Postal Service; and
  - (5) any other delivery service that provides same-day or overnight delivery accompanied by written proof of the date of mailing by the subdivision.
- (g) In the event a participating subdivision fails to timely file its required monthly report with the system, and either before or after receipt of the late notice advice from the system, the subdivision files the report within five business days of its original due date, the system will waive the late reporting penalty imposed by §845.407, Government code, if the subdivision has not received a waiver in the preceding twenty-four month period. In no event shall any participating subdivision receive more than one waiver of the late reporting penalty in any twenty-four month reporting period.
- (h) In the event a subdivision receives a waiver of the late reporting penalty as provided in subsection (g) of this section, the system shall notify each member of the county commissioners' court or the chief employee of the subdivision that the subdivision received the waiver and that it will not be eligible for another waiver of the late reporting penalty in the following twenty-four month period.
- (i) For purposes of computing the "preceding" and "following" twenty-four month periods described by subsections (g) and (h) of this section, the periods shall be calculated using the due dates of the monthly reports as described in Chapter 845, Subchapter E, Government Code. The "preceding" twenty-four month period described in subsection (g) of this section begins with the month a report was due as the first month and counts back twenty-four months. The "following" twenty-four month period described in subsection (h) of this section begins with the month a waiver was granted as the first month and counts forward twenty-four months.
- (j) The waiver provision provided in subsection (g) of this section in no way alters any obligation or procedure of the system to enforce the monthly reporting and penalty requirements of Chapter 845, Subchapter E, Government Code.

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.

### **§107.7. Extension of Due Date.**

Unless otherwise provided by statute, the due date for submitting the monthly report, or any portion of the monthly report consisting of all or any part of the required information or all or any portion of the required contributions, may be extended for any particular month by order of the director, upon written request duly filed with the director by the governing board or correspondent of the subdivision prior to the due date of the report, showing that there is good cause for such extension and that the need is not caused by neglect, indifference, or lack of diligence.

The provisions of this §107.7 adopted to be effective December 31, 1999, 24 TexReg 9302.

### **§107.8. Electronic Transfer of Funds.**

- (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 a subdivision for the electronic transfer of funds from the account of a subdivision to the account of the retirement system.
  - (3) The term “ACH Debit” means an ACH transaction initiated by the retirement system for the electronic transfer of funds from the account of a subdivision to the account of the retirement system.
  - (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.
  - (5) The term “pre-authorized direct debit” means the method available to a subdivision for electronically paying required contributions by granting a continuing authorization to the retirement system to initiate an ACH Debit each month for the electronic transfer of funds from the designated bank account of the subdivision to the account of the retirement system 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 a subdivision, in which funds are electronically transferred to the account of the retirement system using the Federal Reserve Banking System rather than the ACH.
- (b) Monthly amounts required to be contributed to the retirement system in accordance with Chapter 845 of the Texas Government Code may be made by pre-authorized direct debits (ACH Debits), ACH Credits, wire transfers, or checks.

- (c) A subdivision may elect to use the pre-authorized direct debit method of payment by filing a signed authorization agreement with the retirement system in which the subdivision has designated a single bank account from which all transfers will be made.
- (d) The authorization agreement entered into for this purpose constitutes continuing authority for the retirement system to initiate a direct debit of the subdivision's designated bank account each month and shall be effective with respect to each monthly report of the subdivision, whether filed by mail or by electronic transmission in accordance with §107.9 of this title (relating to Electronic Filing of Documents).
- (e) An authorization agreement shall remain in effect until the retirement system receives either a written revocation of the agreement, or a subsequent written agreement, which automatically revokes the existing authorization. A new authorization agreement must be filed if there is any change in the designated bank account. The retirement system, in its sole discretion, may terminate the authorization agreement by mailing written notice to the subdivision. Thereafter, the subdivision must remit all contributions by check, ACH Credit, or wire transfer.
- (f) Following receipt of a monthly report filed under an unrevoked authorization agreement, the retirement system 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 subdivision's designated account will not occur prior to the due date of the report.
- (g) The receipt of a monthly report filed under an unrevoked authorization agreement shall be considered to be receipt by the retirement system of the amount required to be contributed for the month based on that report provided that there are sufficient funds available for transfer from the subdivision'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 a subdivision 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 transferred to the account of the retirement system. A subdivision 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 §107.6 of this title (relating to Penalty for Late Reporting; Waiver of Penalty).
- (h) Except as provided in subsection (g) of this section, amounts sent to the system by electronic transfer of funds are received on the date the funds are credited to the system's account.

