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June 27, 2011

TO: All County Superintendents of Schools
District Superintendents of Schools
Charter School Administrators
Community College Districts and
Other Employing Agencies

FROM: Jack Ehnes
Chief Executive Officer

SUBJECT: Employer Directive 2011-02
Supersedes Employer Directive 2010-01
Earnings Limit and Legislative Changes for the 2011-12 Fiscal and 2011 Calendar Years

PURPOSE:

This employer directive is intended to inform and remind employers of:

- The service retirement post-retirement earnings limit for the 2011-12 fiscal year.
- The disability retirement earnings limit for the 2011 calendar year.
- The disability allowance earnings limit for the 2011-12 fiscal year.
- Legislative changes to clarify the application of the earnings limit.
- The application of the earnings limit for retired CalSTRS members.
- The restriction for retired CalSTRS members who are under age 60.
- Restrictions on hiring retired CalSTRS members who received a retirement incentive through CalSTRS.
- Restrictions on hiring retired CalSTRS members in classified positions.
- Requirements for employers to inform retired CalSTRS members performing creditable service about the annual earnings limit and to report post-retirement earnings to CalSTRS.
- The post-retirement excess earnings notification process.
- Examples of financial consequences of exceeding the earnings limit.

SCOPE:

This directive contains information for county superintendents of schools, school districts, charter schools, community college districts, and any agency that employs retired members of the Defined Benefit (DB) Program (referred to in this directive as "retired CalSTRS members") to perform creditable service.

DISCUSSION:

2011-2012 Post-Retirement Earnings Limit
The post-retirement earnings limit for the 2011-12 *fiscal* year remains unchanged from the 2010-11 *fiscal* year at $31,020. The limit applies to earnings received from the California public school system only. The limit is adjusted annually by the Teachers' Retirement Board, if necessary, and is based on the average salary of DB Program members.

2011 Disability Retirement Earnings Limit
The disability retirement earnings limit for the 2011 *calendar* year is $26,250. The limit applies to all earnings regardless of whether they are earnings from the public or private sectors. The limit is adjusted annually by the Teachers' Retirement Board, if necessary, by the amount of change in the California Consumer Price Index.

2011-2012 Disability Allowance Earnings Limit
The disability allowance retirement earnings limit for the 2011-12 *fiscal* year is calculated individually for each member. The limit applies to all earnings regardless of whether they are earnings in the public or private sectors. The limit is based on the member's indexed final compensation amount. Members with Coverage A are subject to a monthly earnings limit and a continuous six-month earnings limit.

Legislative Changes
Chapter 207, Statutes of 2010 (Assembly Bill 2260) clarifies in Section 24214.5[1] that the post-retirement earnings limit applies to employment specific to the California public school system and not to employment outside of the public school system. This change conforms to Section 24214, which also references the California public school system. Chapter 207 also strikes references to the Immediate Intervention/Underperforming Schools Program and the High Priority Schools Grant Program since they are no longer funded. In place of those two programs, the amended law adds the Local Education Agency Intervention Program.

[1] Any reference to a section of California law refers to the Education Code

Application of Earnings Limit

Section 24214 imposes limitations on any retired CalSTRS member who returns to work and **performs creditable service as either an employee of an employer, an employee of a third party, or as an independent contractor within the California public school system**. Activities considered to be creditable service and, therefore, subject to the earnings limit are listed in Section 22119.5. Generally, positions in grades pre-kindergarten through community college that require a credential, certificate, permit, or require an employee to meet minimum standards adopted by the Board of Governors of the California Community Colleges, or for which the employer is eligible to receive state apportionment, are considered creditable service.

Restriction for Retired CalSTRS Members who are Under Age 60

Pursuant to Section 24214.5, retired CalSTRS members who are under age 60 and have been retired for less than six months will be subject to a restriction if they return to CalSTRS-covered employment during that time. If the retired member returns to work during this period, CalSTRS will reduce his or her retirement benefit dollar-for-dollar by an amount equal to his or her earnings. This law does not allow exemptions.

This restriction is in addition to the annual earnings limit. Any amount the retired CalSTRS member receives while under age 60 will count against the annual post-retirement earnings limit for the appropriate fiscal year. Both restrictions apply simultaneously.

Retirement Incentive Restrictions

A member who retired with a CalSTRS retirement incentive under Section 22714 will lose the increased retirement benefit attributable to the incentive if he or she returns to employment in any capacity, including in permissible classified service, within five years of retirement for the school district, community college district, or county office of education that granted the member the retirement incentive. Additional information on both retirement incentives is available in Employer Directive 2003-06.

