

Military Service Credit Initial Proposal (Revised)

**Washington State
Law Enforcement Officers' and Fire Fighters'
Plan 2 Retirement Board**

July 28, 2004

Two Military Service Credit Types

- Interruptive
 - Applies to LEOFF Plan 2
- Prior (non-interruptive)
 - Does not apply to LEOFF Plan 2

Interruptive

- Military service which interrupts public employment
- All Washington plans allow for interruptive military service credit
- Required by federal law (USERRA)
- States can be more generous than federal law

Interruptive

- Leave employment for service in military
- Initiate reemployment within 90 days of honorable discharge
 - Return to LEOFF covered employment
 - Limited provisions for disability
 - No provisions for death

Interruptive

- Pay required contributions within 5 years
 - Member pays member contributions
 - Employer pays employer contributions
 - Contributions based on compensation that would have been earned

Interruptive Military Service Credit Example

- Purchase 1 year of interruptive service
 - 7/1/2003 through 06/30/2004
 - Reemployed 7/1/2004
- Salary \$3000 per month
- MBR Contribution = \$1821.00
- ER Contribution = \$1171.50
- Payment Deadline = 06/30/2009

Interruptive Military Service Credit Example

- **Benefit Without Military Service Credit**
 - $2\% \times 19 \text{ years} \times \$3000 = \$1140$
- **Benefit With Military Service Credit**
 - $2\% \times 20 \text{ years} \times \$3000 = \$1200$

Prior Military Service Credit

- Military service prior to public employment (non-interruptive)
- Only offered by two plans:
 - PERS Plan 1
 - WSPRS Plan 1
- State pension policy is not to grant additional prior service credit

Prior Military Service

- Must be a “veteran”
- Must have 25 years of service credit
- Must have honorable discharge

- Credited up to 5 years of military service
- No cost to the member

Questions?

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

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1. Issue

The Board requested a briefing on current LEOFF Plan 2 military service credit provisions for the July 28, 2004 Board Meeting.

2. Staff

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3. Members Impacted

Any active LEOFF Plan 2 member who interrupts their membership to serve in the United States Armed Forces may be impacted.

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. The qualifications for the purchase of military service credit are governed by federal law, but may be expanded by state law. The key qualifications for LEOFF Plan 2 include:

- The member must return to LEOFF Plan 2 covered employment within ninety days of honorable discharge from the armed forces.
- The member must pay the member contributions that would have been paid had the member not entered military service. The employer must pay the related employer contributions.
- The required member contributions must be paid within five years of returning to employment.

5. Background Information and Policy Issues

This initial proposal provides an overview of the two types of military service credit available under Washington state pension systems and reviews the criteria for LEOFF Plan 2 members' to purchase military service credit.

There are two types of military service for which service credit is available in the Washington state pension systems: interruptive and prior.

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.

Prior service is military service which took place prior to starting public employment. Prior military service credit is available to members of two plans only: PERS Plan 1 and WSPRS Plan 1. Members of PERS Plan 1 and WSPRS Plan 1 who meet certain requirements may receive up to five years of military service credit at no cost.

The following sections describe the requirements for interruptive and prior military service credit in further detail.

A. Interruptive Military Service

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.

i. 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 subsection ii. 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 subsection iii. Initiation of Reemployment*).
- The member must fully pay the required contributions within the statutorily defined time limits (*See subsection iv. Required Contributions and subsection v. Payment Timeframes*).

ii. 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 qualify¹:

- 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.

iii. 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.²

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.³ 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.⁴ However,

employers are exempt from such efforts if such accommodation would be of such difficulty or expenses as to cause “undue hardship”.⁵

iv. 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)⁶.
- The employer must pay the employer contribution (no interest)⁷.

Example:

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:

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

v. 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.⁸

vi. 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.

vii. 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.