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.

**§107.9. Electronic Filing of Documents.**

- (a) In this section:
  - (1) The term “document” means any form, statement, affidavit, application or report (and related attachments) required to be completed by or on behalf of a principal and filed with the system.
  - (2) The term “electronically filed” means the filing of data transmitted to the retirement system by the communication of information by facsimile or in the form of digital electronic signals transformed by computer and stored in any medium.
  - (3) The term “principal” means the member, beneficiary, annuitant, or subdivision on whose behalf the document is electronically filed.
- (b) All documents required to be filed with the system by or on behalf of a principal in accordance with these rules or the provisions of Subtitle F of Title 8 of the Texas Government Code may be electronically filed. A document requiring certification by a subdivision that is filed with the system shall be considered to have been certified by the subdivision. A document that has been properly completed by a principal (other than a subdivision) or authorized agent of the principal and that is electronically filed with the system shall be considered to have been certified by the principal if certifying language appears on the document.
- (c) The retirement system, in its sole and exclusive discretion, may:
  - (1) accept an electronically transmitted document for filing, in which case the system will not provide notice of acceptance;
  - (2) conditionally accept an electronically transmitted document for filing provided that the original is received by the system within a time certain as indicated in a notice sent to the principal; or,
  - (3) decline to accept an electronically transmitted document for filing, in which case the system shall send notice to the principal that the electronically transmitted document has not been accepted.
- (d) An electronically transmitted document is not received in the system offices until the earlier of the time its receipt is recorded by the system’s computer or the time the electronically transmitted document is printed from the system’s fax machine. An electronically transmitted document accepted for filing is considered to be filed at the time it is received. A filing deadline that falls on a Saturday, Sunday or legal holiday will be extended to the next following business day. For purposes of meeting a filing deadline, an electronically transmitted document must be received by the system before midnight of the filing deadline.
- (e) It is solely the responsibility of the principal to ensure that the system has received an electronically transmitted document.

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.

**§107.10. 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 the retirement system 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 the system.
- (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 is not received by the retirement system, the system may offset the amount of the ineligible benefit payment against future benefit payments otherwise due the recipient.
- (d) If the board determines that an ineligible benefit payment 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 subdivision.
- (e) If the board determines that the ineligible benefit payment was the result of an error or omission of a participating subdivision and determines that the payment is not recoverable, the receivable shall be charged against the subdivision’s account in the subdivision accumulation fund.
- (f) In making its determination, the board 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 board considers to be relevant in finding that further efforts for the recovery of the payment are not in the best interests of the retirement system, its members and annuitants.

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.

**§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.

**§107.12. Payments Due or Suspended on Death of Annuitant.**

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

- (b) If the total value of the payments described above is not more than \$5,000, and there is no surviving beneficiary or spouse (or diligent efforts by the system 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 the system, then upon application, the system 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 §107.12 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.

**§107.13. Membership of Leased Employees.**

- (a) In this section, “leased employee” means a person who is not an employee of a participating subdivision within the meaning of Section 841.001(8), Government Code, or of a controlled entity within the meaning of Section 414(b), (c), (m), or (o) of the Internal Revenue Code of 1986 but who after December 31, 1996, performs services under the primary direction or control of a subdivision or controlled entity for a subdivision, controlled entity, or related persons within the meaning of Section 144(a)(3) of the Internal Revenue Code and under a written or oral agreement between the subdivision or controlled entity and a leasing organization, and the services are performed on a substantially full-time basis for at least one year.
- (b) Notwithstanding any provision governing the retirement system to the contrary, a leased employee is not eligible to become a member of the retirement system.

The provisions of this §107.13 adopted to be effective December 31, 2002, 27 TexReg 12371.

