

2021 Legislative and Regulatory Proposals

Employer Advisory Committee
November 10, 2020

Potential legislative proposal on statute of limitations for collecting overpayments

- Currently soliciting feedback from stakeholders.
- Next steps:
 - Make any additional changes
 - If moving forward, staff would seek approval from the board in December to sponsor legislation

The proposal is intended to accomplish the following goals:

- Provide equity to members that experience a decrease in benefits through no fault of their own.
 - Under current law, in most cases CalSTRS collects the full amount from the member when the decrease occurred because of employer error.
 - In cases of system error, CalSTRS cannot collect more than three years of overpayments from the member.
 - This change would also align CalSTRS practice with that of CalPERS
- Clearly establish CalSTRS' rights to correct benefits and recover overpayments

Among other things, CalSTRS proposal would make the following changes:

- Require CalSTRS to collect overpayments from employers instead of from the members if both of the following criteria are met:
 - The overpayment occurred more than three years prior to the collection; and
 - The employer was responsible for the error that caused the overpayment.
- Require employers to remit amounts due within 30 days, with late payments being subject to regular interest or withholding from school funds.

Estimated impact to employers

Based on 2014-15 to 2018-19 data:

Aggregate annual recoverable from all CalSTRS employers: \$2 million

Annual % of employers with recoverable overpayment: 20%

% of employers with recoverable overpayment over 5 years: 45%

Mean overpayment recoverable from employer: \$6k to \$7k

Median overpayment recoverable from employer: \$300 to \$500

Avg. annual maximum recoverable from one employer: \$250k

Draft regulations on employer audit appeals

- Upon board direction, formed drafting team.
- Currently soliciting feedback from stakeholders on initial draft.
- Next steps:
 - Make any additional changes
 - Seek board approval of draft regulations to initiate the formal rulemaking process

The draft regulations are intended to accomplish the following goals:

- Provide equal and consistent treatment, to the extent feasible, of sampled and systemic members;
- Avoid delays in the issuance of the final audit report;
- Implement reporting corrections, benefit adjustments and recovery of the overpayments as soon as practicable for *all* affected members; and
- Provide a review and appeal process that leads to a single adjudicatory process.

CalSTRS draft regulations would make the following changes:

- Remove the requirement to inform the sampled population of the draft / preliminary audit report or the final audit report.
- Require audited employer to inform employees and former employees that the employer is subject to an audit and to post the final audit report to the employer's web site.

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- Provide that within 90 days of the final audit report, employers must:
 - Submit a list of *all* members affected by an audit finding
 - Request an administrative hearing if the employer disagrees
- Provide the opportunity for *all* affected members to request an administrative hearing within 45 days of the issuing of a Determination.
- Create an additional employer penalty to recoup any costs associated with an appeal by a member not identified in original list