

FINAL STATEMENT OF REASONS

Update of Initial Statement of Reasons

Section 27201. Effective date.

The proposed regulations as originally noticed specified that the provisions of this chapter are effective with service performed on or after July 1, 2014 (or a later date, depending on the earliest effective date allowed following the rulemaking process).

The language was updated to reflect an effective date of January 1, 2015, once it became apparent that the July 1, 2014, target date would not be met. In addition, the language was updated to specify that the provisions related to analysis of consistent treatment of compensation and the formulas used to adjust contributions from inconsistent compensation, which apply uniform standards to a practice currently performed case by case, apply to audits and determinations completed after the January 1, 2015, effective date.

This clarification is needed because CalSTRS already allocates contributions between the Defined Benefit Program and members' Defined Benefit Supplement accounts. These provisions relate to practices that are already in effect and are not affected by the definition of creditable compensation; these regulations simply allow consistent application of those adjustments, without introducing any new requirements for members or employers.

Section 27300. Basis of establishment of a class of employees.

The proposed regulations as originally noticed provided definitions for two of the three terms used in the Education Code to define "class of employees": "Job duties" and "program." The regulations were amended to include the provision of law that states that a class may also be formed because a group of employees shares "other similarities related to the nature of the work being performed."

This reiteration of the law was deemed necessary concurrent with the change to section 27301. Otherwise, there is an apparent conflict between the language of the Education Code and that of the regulations. The third element of "other similarities related to the nature of the work being performed" covers establishment of full-time and part-time community college faculty in separate classes, which does not fall into either category specified in the regulations as originally noticed.

The proposed regulations as originally noticed were expanded in response to comments that related primarily to section 27400. Language was added specifying that, if an employee is performing school activities related to, and an outgrowth of, the instructional and guidance program of the school when performed in addition to other creditable service activities, those employees belong by default to the class of employees performing the other creditable service activities.

This update, together with changes to section 27400, was made in response to multiple comments from the directly affected public objecting to the treatment of “reassigned time” in the regulations. This provision allows an employer to maintain all employees who are performing similar duties in the same class of employees, regardless of other additional, seasonal, permissive or rotating assignments that an individual may be performing in a typical education employment setting.

Most “release time” assignments are outgrowth activities, so these changes allow for those who teach and coach, for example, to remain in the “teacher” class of employees. Many assignments that involve “release time” do not offer additional compensation. When they do, the stipend would be reported as an additional assignment, regardless of whether or not release time was provided from the member’s teaching duties. By allowing this and by making it a default, the number of classes of employees and the potential for classes of one can be minimized, minimizing in turn the potential for unique compensation arrangements for a select group of employees or a single employee.

Section 27301. Prohibited classes of employees.

The proposed regulations as originally noticed specified that a class of employees distinguished by an option or requirement to work a longer day, or more days per year, is acceptable only if the class members are employed in a separate program. However, staff identified a potential conflict with Section 22138.5 of the Education Code, related to the definition of “full time”: The Education Code explicitly provides a separate minimum full time standard for full-time and for part-time community college faculty (175 days or 1,050 hours and 525 hours, respectively). Because the Education Code requires that a class of employees share a common full-time requirement, the mechanism to establish a class needed to be explicit in the regulations. A specific exception to the rule was accordingly added for part-time and full-time community college faculty.

Section 27400. Salary.

Subdivision (a)

The proposed regulations as originally noticed described the requirements of salary, listing the qualities that salary must possess.

A specific exception to the requirement that salary must be “used as a basis for future pay increases” was added in conjunction with the removal of subdivision (c) of this section and the changes described under section 27300, in response to comments from the directly affected public recommending an alternative approach to the provisions discussing “reassigned time.” The change to this subdivision, adding 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, acknowledges that these types of assignments may not be paid according to a salary schedule or reflect year-over-year increases or decreases

that mirror the salary schedule. Instead, the outgrowth assignments described may be paid as a flat amount, as a percentage of a particular step of the salary schedule, or by some other formula. This change acknowledges the realities of employment in an education setting while preserving CalSTRS' intent to require that employers report assignments that are associated with the performance of service as salary.

Subdivision (b)

As originally noticed, subdivisions (b) and former subdivision (c) (now removed) specified that an employer must establish a full-time requirement and compensation earnable for all assignments in which an employee will earn salary and described how to apply this requirement when the employer provides "release time."

