

California Code of Regulations
Title 5. Education
Division 3. Teachers' Retirement System
Chapter 2. Compensation
Articles 2, 3 and 5
Amendments to sections 27300, 27301, 27400, 27401, 27600, 27601 and 27602

Notice published September 30, 2016

NOTICE OF PROPOSED RULEMAKING

The California State Teachers' Retirement System ("CalSTRS") and the Teachers' Retirement Board ("board") propose to adopt amendments to regulations described here after considering all comments, objections and recommendations regarding the proposed action.

PUBLIC HEARING

The Teachers' Retirement Board will hold a hearing:

Date and Time 1:30 p.m.
November 17, 2016

The hearing may be scheduled or rescheduled to occur as early as 8 a.m. or as late as 4 p.m. as it is incorporated into the board's agenda. Please consult the agenda for the meeting, which will be available at www.CalSTRS.com/teachers-retirement-board by November 3, 2016, to confirm the exact time at which the hearing will be held.

Please arrive promptly for check in before the scheduled start time. The hearing will be closed once each speaker has provided his or her testimony.

Location California State Teachers' Retirement System
Boardroom
100 Waterfront Place
West Sacramento, CA 95605

Purpose To receive written or oral comments about this action.
Comments are limited to five minutes each and must not repeat comments already received in written or verbal form.

Accessibility The hearing room is accessible to persons with mobility impairments, and it can be made accessible to persons with hearing or visual impairments upon advance request to the Regulations Specialist.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to CalSTRS. The written comment period closes at 5:00 p.m. on **November 14, 2016**. CalSTRS will only consider written comments received at CalSTRS' address as reflected below by that time. Submit comments to:

Ellen Maurizio
Regulations Specialist, Governmental Relations
California State Teachers' Retirement System
P.O. Box 15275, MS-14
Sacramento, CA 95851-0275
Fax: (916) 414-1993
E-Mail: Regulations@CalSTRS.com

AUTHORITY AND REFERENCE

All Authority and Reference citations are to the California Education Code.

Section 22112.5 defines "class of employees" and provides that the board may override a determination as to whether or not a group or an individual constitutes a class of employees.

Section 22207 authorizes the board to perform any acts necessary for the administration of CalSTRS and the plan in carrying into effect the provisions of the Teachers' Retirement Law, California Education Code sections 22000 through 28101.

Section 22214 provides that the board may take any action it deems necessary to ensure the continued right of members or beneficiaries to receive monthly payments.

Section 22215 provides that the board shall determine the service performed by members to be credited toward qualification for retirement.

Section 22119.2 provides that the board may determine any payments that are and are not "creditable compensation," and CalSTRS may determine any creditable compensation that has been paid to enhance a benefit, and may determine the appropriate crediting of contributions between the Defined Benefit and the Defined Benefit Supplement programs.

Section 22119.5 provides that the board shall have final authority for determining creditable service to cover any activities not already specified in that section.

Section 22138.5 provides that the board has final authority to determine full time for purposes of crediting service.

Section 22138.6 defines "full-time equivalent" as the days or hours of creditable service that a person who is employed part-time would be required to perform in a school year if he or she were employed full time.

Section 22213 provides that the board shall regulate the duties of employers, employing agencies and other public authorities.

Notice of Proposed Rulemaking: Amendments to Creditable Compensation Regulations

Section 22305 provides that any rules and regulations adopted by the board have the force and effect of law.

Section 22458 requires that employers provide the system with information regarding the compensation to be paid to employees subject to the Defined Benefit Program in that school year. The information shall be submitted annually as determined by the board and may include, but shall not be limited to, employment contracts, salary schedules and local board minutes.

Section 22905 describes the types of compensation that are creditable to the Defined Benefit Supplement Program and how related contributions are credited to that program.

These amendments to the regulations further interpret and make specific Education Code sections 22112.5, 22119.2, 22458 and 22905.