Classified Position Restrictions

Section 45134 may preclude retired CalSTRS members from employment in classified positions in the California public school system. This section is outside the Teachers' Retirement Law and would be enforced by the Department of Education.

Notification and Reporting of Post-Retirement Earnings by Employer

Section 22461 requires employers to notify retired CalSTRS members of the earnings limits and report earnings to CalSTRS each month. All post-retirement earnings must be reported with Member Code 2 and Assignment Code 61.

Post-Retirement Excess Earnings Notification Process

If a retired CalSTRS member earns compensation in excess of the earnings limit as an employee of an employer, an employee of a third party, or as an independent contractor within the California public school system, Section 24214(g) requires CalSTRS to reduce the

member's retirement benefit dollar-for-dollar by the amount of compensation that exceeds the earnings limit until the amount withheld equals the excess earnings up to a maximum of the member's annual retirement benefit.

CalSTRS sends two notifications to the retired member. The first notification is sent when post-retirement earnings are initially reported by the employer. The letter is the *Initial Post-Retirement Earnings Letter* (SR 1369.1) and states the current earnings limit and what will occur if it is exceeded. When the employer reports post-retirement earnings equal to one-half of the earnings limit, CalSTRS sends a second letter, called the *Post-Retirement Earnings Mid-Limit Letter* (SR 1369.2), notifying the member of the dollar amount reported to date, and reminding the member of the consequences of exceeding the earnings limit.

When a member exceeds the earnings limit, CalSTRS sends the member a letter notifying her or him that the excess earnings will be withheld from his or her monthly retirement benefit. CalSTRS gives at least 30 days notice before commencing collection.

Through June 30, 2012, some retired members may qualify for an exemption from the post-retirement earnings limit if they meet the eligibility criteria specified in Sections 24214, 24216, 24216.5 or 24216.6. Exemption requests are subject to CalSTRS approval and must be received by CalSTRS no later than June 30 of the school year for which the exemption would apply. The exemption forms are available on the Secure Employer Web site.

Employers can assist retired members and CalSTRS by taking the following actions:

- Inform the member of the current fiscal year earnings limit and determine if the member may qualify for a CalSTRS exemption, subject to CalSTRS approval.
- Determine if the member has a consecutive 12-month break from CalSTRS-covered service. If so, the member is exempt from the earnings limit through June 30, 2012.
- If the member qualifies for a post-retirement earnings limit exemption, file it prior to, or as soon as, the retired member begins working and no later than June 30 of the school year for which the exemption would apply. For the 2011-2012 fiscal year, exemption requests may not be filed until July 1, 2011. CalSTRS will notify both the employer and retired member in writing if the exemption request is granted or denied.
- Assist the member with tracking their earnings so they do not exceed the limit.

Please refer to Attachment 1 for additional information about the post-retirement earnings limit exemptions.

Examples of Financial Consequences of Exceeding the Earnings Limit

Below are three scenarios of retired CalSTRS members who have exceeded one or both of the earnings limits.

EXAMPLE I:

Mrs. Smith, age 62, service retires June 30, 2010. She returns to employment in the California public school system 14 months later on September 1, 2011 as a retired member. Mrs. Smith earns $4,000 each month in post-retirement earnings for a total of $40,000 by June 30, 2012. She is exempt from the earnings limit because she has a consecutive 12-month break in service.

EXAMPLE II:

Mr. Jones, age 65, retires June 30, 2011. He returns to employment for two school districts in the California public school system two months later on September 1, 2011. By March 2012, he earns $20,000 from District 1 and $20,000 from District 2, for a total of $40,000. He exceeds the earnings limit by $8,980 ($40,000 - $31,020 = $8,980). He is not exempt from the earnings limit because he does not have a consecutive 12-month break in service. CalSTRS will collect the excess earnings dollar-for-dollar from his gross monthly retirement benefit.

CalSTRS will collect Mr. Jones' $8,980 of excess earnings for fiscal year 2011-12 from his $5,000 gross monthly retirement benefit as follows:

	Monthly Benefit Amount	**Outstanding Earnings Limit Overage to Collect**	**Deduction From Monthly Benefit**	**Net Monthly Benefit Amount**
1st Month	$5,000	**$8,980**	$5,000	$0
2nd Month	$5,000	**$3,980**	$3,980	$1,020

EXAMPLE III:
Ms. Garcia, age 59 and 4 months, retires June 30, 2011. She returns to employment in the California public school system on July 1, 2011. She returns to work prior to age 60 and does not have a six-month break in service.

