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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 2014-03
Supersedes Employer Directive 2013-01
Postretirement Earnings Limit and Legislative Changes for the 2013-14 Fiscal Year, 2014-15 Fiscal Year, and 2014 Calendar Year

PURPOSE

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

- Legislative changes and impact on postretirement.
- The application of the earnings limit for retired CalSTRS members.
- The postretirement annual earnings limit for the 2013-14 fiscal year.
- The postretirement annual earnings limit for the 2014-15 fiscal year.
- The disability retirement earnings limit for the 2014 calendar year.
- The disability allowance earnings limit for the 2013-14 and 2014-15 fiscal years.
- Requirements for requesting an exemption from the annual postretirement earnings limit. This exemption will sunset on June 30, 2014.
- The postretirement separation-from-service requirement for members during the first 180 calendar days from their retirement date with CalSTRS.
- Requirements for requesting an exemption from the separation-from-service requirement.
- Restrictions on hiring retired CalSTRS members in classified positions.
- Retirement Incentive Restrictions.
- Requirements for employer communication regarding the earnings limits and, if applicable, the retirement incentive restrictions when hiring CalSTRS members. Also, the employer requirements regarding maintaining accurate records and reporting postretirement earnings to CalSTRS.
- The CalSTRS postretirement 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”) or the Cash Balance (CB) Program to perform creditable service.

DISCUSSION

Legislative Changes effective January 1, 2014

Chapter 558, Statute of 2013 (Assembly Bill 1379) and Chapter 559, Statute of 2013 (Assembly Bill 1381) have created a number of changes to the Education Code that affect postretirement employment.

This legislation clarified that the postretirement earnings limitation is not applicable to compensation earned for the performance of retired member activities that are not wholly or in part supported by state, local, or federal funds. This legislation also clarified that written agreements entered into, extended, renewed, or amended beginning January 1, 2014, that include payments, including, but not limited to, those for participation in a deferred compensation plan; to purchase an annuity contract, tax-deferred retirement plan, or insurance program; and for contributions to a plan that meets the requirements of section 125, 401(a), 401(k), 403(b), 457(b), or 457(f) of Title 26 of the United States Code when the cost is covered by an employer, will be applied to the postretirement earnings limitation restriction.

This legislation also clarified that the activities of an employee of a third party shall not be included in the definition of “retired member activities” if all of the following apply: the employee performs an assignment of 24 months or less, the third-party employer does not participate in a California public pension system, and the activities performed by the individual are not normally performed by employees of an employer, as defined in section 22131. The addition of Education Code section 26135.7 also clarifies “Retired participant activities” for participants of the Cash Balance Program receiving a retirement benefit.

CalSTRS now has the ability to request earnings information from the Employment Development Department for members of the Defined Benefit Program performing retired member activities. This was previously limited to members receiving a Disability Benefit.

Application of Earnings Limit

Sections 24214 and 24214.5 of the Education Code impose limitations on retired CalSTRS members who return to work and perform creditable service as either an employee of an employer, an employee of a third party (except under certain circumstances), 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 and subdivision (a) or (b) of section 26113.

2013-14 Postretirement Earnings Limit

The earnings limit for Defined Benefit members for the 2013-14 *fiscal* year is $39,903. The earnings limit applies to compensation paid for creditable service performed on behalf of the California public school system. The limit is adjusted annually by CalSTRS and is equal to one-half of the median final compensation amount for members who retired for service during the fiscal year ending in the previous calendar year (i.e., the earnings limit for this fiscal year is based on 50 percent of the median final compensation for members who retired during the 2011-12 fiscal year).

2014-15 Postretirement Earnings Limit

The earnings limit for Defined Benefit members for the 2014-15 *fiscal* year is $40,173. The earnings limit for 2014-15 is $270 more than the previous fiscal year. As previously indicated, this earnings limit applies to compensation paid for creditable service performed on behalf of the California public school system. The limit is adjusted annually by CalSTRS and is equal to one-half of the median final compensation amount for members who retired for service during the fiscal year ending in the previous calendar year. (i.e., the earnings limit for this fiscal year is based on 50 percent of the median final compensation for members who retired during the 2012-13 fiscal year).

2014 Disability Retirement Earnings Limit

The disability retirement earnings limit for the 2014 *calendar* year is $27,900. The limit applies to all earnings regardless of whether the earnings are 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.

