
**Teacher Retirement System
of Texas**

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EXECUTIVE DIRECTOR
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Mr. Richard Moore
Executive Director
Texas Community College Teachers Association
5113 Southwest Parkway, Suite 185
Austin, Texas 78735

Dear Mr. Moore:

Thank you for your recent inquiry concerning the possibility of a voluntary transfer of participation from the Optional Retirement Program to the Teacher Retirement System, as well as a purchase of service credit in TRS for service performed while participating in ORP. I apologize for the delay in this response, but it is our hope that this communication, although certainly not comprehensive, will sufficiently raise the awareness of some of the issues that must be addressed in considering such a proposal.

Your letter inquires about the cost of the proposed purchase, as well as other issues of importance. Please allow me to first note that there are legal issues that should be explored. For example, our outside tax counsel has previously expressed concerns that should be addressed by the Internal Revenue Service once enacted but prior to implementation of such a proposal. These concerns relate in part to the "irrevocable" election aspect of selecting ORP. IRS analysis is essential as it could affect not only the tax qualified status of TRS but also the tax qualified status of the ORP program.

In addition, and perhaps most challenging, is that it appears there are issues related to Section 67(a)(2) of the Texas Constitution that must be addressed. This provision states that a person may not receive benefits from more than one system for the same service. Therefore, the question arises whether a participant in ORP who became vested in substantial benefits under the ORP program after working for one year, including entitlement to the state's contributions and investment earnings thereon, would be unable to purchase credit in TRS for the same service performed to acquire ORP benefits. The Attorney General recently issued an opinion related to this provision of the Constitution. See Op. Tex. Att'y Gen. No. GA-0221 (2004). Among other things, the opinion rejects a suggestion by the requestor that the Constitutional prohibition applies only to circumstances involving two defined benefit plans.

Provided that the TRS approval can be achieved and the Constitutional issues can be effectively overcome, a proposal to allow the opportunity to purchase TRS service for previous service while in ORP would still have a potentially significant actuarial cost which is clarified further below. It is noteworthy also that under the Internal Revenue Code, there would be annual limits on the amount a member of TRS could contribute to TRS. Therefore, given the cost involved, it could take a significant period of time to complete a purchase of many years of service, making it less desirable toward the end of a career.

In addition, an IRS ruling would be necessary to determine whether the service is considered "permissive service credit" under IRS regulations. If it is not, then more restrictive annual contribution limits would apply, and a member could not use a trustee to trustee transfer during employment. However, a rollover may be available upon termination of employment. If the service is considered by IRS to be "permissive service credit", then the trustee to trustee transfer during employment is possible and the annual contribution limit is higher.

Further, "permissive service credit" may be classified as "qualified" or "non-qualified". If it is considered non-qualified permissive service credit, additional restrictions apply. In short, either the more stringent annual contribution limits must be applied or IRS's 5/5 rule would apply. Under the 5/5 rule, a member would have to have at least five years of actual service credit in TRS before he is eligible to purchase any non-qualified permissive service credit and the number of years of non-qualified permissive service credit a member could purchase is limited to five.

With regard to the potential cost of this proposal, I have consulted with the TRS outside consulting actuary who has indicated that the cost of purchasing the ORP service would be similar to a current TRS program allowing a service credit purchase option (SCPO). Under this program, members with seven years of actual service may purchase up to three years of additional service credit. The TRS actuary has developed actuarial factors adopted by the TRS board that determine the cost of the purchase. The cost of the SCPO is the actuarial present value, at the time of deposit, of the additional standard service retirement annuity benefit that would be attributable to the purchase of the service credit. The cost for this service credit is based on member age and years of service credit at the time of purchase, as well as member salary. The cost tables assume a lump-sum deposit; if deposits are made over a period of time, the cost will be increased to reflect the additional actuarial cost.

The actuarial cost tables for an ORP-related service purchase would have to be developed separately, but as a guideline for your current review please note that the SCPO tables, as well as an interactive cost calculator, are available on the TRS Web site at www.trs.state.tx.us. For your convenience, a copy is also enclosed, and please note the following examples illustrated on the TRS Web site. The total cost amount in Example 1 is for the purchase of one year of service, and the cost in Example 2 is for the purchase of two years. Please keep in mind that these examples and each

calculation are specific to the member's age and years of service at the time of purchase.

Example 1 - A member age 48 with 16 years of credited service requests to **purchase one year** of service. This individual's current annual salary rate is \$35,000, and the average of the three highest years of compensation is \$33,000. On Table 1, cross-referencing age 48 with 16 years of credited service results in a cost factor of \$192.74, which appears above the line. Therefore, the higher annual salary rate of \$35,000 is used in the calculation. The total cost of the service credit purchase is 35 (35,000 divided by 1000) multiplied by \$192.74 or **\$6,745.90**.

Example 2 - A member age 58 with 20 years of credited service requests to **purchase two years** of service. This individual's current annual salary rate is \$38,000. The highest three-year average of compensation is \$35,000. Since the purchase of service credit would result in the individual being immediately eligible for normal retirement under the Rule of 80, the highest three-year average, \$35,000, is used in the calculation. On Table 2, cross-referencing age 58 with 20 years of credited service results in a cost factor of \$484.45, which is found below the line. The total cost of the service credit purchase is 35 (35,000 divided by 1000) multiplied by \$484.45 or **\$16,955.75**.

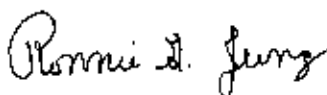
Please note that these published examples are at salary levels more applicable to public education employees. The salaries of higher education employees are typically higher and would result in a higher purchase price.

Again these examples only provide ballpark guidance as to cost. The SCPO tables, as well as the factors and the calculation of the cost, would have to be evaluated specifically for an ORP-related purchase option. This is due in part to the fact that someone coming into TRS under the circumstances you pose (as a result of reversing their irrevocable option to be in ORP in lieu of TRS) would not have any years of service credit with TRS, and TRS would have no salary information from which to draw. Please note also that the cost factors change depending upon the number of years of service credit a person buys. There will be an increased cost factor for each year of service credit purchased. We cannot simply use the factor applicable for purchasing one year and multiply the resulting cost by the total number of years of service credit to be purchased.

These are a few of the additional details that would have to be developed before more specific cost calculations could be identified. However, the TRS actuary believes that the magnitude of the cost would be substantially similar to SCPO and for now these tables may provide some indication of potential cost for you.

I hope that this information is of assistance to you. Please let me know if you have any other questions.

Sincerely,



Ronnie G. Jung