



# Interruptive Military Service Credit Preliminary Report

LEOFF Plan 2 Retirement Board

April 30, 2008

# Background Summary

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- Interruptive Military Service Credit purchase exists in all Plan 2/3 Systems
- Military Service Credit Purchase
  - Purchase up to 5 years military service credit
  - Five year deadline from re-employment
  - Member, Employer, and State pay Contributions
- Death and Disability Recovery (2004)

# 2008 Legislation

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- Joint Legislation – L2B/SCPP
  - Eliminate member/survivor obligation to pay for interruptive military service credit
  - Only applies to military service during a period of war as defined in statute
  - No contribution rate impact in current biennium

# Key Issues

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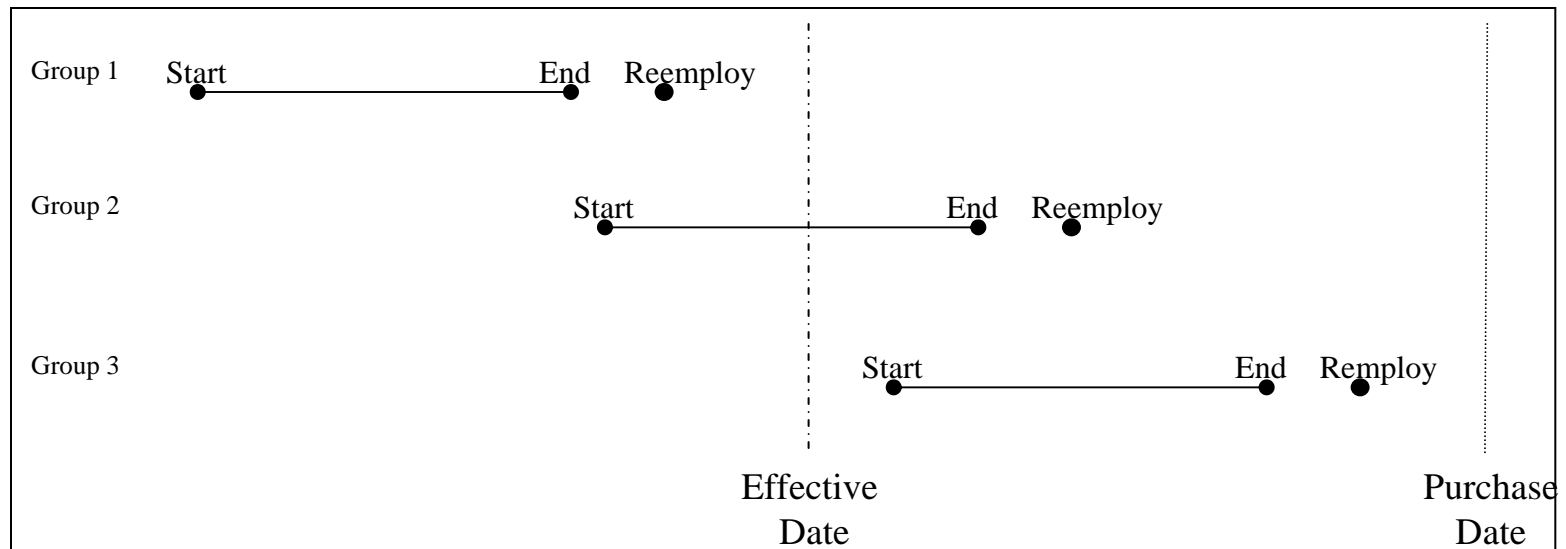
- Should members pay the cost of restoring service credit for periods of public employment that have been interrupted by their military service?
- Should eligible unpaid periods of military service prior to the effective date be included?