2013-14 and 2014-15 Disability Allowance Earnings Limit

The disability allowance earnings limit for the 2013-14 and 2014-15 *fiscal* years is calculated individually for each member. The limit applies to all earnings regardless of whether the earnings are in the public or private sectors. The limit is based on the member's indexed final compensation amount. Members receiving a disability allowance benefit are also subject to individual monthly and continuous six-month earnings limits.

Exemption to the Postretirement Earnings Limit

There is a narrow exemption available through June 30, 2014, for certain appointments to assist schools that are in financial or academic distress. Some retired members may qualify for an exemption from the postretirement earnings limit if they meet the eligibility criteria specified in Education Code section 24214. Please refer to the attached Postretirement Earnings Limit Exemption Matrix for additional information about the postretirement earnings limit exemption.

When applying for the postretirement earnings limit exemption, employers must complete the *Request for Postretirement Earnings Limit Exemption* form which is available in "Reference Items" on the Secure Employer Website. In order for CalSTRS to consider an application for an exemption, we must receive the *Request for Postretirement Earnings Limit Exemption* form and required documentation prior to the retired member performing creditable service as identified in Education Code section 22119.5 or 26113. If CalSTRS does not receive the *Request for*

Postretirement Earnings Limit Exemption form and required documentation prior to the beginning of a member’s postretirement service for that position, CalSTRS will not accept the form for consideration.

If an exemption for the postretirement earnings limit, as outlined in Education Code section 24214, is approved, the member will only be exempt from the annual postretirement earnings limit. The separation-from-service requirement will still apply unless a member previously received a separation-from-service requirement exemption. In order to be exempt from the separation-from-service requirement, a separate exemption request must have been submitted by the employer and approved by CalSTRS.

The postretirement earnings limit exemption provisions set forth in Education Code section 24214 are no longer applicable as of July 1, 2014.

<u>Separation-from-Service Requirement</u>
Pursuant to Education Code section 24214.5, there is a 180 calendar day separation-from-service requirement for all retired CalSTRS members, regardless of age, who retire on or after January 1, 2013. All retired CalSTRS members are subject to a restriction if they return to CalSTRS-covered employment during the first 180 calendar days after their most recent retirement. If the retired CalSTRS member returns to work during this period, CalSTRS will reduce his or her retirement benefit dollar-for-dollar.

We will reduce a member’s retirement by an amount equal to his or her earnings up to the benefit payable during that period. This restriction is in addition to the annual earnings limit. Any amount the retired CalSTRS member receives during the first 180 calendar days of retirement will also count against the annual postretirement earnings limit for the appropriate fiscal year.

Chapter 559, Statute of 2013 (Assembly Bill 1381) amended Education Code section 26812 to stipulate the 180 calendar day separation-from-service requirement applies to Cash Balance Program participants who retired on or after January 1, 2014, no matter their age.

<u>Exemption to the Separation-from-Service Requirement</u>
There is an exemption from the 180 calendar day separation-from-service requirement for a member who retires on or after January 1, 2013, and is at or above normal retirement age. In order to qualify for this narrow exemption, the employer must appoint the retired member to a critically needed position that has been approved by the governing body of the employer in a public meeting as reflected in a resolution. A resolution of the appointment must be adopted before the member begins performing creditable service under the exemption.
The resolution must specify the following:

- The intent to seek an exemption from the 180 calendar day separation-from-service requirement.
- The nature of the employment.
- The appointment is needed to fill a critical need before the 180 calendar day separation-from-service requirement is fulfilled.

- The member did not receive a retirement incentive or any financial inducement to retire from any public employer.
- By retiring the member did not create the vacancy the member is now filling.

When applying for the separation-from-service requirement exemption the Superintendent, the county superintendent of schools, or the chief executive officer of a community college must complete the *Request for Separation-from-Service Requirement Exemption* form which is available in "Reference Items" on the Secure Employer Website. CalSTRS must receive the *Request for Separation-from-Service Requirement Exemption* form and the aforementioned resolution indicating the above information to substantiate the eligibility of the retired member for the exemption before the member begins performing service under the exemption. CalSTRS has an obligation to notify the employer and the retired member within 30 days of receipt of the resolution and all required documentation whether the service performed will be subject to or exempt from the 180 calendar day separation-from-service requirement.

If the separation-from-service requirement exemption is approved, the member will only be exempt from the separation-from-service requirement. The earnings during the 180 calendar day period will still be subject to the annual postretirement earnings limit. In order to be exempt from the postretirement earnings limit, a separate exemption request would need to be submitted by the employer and approved by CalSTRS.