The board approved the proposed amendments on September 15, 2016, and directed CalSTRS staff to give public notice and schedule a public hearing before the board.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law establishes the Defined Benefit Program of the State Teachers' Retirement Plan, which provides a defined benefit to members of the program. The defined benefit is based on final compensation, credited service and age at retirement. Existing law also establishes the Defined Benefit Supplement Program, a cash balance plan, which provides supplemental benefits payable in a lump-sum payment, an annuity or both. Contributions for creditable compensation are credited to either the Defined Benefit or the Defined Benefit Supplement account.

Compensation is negotiated and structured in a variety of ways by over 1,700 school employers statewide. To provide greater clarity to employers, members and other stakeholders, CalSTRS adopted creditable compensation regulations, which became effective on January 1, 2015, to improve consistent and uniform reporting of creditable compensation by clarifying the direction provided in the Education Code.

The existing regulations clarify the circumstances under which CalSTRS will override an employer's determination of a class of employees, identify defining characteristics to determine creditable compensation and define when contributions will be credited to either the Defined Benefit Program or the Defined Benefit Supplement Program.

Section 22112.5 of the Education Code defines a "class of employees" as a number of employees considered as a group because they are employed to perform similar duties, are employed in the same type of program or share other similarities related to the nature of the work being performed. The term "same type of program" is not defined in the statute, but it is specified through regulations to include a state or federal program established in law. Chapter 47, Statutes of 2013 (AB 97–Committee on Budget), revised the public financing of educational programs by establishing the Local Control Funding Formula. Most of the categorical education programs previously established in state law were eliminated, and instead, local educational agencies became authorized to expend the funds previously allocated for those categorical education programs. The vehicle for establishing a local program is a Local Control and Accountability Plan.

Notice of Proposed Rulemaking: Amendments to Creditable Compensation Regulations

The amendments proposed in this rulemaking action explicitly allow establishment of a class of employees based on employment in the same program established under a Local Control and Accountability Plan.

Section 22119.2 of the Education Code defines creditable and noncreditable compensation. It contains terms, including “salary” and “remuneration that is paid in addition to salary,” that are clarified in current regulations by describing identifying characteristics of each type of compensation in order to promote consistent understanding and application of each term.

These proposed amendments to the regulation address gaps that have been identified in those definitions, further promoting clarity and common understanding of proper reporting of compensation.

Section 22905 of the Education Code describes the allocation of contributions to the Defined Benefit Program and Defined Benefit Supplement Program accounts. If CalSTRS determines that compensation was paid to enhance a member’s benefits or to not reflect sound principles that support the integrity of the retirement fund, the related contributions are allocated to Defined Benefit Supplement accounts. Current regulations define circumstances under which CalSTRS will determine that compensation was treated inconsistently, including the circumstances under which a restructure of compensation is inconsistent.

These proposed amendments to the regulation remove an unintended loophole that was included in the original language and, instead, add a declaratory statement that compensation will not be found inconsistent solely on the basis of reduced successor pay.

While developing the text of these proposed amendments, CalSTRS searched other state regulations that related to the topics addressed in these regulations and concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

Anticipated benefits of these regulations include: Consistent, fair and equitable reporting of the compensation used for retirement purposes of California educators by all employers; and consistent application of the statutory principles that support the integrity of the retirement fund.

The proposed action clarifies the standards for, and promotes clear and consistent reporting of, compensation by school employers. The proposed action is expected to result in an improved understanding of creditable compensation among CalSTRS and its members and covered employers, but these positive qualitative effects are not expected to be accompanied by any associated time savings, nor any tangible monetary or other benefit.

DISCLOSURES REGARDING THE PROPOSED ACTION

CalSTRS has made the following initial determinations, as required by the California Administrative Procedure Act and Office of Administrative Law regulations:

1. Mandate on local agencies and school districts:

None. The proposed amendments to the regulations do not place a mandate on local agencies or school districts. They clarify an existing responsibility, the proper reporting of employee compensation to CalSTRS.

2. Cost or savings to any state agency:

The proposed amendments to the regulations are not expected to result in any costs or savings to any state agency.

3. Cost to any local agency or school district which must be reimbursed in accordance with California Government Code sections 17500 through 17630:

None.

4. Other nondiscretionary cost or savings imposed on local agencies:

The proposed amendments to the regulations are not expected to result in any costs or savings for local agencies.