# Option 1

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- Eliminate member/survivor obligation to pay for interruptive military service credit
  - Only applies to military service during a period of war as defined in statute
  - No contribution rate impact in current biennium
  - Applies prospectively based on return to employment

# Option 1



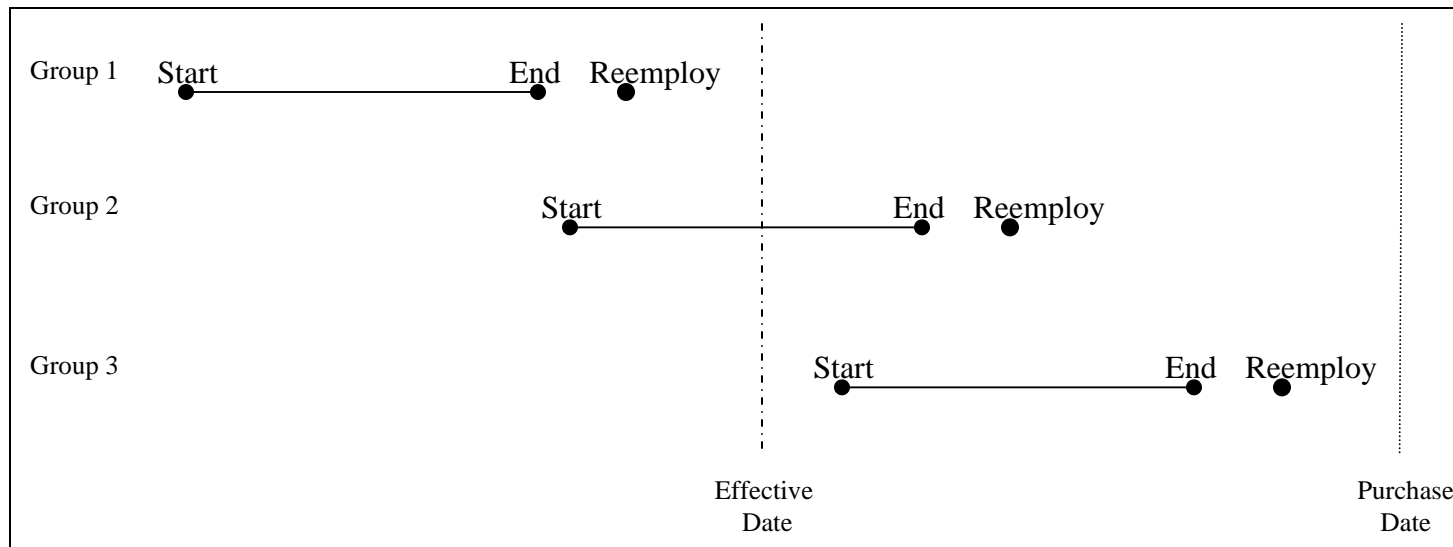
- No-Cost, prospective application
  - Group 1 not covered; Reemployment prior to effective date
  - Group 2 & 3 covered; Reemployment after effective date

# Option 2

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- Eliminate member/survivor obligation to pay for interruptive military service credit
  - Only applies to military service during a period of war as defined in statute
  - No contribution rate impact in current biennium
  - Applies to unpaid periods of service eligible for normal recovery

# Option 2



- No-Cost, All eligible unpaid service periods
  - Groups 1, 2 & 3 covered





# Interruptive Military Service Credit

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Questions?

# LAW ENFORCEMENT OFFICERS' AND FIRE FIGHTERS' PLAN 2 RETIREMENT BOARD

## Interruptive Military Service Credit Preliminary Report

April 30, 2008

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### 1. Issue

Should members pay the cost of restoring service credit for periods of public employment that have been interrupted by their military service?

### 2. Staff

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### 3. Members Impacted

As of September 30, 2006 there were 15,718 active members. This issue impacts LEOFF Plan 2 members who are called to active military service and killed in the line of duty. The number of LEOFF Plan 2 members who have been called to active duty is currently unknown.

### 4. Current Situation

LEOFF Plan 2 members have the option to purchase up to five years of service credit for periods of military service which interrupt their LEOFF employment if the member returns to employment and pays the appropriate contributions within 5 years of returning. The requirements for allowing the purchase of military service credit are governed by federal law, but may be expanded by state law.

A member who cannot return to public employment due to total disability must repay contributions to reinstate interruptive military service credit. In the case of military death, the survivor pays the member cost when applying for interruptive military service credit.

