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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 2013-01
Supersedes Employer Directive 2012-05
Earnings Limit and Legislative Changes for the 2012-13 Fiscal and 2013 Calendar Years

PURPOSE

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

- The service retirement postretirement earnings limit for the 2012-13 fiscal year.
- The service retirement postretirement earnings limit for the 2013-14 fiscal year.
- The disability retirement earnings limit for the 2013 calendar year.
- The disability allowance earnings limit for the 2012-13 fiscal year.
- Legislative changes to extend the narrow exemption for work in distressed schools, expand the separation from service requirement, and create an exemption from the separation from service requirement.
- The application of the earnings limit for retired CalSTRS members.
- The restriction for retired CalSTRS members who are under age 60 and retire before January 1, 2013.
- Restrictions on hiring retired CalSTRS members who received a retirement incentive through CalSTRS.
- Restrictions on hiring retired CalSTRS members in classified positions.
- Requirements for employers to inform retired CalSTRS members performing creditable service about the earnings limits and to report postretirement earnings to CalSTRS.
- The 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") to perform creditable service.

DISCUSSION

2012-2013 Postretirement Earnings Limit
The earnings limit for Defined Benefit members who retire from service for the 2012-13 *fiscal* year is $40,011. The earnings limit applies to earnings received for service performed on behalf of the California public school system. The limit is adjusted annually by the Teachers' Retirement Board and is equal to one-half (or 50 percent) of the median final compensation figure 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 2010-11 fiscal year).

2013-2014 Postretirement Earnings Limit
The earnings limit for Defined Benefit members who retire from service for the 2013-14 *fiscal* year is $39,903. The earnings limit for 2013-14 is $108 lower than the previous fiscal year. As previously indicated, this earnings limit applies to earnings received for service performed on behalf of the California public school system. The limit is adjusted annually by the Teachers' Retirement Board and is equal to one-half (or 50 percent) of the median final compensation figure for members who retired for service during the fiscal year ending in the previous calendar year.

Application of Earnings Limit
Section 24214 imposes limitations on any retired CalSTRS member who returns to work and performs 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.

Retirement Incentive Restrictions
A member who retired with a CalSTRS retirement incentive under Section 22714 will lose the increased retirement benefit attributable to the incentive if he or she returns to employment in any capacity, including in permissible classified service, as an employee of a third party or as an independent contractor, within five years of retirement for the school district, community college district, or county office of education that granted the member the retirement incentive.

Classified Position Restrictions

Section 45134 may preclude retired CalSTRS members from employment in classified positions in the California public school system. This section is outside the Teachers' Retirement Law and would be enforced by the Department of Education.

Notification and Reporting of Postretirement Earnings by Employer

Section 22461 requires employers to notify retired CalSTRS members of the earnings limits and report earnings to CalSTRS each month. All postretirement earnings must be reported with Member Code 2 and Assignment Code 61.

Postretirement Excess Earnings Notification Process

If a retired CalSTRS member earns compensation in excess of the annual postretirement earnings limit 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, Section 24214(g) 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 up to a maximum of the member's annual retirement benefit minus any reduction due to the separation from service requirement.

CalSTRS sends two letters to the retired member. The first notification is sent when postretirement earnings are initially reported by the employer. The letter is the *Initial Postretirement Earnings Letter* (SR 1369.1) and 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* (SR 1369.2), 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.

Employers can assist retired members and CalSTRS by taking the following actions:

- Inform members of the current fiscal year earnings limit ($40,011).
- Assist members with tracking their earnings so they do not exceed the limit.

Restriction for Retired CalSTRS Members who are Under Age 60 and retired prior to January 1, 2013

Pursuant to Section 24214.5, retired CalSTRS members who are under age 60, retire prior to January 1, 2013, and have been retired for less than 180 days are subject to a restriction if they return to CalSTRS-covered employment during that time. If the retired member returns to work during this period, CalSTRS will reduce his or her retirement benefit dollar-for-dollar by an amount equal to his or her earnings. There are no exemptions to the separation for service requirement for retired CalSTRS members under age 60. This restriction is in addition to the annual earnings limit. Any amount the retired CalSTRS member receives while under age 60 will also count against the annual postretirement earnings limit for the appropriate fiscal year. Retired CalSTRS members who retire before January 1, 2013, and have attained normal retirement age are not subject to the 180-day separation from service requirement, but are still subject to the annual earnings limitation of $40,011.

Separation from Service Requirement

Chapter 296, Statues of 2012 (AB 340—California Public Employees' Pension Reform Act of 2013), amends Section 24214.5 to expand the 180 day separation from service requirement to 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 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 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 days of retirement will also count against the annual postretirement earnings limit for the appropriate fiscal year.

There is one exemption to this separation for service requirement for retired CalSTRS members, which applies to retired members who have obtained normal retirement age and meet certain requirements. Please see Separation from Service Exemption to determine if your employee may qualify. Retired CalSTRS members who retire before January 1, 2013, and have attained normal retirement age are not subject to the 180-day separation from service requirement, but are still subject to the annual earnings limitation of $40,011.

