ILLINOIS ASSOCIATION OF SCHOOL PERSONNEL ADMINISTRATORS

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Impact of TRS 3% Salary Cap on Salary Schedules, Contracts, and Retirement Benefits

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Presenters: Cindi DeCola, and
Barbara Erickson

Hodges Loizzi Eisenhammer Rodick & Kohn LLP

Overview and Expectations

- TRS and retirement basics
- What has changed?
  - Pension Code
  - TRS proposed rules
  - TRS final rules
- What do the changes mean?
- What should districts be considering to plan for the future?
  - Bargaining table
  - Administrator contracts
  - Board policies

TRS and Retirement Basics

- TRS Tiers
- How is retirement calculated?
  - Tier I
  - Tier II
- What is the 6% Salary “cap”?
  - What does it limit?
  - What doesn’t it limit?

What Has Changed?

- New 3% Salary "Cap"
  - Governing laws
    - Pension Code (P.A. 100-587)
    - TRS Final Regulations
      - TRS Employer Bulletin 19-09
- The Basics
  - 6% - 3% change
  - What is affected?
  - What is not affected?

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Salary Increases Over 3%

- Section 16-158 of the Illinois Pension Code, as amended in June 2005, requires employer contributions for employee salary increases in excess of 6 percent of the previous year's salary.
  - When a member retires, the employer is required to pay TRS contributions equal to the actuarial value of a pension benefit that results from any salary increase over 6 percent that is used in the retiring member's final average salary calculation.
- On June 4, 2018, Public Act 100-0587 (House Bill 3342) was signed into law effectively changing the 6 percent threshold to 3 percent and is applicable to salaries paid after July 1, 2018.

What Do the Changes Mean?

- The new legislation does not prevent an employer from granting salary increases in excess of 3%.
- The new legislation does not impose an excess employer contribution for all salary increases in excess of 3%.
- For purposes of calculating the retirement annuity benefit, TRS will continue to recognize salary increases up to 20% over the prior year's salary.

What Do the Changes Mean?

- When a contribution is not required
  - If the member's retirement benefit is an actuarial benefit.
  - Any salary increases that are not used in the member's final average salary.
  - For any years in which the member's creditable earnings are less than 50 percent of the preceding year's mean salary for downstate teachers, as determined by the survey of school district salaries provided in Section 2-3.103 of the School Code.
  - If the arrangement is "Grandfathered"

What Do the Changes Mean?

Unlike the prior 6% limit ……..

- No other exemptions exist
- What does it mean to be "grandfathered?"

What Do the Changes Mean? Cont'd

Grandfathered arrangements

- What is grandfathered?
  - Rule 1650.483
    - June 4, 2018
    - Contracts (Employment Contracts, CBA)
    - Policy
    - Handbooks and Benefit Summaries
- What is not grandfathered?
- What could upset grandfathering?

What Do the Changes Mean? Cont'd

Grandfathered arrangements

- What could upset grandfathering?
  - Rule 1650.482
    - An increase in an existing salary or sick leave retirement incentive.
    - The addition of a new salary or sick leave retirement incentive during the exemption period.
    - A renegotiated increase in salaries or sick leave provisions, unless specifically provided for in a salary reopener provision included in the CBA or contract.

What Do the Changes Mean? Cont'd

Grandfathered arrangements

- What could upset grandfathering?
  - Rule 1650.482 (continued …)
    - Failure to follow the retirement incentive age, service, notification or payment provision as contained in the CBA, contract or policy.

What Do the Changes Mean? Cont'd

Grandfathered arrangements

- Once a CBA is amended it loses its grandfathered status and all teachers who retire in that year and future years are subject to the 3 percent threshold.

- Once an individual contract is amended, it loses its grandfathered status and the member is subject to the 3 percent threshold in that year and future years.

What Do the Changes Mean? Cont’d

Grandfathered arrangements

- What about members without contracts?
  - Rule 1650.484
    - TRS will accept employment policies as a contractual agreement for purposes of exemption from employer contributions for salary increases in excess of 3 percent (subject to the 6 percent threshold).
    - The employment policies must have been in effect prior to June 4, 2018.