The Select Committee on Pension Policy (SCPP) and LEOFF Plan 2 Retirement Board recommended joint legislation to the 2008 legislature which would have eliminated the member obligation to pay for interruptive military service credit if the member served during a period of war. The Legislature did not pass the measure.

## 5. Background Information and Policy Issues

### Interruptive Military Service

Interruptive military service credit is available to those who interrupt public employment to serve in the uniformed military branches of the United States. This type of service is governed federally by the Uniformed Services Employment and Re-employment Rights Act (USERRA). As it is governed by federal law, interruptive service is handled the same in LEOFF Plan 2 as it is in all of the other Plan 2 systems in Washington. A LEOFF Plan 2 member who meets certain requirements may purchase up to five years of service credit for a leave of absence to serve in the military.

Interruptive military service credit is available to those who interrupt their membership with LEOFF Plan 2 to serve in the United States Armed Forces. The distribution of interruptive military service credit is governed by federal law. In October 1994 the Uniform Services Employment and Reemployment Rights Act (USERRA) became effective replacing the Veterans' Reemployment Rights Act (VRRRA). At a minimum, public employers must provide the protections specified in USERRA. However, states have the discretion to go beyond USERRA and grant benefits for interruptive service that are more generous than those available under the act. This means that the state may reward active duty by paying all or part of the contributions that the member would have paid during the period of active duty. Enhanced benefits of this nature can be limited to wars and armed conflicts as long as the basic USERRA protections remain intact for all interruptive military service in the uniformed services.<sup>1</sup>

### Eligibility Requirements

Three general requirements must be met in order for a member to be eligible to purchase interruptive military service credit.

- The member must leave LEOFF Plan 2 covered employment to render military service in one of the armed or uniformed services of the United States (*See Qualified Military Service*).
- Upon termination of military service, the member must initiate reemployment covered by the member's original retirement system within certain defined time limits (*See Initiation of Reemployment*).
- The member must fully pay the required contributions within the statutorily defined time limits (*See Required Contributions and Payment Timeframes*).

### Qualified Military Service

Nearly all types of military service qualify as service in either an armed force or in a uniformed service for the purposes of interruptive military service credit. The following types of military service qualify<sup>2</sup>:

- Service in the army, navy, air force, marine corps, or their reserve units (including two-week annual training for reservists);

- Full-time service in the United States Coast Guard;
- Service in the Public Health Service; and
- Service in the Army or Air National Guard provided to the federal government, but not including service provided to a state.

### **Initiation of Reemployment**

Upon termination of military service, a member must initiate reemployment within certain defined time limits. The member must also be reemployed in a position covered by the retirement system the member was participating in at the time of interruption.

USERRA provides different reemployment timeframes which are determined by the duration or type of military service that the person was engaged in. However, the state law is more generous than the provisions in USERRA. State law provides that a member must initiate reemployment within ninety days to qualify for interruptive military service credit. There are two notable exceptions to the ninety day reemployment requirement.

The first exception is in state law. The state law provides that if a person fails to initiate reemployment within the required timeframe, that person can still purchase the service credit by paying the full actuarial value of the increase to their benefit from the additional service credit.<sup>3</sup>

The second exception is in federal law. USERRA provides that the timeframe for initiation of reemployment can be extended for up to two years for a person who is hospitalized or convalescing because of a disability incurred or aggravated during the period of military service. The two year period can be further extended by the minimum time required to accommodate a circumstance beyond an individual's control that would make reporting within the two-year period impossible or unreasonable.<sup>4</sup> Employers are required under USERRA to make reasonable efforts to accommodate reemployment of a person with a disability incurred or aggravated while in Military Service.<sup>5</sup> However, employers are exempt from such efforts if such accommodation would be of such difficulty or expenses as to cause "undue hardship".<sup>6</sup>

### **Required Contributions**

The member and employer contributions that would have been made to the plan if the member had not been on military leave must be paid in order for a member to purchase service credit for the period of military leave. Both the member and employer are responsible for paying a portion of the contributions:

- The member must pay the employee contribution (no interest)<sup>7</sup>.
- The employer must pay the employer contribution (no interest)<sup>8</sup>.