**§107.14. Acceptance of Rollovers and Transfers.**

- (a) The system may accept the funds described in subsections (b) and (c) of this section, subject to the restrictions of this section.
- (b) If permitted under and subject to the provisions of federal law, the system 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 the system for service credit.
- (c) An “eligible rollover distribution” is any distribution of all or any portion of the balance to the credit of the member from an eligible retirement plan. An eligible rollover distribution does not include the following:
  - (1) 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 member or the joint lives (or joint life expectancies) of the member and the member’s designated beneficiary, or for a specified period of ten years or more;

- (2) any distribution to the extent such distribution is required under Internal Revenue Code §401(a)(9);
  - (3) any distribution which is made upon hardship of the member; or
  - (4) the portion of any distribution that is not includible in gross income.
- (d) An “eligible retirement plan” is any program defined in Internal Revenue Code §401(a)(31) and §402(c)(8)(B), from which the member has a right to an eligible rollover distribution, as follows:
- (1) an individual retirement account under Internal Revenue Code §408(a);
  - (2) an individual retirement annuity under Internal Revenue Code §408(b) (other than an endowment contract);
  - (3) a qualified trust;
  - (4) an annuity plan under Internal Revenue Code §403(a);
  - (5) an eligible deferred compensation plan under Internal Revenue Code §457(b) which is maintained by an eligible employer under Internal Revenue Code §457(e)(1)(A); and
  - (6) an annuity contract under Internal Revenue Code §403(b).
- (e) If permitted under and subject to the provisions of federal law, the system may accept a direct trustee-to-trustee transfer of funds from a plan described under §403(b) or §457(b) of the Internal Revenue Code in payment of all or a portion of any deposit a member is permitted to make with the system for service credit.
- (f) In order to authorize the rollover or transfer of funds described in this section, a member shall provide or cause to be provided to the system information sufficient for the system to reasonably conclude that the contribution is a valid rollover or direct trustee-to-trustee transfer as permitted under federal tax law. If the system later determines that a contribution was an invalid rollover or direct trustee-to-trustee transfer or otherwise not permitted under federal tax law, the system may take any action appropriate, permissible or required by the Internal Revenue Code or regulations issued thereunder, including recognition of an invalid rollover as an after-tax contribution by the member, or 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.
- (g) The system shall construe and administer this section in a manner such that the plan will be considered a qualified plan under §401(a) of the Internal Revenue Code of 1986, (United States Code, Title 26, §401).

The provisions of §107.14 adopted to be effective July 20, 2004, 28 TexReg 5032.

### **§107.15. Resumption of Enrollment.**

- (a) In accordance with §842.008(e), Government Code, as in effect on December 31, 2005, and with the approval of the board of trustees, a subdivision that had elected under prior law to discontinue enrolling non-members may, before

January 1, 2006, elect to resume the enrollment in the retirement system of new members effective January 1, 2006.

- (b) A person who is employed on December 31, 2005, by a subdivision that elects to resume enrollment pursuant to subsection (a) of this section, who is enrolled in the system under this section and whose membership in the system begins on January 1, 2006, will be credited with service performed for the subdivision prior to January 1, 2006, provided the person performed such service as an employee described in §841.001(8), Government Code, as that section read on December 31, 2005. Notwithstanding the foregoing, a person shall not be credited under this subsection with service performed prior to January 1, 2006, to the extent that such service is credited under another provision of the Act or another rule adopted by the board. A new member receiving credit under this subsection for service performed prior to January 1, 2006, is not eligible to make employee contributions or receive monetary service credits with respect to such credited service.
- (c) As soon as practicable after the board approves a subdivision's election to resume enrollment, the subdivision shall certify to the retirement system the service to be credited under subsection (b) of this section to each new member.

The provisions of §107.15 adopted to be effective January 10, 2006, 31 TexReg 170.

#### **§107.16. Exclusive Purpose.**

The board of trustees 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 §107.16 adopted to be effective July 21, 2009, 34 TexReg 4740.

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

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

The provisions of this §107.17 adopted to be effective December 27, 2009, 34 TexReg 9474.