In response to public comments objecting to the regulations treatment of "release time," a paragraph was added explicitly providing that a stipend paid for an outgrowth assignment is for additional service, and the employer must establish a compensation earnable for those activities.

This represents a change to current practice; CalSTRS has historically allowed the reporting of stipends as "special compensation" (a type of reporting code that is not associated with the accrual of service credit) if the employee is granted release time to perform the associated duties. The stipend associated with the release time duties could be in recognition of additional time or additional responsibilities. However, as historically reported by employers, no portion of the assignment performed during the release period needed to be reported with associated service credit, meaning that no part of it would generally be creditable to the member's Defined Benefit Supplement account. Instead, these payments effectively increase the member's compensation earnable.

Public comments received indicate that those employers who do provide additional pay do so to acknowledge that the assignment requires additional time. These regulations require that these stipends be reported accordingly. This means that any stipend paid for to an individual who is employed full time will result in some amount being credited to the Defined Benefit Supplement Program. It also means that late-career assignments of these types of duties will not increase a member's final compensation.

In response to the same public comments referenced above, the language specifically referring to establishment of a full-time requirement was removed because establishing a full-time requirement is required by the Education Code 22138.5. When the provision regarding reassigned time was part of the proposed regulation, the specification added an extra level of clarity to that requirement because it prevented salary from being reported as "special compensation." Together with the other changes made, however, the restatement of law in that context was no longer necessary.

Subdivision (c) (Former subdivision [d])

This subdivision specifies that compensation that is permanently restructured as salary becomes salary, effective on the date of the restructure. As originally noticed to the public, this subdivision (formerly numbered as subdivision [d]) additionally described the circumstances under which CalSTRS will presume a restructure is not permanent.

This text was relocated to make clear that restructured compensation may be creditable to CalSTRS (to the Defined Benefit Supplement Program) even if it is not a permanent restructure. A nonpermanent restructure, under law, could be classified as inconsistent treatment of compensation, or else it would be treated as compensation that is paid a limited number of times, which is creditable to the DBS Program. In addition to the movement of text, the description of “nonpermanent” was clarified in response to comments from the directly affected public, as described in sections 27600 and 27602, where those provisions are now located.

Former subdivision (f) (removed)

As originally noticed to the public, subdivision (f) specified how compensation would be treated in the event that a written contractual agreement identifies something as both salary and a fringe benefit or expense because CalSTRS has reviewed written agreements that contain this type of ambiguous language. This subdivision was removed in response to an objection from the Department of Finance because it implied that, for example, based on the language in a written agreement, a fringe benefit could be creditable compensation, which was not CalSTRS intent. Compensation cannot simultaneously be salary **and** a fringe benefit. Instead, a determination must be made based on all the facts as to what type of compensation a particular pay type is using the definitions already provided in these regulations. If the compensation is salary, it should be credited as such. If the compensation is a fringe benefit or expense, it is not creditable compensation.

Section 27401. Remuneration that is paid in addition to salary.

As originally noticed to the public, this section additionally described the circumstances under which CalSTRS will presume a restructure is not permanent.

That text was relocated in the same manner and with the same effect as the similar text under section 27400, which was also moved from subdivision (c) as described above.

Section 27501. Fringe benefit and Section 27502. Expenses paid or reimbursed by an employer.

Language was moved from section 27601 of the proposed regulations as they were originally noticed to the public to both section 27501 and 27502. The text specifies that if compensation that was previously creditable is restructured into a fringe benefit

or an expense paid or reimbursed by an employer, as defined, that amount will not be considered creditable compensation beginning with the date of the restructure.

Section 27600. Consistent treatment of compensation.

Subdivision (a)

As originally noticed, these proposed regulations defined what considerations CalSTRS uses to assess whether compensation affecting a member's final compensation is consistent with those principles that support the integrity of the retirement fund.

In response to comments received from directly affected members of the public, CalSTRS provided clarity and a specific time period for when an increase would occur that may leave it subject to an assessment of consistency. Those new parameters are described in the newly added subdivision (f).