### **Example – Cost of military service versus impact on benefit**

A LEOFF Plan 2 member is called to active duty for 1 year from July 1, 2003 to June 30, 2004. The member's monthly salary during the leave of absence would have been \$3000.00 per month. The member returns to LEOFF covered employment on July 1, 2004 and requests to purchase 12 months of service credit for the period of military leave of absence.

The member would have been paid \$3000 per month by the employer if the member had not been on the military leave of absence. The member cost would be approximately \$1821.00. The employer cost would be approximately \$1171.50.

Without purchasing the military service credit the member would have retired at age 53 with 19 years of service and an AFC of \$36,000. The member's benefit before the military service credit would have been calculated as:

$$2\% \times 19 \text{ years} \times \$3,000 = \$1140$$

The member's benefit after purchasing the military service credit would be calculated as:

$$2\% \times 20 \text{ years} \times \$3,000 = \$1200$$

### **Payment Timeframe**

The contribution must be made within five years of initiation of reemployment or prior to retirement, whichever comes first. If a person fails to make the required contribution within five years then that person can purchase service credit by paying the full actuarial value of the resulting increase to their benefit from the additional service credit.<sup>9</sup>

### **Maximum Service Credit**

USERRA provides for a maximum of five years of interruptive military service credit. The state law matches this maximum providing for a maximum of five years of interruptive military service. There are some exceptions to the five-year maximum that are provided by USERRA as describe in 38 USC, 4312. These exceptions include:

- Obligated services incurred beyond five years, usually by individuals with special skills, (such as an electronics expert)
- Inability to obtain release (needs to be documented on a case by case basis)
- Training requirements
- Specific active duty provisions
- War or a declared national emergency
- Certain operational missions
- Critical missions or requirements (such as Grenada or Panama in the 1980's, when provisions for involuntary activation of Reserves were not exercised)
- Specific National Guard provisions

If a member has over five years of interruptive military service and the excess falls into one of these exceptions then the member may be entitled to this additional military service credit.

**Comparison to Other Washington State Plan 2 Systems**

All of the plans listed below allow members to purchase retirement service credit for interruptive military service in the same manner as allowed for LEOFF Plan 2:

- Washington State Patrol Retirement System (WSPRS) Plan 2,
- Public Employees’ Retirement System (PERS) Plan 2,
- School Employees' Retirement System (SERS) Plan 2, and
- Teachers’ Retirement System (TRS) Plan 2.

While the **Plan 1** systems allow interruptive military service credit, the members in PERS Plan 1, LEOFF Plan 1, and WSPRS Plan 1 are not required to pay any cost for the service credit. A TRS Plan 1 member is required to pay the contributions that would have been paid had the member not gone on a military leave of absence.

**Federal Benefits for Military Service Members**

Although neither USERRA nor state law provides specific relief of pension benefits for service members who are disabled or die while in service, there are various other federal benefits that may be available to these members or their survivors. These benefits are highlighted in the tables below and explained further in Appendix A.

<b>Lump Sum and Recurring Benefits Available to Survivors of Military Service Members</b>	
Social Security	A special one-time payment of \$255 plus benefits based on the service member’s earnings in covered employment
Death Gratuity	\$12,000 tax exempt
Burial Expenses	Up to \$6900
Service member Group Life Insurance (SGLI)	\$250,000 from SGLI unless an election was filed reducing the insurance or canceling it entirely.
Unused Leave	Payment is made to a survivor for all unused leave
Tax Benefits	Survivor exempt from paying decedent’s income tax for year of death.
Survivor Benefit Plan (SBP)	An eligible spouse under the age of 62 or dependent child receives 55% of the retired pay the service member would have been entitled to on the day he or she died, based on 100% total disability. The SBP amount may be offset by DIC payments.
Dependency and Indemnity Compensation (DIC)	An eligible spouse receives \$967 per month, and each minor child receives \$241 per month (tax exempt).

