LASERS
Louisiana State Employees' Retirement System
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RETIREMENT LAW HANDOUT

Post-Retirement OGB Insurance Eligibility

OGB's rules are found in Title 32 of the Louisiana Administrative Code, and LAC 32:I.305 provides for retiree eligibility:

R.S. 32:305. Retiree Eligibility

A. For the purpose of determining eligibility to participate in OGB health coverage and life insurance, the term *retiree* shall refer only to an individual who was an enrollee immediately prior to the date of retirement and who, upon retirement, satisfied one of the following categories:

1. immediately received a retirement plan distribution from an approved state or governmental agency defined benefit plan;

2. was not eligible for participation in such plan or legally opted not to participate in such plan, and either:

a. began employment prior to September 15, 1979, has 10 years of continuous state service, and has reached the age of 65;

b. began employment after September 15, 1979, has 10 years of continuous state service, and has reached the age of 70;

c. began employment after July 8, 1992, has 10 years of continuous state service, has a credit for a minimum of 40 quarters in the Social Security system at the time of employment, and has reached the age of 65; or

d. maintained continuous coverage with an OGB plan of benefits as an eligible dependent until he/she became eligible to receive a retirement plan distribution from an approved state governmental agency defined benefit plan as a former state employee; or

3. immediately received a retirement plan distribution from a state-approved or state governmental agency approved defined contribution plan and has accumulated the total number of years of creditable service which would have entitled him/her to receive a retirement plan distribution from the defined benefit plan of the retirement system for which the employee would have otherwise been eligible. The appropriate state governmental agency or retirement system responsible for administration of the defined contribution plan is responsible for certification of eligibility to OGB.

BOARD OF TRUSTEES:
Beverly Hodges, Board Chair
Virginia Burton, Vice Chair
Thomas Bickham
Commissioner Jay Dardenne
Judge William Kleinpeter
Janice Lansing
Barbara McManus
Sen. Barrow Peacock
Rep. Kevin Pearson
Lori Pierce
Hon. John Schroder
Shannon Templet
Lorry Simmons Trotter
Cindy Rougeou, Executive Director
LASERS Benefits Louisiana.

B. Retiree also means an individual who was a covered employee and continued the coverage through the provisions of COBRA immediately prior to the date of retirement and who, upon retirement, qualified for any of Paragraphs 1, 2, or 3 above.

<u>LEGISLATIVE STEPS TAKEN TO ADDRESS THE UAL:</u>

$8 BILLION OVERALL COST REDUCTIONS

REFORM	FOR LASERS	FOR TRSL
Constitutional Requirement for Actuarial Funding	1987	1987
Constitutional Requirement for Funding Source for New Benefits	2007	2007
Constitutional Requirement for Two-thirds Legislative Approval for New Retirement Provisions with a Cost	2010	2010
Increased Employee Contributions	1988 2005 2010*	1987
Reduced Salary Spiking Cap	2005 2010*	1995
Increased Retirement Age	2005 (age 60) 2014 (age 62)	2010 (age 60) 2014 (age 62)
Increased Final Average Compensation Period from 3 to 5 years	2005 2010*	2010
*Act 992 of 2010 made changes for Hazardous Duty and Judicial Plans.		

REFORM	FOR LASERS	FOR TRSL
Increased COLA Eligibility Requirements Restructured COLA Granting Requirements	2009 2014	2009 2014
Forfeiture of Benefits for Certain Felony Convictions	2012	2012
Changed Actuarial Method to Entry Age Normal	2014	2014
Lowered Discount Rate	2013 (to 8.00%) 2015 (to 7.75%)	2013 (to 8.00%) 2015 (to 7.75%)
Funds Administrative Expenses through Employer Contributions	2016	2016
Adjusts Amortization Periods System Funded Levels Determined before Allocations to Experience Account	2016	2016

Green = Funding Change **Blue** = Benefit Change

Retirement Options:

R.S. 11:446. Mode of payment where option elected

A. Upon application for retirement any member may elect to receive his benefit in a retirement allowance payable throughout his life, or he may elect at that time to receive the actuarial equivalent of his retirement allowance in a reduced retirement allowance payable throughout life, with the provision that:

(1) **Option 1.** If he dies before he has received in annuity payments the value of the member's annuity as it was at the time of his retirement, the balance shall be paid to his legal representatives or to the person he nominates by written designation duly acknowledged and filed with the board; or

(2) (a) **Option 2-A.** Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to the person he nominated by written

designation duly acknowledged and filed with the board of trustees at the time of his retirement; or

(b) **Option 2-B**. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to the person he nominated by written designation and, upon the death of that designated person, his reduced benefit shall be continued throughout the life of the deceased member's mentally handicapped child or children, but such benefits shall be paid to the guardian of such child or children except as provided in Subsection G of this Section. The written designation provided for in this Subparagraph shall be duly acknowledged and filed with the board of trustees at the time of the member's retirement.

(c) Unless otherwise specified, any reference in law to this Paragraph or to Option 2, without reference to a particular Subparagraph or to Option 2-A or Option 2-B shall mean Subparagraph (a) of this Paragraph or Option 2-A.

(3) **Option 3**. Upon his death one-half of his reduced retirement allowance shall be continued throughout the life of and be paid to the person he nominated by written designation duly acknowledged and filed with the board of trustees at the time of his retirement; or

(4) **Option 4.** Some other benefit or benefits shall be paid either to the member or to the person or persons he nominated, provided the other benefit or benefits, together with the reduced retirement allowance, shall be certified by the actuary to be of equivalent actuarial value to his retirement allowance and shall be approved by the board.

(5) **Initial Benefit Option**.

(a) The initial benefit option provided in this Paragraph is available to a member who has not participated in the Deferred Retirement Option Plan provided in this Chapter and who selects the maximum benefit or one of the options in Paragraphs (2), (3), or (4) of this Subsection and, if this initial benefit option is selected, the person shall thereafter be ineligible to participate in the Deferred Retirement Option Plan under this Chapter.

(b) If a member selects the initial benefit option provided in this Paragraph, the member may receive an initial benefit plus a reduced monthly retirement allowance, provided the initial benefit together with the reduced monthly retirement allowance shall be actuarially equivalent to his maximum retirement allowance.

(c) The amount of the initial benefit, as determined by the member, shall not exceed an amount equal to thirty-six payments of the member's maximum retirement allowance.

(d) The initial benefit shall, at the option of the member, be paid as a lump-sum payment or shall be placed in an account in accordance with R.S. 11:449 with interest credited in accordance therewith and payments from the account shall be made in accordance with R.S. 11:450(A)(1).

(e) The monthly retirement benefit received by the retiree and the beneficiary/survivor shall be based on the amount otherwise payable under the retirement option selected that is actuarially reduced by an amount calculated to offset the cost of the initial benefit.

(f) If a member elects the initial benefit option and retires under the provisions of R.S. 11:558 or 582, the monthly benefit of the retiree and the survivors payable under the provisions of R.S. 11:562 or 591 shall be actuarially reduced under the provisions of Subparagraphs (b) and (e) of this Paragraph.

(g) If a change in option selection is allowed under the provisions of Subsection D or E of this Section, the monthly benefit payable under those provisions shall be actuarially reduced in accordance with the provisions of this Paragraph.

(h) A person who retires under the provisions of disability retirement may not select the initial benefit option.

(i) A person who selects this option and subsequently returns to state employment shall be governed by the reemployment after retirement provisions of R.S. 11:416(A)(1) and (3).

(j) Cost-of-living adjustments or permanent benefit increases granted by the board of trustees to retirees who select the initial benefit option shall be computed on the basis of each retiree's regular monthly retirement benefit or on the basis of each beneficiary/survivor's benefit based on the option selected as reduced and shall not be computed on the initial benefit received either as a lump-sum or paid pursuant to R.S. 11:450(A)(1).

(6) **Annual Cost-of-Living Adjustment Option**. In addition to any of the above options, upon application for retirement or participation in the Deferred Retirement Option Plan, any member may make an election, which is irrevocable after the effective date of retirement or the beginning date of participation in the Deferred Retirement Option Plan, to receive an actuarially reduced retirement allowance plus an annual two and one-half percent cost-of-living adjustment pursuant to R.S. 11:247.