In addition, these regulations as originally noticed described evidence that employers can present to CalSTRS to demonstrate that a compensation increase is consistent. Changes to those are summarized below, including a discussion of the rationale for each:

- *Paragraph (1): A restructure of compensation that is a permanent change, as indicated by not meeting either of the criteria for inconsistency described in subdivision (d).* The change to this paragraph relates to the movement of the definition of nonpermanent restructures of compensation from sections 27400 and 27401 to this section.
- *Paragraph (3): A commensurate percentage increase in compensation earnable for the majority of members employed by the same employer.* As originally noticed, these proposed regulations stated that a commensurate increase for "other employees performing similar job duties for the same employer" would demonstrate a consistent increase. This provision was changed to assert instead that provision of a commensurate increase to the majority of members employed by that employer would demonstrate consistency. Data on the majority of members employed by that employer is readily available to CalSTRS staff, whereas staff performing similar job duties is not; specifying a majority of members also broadens the comparator group pool so that special compensation arrangements for a class of one or a class of very few would not be subject to protection under this paragraph. Along with this change, similar language in paragraph (7) was removed.
- *Paragraph (11): An increase in compensation that is required to recruit for a position which is directly responding to a specific time-bound financial crisis.* This provision was added as a reasonable scenario for which an increase might be granted that was not covered by any of the other factors listed but which CalSTRS would accept as a consistent treatment of a position in extremely limited circumstances. Specific criteria (a negative certification of financial obligations pursuant to Section 2140 of the Education Code or a

finding of serious hardship of financial condition as defined in subdivision (c) of Section 59204 of Subchapter 4, Chapter 10, Division 6 of Title 5) define the limited circumstances under which this exception will be granted. The amount of the increase protected under this provision cannot exceed 150 percent of the base compensation earnable of the predecessor who held the position (or the most similar position) prior to the crisis.

Subdivision (b)

As originally noticed to the public, this subdivision clarified a presumption by CalSTRS that if a successor's pay is less than a member's and the reduction is attributable to less education or experience, compensation is presumed to be consistent. Additional language was added to the proposed regulations text clarifying that this applies to the manner in which the pay is structured. This language was added to differentiate between changes to the total compensation package and changes to compensation that is actually reported to CalSTRS.

Subdivision (d)

This subdivision added language to this section that was previously under sections 27400 and 27401 in the regulations as originally noticed to the public. The provisions regarding nonpermanent restructures that result from negotiations conducted outside of standard negotiation timeframes, or restructures that are implemented for a class of one and then reversed for the successor, were moved to this section because they relate to inconsistent treatment of compensation.

In addition to moving the text, in response to comments from the directly affected public, a start date for restructures of compensation outside an employer's standard bargaining or contract negotiation timeframes was added. Recognizing that contracts may be modified in response to these regulations in order to maintain a consistent creditability of certain types of compensation, it is not CalSTRS' intent to introduce a temporary period of discontinuity in creditability. Ideally, any changes in response to these regulations would be seamless, but recognizing that may not be possible, a cutoff date of January 1, 2016, one year following the anticipated effective date of these regulations, was identified as allowing a reasonable cushion of time during which contractual changes could be introduced outside this rule in response to the proposed regulations.

Subdivision (f) (new)

This section was added to specify a period of time that CalSTRS will look back to assess consistent treatment of compensation. Considering that the maximum length of a contract is four years, staff wanted to ensure at least two contracts would be encompassed by any period of examination. CalSTRS staff determined that these examinations should include the five to 10 years prior to the end of the final compensation period: A period of 10 years would most adequately demonstrate

consistency over time, and restricting CalSTRS assessment to any length of time less than five years would be ineffective to deter spiking.

To balance these objectives with workload considerations, and after hearing input from stakeholders, the board supported a seven-year period of examination of compensation for most members. Any inconsistent treatment or restructures of compensation that take place more than seven years prior to retirement, therefore, would not be subject to allocation to the Defined Benefit Supplement Program for most members.

For members whose initial final compensation is calculated based on a nonconsecutive period of time (calculated using any three years due to a reduction in school funds pursuant to Section 22136 of the Education Code), a consecutive seven-year period is less appropriate because it does not account for spikes that may directly precede the final compensation period but do not occur during the last seven years of employment. While this only affects a small portion of the total population, this special rule provides an individually customized, broader lookback period for members whose benefit is calculated based on a nonconsecutive period of time.

Section 27601. Appropriate crediting of contributions.

Subdivision (a)

As originally noticed to the public, this subdivision only applied to inconsistencies affecting a member's final compensation calculation. In response to feedback from directly affected members of the public, this section was further clarified with language specifying that adjustments under this subdivision would not take place unless they result in a change to the member's final compensation and that compensation would only be examined for a specified number of years (see subdivision [b]). Restricting adjustments only to compensation that ultimately reduces a member's final compensation protects against bolstering members' Defined Benefit Supplement accounts at the expense of the Defined Benefit Program, supporting the funding of those benefits.