Government Housing	Provided rent-free housing for 180 days or tax-free Basic Allowance Housing. Also entitled to relocation assistance.
Education Benefits	Up to 45 months of full-time education benefits
Health Care	Health and Dental insurance for three years after service member's death and eligible for care at military medical facilities.
Commissary and Exchange Privileges	Survivors eligible to shop at military commissaries and exchanges.
Gi Bill Contributions	Designated life insurance beneficiary entitled to a refund of money collected through payroll deduction but was not awarded in education benefits
Home Loans	Surviving spouses eligible for a VA-guaranteed home loan

Sources: U.S. General Accounting Office, *Military Personnel: Survivor Benefits for Service members and Federal, State, and City Government Employees*, GAO-04-814 (Washington, D.C.: July 2004)  
[http://www1.va.gov/OPA/fact/docs/survivor\\_benefits.doc](http://www1.va.gov/OPA/fact/docs/survivor_benefits.doc)

<b>Disability Benefits Available to Military Service Members</b>	
Disability Compensation	A person who is at least 10% disabled as a result of military service may be eligible for Disability Compensation that ranges from \$106 to \$2,239 per month, depending on the level of disablement. The benefits are tax-free.
Disability Pension	Veterans with low incomes who are permanently and totally disabled, or are age 65 and older, may be eligible for monetary support if they have 90 days or more of active military service, at least one day of which was during a period of war. Payments are made to qualified veterans to bring their total income, including other retirement or Social Security income, to a level set by Congress (ranges from \$2,244 to \$19,570 per year).

Sources: [http://www1.va.gov/OPA/fact/docs/survivor\\_benefits.doc](http://www1.va.gov/OPA/fact/docs/survivor_benefits.doc)

## Legislative History<sup>10</sup>

The SCPP and L2B most recently studied interruptive military service credit in the 2007 interim. As a result, the SCPP and L2B recommended joint legislation that would have eliminated the Plan 2 and Plan 3 member obligation to pay for interruptive military service credit if the member served during a period of war. Employers would have been required to still pay the employer contributions related to the period of service credit.

The 2008 Legislature did not pass the bill. The SCPP reviewed the 2008 Legislative session at their April 15, 2008 meeting. Bills such as the Military Death Benefit and Interruptive Military Service Credit bills may be reviewed again during the May SCPP meeting as potential legislation for 2009.

The SCPP and the LEOFF Plan 2 Retirement Board (L2B) first studied interruptive military service credit in the 2004 interim. As a result, the SCPP and L2B recommended joint legislation that would provide interruptive military service credit for those who are not re-employed due to death or total disability while serving in the uniformed services. Chapter 64,

Laws of 2005 provided that service credit may be purchased by a totally disabled member or a survivor of a deceased member for interruptive military service up to the date of death or disability. The law requires repayment of member contributions to reinstate service credit for the period of interruptive military service.

Military service credit was previously reviewed by the Joint Committee on Pension Policy (JCPP) in 1988 and by the Executive Committee of the JCPP in 1997. In 1988 military service credit was evaluated as part of a comprehensive analysis of the provisions for granting service credit. Upon completion of its study, the JCPP concluded that the state's policy was not to grant additional service credit for prior military service.

In 1997, the JCPP Executive Committee heard an update on military service credit but the issue was not heard by the full committee. In June 2004, the Full Select Committee on Pension Policy (SCPP) heard a report on military service credit.

Prior to the 2005 joint legislation by the SCPP and L2B, only two JCPP bills on military service credit passed in the legislature since 1996, and both were to conform Washington law to federal law (USERRA). At least twenty other bills outside of the pension committees have been introduced to expand opportunities to acquire military service credit, but none have passed.

## **6. Policy Options**

### **Key Issues**

There are two key issues related to the recovery of interruptive military service credit: (1) cost of recovery and (2) recoverable periods included in a change.

**Cost.** Currently a member must pay the appropriate amount of contributions to recover service credit for a period of employment interrupted for military service. The key question is whether or not there should be a cost to the member for recovering this type of service . There are policy arguments on both sides of this policy question.

