

Date: February 7, 2012

To: Office of Administrative Law
c/o George Shaw

From: Jennifer Plescia



Subject: Memo of Instruction Re: Rulemaking File Z-2011-0630-01

CalSTRS respectfully instructs the Office of Administrative Law to correct Form 400, Section B. 2., titled "Adopt." Please strike out the current text of "Article 16, Sections 27000 through 27103 to Title 5, Division 3, Chapter 1 of the Cal. Code Regs." Please replace with "27100, 27101, 27102, and 27103."

CalSTRS respectfully instructs the Office of Administrative Law to substitute the text of the proposed regulations with the five (5) copies provided herewith.

CalSTRS respectfully instructs the Office of Administrative Law to insert in Tab F behind the transcript the minutes from November 4, 2011, board meeting and the board item that was adopted. These minutes reflect the board's adoption of the proposed regulations.

CalSTRS respectfully instructs the Office of Administrative Law to insert the amended table of contents in the rulemaking file to reflect the location of the minutes in the file.

Finally, CalSTRS respectfully requests that the new certification be included in the rulemaking file. The purpose of the new certification is to re-open the file to insert additional documents.

**TABLE OF CONTENTS
AMENDED**

TAB

- A. Notice of Proposed rulemaking
 - i. Received for Filing Publication Date (STD. 400)**
 - ii. Submission of Regulations (STD. 400)**
 - iii. Notice of Proposed Rulemaking**
 - iv. Informative Digest/Policy Statement**
 - v. Disclosures Regarding the Proposed Action**
 - vi. Consideration of Alternatives**
 - vii. Contact Person**
 - viii. Availability of Statement of Reasons and Text of Proposed Regulations**
 - ix. Availability of Final Statement of Reasons**
 - x. Availability of Documents on the Internet****

- B. Text of Regulations Originally Noticed to the Public**

- C. Final Regulation Text**

- D. Initial Statement of Reasons**

- E. Statement that No Written Comments Were Submitted During 45-day Comment Period or Made at Public Hearing**

- F. Public Hearing Transcript and the Board Item and Minutes Adopting Proposed Regulations**

- G. Updated Informative Digest**

- H. Final Statement of Reasons**

- I. Statement of Mailing Notice**

- J. Fiscal Impact Statement
 - i. Std. 399 Form**
 - ii. Email from Department of Finance****

CERTIFICATION

The foregoing amended table of contents constitutes the California State Teachers' Retirement System's rulemaking file for the subject regulations. The rulemaking file was re-opened to insert additional documents. The rulemaking record re-closed on 2/7/12.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in Sacramento, California, on 2/ 7 /2012.

Signed:



Jennifer L. Plescia
Staff Counsel

**ATTENTION:
NEWLY ADDED/ ADOPTED**

**California Code of Regulations
Title 5. Education
Division 3. Teachers' Retirement System
Chapter 1. Teachers' Retirement System
Article 16. Member's Right to Internal Informal Appeal
of a Determination by CalSTRS Staff of a Right to a Benefit or Obligation**

§ 27100 Definitions

(a) For purposes of this article, an applicant seeking an administrative remedy is defined as any member, former member, participant, former participant, or beneficiary requesting review or appealing with respect to payment of allowances, benefits or refunds, or with respect to crediting service, or correction of records pursuant to Parts 13, 13.5 and 14 of Division 1 of Title 1 of the Education Code and Title 5, Division 3, Chapter 1, section 20520 of the California Code of Regulations.

(b) For purposes of this article, Program Executive is defined as the CalSTRS Executive, or his/her designee, overseeing the Program Area to which the administrative matter was assigned, as deemed appropriate by the System.

(c) For purposes of this article, a Decision means a decision designated as final by a Director of the Program Area, or his/her designee, to which the administrative matter was assigned, as deemed appropriate by the System.

(d) For purposes of this article, a Determination means a determination made by the Program Executive, the Director of Audit Services, or his/her designee.

(e) For purposes of this article, System Headquarters is defined by Education Code section 22375.

