

## INITIAL STATEMENT OF REASONS

### **Problem and Purpose Statement**

Existing law establishes the Defined Benefit Program of the State Teachers' Retirement Plan, which provides a defined benefit to California educators. The defined benefit is based on final compensation, credited service and age at retirement. Existing law also establishes the Defined Benefit Supplement Program, a cash balance plan, which provides supplemental benefits in the form of a lump-sum payment, an annuity or both. Contributions for creditable compensation are credited to either the Defined Benefit Program or the Defined Benefit Supplement Program.

Compensation is negotiated and structured in a variety of ways by over 1,700 CalSTRS-covered employers statewide. To improve consistent and uniform reporting of creditable compensation by clarifying the direction provided in the Education Code, the Teachers' Retirement Board adopted creditable compensation regulations, which became effective on January 1, 2015. The existing regulations clarify the circumstances under which CalSTRS will override an employer's determination of a class of employees, identify defining characteristics to determine creditable compensation and define when contributions will be credited to either the Defined Benefit Program or the Defined Benefit Supplement Program.

CalSTRS compiled questions that have arisen during the course of the first year of implementation of the creditable compensation regulations. The overarching problem staff identified is that, where the regulations seek to provide clear direction, previously unanticipated situations have arisen that are not explicitly described in the regulations. The primary purpose of the proposed amendments described here is to provide further clarification of specific provisions that have raised questions from stakeholders or that CalSTRS recognizes involve greater complexity and warrant a more detailed or nuanced clarification than is provided in current regulations.

Under each of the amendments described in the sections that follow, a more topically specific discussion of the purpose and problem CalSTRS intends to address with each amendment is included as appropriate, along with the rationale for the determination that each amendment is reasonably necessary to carry out the purpose and address the problem for which it is proposed.

This rulemaking also contains amendments that are without regulatory effect pursuant to Section 100 of Title 1 of the California Code of Regulations. The amendments do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any regulatory provision. Each of those changes is noted in the sections that follow, along with an explanatory statement.

**Section 27300. Basis of Establishment of a Class of Employees.**

***Subdivision (a), including paragraph (1)***

This subdivision and paragraph include changes without regulatory effect, revising sentence structure and making the regulatory provision consistent with the reorganization of Section 22119.5 of the Education Code, the referenced California statute, pursuant to Chapter 782, Statutes of 2015 (AB 963–Bonilla). Because of the renumbering of that section and the reordering of related categories of creditable service, the regulatory provision is inconsistent with, and superseded by, the changed statute. CalSTRS has no discretion to adopt a change which differs in substance from the one chosen.

***Paragraph (2) of subdivision (a)***

Problem

Section 22112.5 of the Education Code defines a “class of employees” as a number of employees considered as a group because they are employed to perform similar duties, are employed in the same type of program or share other similarities related to the nature of the work being performed. The term “same type of program” is not defined in the statute, but it is specified through regulations to include a state or federal program established in law.

Chapter 47, Statutes of 2013 (AB 97–Committee on Budget), revised the public financing of educational programs by establishing the Local Control Funding Formula. Most of the categorical education programs previously established in state law were eliminated; instead, local educational agencies are now authorized under state law to create individually tailored plans to expend the funds previously allocated for those categorical education programs. The vehicle for establishing a local program is a Local Control and Accountability Plan (LCAP). Although LCAPs are established pursuant to state law, the specific programs established in an LCAP are local, not state, programs.

Purpose

The amendments proposed in this rulemaking action would explicitly allow establishment of a class of employees based on employment in the same program established under an LCAP.

Rationale

Locally established programs, rather than programs established under state law, are now the most typically found programs in California prekindergarten through grade 12 education. Staff determined that allowing a separate class of employees to be established on the basis of employment in a separate program established under an LCAP was the most appropriate solution to the problem identified. The original intent of the regulations to define a finite and comprehensive list of acceptable programs is best served by cross-referencing the specific code mandating establishment of an LCAP. This reference

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ensures that classes of employees established on the basis of being employed in the same type of program retain a similar degree of formality as the state-mandated programs that LCAPs have largely replaced.

### *Reference citation*

This section includes a change without regulatory effect, deleting a reference citation. Section 1205 of the Education Code was originally referenced in error and does not relate to the regulations text.