Arguments for eliminating the cost to the member include encouraging military service, supporting the ability to recruit military personnel into state/local government service, benefits (direct and indirect) to the State from military service rendered by public employees, recognition and support for plan members serving the public at large in a high risk situation, and supplementing federal benefits which may be viewed as inadequate.

Arguments against providing no cost benefits include that the military service is voluntary so it is not compulsory to interrupt service, additional cost of the benefits must be absorbed by the plan and the membership, favorable terms for recovery of military service already provided by federal law (no interest, 5 years to recover), and the military service is unrelated to any service provided directly to the public employer.



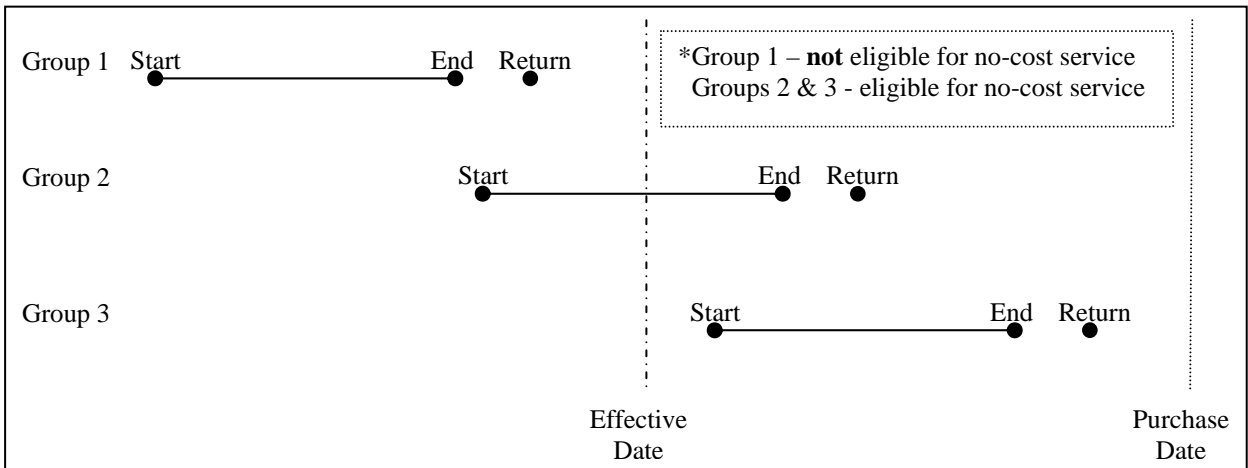
Recoverable Periods. If a change is made to the recovery cost policy, such as eliminating the member cost, consideration must be given to whom, or what periods, will be eligible to recover military service under the new provision. Should the new cost provision apply only to members who return to employment after the new provision is in effect? Or should it apply to members who have any period of unpaid military service that is eligible for recovery (return to employment within 90 days, 5 years from reemployment to recover) regardless of when their return to employment occurred?

For example on the latter situation, a provision eliminating the member cost of recover became effective today, a member has a period of interruptive military service that was rendered from 2004 through 2007 but has not yet recovered the service credit. Should the member be required to pay the applicable contributions to recover the service because it was before the effective date of the new provision, or is the member included under the new provision and the member cost eliminated because the member had not yet completed a recovery of the service?

**Option 1: Eliminate the member cost prospectively**

This option would eliminate the member obligation to pay for interruptive military service credit if the member served during a period of war. The elimination of the member cost would only apply to members who return to employment after the effective date of the provision and have unpaid military service credit. Employers would have been required to still pay the employer contributions related to the period of service credit.