5. Cost or savings in federal funding to the state:

None. These regulations do not relate to any federal program.

6. Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states:

None. The proposed amendments to the regulations do not affect any businesses within or outside the state.

7. Cost impacts on a representative private person or business:

The board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed amendments do not affect private persons or businesses.

8. Results of the economic impact assessment/analysis:

These regulations are not anticipated to have any direct, indirect or induced effect on California businesses. Specifically:

- The action will not have any effect on the creation or elimination of jobs within the state.
- The action will not affect the creation of new businesses or the elimination of existing businesses within the state.
- The action will not affect the expansion of businesses currently doing business within the state.
- The action will have no effect on worker safety and the state's environment.

Notice of Proposed Rulemaking: Amendments to Creditable Compensation Regulations

These regulations will not affect the health and welfare of California residents.

The proposed action will clarify the standards for, and promote clear and consistent reporting of, compensation by public school employers. The proposed action is expected to result in an improved understanding of creditable compensation among CalSTRS and its members and covered employers, but these positive qualitative effects are not expected to be accompanied by any tangible monetary or other benefit.

9. Significant effect on housing costs:

None. The proposed amendments do not relate directly or indirectly to housing costs.

10. Small business determination:

The board has determined that the proposed regulations do not affect small business as small businesses are not governed or affected, either directly or indirectly, by the statute that these regulations are clarifying.

CONSIDERATION OF ALTERNATIVES

In accordance with paragraph (13) of subdivision (a) of section 11346.5 of the Government Code, CalSTRS and the board must determine that no reasonable alternative considered or otherwise identified and brought to its attention would be:

- More effective in carrying out the purpose for which the action is proposed,
- As effective and less burdensome to affected private persons than the proposed action, or
- More cost effective to affected private persons and equally effective in implementing the statutory policy.

CalSTRS and the board invite interested persons to present any statements or arguments that would support an alternative to the proposed regulations in the form of written comments or by providing testimony at the public hearing.

CONTACT PERSON

Inquiries concerning the proposed action may be directed to:

Ellen Maurizio
Regulations Specialist, Governmental Relations
California State Teachers' Retirement System
P.O. Box 15275, MS-14
Sacramento, CA 95851-0275
Telephone: (916) 414-1994
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Notice of Proposed Rulemaking: Amendments to Creditable Compensation Regulations

The backup contact person for these inquiries is:

Joycelyn Martinez-Wade
Director, Governmental Relations
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Sacramento, CA 95851-0275
Telephone: (916) 414-1994
Fax: (916) 414-1993
E-Mail: Regulations@CalSTRS.com

Please direct requests for copies of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to CalSTRS using the contact information listed above.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The rulemaking file is available for public inspection and copying throughout the rulemaking process at CalSTRS headquarters at 100 Waterfront Place, West Sacramento, CA, 95605. As of the date this notice is published in the California Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the Initial Statement of Reasons and the Economic and Fiscal Impact Statement (STD 399).

Copies of this notice, the proposed text of the regulations, the Initial Statement of Reasons and the Economic and Fiscal Impact Statement are available at no charge by contacting CalSTRS using the contact information listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the board may adopt the proposed regulations substantially as described in this notice or may, on its own motion or at the recommendation of any interested person, modify the proposed regulations.

If the board makes modifications that are sufficiently related to the original proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before adopting the regulations as revised. The board will accept written comments on the modified regulations for 15 days after the date on which they are made available. Please refer to www.CalSTRS.com/regulations or contact CalSTRS using the contact information listed above for copies of modifications, if any.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, CalSTRS will have the Final Statement of Reasons available for public inspection and copying at its headquarters, located at 100 Waterfront Place, West Sacramento, CA, 95605. Upon filing of the amended regulations with the Secretary of State, the Final Statement of Reasons will also be available temporarily on the CalSTRS website at www.CalSTRS.com/approved-regulations.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Notice of Proposed Rulemaking, the Initial Statement of Reasons and the text of the proposed amendments to the regulations in underline and strikeout are posted on the CalSTRS website at www.CalSTRS.com/regulations.