B. A retiree cannot change the designation of beneficiary unless the retirement was approved under Option 1.

C. No change in the option elected by the member, other than to correct administrative error, shall be permitted after the application has been officially filed with the board.

D. If the beneficiary dies at any time before the death of the retiree, the benefits payable to the retiree shall be increased to the amount the retiree would have received had the retiree selected the maximum benefit, and the retiree's reduced benefit shall change to the maximum benefit effective on the first day of the next month following the death of the designated beneficiary. It shall be the responsibility of the retiree to notify the system of the death of the beneficiary and to furnish the beneficiary's death certificate.

E. If an option of Subsection A of this Section hereof was selected, and the retiree's spouse was designated as the beneficiary, and a judgment of divorce is rendered with respect to the retiree and the spouse, and, in connection therewith, the spouse, irrevocably, by court order, relinquishes the spouse's survivorship rights under the option originally selected by the retiree, the originally selected option shall be considered revoked and the retiree shall be considered as retired under the maximum benefit, subject to reduction as hereinafter set forth, and without affording the retiree the right to select an option under which the retiree could designate a new beneficiary, and the benefits payable to the retiree shall be increased to the amount the retiree would have received had the retiree selected the maximum benefit, adjusted for any cost-of-living increase or permanent benefit increase granted to the retiree, less any amount required as a result of such change in retirement status to render the new benefit to be the actuarial equivalent of the maximum benefit. The retiree shall be required to reimburse the system, by way of a one-time deduction from the retiree's next benefit check, the reasonable costs incurred by the system to have these calculations made. The retiree shall be required to contractually hold the system harmless in the event that the former spouse ever successfully asserts a property right relative hereto which has any adverse effect upon the system. It shall be the responsibility of the retiree to notify the system of these circumstances, to present satisfactory evidence of same, and to request the recomputation of benefits. Adjustment of benefits under this Subsection shall not be retroactive, and shall be effective on the first day of the next month following official approval of the application for recomputation of benefits.

F. If the member is married, the designated beneficiary for a qualified joint and survivor annuity and any Deferred Retirement Option Plan benefits payable in accordance with law shall be his spouse, unless such spouse has consented to the contrary in writing before a notary public, or such spouse cannot be located and the member submits an original affidavit signed by him before a notary public which evidences good faith efforts to locate the spouse. If the member does not select a joint and survivor annuity option and fails to provide such a spousal consent at the time of his retirement, then for the purposes of a retirement benefit option the system shall establish the benefit as if the member had selected the Option 3 joint and survivor annuity as provided in Paragraph (A)(3) of this Section. For purposes of this Paragraph, “spouse” shall mean that person who is married to the member under a legal regime of community of acquets and gains on his effective date of retirement or effective date of participation in the Deferred Retirement Option Plan, whichever is earlier.

G. (1) If a retiree designates a child as a beneficiary under Option 1, Option 2-A, Option 2-B, Option 3, or Option 4 as provided in Subsection A of this Section, or if a retiree designates children as beneficiaries under Option 2-B as provided in Subsection A of this Section, and a trust is created under law by the retiree for the benefit of the child designated as a beneficiary under Option 1, Option 2-A, Option 2-B, Option 3, or Option 4 as provided in Subsection A of this Section, or for the benefit of the children designated as beneficiaries under Option 2-B as provided in Subsection A of this Section, if the terms of the trust so provide, and if the system is provided with a certified copy of the trust document, then the optional retirement allowance payable to a beneficiary pursuant to this Subsection upon the death of the retiree shall be paid to the trust for addition to the trust property.

(2) If the trust is contested by any party, the system shall withhold all benefit payments or deposit them in the registry of the court if a concursus proceeding is filed until there is a final binding legal agreement or judgment regarding the proper payment of benefits.

(3) If the trust terminates under the terms of the trust prior to the death of a designated beneficiary, then any optional retirement allowance payable after the date of termination of the trust shall be paid as provided for in Subsection A of this Section.