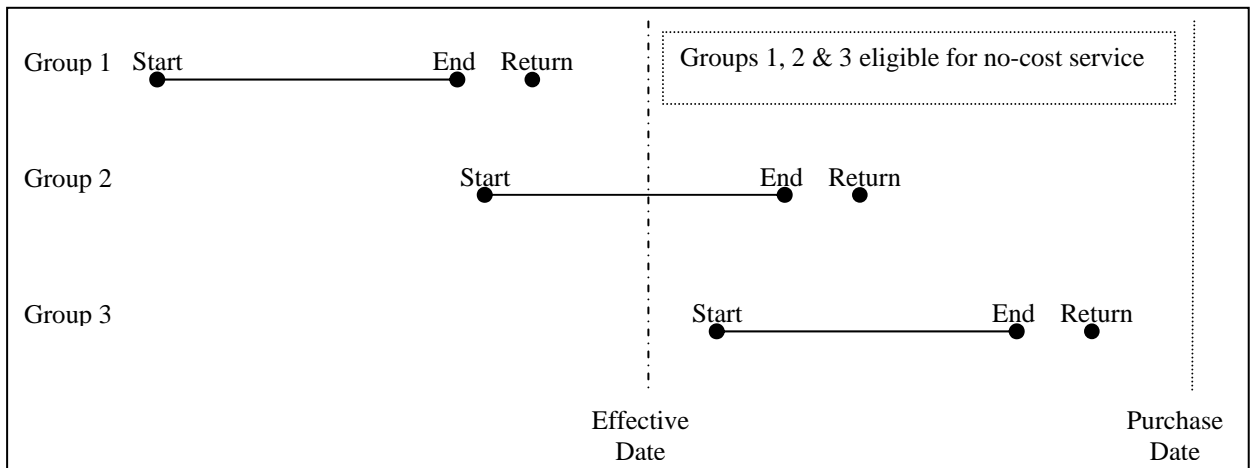
Although this would ensure that any member currently serving in a period of war could be eligible to recover service credit at no cost, a member who returned to employment prior to the effective date provision but is still within the fiver year window to recover eligible military service would be required to pay for the service credit.



## Option 2: Eliminate the member cost for any period eligible for recovery

This option would eliminate the member obligation to pay for interruptive military service credit if the member served during a period of war. The elimination of the member cost would apply to members who have unpaid interruptive service that is eligible for recovery (within the recovery window of five years after reemployment). Employers would have been required to still pay the employer contributions related to the period of service credit.

This would ensure that any member who has served or is currently serving in a period of war could be eligible to recover service credit at no cost as long as the member returned to employment with 90 days of military service, is still within the five year recovery window, and has not already completed the purchase of the military service.



## 7. Supporting Information

### Endnotes

- 1 Laura Harper, "Interruptive Military Service Credit", Select Committee on Pension Policy, December 18, 2007.
- 2 Department of Retirement Systems, "Military Service Credit for LEOFF Plan 2, WSPRS Plan 2, PERS Plan 2 & 3, TRS Plans 2 & 3, and SERS Plans 2 & 3", n.d., <<http://www.drs.wa.gov/member/militsc/plan23mil.htm>> (July 14, 2004)
- 3 Department of Retirement Systems, "Military Service Credit for LEOFF Plan 2, WSPRS Plan 2, PERS Plan 2 & 3, TRS Plans 2 & 3, and SERS Plans 2 & 3", n.d., <<http://www.drs.wa.gov/member/militsc/plan23mil.htm>> (July 14, 2004)

- 4 “A Non-Technical Resource Guide to the Uniformed Services Employment and Reemployment Rights Act (USERRA)”, The U.S. Department of Labor Veterans Employment and Training Service, March 2003, p.5.
- 5 Ibid., p.8.
- 6 Ibid., p.9.
- 7 USERRA prohibits the state from charging interest on the outstanding employee contributions.
- 8 USERRA prohibits the state from charging interest on the outstanding employer contributions.
- 9 Department of Retirement Systems, “Military Service Credit for LEOFF Plan 2, WSPRS Plan 2, PERS Plan 2 & 3, TRS Plans 2 & 3, and SERS Plans 2 & 3”, n.d., <<http://www.drs.wa.gov/member/militsc/plan23mil.htm>> (July 14, 2004). Also see RCW 41.50.165(2).
- 10 Laura Harper, “Military Service Credit”, Select Committee on Pension Policy, June 15, 2004.