Separation from Service Exemption

There is an exemption from the 180-day separation from service requirement for a member who retires on or after January 1, 2013, and is at or above normal retirement age (age 60 for CalSTRS 2% at 60 members). 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. The resolution must specify the following:

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

The Superintendent, the county superintendent of schools, or the chief executive officer of a community college must submit to CalSTRS the aforementioned resolution with any supporting documentation required to substantiate the eligibility of the retired member for the exemption. The resolution and all required documentation must be received 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-day separation from service requirement.

The form for this exemption is available on the Secure Employer Web site.

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

<u>Exemption When Working In Distressed Schools</u>
There is a narrow exemption available for certain appointments to assist schools that are in financial or academic distress. Through June 30, 2014, some retired members may qualify for an exemption from the postretirement earnings limit if they meet the eligibility criteria specified in Section 24214. Please refer to Attachment 1 for additional information about the postretirement earnings limit exemption.

When applying for this exemption, the law requires that all requests must be received by CalSTRS prior to the retired member performing creditable service as identified in 22119.5 or 26113. In order for CalSTRS to consider an application for an exemption, we must receive the exemption form and required documentation prior to the member beginning work. If we do not receive the form and required documentation prior the beginning of a member's postretirement service, CalSTRS is unable to accept the form for consideration.

The form for this exemption is available on the Secure Employer Web site.

If this exemption is approved, the member will only be exempt from the annual earnings limit. The separation from service requirement, if applicable, will still apply. In order to be exempt from the separation from service requirement, a separate exemption request would need to be submitted by the employer and approved by CalSTRS.

<u>Exclusion When Working for a Third Party</u>
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.

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.

<u>2013 Disability Retirement Earnings Limit</u>
The disability retirement earnings limit for the 2013 *calendar* year is $27,450. The limit applies to all earnings regardless of whether they are earnings 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.

<u>2012-2013 Disability Allowance Earnings Limit</u>
The disability allowance retirement earnings limit for the 2012-13 *fiscal* year is calculated individually for each member. The limit applies to all earnings regardless of whether they are earnings in the public or private sectors. The limit is based on the member's indexed final compensation amount. Members with Coverage A are subject to a monthly earnings limit and a continuous six-month earnings limit.

<u>Examples of Financial Consequences of Exceeding the Earnings Limit</u>
Below are three scenarios of retired CalSTRS members who have exceeded one or both of the earnings limits.

EXAMPLE I:
(<u>Annual Postretirement Earnings Limit</u>)
Mr. Jones, age 65, retires 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 two months later on September 1, 2012. By March 2013, 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 $9,989 ($50,000 - $40,011 = $9,989). CalSTRS will collect the excess earnings dollar-for-dollar from his gross monthly retirement benefit.

CalSTRS will collect Mr. Jones' $9,989 of excess earnings for fiscal year 2012-13 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	**$9,989**	$5,500	$0
2nd Month	$5,500	**$4,489**	$4,489	$1,011

EXAMPLE II:
(Restriction for Retired Members Under Age 60 and Retired Prior to January 1, 2013)
Ms. Garcia, age 59 and 4 months, retires June 30, 2012. 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, 2012. She returns to work prior to age 60 and does not have a six-month break in service.

Ms. Garcia earns $3,500 each month in postretirement earnings for a total of $42,000 by June 30, 2013. During the first six months of employment after her retirement, Ms. Garcia earns $21,000 in postretirement earnings. Because she is under age 60 at the time of retirement, she is restricted from earning any amount for the first six months after her retirement date. In addition, she exceeds the annual earnings limit by $1,989 ($42,000 - $40,011 = $1,989). CalSTRS is required to collect $22,989 ($21,000 + $1,989 = $22,989).

CalSTRS will collect the $22,989 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	**$22,989**	$7,500	$0
2nd Month	$7,500	**$15,489**	$7,500	$0
3rd Month	$7,500	**$7,989**	$7,500	$0
4th Month	$7,500	**$489**	$489	$7,011

The collection method above also applies to all retired members, regardless of age, who retire after January 1, 2013, and return to CalSTRS-covered employment within 180 calendar days of retirement.

EXAMPLE III:
(Working for a Third Party)
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 $67,989 ($108,000 - $40,011 = $67,989). CalSTRS will collect the excess earnings dollar-for-dollar from his gross monthly retirement benefit.

CalSTRS will collect Mr. Jones' $67,989 of excess earnings for fiscal year 2012-13 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	**$67,989**	$10,000	$0
2nd Month	$10,000	**$57,989**	$10,000	$0

	Monthly Benefit Amount	Outstanding Earnings Limit Overage to Collect	Deduction From Monthly Benefit	Net Monthly Benefit Amount
3rd Month	$10,000	**$47,989**	$10,000	$0
4th Month	$10,000	**$37,989**	$10,000	$0
5th Month	$10,000	**$27,989**	$10,000	$0
6th Month	$10,000	**$17,989**	$10,000	$0
7th Month	$10,000	**$7,989**	$7,989	$2,011

ACTION

In accordance with 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.
- 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 e-mail 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	Form SR0164: Request for Postretirement Earnings Limit Exemption	Form SR1897 : Request for Separation-from-Service Requirement Exemption
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-day separation from service requirement. • The nature of the employment. • The appointment is needed to fill a critical need before the 180-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 sunsets 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.