**§107.18. Special Prior Service Contribution Rates.**

- (a) Section 844.703 of the Texas Government Code provides that the board may establish criteria for the circumstances under which a subdivision's prior service contribution rate must be based on an amortization period shorter than the standard amortization period approved by the board.
- (b) If the system determines that the following conditions apply to a newly participating subdivision, then, if approved by the director and recommended by the System's actuary, the prior service contribution rate must be based on an amortization period of five years. The conditions are:
  - (1) The subdivision has five or fewer employees; and
  - (2) All the employees will be eligible to retire within five years of the subdivision's participation date.
- (c) If conditions other than those listed in subsection (b) of this section exist that cause the subdivision's prior service contribution rate based on the standard amortization period to be an unreasonable method of funding the prior service contributions, then the board must approve any special amortization period recommended by the system's actuary.

The provisions of this §107.18 adopted to be effective April 30, 2015, 40 TexReg 2281.

## CHAPTER 109. DOMESTIC RELATIONS ORDERS

### §109.1. Purpose.

- (a) The Texas County and District Retirement System (the system) receives a substantial number and variety of domestic relations orders (as that term is defined in §109.2 of the title (relating to Definitions)) which purport to divide the accumulated contributions of members of the system, and/or the retirement benefits of such members, as part of divorce or other domestic relations proceedings.
- (b) Many of those orders contain provisions that would require the system to attempt to determine what effect the order is intended to have on accumulated contributions and/or retirement benefits upon the happening of certain events. The board of trustees of the system has therefore adopted the sections and procedures set forth in this chapter, in order to establish a process whereunder it can be determined if a particular domestic relations order clearly divides all benefits that may be payable under the Act governing the system, clearly advises the system as to whom benefits are to be paid and in what manner, and does not purport to require payments to be made in a manner that would conflict with the Act governing the system.

The provisions of this §109.1 adopted to be effective January 29, 1988, 13 TexReg 305.

### §109.2. 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) Act--Texas Government Code, Title 8, Subtitle F, as amended.
- (3) Actuarial present value--The value of a benefit that, as computed by the system in its sole discretion, is consistent with §841.001(1) of the Act.
- (4) 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 the system with respect to such member or retiree. The alternate payee's information is subject to the confidentiality provisions in §845.115 of the Act.
- (5) Benefits--Any of the payments or benefits described in §109.12 of this title.
- (6) Domestic relations liaison--A person (who may or may not be an employee of the system) who is designated by the director of the system to receive and take action concerning domestic relations orders that are sent or delivered to the system.

- (7) 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 the system; and
  - (B) is made pursuant to the Texas Family Code or any other applicable domestic relations or community property law.
- (8) Participant--A member, former member of the system who has sums of money on deposit with the system or who is or may become entitled to receive any benefit from the system based on membership in the system, or a former member of the system who has commenced receiving a monthly benefit from the system.
- (9) Parties--The participant and all alternate payees named in a domestic relations order.
- (10) 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 §109.2 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).

**§109.3. Notice Regarding Receipt of Order.**

Upon receiving a domestic relations order, the domestic relations liaison shall promptly send a notice to those persons listed in paragraphs (1) and (2) of this section, stating that the system has received the domestic relations order and that it will be acted upon by the system 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 the system 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 the system 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 §109.3 adopted to be effective January 29, 1988, 13 TexReg 305; amended to be effective January 10, 1996, 21 TexReg 135.

**§109.4. Requirements for Qualified Domestic Relations Orders.**

- (a) 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 a qualified domestic relations order under this chapter, an order must be determined, either by the system or by a court of competent jurisdiction, having actual knowledge of the provisions of this chapter, to meet the requirements set forth in this section and §109.5 of this title (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 the system may be taken into account.
- (b) A qualified domestic relations order shall be signed by the participant and the alternate payee or, in the alternative, the order submitted to the system shall include proof that the participant and the alternate payee received a copy of 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).

**§109.5. 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 alternate payee. A domestic relations order that is entered after the participant has retired under a service or disability retirement must clearly specify that participant's annuity is divided into two single life annuities as described in §109.6 of this title, with one such life annuity being the alternate payee's interest in the plan; and
  - (3) whether the order applies only to benefits under this system 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 the system to provide any type or form of benefit, or any option, not otherwise authorized under the Act;
  - (2) it purports to require the system 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 the system 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 the system (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 §109.5 adopted to be effective January 29, 1988, 13 TexReg 305; amended to be effective April 30, 2015, 40 TexReg 2282.

#### **§109.6. [Repealed]**

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.

#### **§109.7. Approval of Order.**

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

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, 40TexReg 2282.