What Do the Changes Mean? Cont'd

Grandfathered arrangements

- What about members without contracts?
  - Rule 1650.484 (continued…)
    - Employees working under employment policies that are governed by the CBA will have an exemption from employer contributions in excess of 3 percent (subject to the 6 percent threshold) for the period of the CBA. **

    *(**currently, it is not clear what "governed by the CBA means.)*

    - Employees working under employment policies that are not governed by the CBA will be exempt from the 3 percent threshold if notice was provided as required by the employment policy prior to June 4, 2018 and payments are made pursuant to the term of the policy prior to June 30, 2022.

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Modifications to “Grandfathered” Contracts/Collective Bargaining Agreements

What if a “grandfathered” contract or collective bargaining agreement includes a wage reopener – will the “grandfathered” status be lost if the parties renegotiate the wages?

What about adding new terms?

Tentative Agreements

Are collective bargaining agreements that were tentatively agreed to prior to June 4, 2018, but were not ratified by the union or approved by the board until after June 4, 2018, considered "grandfathered" until they expire?

If so, how does a District demonstrate it?

Non-Reportable/Post-Employment Compensation

Can an employer make payments to a teacher (*i.e.,* retirement incentive bonus, etc.) after the teacher's final regular paycheck or last day of teaching, whichever is later, without being subject to employer contributions for salary increases over 3%?

Settlement Agreements

In a separation/settlement agreement reached to resolve an employment controversy, is the compensation subject to the excess salary contribution provision if it results in an annual salary increase greater than 3%?

One or More Employers

- If two or more school districts are responsible for granting salary increases over 3% in the final averaging years, how will TRS assign the employer contributions?

Board Policies

Will TRS recognize oral agreements/ Board Policies to provide salary increases greater than 3% if they were entered into/or in effect before the effective date of the 3% change? If so, for how long?

Not Covered by Contract or Collective Bargaining Agreement, or Board Policy

Is there any “grandfathering” available for salaries paid to employees who are not covered by a contract or collective bargaining agreement or Board Policy?

Passing on the Cost

If we get an excess salary contribution penalty, can we just have language in the agreement that says the employee is responsible for paying it? After all, he/she is benefiting…..

Pension Issues Affecting Administrator's Contracts

- Grandfathering Issues
  - Multi-year
  - No future salaries defined
  - Amendment provisions
- "Me too" provisions
- Board Policy

Recordkeeping

- According to the Employer Bulletin 19-09, to determine if employer contributions are due at the time of a member's retirement, TRS will gather information from employers about TRS members covered under CBAs and individual contracts entered into, renewed or amended prior to June 4, 2018, and those members covered by employment policies.
- TRS anticipates contacting districts now, in January 2019, for this information.
- TRS warns to ensure that employer contributions are calculated correctly, please submit the requested information to TRS in a timely manner.

Recordkeeping

- TRS Final Rule 1650.482
    - Annually, TRS will require all employers that have exempt CBAs to complete an affidavit informing TRS whether any of the conditions that could interrupt grandfathering listed in the rule occurred and the date of occurrence.
    - If the CBA has been amended, the employer will be required to provide the amendment.
    - When a member under an individual contract retires, the employer will be required to inform TRS whether any of the conditions that could interrupt grandfathering listed in the rule occurred and the date of occurrence.
    - If any of the conditions occurred, the contract/arrangement will lose its exempt status and the 3 percent threshold will apply.

The Bargaining Table: Then (6%) and Now (3%)

Then

- The 2005 Pension Code reform was followed by a deep recession in 2008
- Bigger labor pool
- Easier to replace loss of 2 x 10% with 4 x 6%

Now

- Inflationary pressures
- Teacher Shortage – especially in hard-to-fill positions
- Harder to replace loss of 4 x 6% with 4 x 3%

It's All Contextual: There's No One Size Fits All Formula

Every District has its own unique compensation structure:

- Board/Union/Community
- Financial conditions
- Bargaining dynamics
- Historical timing of negotiations/market factors
- Type of District

When you consider this advice for your District:

- Current compensation structure
- Retirement benefits
- Demographics
- Opportunities to supplement pay

The 3% Cap – Risks of Various Compensation Structures

- Typical step and lane structure
  - number of steps
  - longevity
- Salary Tiers
- No Schedule

Options for Responding to 3% "Cap"