(4) The trustee of the trust shall immediately notify the system in writing of the death of a beneficiary. Upon the death of a beneficiary, benefit payments from the system to the trust on behalf of the deceased beneficiary shall cease.

(5) For purposes of this Subsection only, the term “child” shall mean a minor or major child, regardless of age, who is the issue of a marriage of a member of this system, the legally adopted child of a member of this system, a child born outside of marriage of a female member of this system, or the child of a male member of this system if

PRACTICAL APPLICATIONS:

Divorce FAQs:

- What is the Sims formula?

Sims v. Sims, 358 So.2d 919 (La.1978)
La. Supreme Court established a formula for calculating the ex-spouse's interest in the member's retirement:

$$\frac{\text{Years of service earned or purchased during the existence of the community}}{\text{Total years of service}} \times 1/2 \times \text{Annuity (or lump-sum payment)}$$

- Why does LASERS require a certified copy of my divorce if it is prior to my state service?
  LASERS needs to ensure that the member was actually divorced and that the member is not required to name the prior spouse as a beneficiary.

- Why does LASERS require all divorce decrees instead of just the most recent divorce?
  LASERS needs copies of all divorce and community property decrees to ensure that the member was actually divorced from all prior spouses. If we only obtain documentation on the last divorce, we have no way of knowing whether the member was ever divorced from their other spouse or spouses. Just because a member is divorced from one spouse, that does not necessarily mean they were divorced from any prior spouse.

- When does LASERS require a certified copy?
  For Domestic Relations Orders (DROs), the law requires that LASERS be provided with a certified copy of the order. For other documents, a certified copy is the best evidence that the legal document was actually signed and is not a fake or forged document.

- Can you give me a DRO sample?
  Yes, a sample is included with this handout.

- Can you provide sample form that allows ex-spouse to waive rights to all retirement benefits?
  Yes, a sample is included with this handout.

- How can I access my ex-spouse’s retirement? (calls from ex-spouses)
  A Domestic Relations Order (“DRO”) benefit will be needed to divide the member’s retirement benefits pursuant to the ex-spouse’s community property rights.

Trusts/Estates FAQs:

- How does it work if I name a trust as my beneficiary?
  A trust may only be named as a beneficiary for lump-sum amounts. Upon the death of the member any sums due will be paid to the trust.

  If a child is named as beneficiary under Option 1, Option 2-A, Option 2-B, Option 3 or Option 4, or if children are named as beneficiaries under Option 2-B, and a trust is created under law by the retiree for the benefit of the designated child or children, and the terms of the trust so provide, then the optional retirement allowance payable to the beneficiary shall be paid to the trust if LASERS is provided with a certified copy of the trust document.

- Do you require paperwork at the time the Trust is designated beneficiary or when at retirement?
  A certified copy of the trust document is required before payment can be made to the trust.

- Who will be over the minor child funds if I name a Trust?
  The trustee of the trust.

  Any sums that were due to the member as of the date of death become property of the member’s estate. A succession may need to be opened in order to cash or deposit the check.

Garnishment FAQs:

- Can my retirement be garnished for child support?
  - Yes.
- Can my retirement be garnished by the IRS?
  - Yes.
- Can my retirement be garnished if I file bankruptcy?
  - LASERS accepts wage assignments signed by our retirees, treating them as payroll deduction requests in an attempt to help them through their financial difficulties. We have honored the wage deduction form described

above, signed by our retirees, rather than wage deduction orders issued by a bankruptcy judge. When our retirees come to us prior to signing, we would advise them to seek legal counsel and have counsel review the decision by the Supreme Court in *Patterson v. Shumate*, 504 U.S. 753; 112 S.Ct. 2242; 119 L.Ed. 519, June 15, 1992.

<u>Cases:</u>

Retired State Employees' Association v, State of Louisiana, 2013-0499 (La. 6/28/13), So.3d (2013 WL 3287132)

The Cash Balance Plan enacted by Act 483 of 2012 did not receive the requisite two-thirds vote of the legislature and was therefore unconstitutional.