#### **§109.8. [Repealed]**

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.

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

- (a) If, upon receipt of a domestic relations order, the domestic relations liaison is of the opinion that the order does not comply in all ways with the requirements for a qualified domestic relations order hereunder, the domestic relations liaison shall so state (in the notice to be sent under §109.3 of this title (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 the system

reflecting that action has been commenced to bring the order into compliance, the domestic relations liaison will remind each party by first class mail that unless documentation has been submitted to the system 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 the system 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 the system.

- (b) If the domestic relations liaison has made an initial determination under this section that the order does not appear to qualify, the system 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 the system until they are paid under one of the remaining subsections of this section.
- (c) In the event that, in the opinion of the domestic relations liaison, the order is subsequently brought into compliance with the requirements of this chapter for qualified domestic relations orders, the domestic relations liaison shall so notify the parties in writing, and the system 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 the domestic relations liaison determines after the expiration of 90 days from the date of mailing of the notice under §109.3 of this title (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. The domestic relations liaison shall so notify the parties in writing, and the system will pay to the participant any sums that have been withheld hereunder after the expiration of six months from the date the notice under §109.3 of this title (relating to Notice Regarding Receipt of Order) was mailed (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 the domestic relations liaison determines qualifies under this chapter, the system 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, the system 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 the system.
- (g) In accordance with the Act, §841.009, neither the system nor any officials to the system shall be liable for making any payment under this section.

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.

**§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.

**§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, 40TexReg 2283.

**§109.12. Payments to Alternate Payees.**

- (a) At any time after a qualified domestic relations order is filed and approved by the system, 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.
- (b) The alternate payee may commence a life annuity calculated in accordance with the terms of the plan and based on the interest awarded 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 §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) of this section 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 §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) If the participant dies before commencing a benefit, and the participant was not eligible for a survivor annuity death benefit under §844.407 of the Government Code, then the alternate payee may withdraw the accumulated contributions associated with the interest awarded under the qualified domestic relations order.
- (f) The alternate payee must commence a distribution when the participant attains age 70 1/2 or when the alternate payee attains age 70 1/2, whichever is earlier. 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.

- (g) If the alternate payee dies before commencing a benefit, and the participant is eligible for a survivor annuity benefit under §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 §844.407 that is actuarially equivalent to the deceased alternate payee's benefit awarded under the qualified domestic relations order.
- (h) If the alternate payee dies before commencing a benefit and the participant is not eligible for a survivor benefit under §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.
- (i) 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.
- (j) Subsections (a) and (b) of this section will apply to all domestic relations orders approved in accordance with this chapter after January 1, 2018, and to such domestic relations orders approved prior to that date as are construed to provide for such an annuity or withdrawal.
- (k) If a qualified domestic relations order is received by the system after the participant begins receiving a retirement annuity, the system 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. The system shall compute the two single life annuities by determining the actuarial present value of participant's current annuity as of the date that the system 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.
- (l) If a qualified domestic relations order is received by the system after the participant begins receiving a retirement annuity under which 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 the system, in computing the two single life annuities to be paid to the participant and 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 the system 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 alternate payee is based on the actuarial present value of 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 participant's current annuity not attributable to the beneficiary.

- (m) 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.
- (n) If 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.
- (o) Notwithstanding any other provision of this chapter, all distributions made under this chapter must be determined and made in accordance with §401(a) of the Internal Revenue Code, including but not limited to §401(a)(9); and §415.

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 2341), amended to be effective January 1, 2019 (43 TexReg 7182).

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

The retirement system has prescribed forms that are pre-approved by the retirement system as meeting the requirements of this title for a qualified order. The prescribed forms are available on the retirement system's website, and are also available upon request. The prescribed forms incorporate by reference the definitions set forth in this section and the provisions set forth in §109.14 of this title (relating to Provisions Incorporated by Reference). The system may reject any domestic relations order submitted to the system that does not utilize the applicable prescribed form.

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.