### **Section 27301. Prohibited Classes of Employees.**

#### *Paragraph (5) of subdivision (a)*

This paragraph contains changes without regulatory effect, revising sentence structure and making the regulatory provision consistent with the reorganization of Section 22119.5 of the Education Code, the referenced California statute, pursuant to Chapter 782, Statutes of 2015 (AB 963–Bonilla). Because of the renumbering of that section and the reordering of related categories of creditable service, the regulatory provision is inconsistent with, and superseded by, the changed statute. CalSTRS has no discretion to adopt a change which differs in substance from the one chosen.

### **Section 27400. Salary.**

#### *Paragraphs (1) and (2) and subparagraphs (A) and (B) of paragraph (3) of subdivision (a)*

These two paragraphs and the referenced subparagraphs contain changes without regulatory effect, revising structure and syntax.

The current regulations provide that salary is “paid in cash by an employer to an employee for the performance of creditable service.” As other proposed changes to this section, described below, were added, the section grew and became more complex, compromising its overall readability. The proposed amendments present the requirements and identifying characteristics of salary as discrete requirements and provide a cross reference to relevant law.

The amendments add a global requirement that salary is paid in accordance with a “publicly available written contractual agreement.” This is a restatement of a requirement of the Education Code, which requires that salary must be “paid in accordance with a publicly available written contractual agreement, including, but not limited to, a salary schedule or employment agreement.”

The amendments include a cross reference to the Education Code definition of “creditable service” and add the word “activities.”

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These amendments, while not substantive, were identified by staff as necessary to promote readability and usefulness of the regulations. Staff determined that the restatement of the law in paragraph (1) is necessary in the context of this section, which clearly lays out the other qualities needed for creditability of salary, for ease of use of the regulations. Staff added the cross reference to “creditable service” as defined in the Education Code to improve the usefulness of the regulatory definition of “salary” to stakeholders.

### *Subparagraph (C) of paragraph (3) of subdivision (a)*

#### Problem

Section 22119.2 of the Education Code defines creditable and noncreditable compensation. It contains terms, including “salary,” that are clarified in current regulations. Whenever feasible, the current regulations define creditability of compensation in terms of *qualities the compensation possesses*, rather than *what it is paid for*. In addition, the regulations define “salary,” in general, as creditable compensation that is earned for performance of service.

The current definition of salary contains an exception that compensation paid to execute duties that are “related to, and an outgrowth of, the instructional and guidance program of the school” need not be the basis of future pay increases, acknowledging that these types of assignments (which include, for example, coach or club advisor) are often not paid according to a salary schedule and do not always reflect year-over-year increases or decreases that mirror the salary schedule. Instead, pay for these outgrowth assignments may be negotiated as a flat amount, as a percentage of a particular step of the salary schedule, or by some other formula. This language was added to the original regulations as a result of stakeholder feedback, acknowledging the realities of employment in an education setting while preserving CalSTRS’ intent to require that employers report compensation for assignments that are associated with the performance of service as salary.

Since the implementation of the current regulations, it has come to staff’s attention that, in some agreements, compensation for other types of assignments that CalSTRS would generally view as “salary,” when the pay meets the other criteria delineated in regulations, are structured similarly to the outgrowth assignments described above.

#### Purpose

The proposed amendments add compensation paid “to perform creditable service activities that are related to the examination, selection, in-service training, mentoring, or assignment of teachers, principals, or other similar personnel involved in the instructional program” as another type of pay that is reportable as salary, but that does not need to be explicitly described as “salary” on the written agreement nor be the basis of future pay increases.

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### Rationale

Staff initially identified an amendment to this provision as necessary as a result of inquiries from employers regarding creditability of this type of pay.

Staff solicited input from employers and member representative groups regarding other compensation, besides pay for outgrowth activities, which would similarly not necessarily be characterized as “salary” on a written agreement or used as the basis for pay increases. Mentoring and related assignments were the sole assignments identified; no other assignments have been identified that would be paid in this manner.

Although it is generally staff’s preference to identify qualities of pay, rather than the purpose of pay, as often as feasible when defining what is creditable, staff determined that this limited carveout would most appropriately address the questions regarding mentoring-type assignments, without unnecessarily revising the definition of “salary” more globally.

Rather than referencing mentoring assignments specifically, the text of related activities is transcribed from Section 22119.5 of the Education Code, which defines creditable service. This is necessary in order to remain consistent with the convention established throughout these regulations, which consistently group similar types of activities in the same manner they are grouped in the statute.

### ***Paragraph (1) of subdivision (b)***

### Problem

The current regulations provide that a stipend paid for an outgrowth assignment is for additional service, and the employer must establish a compensation earnable for those activities. With the addition of a carveout for mentoring activities that is similar to the carveout for outgrowth activities as described earlier, the text becomes less clear as to whether it is directing employers to establish a compensation earnable only for outgrowth activities or for all activities.