Paragraphs (1) through (4)

As originally noticed to the public, the first and third paragraphs of subdivision (a) provided the specific formula CalSTRS will utilize when compensation is found to be inconsistent, and the second paragraph described a noncreditable restructure of compensation. This text was modified, together with the movement of former paragraph (2) to sections 27501 and 27502, to provide a formula for two circumstances under which compensation can be found inconsistent: An inconsistency that is due to a restructure, and an inconsistency that is not.

There is no change to the fact that each formula dictates the amount a member's compensation earnable is reduced, with the contributions on the earnings in excess of that amount allocated to the Defined Benefit Supplement account. Based on CalSTRS

further examination of the formulas that were described in the text as originally noticed, however, the formulas were modified.

The modifications provide a larger sample size than the member and two others as specified in the regulations as originally noticed in order to minimize the potential for special treatment of compensation among a select group of employees. Instead, a broader sample size is used, comprised of CalSTRS members employed by that employer if there are 30 or more such employees or comprised of all CalSTRS members employed in that county for small employers with fewer than 30 CalSTRS members at the district level. The median pay increase earned by that group is multiplied by 1.5, and any increase in compensation above that percentage amount is allocated to the Defined Benefit Supplement account. CalSTRS considered multiple other measures to set this adjustment formula, including numbers based on actuarial assumptions that would change year-over-year only insofar as the actuarial assumptions were modified, or using a lower multiplier of the average or median increases earned. The rationale behind the use of an employer-level median is that it acknowledges year-to-year and employer-to-employer shifts in budgeting and compensation practices. The rationale behind a multiplier of 1.5 times is that substantial increases in compensation generally have some context, even if the increase is ultimately found to be inconsistent by CalSTRS. Adjusting the compensation increase down to a level that is exceeded by a full half of the other CalSTRS members employed by that employer would likely be deemed overly punitive when applied to individual circumstances. Because median pay increases vary greatly by employer and may be negative in some years, an alternative measure of 150 percent of the statewide median, or zero, whichever is greater, is established as a floor to the adjustment.

The median, rather than the average, is used in order to reflect the actual year-over-year increases earned by employees of that employer more precisely. A measure of average is overly subject to staffing turnover dynamics at the employer level, whereas the median provides a more plausible representation of a typical pay increase at that employer without introducing the element of employee demographics.

The regulations further define how that amount becomes a baseline that is carried forward year over year depending on whether or not compensation increases in subsequent years are found to be inconsistent. If subsequent increases are consistent, the member's own percentage increase is applied against the resulting baseline. This allows the adjustment formulas to function as intended – if a member earns a pay increase that is acceptable, CalSTRS has no rationale to apply the adjustment formula to that year-over-year increase simply because an adjustment was executed in any prior year.

Subdivision (b) (new)

This language mirrors the language added to subdivision (f) of section 27600 and was added for the same purpose and rationale.

Section 27602. Compensation that is paid a limited number of times.

Former subdivision (a) (removed)

As originally noticed to the public, subdivision (a) stated that Lottery and parity payments are creditable to the Defined Benefit Program under the rationale that, because they are funded continuously by statute and paid pursuant to the availability of funds at the state level, they are ongoing. However, under the Education Code, compensation that is paid a limited number of times is not creditable to the DB Program, which was not addressed in the original regulations for these pay types. Therefore, the provision was removed. Lottery and parity pay are covered under the definition of “remuneration in addition to salary,” and each is creditable based on the same criteria used for all remuneration in addition to salary. Pursuant to the Education Code, compensation that is paid for a limited number of times as specified by law, a collective bargaining agreement, or an employment agreement is creditable to the Defined Benefit Supplement Program, regardless of the source of the funds.

Subdivision (a) (new)

As originally noticed to the public, language similar to the text newly added in subdivision (a) was included in section 27400. The provisions regarding nonpermanent restructures that are associated with compensation that is paid a limited number of times, has a specified end date, or is otherwise not permanent is creditable to the Defined Benefit Supplement Program. This move is necessary because when an employer is aware at the time compensation is being paid that it will not be creditable to the Defined Benefit Program, the compensation should be reported directly to the member’s Defined Benefit Supplement account. This provision differentiates this type of nonpermanent restructure from the types that would generally be identified only after reporting them initially to the Defined Benefit Program.