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

An order on the form set forth in §109.13 of this title (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 Participant’s retirement before normal retirement age, the benefits payable to 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 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 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 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 Participant’s death after the date of the order, a payment is made by the Plan to Participant’s estate, surviving spouse, or designated beneficiaries, which payment does not relate in any way to 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 Alternate Payee shall have no interest in such death benefit.
- (9) If the board of trustees 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 Alternate Payee’s death, and Alternate Payee’s beneficiary may be entitled to a benefit under §109.12.
- (11) All benefits payable under the Plan, other than those payable to Alternate Payee as provided in a qualified domestic order, shall be payable to Participant in such manner and form as Participant may elect in his/her sole and undivided discretion, subject only to Plan requirements.
- (12) Alternate Payee must report any retirement payments received on any applicable income tax return, and must promptly notify the Plan of any changes in Alternate Payee’s mailing address. The Plan is authorized to issue a Form 1099R on any direct payment made to Alternate Payee.

- (13) Participant is designated a constructive trustee for receiving any retirement benefits under the Plan that are due to Alternate Payee but paid to Participant. Participant must pay the benefit defined in this paragraph directly to Alternate Payee within three days after receipt by Participant. All payments made directly to 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 §109.14 adopted to be effective January 10, 1996, (21 TexReg 135); amended to be effective January 1, 2018 (42 TexReg 2341).

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

### **§111.1. Purpose.**

The participation in the Texas County and District Retirement System (“TCDRS”) by a subdivision that is not a county may be terminated on a voluntary or involuntary basis in accordance with the provisions of Chapter 842, Subchapter A-1, Government Code. The board of trustees of the retirement system has been given rulemaking authority to establish standards, definitions, and procedures it considers necessary to administer Subchapter A-1, and is to take reasonable actions and exercise its discretion in a fair and equitable manner on a case-by-case basis to preserve accrued benefits. Therefore, the board has adopted rules and definitions of general application as set forth in this chapter for the voluntary and involuntary termination of subdivisions.

The provisions of this §111.1 adopted to be effective January 6, 2006, 31 TexReg 171.

### **§111.2. Definitions.**

For purposes of this chapter only:

- (1) The term “accrued benefit” means the actuarial equivalent value of the sum of the member’s accumulated contributions and service credits as of the determination date without regard to credited service.
- (2) The term “actuarial equivalent value” is the accrued benefit for members, and the actuarial equivalent, as described in §841.001(1), Government Code, of the supplemental annuity as of the determination date.
- (3) The term “determination date” means the date specified in the termination agreement under §842.052(a)(1), Government Code, or the date specified by the board under §842.053(d), Government Code, as applicable, for determining the actuarial equivalent values of all accrued benefits and supplemental annuities.
- (4) The term “full performance” means the complete and timely performance of all terms of the termination agreement, as originally agreed to by the subdivision or as thereafter modified or amended in writing by the subdivision and TCERS. On full performance of the termination agreement, the subdivision is released from all future liability for the accrued benefits and supplemental annuities payable with respect to the subdivision under the retirement system.
- (5) The term “supplemental annuity” means the annuity described in §844.002(c), Government Code. In determining the actuarial equivalent value of a supplement annuity as of the determination date, the retirement system may take into consideration facts in existence on the determination date such as the prior death of a retiree or joint annuitant.

The provisions of this §111.2 adopted to be effective January 6, 2006, 31 TexReg 171.

**§111.3. Notices – Voluntary Termination.**

- (a) In the case of a voluntary termination under §842.052, Government Code, the subdivision must provide to the system at least 12 days advance written notice of the date, hour and place of the meeting at which the subject of the termination of participation in TCDRS will be considered by the subdivision's governing body.
- (b) The system will provide written notice of the subdivision's consideration of the termination of its participation in the retirement system to each member and annuitant of the subdivision by first class mail to the person's most recent address of record with the system. The notice will be a summary of the process and the general effect of plan termination, and will include the date, hour and place of the meeting as provided by the subdivision to the system under subsection (a) of this section.
- (c) Copies of the notice described in subsection (b) of this section will be provided to the subdivision for posting in one or more conspicuous places readily accessible to its workforce and in a manner where the notice is likely to be seen. In lieu of posting, the subdivision may have notices personally distributed to its employees.
- (d) The subdivision must post or distribute the notice described in subsection (b) of this section no later than the time that the subdivision posts notice of the date, hour, place, and agenda of the meeting at which the subject of the termination of participation in TCDRS is to be considered, but in no event less than 72 hours before such meeting.