### Purpose

The amendments remove the cross reference to Section 22119.5 of the Education Code, which was renumbered and reordered pursuant to Chapter 782, Statutes of 2015 (AB 963–Bonilla).

In the place of that cross-reference, the regulations text related to outgrowth and mentoring activities is cross-referenced. In the case of outgrowth activities, this is a change without regulatory effect, replacing a reference to text in the Education Code with the same text in the regulations. In the case of mentoring activities, the change highlights the requirement for employers to develop a compensation earnable for these assignments.

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### Rationale

All compensation that meets the definition of “salary” must be reported with a compensation earnable amount, meaning that it will generate service credit. In the original regulations, outgrowth assignments were specifically called out in this section to confirm for employers that additional assignments that are associated with the performance of service should be reported so that they generate service credit, in contrast to the idea that if release time was granted, the additional compensation could be reported in a manner that would *not* generate service credit.

Using the same rationale, staff determined that it is also necessary to specify that assignments such as mentoring must be reported with the amount of the compensation that would be earnable if the assignment were performed full time.

### **Section 27401. Remuneration that is Paid in Addition to Salary.**

#### ***Subdivision (a), including paragraphs (1), (2) and (3)***

This subdivision and paragraphs include changes without regulatory effect, revising sentence structure and syntax by breaking up a long opening provision into separate discrete requirements.

#### ***Subparagraph (A) of paragraph (2) of subdivision (a)***

### Problem

Section 22119.2 of the Education Code defines creditable and noncreditable compensation. It contains terms, including “remuneration that is paid in addition to salary,” that are clarified in current regulations. “Remuneration that is paid in addition to salary” is defined, in part, as creditable compensation that is earned for non-time based pay, such as pay for attainment of a certificate or advanced degree or in recognition of the complexity or responsibility of a creditable service activity, when the complexity or responsibility does not entail additional time.

Current regulations include a short list of pay types that may be creditable as remuneration in addition to salary, one of which is “employment in an assignment in which the number of students enrolled exceeds the contractual amount.” The provision was initially included in the regulations as a result of feedback from stakeholders, who pointed out that additional pay associated with having more students in the classroom was not covered under other creditable categories initially identified by CalSTRS staff. Recognizing that pay for large class sizes is creditable, it was explicitly included in the definition of remuneration that is paid in addition to salary.

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Since the implementation of the regulations, staff has become more familiar with complexities associated with compensation for large class sizes. The specific issues identified are:

1. Large class sizes are treated as additional load in some written agreements. It is common, particularly among community college districts, for a written agreement to define “full time” in terms of a workload-based unit of measurement that is representative of full-time hours worked. A full-time employee must achieve a given load factor to meet the full-time requirement. Factors such as lab versus lecture hours, certain subject areas and large class sizes contribute to the formula awarding load factors to individual employees.

By the terms of such an agreement, an instructor might earn double or triple the load credit by teaching a very large class. Generally, this additional load credit could be used to offset the number of courses that instructor teaches in a semester, or if the instructor is teaching in excess of a full load (commonly called “overload”), it might be banked or taken as additional pay above the full-time requirement during that semester, as permitted by the Education Code and according to the terms of the agreement.

Staff has identified that any pay associated with the accrual of load necessarily must be treated as salary since it is implicitly time-based according to the terms of the agreement, and because overload pay allows instructors to earn more in a pay period than their compensation earnable—which, as overtime pay, will ultimately result in crediting of contributions to the member’s Defined Benefit Supplement account.

2. Large class size compensation arrangements may be established case by case at the discretion of the administration or educator. In reviewing a variety of contracts, staff identified a pattern of discretion in the provision of large class size compensation at multiple districts; these types of arrangements are generally found among prekindergarten through grade 12 districts. A typical agreement specifies that if the class size maximum cap is exceeded, the employer and educator must mutually agree to a remedy, which may include the assignment of a teachers’ aide, relocation of excess students to a different site or additional compensation.

This type of arrangement, as with other similar arrangements where cash is available in lieu of a noncreditable form of remuneration and not paid in the same manner to an entire class of employees, is not creditable compensation. Even in a class of one, when the written agreement specifies a choice in the manner in which compensation is provided, and the selection made dictates the creditability of that compensation, the pay is not creditable to CalSTRS.