- Freeze all increases at 3%
- Cap increases at 3%, but only for "certain" teachers (i.e., within 10 years of retirement eligibility)
- Provide greater % increases for new/mid-range teachers and smaller %'s for teachers with more experience and higher pay
- Do nothing and pay penalties

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Age Discrimination
Equal Employment Opportunity Commission v. Urbana School District No. 116 and Urbana Education Association, IEA-NEA

Notwithstanding any of the provisions of this agreement, no teacher who is less than ten (10) years from retirement eligibility may receive an overall increase in total reportable creditable earnings in excess of six percent (6%) over the previous year's total reportable creditable earnings, unless the payment causing the teacher to exceed the six percent (6%) salary threshold is specifically exempt by statement or regulation form the payment of any penalty of other monies constituting a surcharge to the Teachers' Retirement System. Should the Illinois General Assembly or the Teachers' Retirement System impose a salary threshold greater or lesser than the six percent (6%) threshold thereby causing the payment or any penalty or0tother monies constituting a surcharge to TRS then this agreement shall automatically incorporate this new threshold upon its effective date.

Why Offer a Retirement Incentive?

- Encourage teachers to retire early
- Provide an attractive benefit package
- Create a retirement benefit structure that is designed to be a penalty-free pathway to retirement
- Advance notice for staffing/budgeting
- Demand from employees to allocate resources to retirement benefits

Sentiment at the Bargaining Table

- Unions don't want the District to pay "penalties"
- Unions don't want the teachers to lose benefits
- There is still a perceived loss of pay and benefits
- More sophistication about the impact of a 3% cap

What Can You Expect to See at the Bargaining Table?

- A 5-7 year notice/benefit period with a combination of salary increases and non-creditable post-retirement benefits, for example:

  6 year Notice

  Creditable Earnings

  2 years of 6% salary increases

  4 years of 3% salary increases

  Non-Creditable Earnings

  Post Retirement Contributions to TRIP

  Post-Retirement Severance or 403(b) Contributions

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Why Creditable and Non-Creditable Earnings?

- They're non-creditable!
- In many cases, non-creditable earnings are already included as a contractual benefit
- Used as a carrot to encourage teachers to retire without an actuarial contribution
- They can be withheld if a teacher decides to retire earlier than indicated in the notice, or if a teacher retires without notice

Advantages and Disadvantages of this Structure

- Allows teachers to raise their final average salaries and therefore, their pension annuities
- Mitigates the cost of an actuarial contribution for the District, but carries a risk if a teacher retires earlier than originally planned (especially when planning 6 or 7 years out)
- This structure may not be palatable to the community, but then again, neither are "penalty" payments
- Must be careful about Tier II employees

Comparisons

Date of Birth: 2/14/65
Date of Retirement: 6/10/2025
Years of Service at Retirement: 35
Factor: 75%

	2 x 4%/4 x 6%	2 x 6%/4 x 3%	2 x 8%/4 x 3%
2018-2019	$ 80,000	$ 80,000	$ 80,000
2019-2020	$ 83,200	$ 84,800	$ 86,400
2020-2021	$ 86,528	$ 89,888	$ 93,312
2021-2022	$ 91,720	$ 92,585	$ 96,111
2022-2023	$ 97,223	$ 95,362	$ 98,994
2023-2024	$103,055	$ 98,223	$101,964
2024-2025	$109,238	$101,170	$105,022
7 Year Earnings	$650,964	$642,028	$661,803
Last 4 Years	$401,236	$387,340	$402,091
Final Average	$100,309	$ 96,835	$100,522
Annual Annuity	$ 75,232	$ 72,626	$ 75,392
Actuarial Cont.	$ 35,801.98	$ 2.55	$ .57

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General Drafting Tips

- Keep or add reopener language to address the possibility of additional cost shifts in the future
- Include language to sunset your retirement benefits
- Use language to define specific dates (e.g., must submit between September 1, 2018 and January 1, 2019, with resignation for the purpose of retirement to occur not later than June 30, 2022
- Avoid open ended language (e.g., must submit at least 4 years before the school year in which the teacher will resign for the purpose of retirement)

Options for Benefits Post-Grandfather

- 403(b) Post-severance benefits
- Cash provided post-severance
- Insurance provided post-severance
- Additional non-creditable benefits
  - Rabbi trusts
  - Non-qualified deferred compensation

THANK YOU

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