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Creditable Compensation: Compensation Eligible for TRS

Compensation reported to TRS should reflect the types of monetary compensation that are recurring base pay for periods of employment that meet the definition of salary and wages. Salary and wages are monetary compensation that are (1) payments for services rendered (2) earned or accrue proportionally as the work is performed, (3) paid at fixed intervals, and (4) not specifically excluded under applicable laws and rules.

In addition, compensation eligible for TRS purposes may include:

1. Performance Pay that is a part of the total compensation plan approved by the board of trustees and otherwise meets the statutory and rule requirements. TRS Rules, Subchapter B, Compensation, Rule 25.24, Performance Pay.
Performance Pay must be reported through an RP 11 record with the Regular Payroll Report. TRS form 596, *Certification of Performance Pay*, must be submitted the same month the Performance Pay is reported. The form is located on the TRS website under TRS Forms. Performance Pay as eligible compensation is for public schools only. Institutions of higher education and region service centers may not report performance pay for employees.
2. Payments of normal compensation when vacation, sick leave, or compensatory time **is actually taken** by the employee.
3. **Additional duties** and pay authorized by the employer and paid to an employee serving in a TRS eligible position. The following are **examples** of pay for additional duties performed by someone who is **already serving in a TRS eligible position**:
 - Teaching Driver Education as part of regularly assigned duties **during** the regular workday.
 - Teaching Driver Education **outside** the regular workday and during the summer is an additional duty; however, the amount of compensation credited for this type of additional work **is limited** to \$5,000.00 annually.
 - Tutoring students outside the regular workday.
 - Driving the school bus.
 - Covering a class during an off-period for an absent teacher.
 - UIL sponsor, class sponsors, student teacher sponsor, annual sponsor, etc.
 - Teaching summer school when performed by an employee who had served in a TRS eligible position during that school year and earned a year of TRS service credit.
 - Overload scheduling (employment beyond the standard workload).
4. Compensation for Overtime if paid as salary and wages rather than compensatory leave as the service is rendered. If compensatory leave is given for overtime worked in lieu of wages, payment at a later point for any unused leave is never eligible compensation.

5. Workers' compensation paid as temporary wage replacement pay is creditable compensation if verified to TRS on the form TRS 22W and the member contribution paid in a lump sum by the end of the school year after the school year in which the compensation was received. If the employee is also receiving compensation from the employer, the compensation should be reported on the regular monthly payroll report as well.
6. Longevity pay when it is paid in periodic payments as the service is rendered. Lump sum payments paid as retention bonuses or other incentives to retain employees are not considered longevity pay and should not be reported.
7. Service in a particular location that the employer has determined requires additional compensation compared to other employees of that employer. For example, a reporting entity may pay employees working at a specific school more than other employees performing similar duties at other locations. However, payment for relocating to a new employer or to compensate an employee for differences in the cost of living at a new location is not eligible compensation.
8. Service in a particular specialty that the employer has determined requires additional compensation compared to other employees of that employer. For example, paying an additional stipend for bilingual teachers or teaching advanced placement classes is creditable compensation.
9. Pay for Assault leave. Salary that is continued while the employee is on assault leave as authorized by Section 22.003 of the Education Code is eligible compensation for TRS purposes. If the employee receives both workers compensation paid as temporary wage replacement pay and compensation from the employer, the workers compensation may be verified to TRS on the form TRS 22W, and member contributions paid in a lump sum by the end of the school year after the year in which the workers compensation was paid. Member contributions on continuing compensation from the employer should be withheld and reported to TRS by the employer on the regular monthly report. See Section 22.003 of the Education code and Sections 25.21, 25.43, and 25.47 of the TRS Rules.
10. Settlement Pay. Eligible only if the employer paying amounts to a member pursuant to a settlement agreement obtains a written determination from TRS that the amounts are creditable compensation before reporting such amounts to TRS as compensation. In the absence of the written determination from TRS, amounts paid pursuant to a settlement agreement are not creditable compensation for TRS purposes.
11. Delayed payments of lump sum amounts that by law or contract should have been paid at fixed intervals provided that the amounts are credited to the payroll period in which they were earned.
12. Amounts deducted from regular pay for:
 - A tax-sheltered annuity (403(b))
 - A cafeteria plan qualifying under Section 125 of the United States Internal Revenue Code
 - Other deferred compensation under 401(k), 403(b), or 457

See TRS Rules, Chapter 25, Subchapter B, Rule 25.22.