Chapter 559, Statute of 2013 (Assembly Bill 1381) amended Education Code section 24214.5 to clarify what constitutes a "financial inducement to retire" which would affect a retired member from being eligible for an exemption from the separation-from-service requirement.

<u>Classified Position Restrictions</u>
Education Code section 45134 precludes retired CalSTRS members from employment in classified positions in the California public school system. However, this section is outside of the Teachers' Retirement Law and therefore outside the purview of CalSTRS.

<u>Retirement Incentive Restrictions</u>
For members who retired with a CalSTRS retirement incentive under section 22714, they will lose the increased service credit attributable to the retirement incentive if he or she returns to employment in any job within five years of receiving the incentive with the school district, community college district, or county office of education that granted the member's retirement incentive.

Assembly Bill 1379 amends Education Code section 22461 to include a requirement that employers notify retired members of employment restrictions set forth in Education Code section 22714 upon retaining services of a retired member.

Exclusion When Working for a Third Party

Retired members employed by a third party are excluded from the postretirement earnings limit and related provisions provided they meet all of the following criteria:

- The retired member is employed by a third party that does not participate in a California public pension system;
- The activities performed by the retired member are not normally performed by the employees of an employer; and
- The activities are performed by the retired member for a limited term of 24 months or less.

Employer reporting of retired members who are employed by a third party under the narrow conditions above is no longer required. CalSTRS has not identified any example of service that would meet these criteria.

Employer Requirements-Notification of Postretirement Earnings and Employment Restrictions, and Required Reporting of Postretirement Earnings

Education Code section 22461 requires employers to notify retired CalSTRS members of employment restrictions for retirement incentives in addition to earnings limitations and report earnings to CalSTRS each month. All postretirement earnings must be reported with Member Code 2 and Assignment Code 61.

CalSTRS Postretirement Excess Earnings Notification Process

If a retired CalSTRS member earns compensation either during the separation-from-service requirement period or in excess of the annual postretirement earnings limit (for retired member activities) as an employee of an employer, an employee of a third party (except under certain circumstances), or as an independent contractor within the California public school system, Education Code sections 24214(g) and 24214.5(h) 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. CalSTRS can deduct up to a maximum of the member's retirement benefit payable during either, the 180 calendar days for a separation-from-service violation, or during the fiscal year for an annual earnings limit minus any reduction due to the separation from service requirement.

CalSTRS sends an *Initial Postretirement Earnings Letter* to the member when postretirement earnings are initially reported by the employer. The *Initial Postretirement Earnings Letter* states information regarding both earnings limits and what occurs if they are exceeded. When the employer reports postretirement earnings equal to one-half of the annual postretirement earnings limit, CalSTRS sends a second letter, called the *Postretirement Earnings Mid-Limit Letter* notifying the member of the dollar amount reported to date, and reminding the member of the consequences of exceeding the earnings limits.

When a member exceeds either earnings limit, CalSTRS sends the member another letter notifying him or her that the excess earnings will be withheld from his or her monthly retirement benefit. CalSTRS gives at least 30 days' notice before commencing collection. If the earnings were reported to CalSTRS in error by a member's employer, the employer is responsible for correcting the previous reporting and notifying CalSTRS that corrected contribution lines were submitted.

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:

Annual Postretirement Earnings Limit

Mr. Jones, age 65, retired June 30, 2012. He receives $5,500 per month in retirement from CalSTRS. He returns to employment for two school districts in the California public school system on September 1, 2013. By March 2014, he earns $20,000 from District 1 and $30,000 from District 2, for a total of $50,000. He exceeds the earnings limit by $10,097 ($50,000 - $39,903 = $10,097). CalSTRS will collect the excess earnings dollar-for-dollar from his gross monthly retirement benefit.

CalSTRS will collect Mr. Jones' $10,097 of excess earnings for fiscal year 2013-14 from his $5,500 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	$5,500	**$10,097**	$5,500	$0
2nd Month	$5,500	**$4,597**	$4,597	$903

Example II:

Separation-from-Service Requirement - Restriction for all Retired Members who Retired January 1, 2013 or later

Ms. Garcia, age 61 and 2 months, retires June 30, 2013. She receives $7,500 per month in retirement from CalSTRS. After her retirement, she returns to employment in the California public school system on July 1, 2013. She returns to work prior to the 180-day separation-from-service requirement being met.

Ms. Garcia earns $3,500 each month in postretirement earnings for a total of $42,000 by June 30, 2014. During the first 180-days after her retirement, Ms. Garcia earns $21,000 in postretirement earnings. She is restricted from earning any amount for the first 180-days after her retirement date. In addition, she exceeds the annual earnings limit by $2,097 ($42,000 - $39,903 = $2,097). CalSTRS is required to collect $23,097 ($21,000 + $2,097 = $23,097).