The provisions of this §111.3 adopted to be effective January 6, 2006, 31 TexReg 171.

**§111.4. Notices – Involuntary Termination.**

- (a) In the case of an involuntary termination under §842.053, Government Code, the retirement system will provide written notice to the presiding officer of the subdivision's governing body, if any, or its successor, if any, and to each member and annuitant with respect to the subdivision of the consideration by the board of trustees of the retirement system to terminate the participation of the subdivision in the retirement system. The written notice shall be sent by first class mail to each person's most recent address of record with the system. The notice will be a summary of the process and the general effect of plan termination, and will state the date of the meeting at which the subject of the termination of the subdivision's participation in TCDRS will be considered by the board of trustees.
- (b) The written notices described in subsection (a) of this section will be mailed on or before the tenth day preceding the date of the meeting at which the subject of the termination of the subdivision's TCDRS participation will be considered by the board of trustees.

The provisions of this §111.4 adopted to be effective January 6, 2006, 31 TexReg 171.

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

**§113.1. Purpose.**

The Board of Trustees of the Texas County and District Retirement System hereby establishes a qualified governmental excess benefit program in accordance with §415(m) of the Internal Revenue Code and as authorized under §845.504, 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 the Texas County and District Retirement System but for the limitation on the payment of benefits under §415(b) of the Internal Revenue Code of 1986, as amended.

The provision of this §113.1 adopted to be effective January 6, 2006, 31 TexReg 171.

**§113.2. Definitions.**

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

- (1) “Act” means the provisions of Texas Government Code, Title 8, Subtitle F, as amended from time to time, establishing the Texas County and District Retirement System.
- (2) “Arrangement” means the Texas County and District Retirement System Qualified Replacement Benefit Arrangement, as set forth herein and as amended from time to time.
- (3) “TCDRS” or “System” means the Texas County and District Retirement System, as established under the provisions of the Act.
- (4) “Benefit Recipient” means 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.
- (5) “Benefit” means a retirement benefit accrued under the provisions of the Act.
- (6) “Board” means the Board of Trustees of TCDRS.
- (7) “Code” means the Internal Revenue Code of 1986, as amended (and corresponding provisions of any subsequent federal tax laws) and the regulations thereunder.
- (8) “Effective Date” means January 1, 2006, the effective date of the Arrangement.
- (9) “Eligible Member” means a Retiree or a deceased Member or Retiree with respect to an Employer, from and after the date the Employer adopts the Arrangement.

- (10) “Employer” means an Employer whose employees are Members of TCDRS with respect to retirement benefits paid by TCDRS under the provisions of the Act; provided that the Employer signs an adoption agreement in the form specified by the Board to adopt the Arrangement.
- (11) “Restricted Benefit” means the maximum Benefit permitted to be paid to a Benefit Recipient under the Retirement Plan of the Employer, as limited by Code §415, in accordance with §844.008 of the Act.
- (12) “Member” means any individual who accrues or has accrued a Benefit under the Act.
- (13) “Participant” means 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.
- (14) “Retirement Plan” means the defined benefit plan established under TCDRS for employees of the Employer, and their beneficiaries, in accordance with the Act, and qualified under Code §401(a).
- (15) “Retiree” means a Member who receives a Benefit under the Act with respect to an Employer.
- (16) “Unrestricted Benefit” means the benefit that would be payable to a Benefit Recipient under the Retirement Plan of the Employer if the limits of Code §415 were not applicable in accordance with §844.008 of the Act.

The provisions of this §113.2 adopted to be effective January 6, 2006, 31 TexReg 171.

**§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 the System may direct. Any election made by an Eligible Member with regard to the distribution of Benefits under the System, including the designation of a named beneficiary, as defined in §841.001(4) of the Act, 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 §415 of the 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 Code §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 Code §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.

**§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 Board within 20 days from the date of notice of the decision, for consideration and action in accordance with the administrative review procedures set forth in 34 TAC §§101.19 – 101.23. The action of the Board, taken on its own motion or as the result of an appeal, is final, conclusive, and binding.

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.

**§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 §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 the System or the status of this Arrangement as a qualified governmental excess benefit arrangement as defined in Code §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 §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 the System 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.

#### **§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 the System, the employees of the System, 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 the System 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.