

FINAL STATEMENT OF REASONS

Update of Initial Statement of Reasons

Section 27401. Remuneration that is Paid in Addition to Salary

Paragraph (5) of subdivision (a)

The proposed regulations, as originally noticed, clarified that remuneration in addition to salary is paid “with no requirement for expenditure.” The Purpose statement on the ISOR noted, “If compensation is paid with a requirement for expenditure, it is a job-related expense and not creditable compensation.”

The regulations text was updated to state that, in order to meet the definition of “remuneration in addition to salary,” the compensation must be “paid without a requirement by the employer for proof of expenditure.” This is the same verbiage that is used in the preceding definition of “salary,” and it describes the same requirement.

The originally published regulations text did not clearly attribute who or what would be making a requirement for expenditure of compensation, or how that requirement would manifest itself. The updated verbiage makes the intent as stated in the ISOR clear: a payment for a job-related expense, for which an employee is required to show proof to an employer that an expenditure was made (for example, documenting miles driven to receive a travel reimbursement), is not creditable compensation.

Section 27600. Consistent Treatment of Compensation

Subdivision (e)

The amendments originally proposed did not provide an explicit mechanism for finding inconsistent treatment of compensation should, for example, a class of employees that is based on a program created under a Local Control and Accountability Plan (LCAP) functionally provide a significant compensation increase to late-career individuals to the detriment of sound principles that protect the integrity of the retirement fund.

The amendments to Section 27300 explicitly allow the establishment of a class of employees based on employment in the same program established under an LCAP. A comment from the public encouraged CalSTRS to consider whether limitations on classes of one should be included in the regulations as a result. In considering the possible implications of the broader universe of acceptable classes of employees that may result from this provision, CalSTRS determined that it would be prudent to also broaden the language regarding a finding of inconsistent treatment of compensation when there is a pattern of late-career compensation increases.

As a result, subdivision (e) of Section 27600 was modified. The language in the original chaptered regulations provides that, notwithstanding other provisions that would generally protect against a finding of inconsistent treatment of compensation, if there is a pattern of assignment of duties or responsibilities during the final compensation period, the additional compensation associated with those duties is inconsistent (and would therefore be credited to the Defined Benefit Supplement Program). The provision is made more general, as follows:

1. *Refer to a pattern of “changes that result in additional compensation that the system determines was paid to enhance a member’s benefits” rather than the more restrictive pattern of “assignment of duties or responsibilities.”*

This change addresses the commenter’s concern by describing the mechanism CalSTRS staff could use to find inconsistent treatment of compensation for a program-based class of employees.

2. *Refer more generally to “late career” changes rather than restricting the timeframe to the final compensation period.*

Using more general language protects against potential manipulation by allowing CalSTRS greater discretion to enforce the provision. To illustrate, under the current regulations, if a pattern of late career increases is noted, CalSTRS would be restricted from making a finding of inconsistent treatment of compensation for a member who had one-year final compensation if the increase began at least one year and one day prior to retirement and continued until retirement. In contrast, other findings of inconsistent treatment are examined and adjusted over the course of the last seven years of employment. This change permits staff to make individual determinations of inconsistent treatment where a pattern is found.

Subdivision (e) of Section 27600 would only be used in individual cases to support a finding of inconsistent treatment after case-by-case evaluation by CalSTRS. This provision has not yet been used as a basis of a finding of inconsistent treatment, and with the changes, CalSTRS is not aware of any compensation arrangements that will necessitate its use in the future. The provision is needed to communicate CalSTRS interpretation of law, clarifying for the public that a pattern of late career increases is subject to examination by CalSTRS. This allows employers and other stakeholders to proactively avoid problematic compensation arrangements that violate sound actuarial principles.

Paragraph (2) of subdivision (f)

This change and a similar one in paragraph (2) of subdivision (b) of Section 27601 are changes without regulatory effect that merely revise syntax.

The regulations, as originally noticed, were updated to make the regulatory provision consistent with Chapter 755, Statutes of 2014 (SB 1220–Torres), which revised the language in Section 22134 of the Education Code and repealed Section 22136 of the Education Code, statutes that define “final compensation.”

The language in the regulations as originally proposed was made more flexible to functionally incorporate the evolution in statutory language. At the request of the Department of Finance, the language is amended to instead specifically reference Education Code section 22134.

The change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

Section 27601. Appropriate Crediting of Contributions*Paragraph (2) of subdivision (b)*

The same changes are made that were made in paragraph (2) of subdivision (f) of Section 27600.

Summary and Response to Comments Received in the Initial Comment Period

Comment 1: Class of One in “Common Use” and Revised Definition of “Program”: The commenter encouraged CalSTRS to consider the implications of not limiting the creation of a class of one based upon a separate program. While supporting the flexibility of the proposed language, the commenter noted the likelihood of classes of one based on LCAP programs being established, and if limits on that ability are intended, CalSTRS may wish to consider doing so in these amendments.

Response: CalSTRS made the amendments discussed above to subdivision (e) of Section 27600 in response to this comment.

Comment 2: Section 27400 Language and Education Code Section 22119.2: The commenter suggested adding language from Education Code section 22119.2 to subdivision (a) of Section 27400, which requires salary to be paid “in accordance with a publicly available written contractual agreement,” clarifying that this is “including, but not limited to, a salary schedule or employment agreement.” The commenter explained

that some managers have a salary schedule but are not part of a bargaining agreement and do not have an employment contract.

Response: CalSTRS did not make changes to the text of the regulations in response to this comment. A salary schedule is, by its nature, a contractual agreement—that understanding is supported by the express language of Education Code section 22119.2, which describes a salary schedule as a publicly available written contractual agreement. CalSTRS determined that the additional language duplicating the language in the Education Code was not needed and, therefore, would not meet the “nonduplication” standard of the Administrative Procedure Act.

Comment 3: Statement of Support of Certain Provisions: One commenter shared a letter of support for the amendments. Specifically, the commenter supported the inclusion of LCAP programs as the basis of a class of employees; the clarification that compensation is not creditable when a choice of how the remuneration is awarded is offered, especially as it pertains to large class sizes; and the inclusion of salary for mentoring assignments, regardless of how it is documented or increased. The commenter also supported the revision to Section 27600 related to the consideration of successor pay by CalSTRS in assessing the consistent treatment of compensation.

Response: No response is needed. The comments were considered during the development of the regulations, and it was determined that none of the changes discussed in the Final Statement of Reasons affect the items included in the comment.

Hearing and Second Comment Period

No comments were received at the hearing held on November 17, 2016.

No comments were received during the second comment period, held from April 10 through April 25, 2017.

Alternatives Determination

CalSTRS has determined that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Local Mandate Determination

CalSTRS has determined that the regulations proposed do not constitute a mandate on school districts or other local agencies. The regulations do not mandate a new program or activity or require a higher level of service in any existing program or activity. These amendments make only technical and clarifying changes to current regulations. These changes are expected to improve the usefulness of the regulations as a tool for employers and other stakeholders, but are not expected to result in any time or cost savings or expenditures.