SUMMARY AND RESPONSE TO COMMENTS

First comment period

Relates to Section 27200 - Members affected by this chapter

Issue 1: Affected members.

Summary of comments received: Regulations point only to 2% at 60 members. However, some of the issues addressed could also affect 2% at 62 members.

Response: This comment does not warrant any change to the regulations. Members subject to the new benefit structure under the California Public Employees’ Pension Reform Act of 2013 (PEPRA) are not covered by these regulations. This issue was already addressed in the Initial Statement of Reasons:

Though parts of the Education Code that are clarified by these regulations apply to both benefit structures, many of the Education Code provisions referenced in the regulations apply exclusively to 2% at 60 members.

Rather than specifying section-by-section which rules relate to both benefit structures, the entire chapter is specific to 2% at 60 members. Any future regulations that relate to members who are subject to PEPRA (“CalSTRS 2% at 62” members) will incorporate the provisions that are shared by both benefit structures as appropriate.

Relates to Section 27201 - Effective date

Issue 2: Effective date.

Summary of comments received: If a second comment period is required and these regulations are not final by July 1, 2014, then the effective date should be January 1, 2015.

Response: The regulations were amended because the default effective date dictated by Section 11343.4 of the Government Code, was January 1, 2015. This is the next quarterly default effective date that CalSTRS anticipated these proposed regulations would be subject to if filed with the Secretary of State between September 1 and November 30, 2014.

Issue 3: Prospective application of regulations.

Summary of comments received: Clarifications to the definition of “creditable compensation” should only take effect prospectively, and earnings up to the effective date should be protected.

Response: This comment does not warrant any change to the regulations. The original text as noticed was clear that the regulations are effective for compensation earned for service performed on or after the effective date.

Issue 4: Interim process.

Summary of comments received: The regulations should specify how compensation is treated prior to the effective date.

Response: This comment does not warrant any change to the regulations. Staff considered language codifying the use of prior interpretations through the effective date and determined that the regulations were not the appropriate forum. Instead, recognizing the need for an interim process, the Teachers’ Retirement Board directed staff at the December 2013 meeting that until the regulations are effective, employers could continue to refer to Employer Directives and the Creditable Compensation Guide previously issued by CalSTRS to the extent they are consistent with law.

Issue 5: Limitation on years examined.

Summary of comments received: The regulations should provide a three-year limit on evaluation of compensation, referencing the December 2013 board agenda item that states: “For circumstances in which the legal interpretation as expressed in the regulations differs from guidance employers may have received in the past, staff would apply the three year statute of limitations when requiring employers to re-report contribution lines or in assessing collection of overpayments.”

Response: This comment does not warrant any change to the regulations. At the December 2013 meeting, the board discussed procedural obstacles to applying a three-year limitation on examination of compensation paid before the effective date of the regulations. Instead, the regulations provided that compensation earned prior to the effective date is not subject to the provisions of the regulations that may differ from how compensation is currently being reported—allowing more flexibility in implementation than the approach that was requested.

Relates to Section 27300 - Basis of establishment of a class of employees

Issue 6: Criteria for “common use.”

Summary of comments received: Administration of the provision defining “common use” would be a challenge. Employers would need to investigate whether a class of employees is in use by other districts to avoid “hindsight” audit risk; it is not clear how this would be done efficiently. Because this provision only applies to employers who have a class of one, the burden of this provision would be most likely felt by small employers.

Response: This comment does not warrant any change to the regulations; “common use” is required under subdivision (b) of Section 22112.5 of the Education Code:

A class of employees may be comprised of one person if no other person employed by the employer performs similar duties, is employed in the same type of program, or shares other similarities related to the nature of the work being performed and **that same class is in common use among other employers.**

The regulations simply clarified this section of the Education Code with a minimal requirement.

As a practical matter, this provision would only come into play if the validity of a particular class of one is under question. If common use cannot be demonstrated in that context, the employer would be required to report the compensation as separate assignments (or whatever alternative reporting method is appropriate to the situation). Staff have evaluated the concerns expressed and determined that this provision is necessary to define what constitutes “common use” and establish who is responsible for demonstrating it in those instances when the validity of a class of one is under question.

Relates to Section 27300 – Basis of establishment of a class of employees; Section 27400 – Salary; and Section 27401 – Remuneration that is paid in addition to salary

Issue 7: No time limit to lookback comparison when comparing predecessor/successor.