13. Amounts deducted from regular pay for a qualified transportation benefit under Government Code 659.202 (Higher Education only).
14. Merit salary increases, including one-time lump-sum merit payments made under Section 51.962, Education Code and defined in TRS Laws, Subchapter B, Section 822.201 (b) (8) (Higher Education only).
15. One-time salary increases provided pay is for service rendered and the right to receive the salary increase accrues proportionately as service is rendered. These salary increases must be approved by the local Board of Trustees in advance of the school year and before employee begins work. Usually this type of pay increase is paid outside of the normal salary schedule but is not intended to bind the employer to continue to pay the increase in years to come. This type of pay increase is usually provided to all employees and may be paid in one lump sum provided the lump sum payment is made after all service under the contract has been rendered.

Compensation *Not* Eligible for TRS

The following types of compensation should not be reported to TRS:

1. Payments for terminating employment or paid as an incentive to terminate employment. Examples of such payments are: contract buy-outs, amounts paid pursuant to an agreement for the employee to waive or release rights to future employment, and amounts paid pursuant to early retirement incentive programs, or other programs intended to increase the compensation paid to the employee upon receipt of the resignation of the employee, waiver, or release of rights to future employment.
2. Settlement Pay (payment of a "settlement amount" in lieu of the amount of salary and wages owed in resolution of an employee's claim). The employer paying amounts to a member pursuant to a settlement agreement must obtain a written determination from TRS that the amounts are creditable compensation before reporting such amounts to TRS as compensation. In the absence of the written determination from TRS, amounts paid pursuant to a settlement agreement are not creditable compensation for TRS purposes. Ongoing payments of compensation while an employee is on paid administrative leave are not usually considered settlement pay.
3. Any type of reimbursement for an expense is not eligible compensation. Examples of an expense are (but not limited to):
 - Travel and travel related expenses
 - Tuition, fees, and other related school expenses
 - Professional development classes/fees
 - Supplies for the classroom purchased by the teacher for which the teacher is reimbursed
 - TRS member contributions
 - Health care
4. Any type of an allowance is not eligible compensation. Examples of an allowance are (but not limited to):
 - Housing
 - Car
 - Cell Phones
 - Relocation costs
 - Health care
5. Payments for accrued vacation, sick, or compensatory leave.
6. Payments for accrued compensatory time for overtime worked. Compensatory leave (or time) is time-off granted in lieu of overtime wages under the Fair Labor Standards Act (FLSA). When leave is granted in lieu of wages at the time the overtime is worked, the characterization of the overtime pay is leave. If unused leave (earned as a result of working overtime) is later "cashed out" the pay for the unused leave is NOT creditable compensation. Compensatory time converted to a monetary payment is never TRS eligible compensation.
7. Bonus and incentive payments, unless state law expressly provides that the type of bonus or incentive payment is to be considered TRS-creditable compensation, or the payments qualify as performance pay under the law and TRS rules.
8. Payments that exceed \$5,000.00 annually for teaching a driver's education and traffic safety course outside the regular workday.
9. Employer payments for fringe-type benefits such as but not limited to:
 - Insurance
 - Employee's FICA tax
 - Payment for the purchase of special service credit or withdrawn service

- Employer payments of TRS member contributions
10. Cash payments in lieu of a fringe benefit provided by the reporting entity.
 11. Pay for work as an independent contractor or consultant.
 12. Signing bonus.
 13. Retention bonus or payment.
 14. Payments that exceed the salary cap. Due to IRS requirements there is a salary cap for an employee who first became a member of TRS on or after September 1, 1996. The threshold generally changes on September 1st each year. Refer to the Employers section of the TRS website for the current salary cap.
 15. "At risk" pay. Pay identified by the employer that can be lost or is "at risk" when certain performance or other criteria are not met. "At risk" pay is not the same type of pay as pay that is earned proportionately as service is rendered.