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3. Large class size compensation is not always given in a form that is creditable to CalSTRS. Similar to the issue above, even in the absence of the element of discretion, remuneration for a large class size may be given in a form that is noncreditable to CalSTRS. For example, an educator with a large class might be given an allowance for additional classroom supplies.

This type of pay is not creditable compensation as it meets the definition of a job-related expense.

The overarching problem, given the issues above, is that explicitly including pay for assignments in which the number of students exceeds the contractual amount as creditable, alongside contradicting requirements and qualities of pay required for creditability, has the potential to lead to confusion as to its application.

The edits to this subparagraph seek to clarify creditability of compensation for the first issue listed above. See the discussion related to paragraphs (4) and (5) of this section for staff's proposed solution to clarify issues 2 and 3.

### Purpose

The addition of this subparagraph addresses the first issue identified under *Problem*, which relates to the different treatment of large class sizes under different written agreements.

The amendments add language clarifying that, in an assignment for which full time is calculated on the basis of workload credits (most commonly found at community college districts), compensation for service that is associated with the accrual of workload credits is not reportable as remuneration that is paid in addition to salary.

### Rationale

When units of load form the basis of full time, the associated salary most often will meet the definition of "salary" in Section 27400. However, staff concluded that it was necessary to specifically refer to load crediting in Section 27401, and to make it clear that pay associated with load accrual is associated with the performance of additional service and, therefore, is not remuneration in addition to salary. This language redirects those who may be uncertain as to whether pay that is given in the context of a large class size constitutes "salary" pursuant to Section 27400 or "remuneration that is paid in addition to salary" pursuant to Section 27401.

The relationship between the large class size provision and load is not explicitly highlighted in the regulations language. This is because load credits, globally, should *always* be reported to CalSTRS associated with performance of service. Staff determined that an overall clarification of this concept would provide greater usefulness than more narrow language specifically addressing the problem related to large class sizes that was initially identified.

*Paragraphs (4) and (5) of subdivision (a)*

Problem

See preceding discussion of *Subparagraph (A) of paragraph (2) of subdivision (a)*. The amendments proposed to these paragraphs address issues 2 and 3 under *Problem*.

Purpose

The addition of paragraph (4) clarifies that remuneration that is paid in addition to salary must be paid in the same manner to all members of a class of employees. If compensation is offered in an alternative form (for example, a teacher with extra students in the classroom can choose between a teachers' aide and cash compensation), it is not creditable.

The addition of paragraph (5) similarly clarifies that remuneration in addition to salary is paid with no requirement for expenditure. If compensation is paid with a requirement for expenditure, it is a job-related expense and not creditable compensation.

Rationale

When compensation is paid according to individual choice, or when compensation has a requirement for expenditure, it is not creditable. Staff determined that the inclusion of text walking through these concepts would assist employers and members in differentiating between the various types of noncreditable remuneration and creditable compensation that is paid for teaching large class sizes.

The relationship between the large class size provision and paragraphs (4) and (5) is not explicitly highlighted in the regulations language. This is because the relevant provisions apply to all remuneration that is paid in addition to salary, even though the problem initially identified related to large class sizes. Staff determined that an overall clarification of this concept would provide greater usefulness than more narrow language directly addressing the specific problem related to large class sizes that was initially identified.

*Paragraph (6) of subdivision (a)*

This paragraph includes changes without regulatory effect, revising sentence structure and syntax by adding an introductory provision and renumbering subparagraphs and clauses.

In addition, the phrase “the number of students enrolled exceeds the contractual **amount**” is changed to “the number of students enrolled exceeds the contractual **class size maximum**,” for improved readability.

**Section 27600. Consistent Treatment of Compensation.**

***Subdivision (b)***

Problem

Section 22905 of the Education Code describes the allocation of contributions to the Defined Benefit Program and Defined Benefit Supplement Program. If CalSTRS determines that compensation was paid to enhance a member's benefits or to not reflect sound principles that support the integrity of the retirement fund, the related contributions are allocated to the Defined Benefit Supplement accounts. Current regulations define circumstances under which CalSTRS will determine that compensation was treated consistently, in the absence of which, CalSTRS will generally find compensation to be inconsistent.

The current regulations contain language that unintentionally created a loophole through a "notwithstanding" provision, which would theoretically allow a late career pay restructure for a class of one that is not continued for the employee's successor to remain creditable to the Defined Benefit Program, so long as the successor had less education or experience. In addition, subdivision (b) contains a presumption of consistent treatment of compensation, which conflicts with other provisions that presume inconsistency in scenarios that could co-exist with a successor who is paid less due to less education or experience.