- RSEA had standing to challenge the constitutionality of the plan's enactment.
- Two-thirds vote of the legislature is required for any retirement change with a cost, not just changes for current members.
- Legislative Auditor must determine whether a change has a cost.

Bordes v. Bordes, 730 So. 2d. 443 (La. 1999).

Disability Benefit is member's separate property.

Patterson v. City of Baton Rouge, 309 So. 2d. 306 (La 1975).

Public retirement system members vest when they reach eligibility.

Talbott v. Independent School District, 230 Iowa 949, 299 N.W. 556, 137 A.L.R. 234.

Legislature may modify the rate of contribution and benefits of non-vested members of public retirement system.

Louisiana State Troopers' Assoc., Inc. v. Louisiana State Police Retirement Board, 417 So. 2d 444 (La. App. 1st Cir. 1982)

Public employee's right to retirement benefits is vested when he is eligible to retire.

Smith v. LASERS, 851 So. 2d 110, (La. 2003).

Re-employment benefits vest when reach eligibility to receive them.

Bowen v. Board of Trustees of Police Pension, 76 So. 2d 430 (La. App. Orl. 1955).

Vested rights.

Louisiana State Employees Retirement System, et al v. State of Louisiana through the Department of Justice, et al, 423 So. 2d 73 (La. App. 1st Cir. 1982).

Retirement system funds are not public funds.

Firefighters Retirement System v. Landrieu, 572 So. 2d 1175 (La. App. 1st Cir. 1990).

Retirement system funds are not required to be deposited in the State Treasury and there is no need for an appropriation to remove them.

Sims v. Sims, 358 So. 2d 919 (La. 1978).

Former spouse is entitled to his or her pro-rata share of retirement benefits of a member spouse to the extent retirement benefits were attributable to the former community.

Audubon Insurance Company v. Bernard, 434 So. 2d 1072 (La. 1983).

Charge that has primary purpose of raising revenue is a tax.

Safety Net for Abused Persons v. Segura, 96-1978 (La. 4/8/97), 692 So. 2d 1038.

Tax v. Fee

Louisiana Attorney General Opinions:

La. Atty. Gen. Op. No. 02-0082-----funds in DROP account are retirement benefits and are therefore protected by Article X, Section 29 (E) of the Louisiana constitution that provides the accrued benefits of members of any state or statewide public retirement system shall not be diminished or impaired.

La. Atty. Gen. Op. No.02-169----affirmed 02-0082

Atty. Gen. Op. No. 02-169A-----questioned whether members choosing to invest with the system could waive their constitutional right to avoid any diminution or impairment and opined that any waiver must be voluntary, intelligent, and knowing and also questioned whether such constitutional right was subject to waiver by an individual retiree.

La. Atty. Gen. Ops. No. 03-0087; 93-6786; 86-183------retirement system funds are not considered public funds.

Constitutional Provisions:

U.S. Const. Art.1, §10, Clause 1------ex-post facto laws.

La. Const. Art. X, § 29 (B) and (E)(5)------membership is contractual relationship between employer and employee; accrued benefits shall not be diminished.

Statutes:

La. R.S. 11:154------tax sheltering of employee contributions.

La. R.S. 11:403(33) ------vested right.

La. R.S. 11:405------tax exemption.

La. R.S. 44:15 & 16-----Public Records.

Act 818 of 2003------Self-Directed DROP.

Act 634 of 2010------Pension Garnishment.

Recent Legislation

La. Const. Art. VII, §10(D)(2)(b)(iii) provides that for Fiscal Year 2015-2016 and every fiscal year thereafter, the legislature shall appropriate no less than ten percent of any money designated in the official forecast as nonrecurring to LASERS and the Teachers' Retirement System of Louisiana for application to the IUAL of the systems.

- **2019 Legislative Session** - Act 50 appropriated approximately $9.5 million in State nonrecurring revenue to LASERS to be applied to the initial unfunded accrued liability.

- **2020 Legislative Session -** Act 255 appropriated approximately $16.7 million in State nonrecurring revenue to LASERS to be applied to the initial unfunded accrued liability.