See: TRS Laws Subchapter B, 822.201, Member Compensation; and TRS Rules 25.21, Compensation Subject to Deposit and Credit and 25.24, Performance Pay. When in doubt about compensation eligibility, contact TRS.

Conversion of Non-Creditable Compensation to TRS Creditable Compensation

The information concerning conversion of non-creditable compensation to TRS creditable compensation is provided as a resource for the reporting entity when considering conversion of a payment to salary. **The rules for conversion do not affect reporting of salary and deposits for monthly reporting purposes.** The reporting entity must always withhold contributions and report creditable compensation, including converted amounts, when it is earned.

At the time of a member's retirement, TRS will review all compensation reported, and adjust, if necessary, a member's annual compensation to comply with the requirements of Sections 25.30 (a) or (b). TRS will refund to the member contributions paid above the allowed amount.

TRS Laws and Rules allow non-creditable compensation to be converted to TRS creditable compensation. Conversion occurs whenever an employer has paid an employee non-creditable compensation in the past but changes the nature of the compensation in order to pay a member with creditable compensation for services performed in the future. For example, if in one year an employer provided a member with an allowance for cell phone expenses but then in a later year replaces that allowance with additional salary, a conversion of compensation has occurred.

Under TRS Rules, Chapter 25, Subchapter B, 25.30, non-creditable compensation converted after the 2005–06 school year or contract year and paid in any of the three (3) or five (5) school years before retirement will be excluded from benefit calculations. (Note, however that payment for unused accrued leave or unused accrued compensatory time for overtime worked is not TRS-creditable compensation at any time, regardless of whether payment for the leave occurred before the 2005–2006 school year or after that school year.)

This rule applies only to compensation converted **after** the 2005–2006 school year. Amounts converted during the 2005–06 school year will be included as compensation provided the member begins to receive the converted compensation during the 2005–2006 contract year.

Reporting Entities are required to certify at the time of a member's retirement on form TRS 7, *Notice of Final Deposit before Retirement*, whether non-creditable compensation was converted to TRS creditable compensation in the last three (3) or five (5) contract years prior to retirement. Amounts converted during the 2005–06 school year will be included in the benefit calculation as compensation; only amounts converted after 2005–06 that are within the last 3 or 5 years before retirement will be excluded from the benefit calculation.

If compensation is excluded under TRS Rules, Sections 25.30(a) or (b), the member may provide additional information in the form of written documentation to demonstrate that the compensation should not be excluded. TRS may also request the reporting entity to provide documents or records concerning the characterization of the compensation.

TRS makes the final determination regarding the characterization of compensation as creditable or not creditable.

Percentage Limits on Compensation Increases

TRS Rule 25.31

Compensation earned after the 2005–06 school year is subject to a limit on the amount creditable compensation can increase from one school year to the next in each of the last three years prior to retirement. Increases in creditable compensation are capped at the greatest of 10% of the previous year's compensation or \$10,000.

If the member's change in salary occurs prior to 2011–12 and is the result of one of the following exceptions, compensation increases will not be subject to the percentage limits:

- Change of employer
- Change of duties
- Performance of additional duties or work
- Increase in percentage of time worked
- Federal or state law changes

Beginning the first day of the 2011–2012 school year and thereafter, there are no exceptions to the percentage increases in compensation over the allowable limits. Additionally, limits on compensation increases will apply to the last three school years prior to retirement for grandfathered members and the last five school years prior to retirement for non-grandfathered members as follows:

TRS makes the final determination regarding whether compensation is creditable and can be used in the member's benefit calculation and may also request the employer to provide documents or records concerning the basis for the increased compensation.