Staff is not aware of any attempts since implementation to exploit the inadvertent weaknesses in the current language.

Purpose

The language is revised to declare that CalSTRS will not presume a member's compensation to be inconsistent solely by reason of reduced successor pay, rather than to declare that CalSTRS will presume pay to be consistent if a successor earns less as a result of less education or experience.

Rationale

While the amended language is essentially declaratory, since CalSTRS has no provision to presume inconsistent treatment of compensation solely on the basis of reduced successor pay, staff has determined this language is necessary through discussions with stakeholders, as well as comments that were received during the initial rulemaking.

Under paragraph (8) of subdivision (a), CalSTRS will make a positive presumption of consistency in cases where a successor's pay is commensurate with that of a retired member's. This positive presumption prompted questions from some stakeholders as to whether the converse would also apply, in which CalSTRS would presume compensation to be *inconsistent* because a successor earns less.

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Staff determined that the proposed language best serves the purpose of ensuring mutual understanding among CalSTRS and stakeholders as to how successor compensation figures into an analysis of consistent treatment of compensation.

### ***Subdivision (d)***

This subdivision includes a change without regulatory effect, fixing a grammatical error.

### ***Paragraph (1) of subdivision (f)***

This paragraph contains a change without regulatory effect, making the regulatory provision consistent with revised language in Section 22134 of the Education Code, a statute that defines “final compensation,” pursuant to Chapter 755, Statutes of 2014 (SB 1220–Torres). The term “3 years” was changed to “36 months.” The current regulatory provision is inconsistent with, and superseded by, the changed statute. CalSTRS has no discretion to adopt a change that differs in substance from the one chosen.

### ***Paragraph (2) of subdivision (f)***

This paragraph contains a change without regulatory effect, making the regulatory provision consistent with revised language in Section 22134 of the Education Code and the repeal of Section 22136 of the Education Code, statutes that define “final compensation.”

Chapter 755, Statutes of 2014 (SB 1220–Torres) revised the definition of “final compensation,” in relevant part by changing references to “three years” to “36 months.” Chapter 218, Statutes of 2016 (SB 1352–Committee on Public Employment and Retirement), effective January 1, 2017, reorganizes and revises the definition of “final compensation” to address breaks in service, including reference to periods during which a member’s salary was reduced because of a reduction in school funds.

The statutory language that currently allows for nonconsecutive periods of final compensation in limited circumstances, Section 22136 of the Education Code, will be repealed effective January 1, 2017. Similar language is added to Section 22134 stating that periods of service separated by breaks in service or by periods in which a member’s salary was reduced because of a reduction in school funds may be aggregated.

The language in the regulations is updated accordingly and is also made more flexible to functionally incorporate the historical evolution in the statutory language. The proposed amendments cover all members who retired over the years prior to and following the changes to the statute described above:

- The term “any three years” is replaced with “nonconsecutive periods of time.”
- The specific reference to Section 22136 of the Education Code is removed and replaced with a generic reference to the Education Code.

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The current regulatory provision is inconsistent with, and superseded by, the changed statute. CalSTRS has no discretion to adopt a change that differs in substance from the one chosen.

### **Section 27601. Appropriate Crediting of Contributions.**

#### ***Paragraph (1) of subdivision (b)***

This paragraph contains a change without regulatory effect, making the regulatory provision consistent with revised language in Sections 22134 and 22136 of the Education Code, statutes that define “final compensation,” pursuant to Chapter 755, Statutes of 2014 (SB 1220–Torres). The current regulatory provision is inconsistent with, and superseded by, the changed statute. CalSTRS has no discretion to adopt a change that differs in substance from the one chosen.

#### ***Paragraph (2) of subdivision (b)***

This paragraph contains the same change without regulatory effect that is described in paragraph (2) of subdivision (f) of section 27600.

#### ***Reference citation***

This section includes a change without regulatory effect, deleting a reference citation. Sections 1205 and 2574 of the Education Code were originally included in error and do not relate to the regulations text.

### **Section 27602. Compensation that is Paid a Limited Number of Times.**

#### ***Subdivision (b)***

This subdivision includes changes without regulatory effect, changing structure or syntax. The current regulations reiterate parts of the content of Section 27401. Rather than update that language with the concurrent changes to Section 27401, the proposed amendments include a cross reference to that section.