B. Prior Military Service

Prior service is military service which took place prior to starting public employment. Service credit for prior military service is a benefit available only to members of WSPRS Plan 1 and PERS Plan 1. Members of all other plans are only allowed service credit for interruptive military service.

i. Current Provisions

Members of PERS Plan 1 and WSPRS Plan 1 must have twenty five service credit years, meet the statutory definition of veteran, and have an honorable discharge to be eligible to receive prior military service credit. Total interruptive and prior military service credit cannot exceed five years, and in both plans the members must restore all withdrawn accumulated contributions in order to receive credit for the prior service. No member payments are required for prior military service credit.

ii. State Pension Policy⁹

The former Joint Committee on Pension Policy (now the Select Committee on Pension Policy) concluded in 1988, upon completion of its study of service credit, that the state's policy was not to grant additional (prior) service credit for military service.

Policies cited that **support** granting prior military service credit in other Washington plans include the following:

- **Recognition of Service:** Granting military service credit that is either partially or wholly funded by the state would recognize the service rendered by individuals to our country.
- **Career Delay:** Service in the military might have delayed the beginning of a member's career with the state and deprived the member of the opportunity to earn a better retirement benefit.
- **Parity:** Prior military service is provided only to the PERS and WSP Plans 1. There has been pressure from members of other systems for similar benefits. RCW 41.50.005(1) sets forth as retirement policy that the retirement systems of the state shall provide similar benefits whenever possible.

Policies cited that **oppose** granting prior military service credit in other Washington plans:

- **Federal Responsibility:** Veteran benefits are properly a responsibility of federal law and federal funding.
- **Cost:** Granting additional military service credit to plan members without requiring payment of the full actuarial cost results in additional liabilities to the plan.
- **Lack of Uniformity:** Providing additional prior military service to one plan might create significant pressure from other systems for similar benefits.
- **Unearned Service:** Granting additional military service credit at little or no cost would provide a benefit for periods when no service was rendered within the plan. Granting service credit for periods of time in which no service was rendered creates pressure on the actuarial liability of the plan.

C. Legislative History¹⁰

Military service credit was 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.

Since 1996, two JCPP bills on military service credit passed in the legislature, and both were to conform Washington law to federal law (USERRA). At least twenty more bills were filed to expand opportunities to acquire military service credit, but none passed.

Due to the war in Iraq there has been a renewed interest in the effects of military service on employee benefits. During the 2004 legislative session, the Office of the State Actuary tracked five bills concerning military service, none of which passed.

Two of these bills, HB 2415 and SSB 6071 would have expanded the definition of "veteran" for various purposes. One bill, 2SSB 6578 would have provided additional compensation to members on military leave.

- **HB 2415** would have expanded the definition of veteran to include a U.S. documented merchant mariner with service aboard an oceangoing vessel operated by the Department of Defense or its agents during the Korean and Vietnam wars.
- **SSB 6071** would have exempted veterans of the Afghanistan conflict and Persian Gulf War II from certain increases in tuition and fees for higher education.
- **2SSB 6578**, would have provided up to two years of military leave during which employees of the state would receive one-half of the difference between their normal pay and their combined military pay and allowances.

The remaining two bills, SB 6743 and SB 6492, would have allowed members of TRS 1 with twenty-five service credit years to receive up to five years of service credit for prior military service. The two bills differed in the amount of contributions members would be required to pay to receive the service credit:

- **SB 6492** required a contribution "as determined by the Director of the Retirement Systems;"
- **SB 6743** required "six percent of the average earnable compensation for the two highest compensated consecutive years of service for each year of prior military service credited."

6. Supporting Information

Endnotes

- 1 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)
- 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 “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.
- 4 Ibid., p.8.
- 5 Ibid., p.9.
- 6 USERRA prohibits the state from charging interest on the outstanding employee contributions.
- 7 USERRA prohibits the state from charging interest on the outstanding employer contributions.
- 8 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).
- 9 Steve Nelsen, “Military Service Credit”, Joint Committee on Pension Policy, September 23, 1997.
- 10 Laura Harper, “Military Service Credit”, Select Committee on Pension Policy, June 15, 2004.