CalSTRS will collect the $23,097 of excess earnings from her $7,500 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	$7,500	**$23,097**	$7,500	$0
2nd Month	$7,500	**$15,597**	$7,500	$0
3rd Month	$7,500	**$8,097**	$7,500	$0
4th Month	$7,500	**$597**	$597	$6,903

Example III:
<u>Working for a Third Party</u>

Mr. Smith, age 63, retires June 30, 2012. He receives $10,000 per month in retirement from CalSTRS. He returns to employment for Party of Three, Inc., a third-party employer, and works as an interim superintendent for a school district in the California public school system two months later on September 1, 2012. By May 31, 2013, he earns $108,000. He exceeds the earnings limit by $68,097 ($108,000 - $39,903 = $68,097). CalSTRS will collect the excess earnings dollar-for-dollar from his gross monthly retirement benefit.

CalSTRS will collect Mr. Jones' $68,097 of excess earnings for fiscal year 2013-14 from his $10,000 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	$10,000	**$68,097**	$10,000	$0
2nd Month	$10,000	**$58,097**	$10,000	$0
3rd Month	$10,000	**$48,097**	$10,000	$0
4th Month	$10,000	**$38,097**	$10,000	$0
5th Month	$10,000	**$28,097**	$10,000	$0
6th Month	$10,000	**$18,097**	$10,000	$0
7th Month	$10,000	**$8,097**	$8,097	$1,903

ACTION

In accordance with Education Code 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 all earnings limits and also the retirement incentive employment restrictions, if applicable.
- 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.

To learn more about postretirement limitations, please visit CalSTRS.com, click "Members" and then click "Working After Retirement." If you have questions regarding the postretirement earnings limit, you may contact Postretirement by email at postretirement@calstrs.com or leave a voicemail at (916) 414-5967.

Postretirement Earnings Limit Exemption Matrix

- **Exemption forms AND additional required documentation must be received by CalSTRS prior to the retired member beginning service.**
- **Qualification for an exemption is subject to CalSTRS approval. After review is complete, CalSTRS sends a letter to the member and their employer approving or denying the exemption request.**

	Narrow Exemption for Working in Distressed Schools	**Exemption from the Separation-from-Service Requirement**
Details	Four specific appointments are exempt: o Appointment by the State Superintendent of Public Instruction as a trustee for a school district that has received an emergency apportionment. o Appointment by a county superintendent of schools as a fiscal adviser or fiscal expert for a school district that must revise its budget or that may or will be unable to meet its financial obligations for the remainder of the fiscal year or the subsequent fiscal year(s). o Appointment by the State Board of Education as a trustee or a receiver for a local educational agency that has been identified for corrective action under the federal No Child Left Behind Act of 2001. o Appointment by the Board of Governors of the California Community Colleges as a special trustee for a community college district that fails to achieve fiscal stability or that fails to comply with Board of Governors recommendations.	In order to qualify for this exemption, the employer must appoint a member to a position that has been approved by the governing body of the employer in a public meeting as reflected in a resolution. The resolution must be adopted before the member begins performing creditable service under the exemption. A member can only qualify for this exemption if he or she has reached normal retirement age.
Education Code	§24214	§24214.5
Required CalSTRS Form	*Request for Postretirement Earnings Limit Exemption* form	*Request for Separation-from-Service Requirement Exemption* form
Additional Required Documentation	The appointing authority must certify that: o The position was advertised to active or inactive members and no qualified person was available to be appointed. o The appointing authority made a good faith effort to hire a retired member who would reinstate. o The salary being paid does not exceed what was advertised or is currently paid for that position.	The resolution must specify the following: • The intent to seek an exemption from the 180 calendar day separation-from-service requirement. • The nature of the employment. • The appointment is needed to fill a critical need before the 180 calendar day separation-from-service requirement is fulfilled. • The member did not receive a retirement incentive or any financial inducement to retire from any public employer. • The member did not create the vacancy the member is now filling.
Expiration of Exemption and Additional Restrictions	This exemption only applies to the annual earnings limit. If applicable, the retired member will still be subject to the separation-from-service requirement. To exempt a member from both limitations, you must apply for both exemptions separately. This exemption sunset on June 30, 2014.	This exemption only applies to the separation-from-service requirement. The retired member will still be subject to the annual earnings limit. To exempt a member from both limitations, you must apply for both exemptions separately.