### **Benefits Anticipated**

Anticipated benefits of these regulations include: Consistent, fair and equitable reporting of the compensation used for retirement purposes of California educators by all employers; and consistent application of the statutory principles that support the integrity of the retirement fund.

The proposed action will clarify the standards for, and promote clear and consistent reporting of, compensation by CalSTRS-covered employers. The proposed action is expected to result in an improved understanding of creditable compensation among CalSTRS and its members and

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covered employers, but these positive qualitative effects are not expected to be accompanied by any associated time savings, nor any tangible monetary or other benefit.

### **Studies, Reports or Other Documents Relied Upon**

None.

### **Economic Impact Analysis**

CalSTRS has considered the proposal's impact on business, with consideration of industries affected and information supplied by interested parties, including the ability of California businesses to compete with businesses in other states. The amendments will not impact any business, nor any specific industry, because the amendments do not impose any rules or obligations on any entity other than school employers (which includes school districts, community college districts and county offices of education).

These amendments do not substantively change CalSTRS existing interpretation of the related statutes; they simply improve the clarity of existing regulatory provisions. These clarifications are expected to result in no cost or benefit to school employers. The amendments do not alter any existing requirements or create new requirements but simply expand the language of provisions that have invited questions by stakeholders, prompting CalSTRS to provide greater clarity through more specific language in the regulations. Similarly, the amendments are not expected to result in any costs or savings to CalSTRS or any other state agency.

Because there is neither direct fiscal impact at the local or state level, nor any change to the current creditability of member compensation, CalSTRS does not anticipate any indirect or induced effects of the regulation to any public or private sector entities or individuals.

CalSTRS has determined that the regulations proposed do not constitute a major regulation, as the total economic output in the first 12 months is not expected to exceed \$50 million.

### **Economic Effect on Business**

These amendments to the regulations include clarifying language to improve the usefulness of existing regulations for school districts, community college districts, county offices of education and other employing agencies; member representative groups; and CalSTRS staff. The current regulations do not impose any rules or obligations on any business entity, and the amendments do not introduce any new rules or obligations, nor do they contain any items of potential interest or even relevance to businesses. No direct, indirect or induced effect on businesses is anticipated.

Specifically:

- The action will have no effect on the creation or elimination of jobs within the state.

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- 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 the health and welfare of California residents and no effect on worker safety and the state's environment.

CalSTRS concludes that there will be no economic impact on business, including no effect on the ability of California businesses to compete with businesses in other states. These regulations do not place any economic burden on business as they do not place any additional licensing, record keeping or compliance requirements on businesses.

### **Conferring with Interested Persons**

Pursuant to Section 11346.45 of the Government Code, CalSTRS staff provided information and solicited input regarding this proposed action with stakeholder groups, including various school employers, the California Teachers Association, the Association of California School Administrators, the California County Superintendents Educational Services Association, the California Association of School Business Officials, the California Federation of Teachers, the Small School Districts' Association, other stakeholder groups and the CalSTRS Employer Advisory Committee.

CalSTRS staff has provided information to the Department of Finance regarding the proposed amendments and their economic and fiscal impact.

### **Alternatives Considered**

The majority of edits made did not warrant a discussion of alternatives since they are simply providing additional clarity or bringing the regulations in line with current California statutes.

However, the changes to Section 27401, the definition of “remuneration that is paid in addition to salary,” with respect to providing clarification regarding class size in excess of the contractual amount, did warrant exploration of alternatives.

The alternative identified would have specified that compensation for large class sizes *paid by prekindergarten through grade 12 employers only* is within the definition of remuneration in addition to salary (leaving compensation paid by a community college districts creditable as salary or as noncreditable if the compensation does not meet the definition of “salary” pursuant to Section 27400).

The alternative approach was discarded because it makes a broad distinction between the treatment of compensation paid by community college and prekindergarten through grade 12 districts. While the two employer types have legitimate differences—the laws governing their

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staffing and class sizes being the most relevant here—in staff’s analysis of community college district bargaining agreements, at least one district was found to compensate for large class sizes in a cash stipend similar to the pay more commonly found in a prekindergarten through grade 12 environment. Therefore, while there is a strong correlation between community college districts’ treatment of large class size payments as salary and prekindergarten through grade 12 districts’ treatment of it as noncreditable or as remuneration that is paid in addition to salary, that correlation is imperfect and cannot be relied upon.

CalSTRS has not identified any alternative that would lessen any adverse impact on small businesses. No alternative has been proposed that would be less burdensome and equally effective in achieving the purposes of the regulation in a manner that accomplishes the purposes of the statute being implemented.