

California Code of Regulations

Title 5. Education. Division 3. Teachers' Retirement System

Chapter 1. Teachers' Retirement System.

Article 15.5. Penalties and Interest for Late Remittances and Late and Unacceptable Reporting by Employers.

Amendments to § 27007.

Notice published July 31, 2015

NOTICE OF PROPOSED RULEMAKING

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

PUBLIC HEARING

The Teachers' Retirement Board has delegated the authority to hold a public hearing to the Chief Executive Officer. The CEO will hold a hearing:

Date and Time	9:30 a.m. September 15, 2015
	Please arrive promptly for check in by 9:30 a.m. 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 actions to CalSTRS. The written comment period closes at **5:00 p.m.** on September 14, 2015. CalSTRS will only consider written comments received at CalSTRS' address as reflected below by that time. Submit comments to:

Ellen Maurizio
Regulations Specialist, Legislative Affairs
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

The Teachers' Retirement Board has exclusive authority to administer CalSTRS under Article XVI, section 17 of the California Constitution.

Sections 22119.2 and 22119.3 of the California Education Code define "creditable compensation."

Section 22905 of the Education Code describes the circumstances under which contributions are credited to Defined Benefit and Defined Benefit Supplement accounts.

Section 22207 of the Education Code 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 22213 of the Education Code provides that the board shall regulate the duties of employers, employing agencies and other public authorities.

Section 22214 of the Education Code 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 22250 of the Education Code provides that the board and its officers and employees shall discharge their duties with respect to the system and the plan solely in the interest of its members, participants and beneficiaries, and for the exclusive purpose of providing benefits and defraying reasonable costs of administering the plan.

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

These regulations implement, interpret, and make specific Education Code sections 23002 and 23003.

INFORMATIVE DIGEST

CalSTRS relies on the timely and correct remittance of information and contributions from county offices of education and district employers that are authorized to report directly to CalSTRS. The information reported to CalSTRS is used to determine the amount of the state appropriation from the General Fund to the Teachers' Retirement Fund. Late and inaccurate reporting of data can result in inaccurate benefit payments to members. It can also result in lost state appropriations and lost investment opportunities for CalSTRS.

Chapter 17 of the Teachers' Retirement Law requires that penalties and interest be assessed on employers for late or inaccurate reporting of retirement data and payment of contributions. Effective July 1, 2012, the Penalties and Interest Regulations (Article 15.5 of Chapter 1 of Division 3 of Title 5, California Code of Regulations) implemented consistent and transparent assessment of penalties and interest.

Current regulations levy a 5 percent penalty for extra-late contributions, which are those contributions received from employers after March 1 of the year following the fiscal year in which the contributions were due.

The current 5 percent penalty rate is insufficient to recover lost state contributions. At the time the Penalties and Interest regulations were written, the state appropriation rate was lower than it is today. The state appropriation rate increased effective July 1, 2014, and will be subject to adjustment by the Teachers' Retirement Board under Chapter 47, Statutes of 2014 (AB 1469–Bonta), beginning July 1, 2017. The state appropriation rate may be increased by no more than 0.5 percent per year or may be adjusted down as low as 4.517 percent (2.017 percent for the state contribution to the Defined Benefit Program, plus 2.5 percent for the Supplemental Benefits Maintenance Account), in accordance with the funding needs of the plan pursuant to the actuarial valuation.

These amendments to the regulation propose a penalty rate that is the greater of the following: the state rate in effect each March 1 immediately preceding the date the late contribution is received, or 5 percent.

These regulations are specific to CalSTRS, and there are no comparable federal regulations or statutes. 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.

It is the broad intent of these regulations to (1) recoup from employers an amount that will more closely relate to the actual state rate and (2) retain the existing incentive for employers to remit contributions and report in a timely fashion by establishing the existing 5 percent penalty rate as the minimum penalty rate.

Setting the penalty rate to reasonably recoup lost state contributions ensures that the Defined Benefit Program is appropriately funded and not shortchanged by late reporting. This, in turn, benefits taxpayers, the state and employers who remit contributions according to the law.

Notice of Proposed Rulemaking: Assessment of Penalties for Late Contributions

No other nonmonetary benefits, such as the protection of public health and safety, worker safety or the environment; the prevention of discrimination; the promotion of fairness or social equity, are anticipated.

The regulations proposed in this rulemaking action make specific the Education Code as it relates to the board's authority to approve school districts or community college districts to report directly to CalSTRS. CalSTRS evaluated whether the proposed regulations were inconsistent or incompatible with existing state regulations and found that there are no overlapping provisions with other state regulations. Thus, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

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. These regulations increase an existing penalty assessed when employers remit extra late contributions. Employers can avoid this penalty by remitting contributions timely.

2. Cost or savings to any state agency:

These regulations are expected to result in savings to the General Fund in the form of a lower continuous appropriation rate for transfer to the Teachers' Retirement Fund beginning July 1, 2017.

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:

These regulations are expected to result in an increased cost for those local governments (school employers) that report late contributions after March 1 of the year following the fiscal year in which the contributions were due. However, these regulations are expected to result in savings to local government (school employers) overall in the form of a resulting lower contribution rate paid to CalSTRS beginning July 1, 2020.

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

None.

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

None.

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

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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 regulations only directly affect local government (school employers).

8. Results of the economic impact assessment/analysis:

These regulations are not anticipated to have any effect on California businesses. Specifically:

- The action will have a negligible induced 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.

These regulations will not affect the health and welfare of California residents, except to the extent that they ultimately result in a modest benefit to the state and school employers as a whole and, thus, to taxpayers and the economy.

9. Significant effect on housing costs:

None.

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 by the statute that these regulations are clarifying.

CONSIDERATION OF ALTERNATIVES

In accordance with paragraph (13) of subdivision (a) of section 11346.5 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 administrative action may be directed to:

Ellen Maurizio
Regulations Specialist, Legislative Affairs
California State Teachers' Retirement System
P.O. Box 15275, MS-14
Sacramento, CA 95851-0275
Telephone: (916) 414-1994
Fax: (916) 414-1993
E-Mail: Regulations@CalSTRS.com

The backup contact person for these inquiries is:

Joycelyn Martinez-Wade
Manager, Legislative Affairs
California State Teachers' Retirement System
P.O. Box 15275, MS-14
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 the Regulations Specialist using the contact information listed above.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

CalSTRS will have the entire rulemaking file available for public inspection and copying throughout the rulemaking process at its offices 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 the Regulations Specialist using the contact information listed above.

In addition, each of the above documents is available for viewing on the CalSTRS website at www.CalSTRS.com/regulations.

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.

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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 Ellen Maurizio using the contact information listed above for copies of modifications, if any.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, the Final Statement of Reasons will be available temporarily on the CalSTRS website at www.CalSTRS.com. CalSTRS will have the Final Statement of Reasons available for public inspection and copying at its offices at 100 Waterfront Place, West Sacramento, CA, 95605.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

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