Ms. Garcia earns $2,700 each month in post-retirement earnings for a total of $32,400 by June 30, 2012. During the first six months after her retirement, Ms. Garcia earns $16,200 in post-retirement earnings. Because she is under age 60 at the time of retirement, she is restricted from earning any amount for the first six months after her retirement date. In addition, she exceeds the annual earnings limit by $1,380 ($32,400 - $31,020 = $1,380). CalSTRS is required to collect $17,580 ($16,200 + $1,380 = $17,580).

CalSTRS will collect the $17,580 of excess earnings from her $7,000 gross monthly retirement benefit as follows:

	Monthly Benefit Amount	**Outstanding Earnings Limit Overage to Collect**	**Deduction From Monthly Benefit**	**Net Monthly Benefit Amount**
1st Month	$7,000	**$17,580**	$7,000	$0
2nd Month	$7,000	**$10,580**	$7,000	$0
3rd Month	$7,000	**$3,580**	$3,580	$3,420

ACTION

In accordance with Section 22461, upon retaining the services of a retired CalSTRS member as an employee of an employer, an employee of a third party, or as an independent contractor within the California public school system, the employer is required to:

- Notify the retired member of the earnings limit.
- Maintain accurate records of the retired member's earnings.
- Report those earnings to the retired member and to CalSTRS monthly, using Member Code 2 and Assignment Code 61, regardless of the method of payment or the fund from which the payments were made.

If you have questions regarding the post-retirement earnings limit please visit CalSTRS.com or call 800-228-5453 to speak with a Customer Service Representative. To view prior post-retirement and retirement incentive employer directives, please visit CalSTRS.com, click "Members" and then click "Working After Retirement."

Attachment

Post-Retirement Earnings Limit Exemption Matrix

- An employer must submit all required forms and documentation to CalSTRS by June 30 of the school year for which the exemption is to apply. See employer for exemption forms.
- A member receiving a CalSTRS Retirement Incentive who has not been retired for one year from the effective date of retirement is ineligible for an emergency employment exemption.
- A member receiving additional service credit under Education Code Section 22715 and 22716 is ineligible for an exemption.
- Qualification for **all** earnings limit exemptions is subject to CalSTRS approval. CalSTRS sends a letter to a member approving or denying the exemption request.
- **All exemptions end June 30, 2012** unless extended by future legislation.

Exemption	Required Form	Eligibility	Education Code
12-Month Break	No Form Required	No creditable service performed for at least 12 consecutive months after the most recent retirement.	Education Code Section 24214(e)
K-12 Direct Instruction and Teacher Support	Form SR0126 Direct Classroom/ Remedial Exemption form	• Effective date of retirement on or before January 1, 2009. • Employment in a school district for: o K-12 direct classroom instruction. o Special education program instruction and pupil services. o English language learner program pupil instruction. • Employment to support these programs: o Pre-Internship Teaching Program o Alternative certification o School Paraprofessional Teacher Training Program o Individuals completing student teaching assignments o Beginning Teacher Support and Assessment Program.	Education Code Section 24216.5
Exemption Certification for Classroom/ Remedial Education	Form SR0126 Direct Classroom/ Remedial Exemption form	• Effective date of retirement on or before January 1, 2009. • Employment in direct remedial instruction for grades 2-12: o Before school o After school o Intersession o Summer school o Combination of above	Education Code Section 24216.6

Exemption	Required Form	Eligibility	Education Code
Exemption Certification for Emergency Employment of Retired Member	Form SR0165 Exemption Certification for Emergency Employment of Retired Member	• Employment performing creditable service for a permanently vacant administrative position requiring highly specialized skills in an emergency. • Exemption limited to 24 consecutive months from date of appointment or assignment. • Employment must be reported to governing body of employer in a public meeting. • Recruitment to permanently fill the vacancy is expected to extend over several months. • Vacancy occurs due to circumstances beyond the employer's control. • Vacancy is not due to the termination of the retired member seeking the exemption.	Education Code Section 24216

Exemption Certification for Limited-Term Appointment/ Assignment of a Retired Member	Form SR0164
	
	Exemption Certification for Limited-Term Appointment/ Assignment of a Retired Member
		• Exemption limited to 24 consecutive months from date of appointment or assignment.
		• Member appointed as:
		  o Trustee or administrator by the Superintendent of Public Instruction with a recognized expertise in management and finance.
		  o Trustee under the Local Education Agency Intervention provisions.
		  o Trustee under the High Priority Schools Grant Program
		• Member assigned by:
		  o County superintendent of schools as a fiscal advisor, fiscal expert or as a member of the Fiscal Crisis and Management Assistance Team.
			Education Code Section 24216