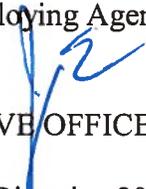




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October 12, 2017

TO: All County Superintendents of Schools  
District Superintendents of Schools  
Community College Districts  
Charter Schools and  
Other Employing Agencies

FROM: Jack Ehnes   
EXECUTIVE OFFICE

SUBJECT: Employer Directive 2017-05  
October 1, 2017, Amendments to the Creditable Compensation Regulations

**PURPOSE:**

This directive provides information regarding the October 1, 2017, amendments to the Creditable Compensation Regulations (Chapter 2 of Division 3, Title 5 of the California Code of Regulations).

**SCOPE:**

This directive contains information for county superintendents of schools, school districts, charter schools, community college districts and any agency that employs persons to perform creditable service under the CalSTRS Defined Benefit (DB), Defined Benefit Supplement (DBS) and Cash Balance (CB) Benefit programs.

**DISCUSSION:**

Effective January 1, 2015, the Creditable Compensation Regulations clarify and make specific provisions related to class of employees, creditable compensation and the appropriate crediting of contributions for CalSTRS 2% at 60 members. The regulations were amended on October 1, 2017, to provide additional clarification. Refer to Employer Information Circular Volume 30, Issue 5, for more comprehensive information regarding the regulations in their entirety.

**Programs Established Pursuant to a Local Control and Accountability Plan as a Basis for Establishing a Class of Employees**

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.

Section 27300 of the Creditable Compensation Regulations clarifies the basis upon which an employer can create a class of employees. Education Code section 22112.5 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 in Section 27300 to include a state or federal program established in law.

Section 27300 was amended to clarify that programs established in an LCAP meet the criteria upon which an employer can establish a class of employees.

#### **Compensation Paid for Mentoring and Similar Duties as Salary**

Section 27400 of the Creditable Compensation Regulations clarifies the use of the term “salary” as it relates to creditable compensation. In order for compensation to be considered salary, it must be paid in cash by an employer, paid for the performance of creditable service, explicitly characterized as salary in a written agreement, and used for the basis of future pay increases. However, 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 because these types of assignments 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.

Section 27400 was amended to clarify that 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” is 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. As with any compensation deemed salary, the employer must establish a compensation earnable for these activities.

#### **Class Size Overload as Creditable Compensation**

Section 27401 of the Creditable Compensation Regulations defines “remuneration that is paid in addition to salary” as it relates to creditable compensation. “Remuneration that is paid in addition to salary” is defined, in part, as compensation that is not associated with the performance of additional service. Section 27401 includes a short list of the types of pay that may be creditable as remuneration in addition to salary, which includes “employment in an assignment in which the number of students enrolled exceeds the contractual amount.” The language was amended to reference the “contractual class size maximum” for improved readability.

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. Based on this type of 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, it might be taken as additional pay above the full-time requirement during that semester or banked to offset a future semester, as permitted by the Education Code and according to the terms of the agreement.

Section 27401 was amended to clarify that when the contractual full-time is based on load credits or a similar non-time based measure, additional service includes any service that is associated with earning those credits. In other words, the compensation associated with accumulating load credits is associated with the performance of additional service and, therefore, is not reportable as remuneration in addition to salary. If the overload credit is banked for future use to cover a period when the employee works less than a full load, the compensation overload credit should be reported as salary when the banked time is used. If the overload credit is not banked for future use, the compensation should be reported as salary for an additional assignment.

In addition, compensation for large class sizes and other types of 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), the compensation is not creditable. This is true even if cash is one of the alternatives and it is the option selected. Section 27401 was amended to clarify this provision.

**Additional Amendments with No Impact to the Reporting of Creditable Compensation**

The aforementioned sections along with Section 27301 of the Creditable Compensation Regulations also include amendments to improve readability. In addition, Sections 27600 through 27602 were amended to clarify the manner in which CalSTRS assesses compensation for consistency and credits contributions appropriately. None of these amendments have a bearing on the manner in which employers report creditable compensation to CalSTRS.

**ACTION**

Refer to the updated Creditable Compensation Regulations to ensure compensation paid to CalSTRS 2% at 60 members for service performed on or after January 1, 2015, is accurately reported to CalSTRS.

The updated regulations will be included in the 2018 edition of the Teachers' Retirement Law book available on CalSTRS.com. In the meantime, you can access the updated regulations on the Secure Employer Website under Reference Items.

This Employer Directive does not take precedence over the law. If you have any questions regarding this Employer Directive, please email [EmployerHelp@CalSTRS.com](mailto:EmployerHelp@CalSTRS.com) or call 877-277-5778.