Summary of comments received: While commenters acknowledged the intent of the regulations to discourage late career restructures to inflate a benefit, the language as originally noticed was critiqued as overly broad in terms of the lack of restriction to the time period that CalSTRS could look back to compare a member with his or her successor. A similar concern was raised in regards to the lack of a specific timeframe CalSTRS could use to examine a restructure affecting final compensation.

Response: Revisions were made in response to this comment. The language regarding non-permanent restructures was moved to section 27600, addressing consistent treatment of compensation, where it more appropriately belongs.

A second edit placing a limit on the period of time subject to examination (seven years for most members) was also included in the proposed regulations text.

Issue 8: Negotiations outside standard time frames.

Summary of comments received: Negotiations made specifically to address the changes in these regulations should be exempted from the presumption that they are not permanent.

Response: Revisions were made in response to this comment. This language moved to subdivision (d) of Section 27600, as described in Issue 7, and was delayed to take effect for contracts and agreements effective on or after January 1, 2016.

Issue 9: Release time.

Summary of comments received: The treatment of release time in the regulations is problematic, both because of the establishment of separate classes that accompanies that provision and because the term “release time” is ambiguous, as release time is also commonly granted to perform union duties or serve on the Academic Senate—situations not addressed in the regulations. In addition to problems with clarity in the terminology used, the concept described in the regulations is not consistent with the way work is assigned in an education setting.

Other commenters spoke to administrative difficulties they anticipated with establishing multiple separate classes of employees and attendant salary schedules, especially related to those job assignments that do not affect salary.

Response: Multiple revisions were made in response to these comments:

- A class of employees may contain individuals performing activities that are related to, and an outgrowth of, the instructional and guidance program of the

school (“outgrowth activities”) when performed in addition to the activities that the class of employees performs. Performance of these outgrowth activities does not necessitate the establishment of a separate class of employees.

- Compensation for outgrowth activities is considered “salary.”
- The language regarding “release time” was removed. With the other changes listed, no distinction is required between assignments performed with or without release time.

Issue 10: Ability of local boards to negotiate contracts.

Summary of comments received: The consideration of predecessor and successor pay and compensation structure limits the ability of local boards to negotiate unique contracts. The language should be amended to avoid linking successor and predecessor compensation for the purpose of determining creditability, or the language should be amended so this comparison would only take place if a restructure increased compensation during the final compensation period preceding retirement.

Response: While staff do not agree with the premise of this statement (the regulations do not restrict the negotiation of unique contracts, they merely clarify how compensation is credited for retirement purposes), a revision was made that relates to the concerns expressed. The period of time subject to examination is limited in most cases to seven years as described under sections 27600 and 27601.

Issue 11: Not clear whether allowances can be reported as special compensation or not.

Summary of comments received: The regulations need to be clear as to whether certain payment types can be reported as special compensation. It seems that districts will build compensation into the base salary rather than report payments as special compensation.

Response: This comment does not warrant any change to the regulations. The regulations stated that compensation that relates to service must be reported with a compensation earnable and described the qualities that distinguish different compensation types, as well as their creditability. The regulations also clearly allowed for crediting of restructured compensation, so staff are aware that the scenario described may occur and do not view this as a problem.

Issue 12: Stipends paid for additional service.

Summary of comments received: The regulations are not clear as to how stipends associated with the performance of additional service, but not covered under Section 27400 or 27401, should be reported.

Additionally, employers should have specific instructions as to how to establish the compensation earnable for assignments performed on a part-time basis for which there is no full-time minimum standard.

Response: The proposed regulations included the clarification recommended but not specific instructions to employers as to how to establish a compensation earnable, which requires a statutory change. Together with the changes explained under Issue 9, language was added that allows for the reporting of stipends associated with the performance of service as “salary.”

Employers may be provided with specific instructions as to how to establish the compensation earnable through legislation. Chapter 755, Statutes of 2014 includes language that was developed in response to this feedback.

Relates to Section 27500 – Amounts not deducted from a member’s salary

Issue 13: Creditability of amounts deducted from salary versus compensation.

Summary of comments received: The regulations seem to contradict paragraph (5) of subdivision (a) of Section 22119.2 of the Education Code.

Response: This comment does not warrant any changes to the regulations. The distinction in question (whether the deduction is specifically from “salary,” and therefore creditable, or deducted from other types of compensation, and noncreditable) was explained in the Initial Statement of Reasons:

The Education Code clearly states that deductions for the items listed above are not creditable if they are not deducted from salary. In Section 27400, these regulations clarify that amounts deducted from salary at the member’s discretion are salary and, therefore, creditable. This section further clarifies that compensation paid in addition to salary that is contingent upon the purchase of any of these items is not creditable. CalSTRS determined it was necessary to add this section explicitly to prevent a pass-through or workaround in which the member is required to use certain amounts to purchase the items, even if the items are paid through a deduction from the member’s remuneration.

Relates to Section 27600 – Consistent treatment of compensation

Issue 14: Comparison of predecessor and successor.

Summary of comments received: Echoing similar comments related to restructures, some commenters objected globally to the comparison of predecessors and successors.

Response: Revisions were made in consideration of these comments by limiting the period of examination of compensation to seven years as explained under Issue 7, but the changes did not globally remove the consideration of predecessor and successor compensation. Those considerations remain as acceptable rebuttals of an apparent inconsistent treatment of compensation. There are circumstances that warrant review of predecessor and successor compensation to comply with Section 22119.2 of the

Education Code (specifying the principle of “consistent treatment of compensation for the position.”)

Issue 15: Interim position transfers.

Summary of comments received: A faculty member could transition to be an administrator on an interim basis until recruitment is completed or be recruited into that position on a permanent basis. If that faculty member retires after two years, is he or she jeopardizing his or her final compensation?

Response: This comment does not warrant any change to the regulations. Faculty and administrators have different duties and may be treated as separate classes of employees. This was explained in the Initial Statement of Reasons:

The manner in which compensation is paid to a class of employees is one of the bases for determining creditability of compensation. The regulation defines and clarifies the terms that describe the criteria that are used to establish a class.

“Job duties” refers to a complete listing of ten specific categories of creditable service activities in the Education Code. A finite and comprehensive list of specific creditable activities is described in Education Code Section 22119.5. Every creditable service activity that is reportable for CalSTRS purposes is covered under subdivisions (a) and (b) of that section.

For individuals who take on additional duties or responsibilities, the ISOR further explained:

These regulations describe evidence that employers can present to CalSTRS to demonstrate that a compensation increase is consistent. Acceptable evidence would demonstrate that the pay increase was due to any of the following reasons, summarized below, including a discussion of the rationale for each:

- *A change in duties required of the employee that is incorporated in the first contract for the immediate successor to the position. If a pay increase is the result of additional duties required of a position, the pay increase is consistent so long as the expectation continues for the successor to the position. Requiring the change of duties to remain for the successor demonstrates a change in the employer’s business practice, rather than a temporary assignment that is given to enhance that member’s benefits.*
- *An increase in responsibility of the employee that is incorporated in the first contract for the immediate successor to the position. Similar to the previous bullet, if a pay increase is the result of increased responsibility required of a position, the pay increase is consistent so long as [the] expectation continues for the successor to the position. Requiring the added responsibilities to remain for the successor demonstrates a change in the employer’s business practice, rather than a temporary assignment that is given to enhance that member’s benefits.*

Relates to Section 27601 – Appropriate crediting of contributions

Issue 16: Period of time during which adjustments are made.

Summary of comments received: The regulations should specify that the adjustment formula is only applied during the final compensation period or another specified period.

Response: Revisions were made in response to this comment, as noted under Issue 7.

Relates to Section 27602 – Compensation that is paid a limited number of times

Issue 17: One-time off-schedule salary increases.

Summary of comments received: One-time off-schedule salary increases should not be exclusively creditable to the Defined Benefit Supplement Program. Such amounts are paid in cash in accordance with a publicly available written contractual agreement in compliance with subdivision (a) of Section 22119.2 of the Education Code.

Response: This comment does not warrant any change to the regulations. This comment contradicts the plain language of the law and cannot be addressed through regulations. One-time off-schedule salary increases are creditable for the reasons cited by the commenter; however, Section 22905 of the Education Code mandates that compensation that is paid for a limited number of times as specified by law, a collective bargaining agreement or an employment agreement is creditable to the Defined Benefit Supplement Program.

Relates to Procedure

Issue 18: Stakeholder engagement.

Summary of comments received: Has CalSTRS sought feedback from the Faculty Association of California Community Colleges (FACCC) and the California Teachers Association (CTA) on these proposed regulations? These regulations should be discussed in detail at the Employer Advisory Committee meeting and allow employers to provide feedback and ask questions prior to approval by the board.

Response: This inquiry is procedural. CalSTRS has adhered to the requirements of the Administrative Procedure Act and conducted extensive outreach to employers and employer and member representative groups in the development of the proposed regulations. CalSTRS staff sought and received feedback from a variety of stakeholder groups, including representatives of FACCC and CTA. CalSTRS pre-Notice activities are summarized in the ISOR. Presentations to the Employer Advisory Committee were conducted at each of its meetings on November 13, 2013, February 12, 2014, and May 7, 2014, and an opportunity to provide feedback verbally was offered at a hearing before the Teachers' Retirement Board on February 6, 2014.

Issue 19: Regulations should be placed on hold.

Summary of comments received: These regulations should be placed on hold and redrafted from a perspective that is based in the realities of 21st century educational practice and not 19th century organizational paradigms.

Response: This recommendation is procedural. CalSTRS did not put the regulations “on hold,” but made many changes based on comments made by this individual and echoed by other commenters. The regulations were released for a second comment period, which was extended to 45 days rather than the required minimum 15 days, in acknowledgement of the extent to which the text was amended.

Issue 20: Request for hearing in April (verbally at hearing).

Summary of comments received: During the hearing, one commenter requested that the board hold a second hearing in April.

Response: During the hearing, the feasibility of holding a hearing in April was discussed by the board. Since the first set of revisions was being presented to the board in April, a hearing in June was deemed more appropriate. The board deferred the decision to set a hearing or not in June, until the April meeting. In April, after hearing from stakeholders the board decided it was not necessary to schedule a second hearing.

Comments Not Relevant to Regulations Text

Issue 21: Penalties for noncompliance (verbally at hearing).

Summary of comments received: Apply penalties or build enforcement into the regulations (counterpoint made during hearing: penalties take money from districts; do not get carried away attributing fault).

Response: This comment does not warrant any changes to the regulations. CalSTRS does not have authority to enforce the requested sanctions; these regulations are only interpreting the law.

Issue 22: Provide prospective judgment of creditability (verbally at hearing).

Summary of comments received: Preview and allow prospective judgment of creditability of compensation so that employers can craft compensation that does not cause problems downstream.

Response: This comment does not warrant any changes to the regulations. This issue is being addressed separately from the regulations.

Second comment period

Relates to Section 27201 - Effective date

Issue 23: Effective date.

Summary of comments received: A July 1, 2015, effective date would provide for more adequate preparation time than the January 1, 2015, date specified in the regulations. Cash-in-lieu stipends currently reported as creditable compensation are determined in August each year, taking expected employer contributions into account when determining the stipend amount. As a result, knowing whether creditability of the amounts would change mid-year is important to planning. Since it cannot be assured that employers will have access to the final regulations language in time to prepare for the mid-fiscal year changes, a July 1, 2015, effective date would be easier to implement, as well as cleaner for fiscal year reporting.

Response: This comment does not warrant any change to the regulations. CalSTRS is sympathetic to the logistical concern expressed by the commenter. However, upon considering the consistency these regulations will bring to the reporting of creditable compensation, and weighing the stakeholder demand for these regulations as well as the board's initial direction to move forward with them expeditiously, staff determined that the benefits of a timely implementation of these regulations outweigh the convenience of having them coincide with the start of a fiscal year.

Relates to Section 27600 – Consistent treatment of compensation

Issue 24: Comparison of current and former employees.

Summary of comments received: We disagree with the proposed regulation requiring a practice of comparing current and former employees. There are multiple factors that may influence the need for a change in duties and the need for compensation adjustments.

Response: This comment does not warrant any change to the regulations. This comment was received during the second comment period but was not relevant to the text that was modified. In addition, the comment was redundant with comments responded to after the first comment period (see Issue 14).

CONFERRING WITH INTERESTED PARTIES - UPDATED

CalSTRS has conferred with the Department of Finance regarding these regulations.

ALTERNATIVES INFORMATION

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 local agencies or school districts. The regulations provide specific guidance as to how to report compensation and do not require that the employer make any changes to current technological systems or compensation practices to the extent they already comply with law.

ECONOMIC IMPACT ON BUSINESS

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. The primary economic impact of these regulations is to individual educators and their employers, and any indirect effect on businesses would be solely the result of that impact.