Updated 2/7/2012

(f) For purposes of this article, a Field Office is a retirement counseling office defined by Education Code section 22303 which is either established by contract or by the System.

Note: Authority: California Constitution, Article XVI, Section 17; and Section 22219, Education Code.

Reference: Sections 22107, 22108, 22146, 22161.5, 22174, 22303, 22375, and 26132, Education Code.

§ 27101 Administrative Remedy for Benefits & Services and Financial Services.

(a) Any applicant who disagrees with a Decision, excluding audit findings as referenced in section 27102, may request a review of that Decision by the Program Executive. The request for review must:

(1) Be made in writing;

(2) Be addressed to the Program Executive;

(3) State all facts, any basis in the Education Code or other law that applicant believes are relevant, and any other pertinent information, which may include but is not limited to medical records, which the applicant relies on to dispute the Decision.

(A) The stated facts, law, and pertinent information, which may include but is not limited to medical records, must be submitted with all documentary evidence applicable to the disputed Decision. If there is no documentary evidence, the writing should expressly state there is an absence of such evidence.

(B) It is the applicant's burden to show that the facts, law, and pertinent information would provide a legal basis for CalSTRS to reverse the Decision.

(4) Within forty-five (45) days after the date of the disputed written Decision, be received by the System Headquarters or by a CalSTRS Field Office or at the following email address: [CalSTRSInternalReview@calstrs.com].

(b) CalSTRS will inform the applicant of the applicant's right to an administrative hearing. CalSTRS will also refer the applicant to the Office of Administrative Hearings (OAH) for information pertaining to administrative hearings, notify the applicant that the applicant has a right to self-representation or counsel at their own expense and that CalSTRS will be represented by counsel.

(c) If the applicant's request for review by a Program Executive ("Executive Review") does not contain additional information or legal basis for review beyond the facts and/or documentary evidence previously provided to or obtained by the program area and merely repeats information previously provided, the applicant's request for Executive Review by the Program Executive shall be denied and the applicant may request an administrative hearing. The Program Executive may consult with CalSTRS staff prior to denying applicant's request for Executive Review.

(d) If the Program Executive determines that the applicant has provided sufficient additional information or legal basis for review, the Program Executive will review the Decision and make one of the following Determinations:

(1) Based upon review of the law and facts, including any additional information provided by applicant, applicant has not provided a legal basis to reverse the Decision and has therefore failed to meet his or her legal burden. The Program Executive shall inform the party in writing of the Determination and the applicant's right to an administrative hearing.

(2) Informal fact finding is necessary in regard to the applicant's dispute with the Decision and the matter is referred to staff for investigation. The informal factual investigation may include, but is not limited to, inquiries made to the applicant and requests for further documentary evidence pursuant to Education Code sections 22207, 22250, 22450, 24003, 24103, and 26002. The applicant must in good faith cooperate with and respond to staff.

(A) The applicant must respond in writing, either through mail, facsimile or email, to any inquiries made and/or requests for further documentary evidence. If the applicant fails to respond in writing or produce documentary evidence within forty-five (45) days after the inquiry or request was made, the applicant shall be deemed to have waived the right to pursue any additional administrative remedies. Accordingly, the Decision will be deemed to be a Determination by the Program Executive.

(B) At the discretion of the Program Executive an extension to respond to any inquiries made and/or requests for further documentary evidence may be granted if the request for an extension is made prior to the last day to respond, in writing, and received at the System Headquarters, at a CalSTRS field office, or at the following email address: [CalSTRSInternalReview@calstrs.com].

(C) Upon completion of the informal factual investigation, the Program Executive will conduct a review of the additional information, the legal basis for review

that applicant believes are relevant, and the information gathered through investigation. The review may include consultation with, including but not limited to, staff, the Ombudsman, a Legal Services representative, and a representative from the relevant program area. After the review is complete, the Program Executive shall make a Determination and shall inform the applicant in writing within fifteen (15) days. If the applicant disagrees with the Program Executive's Determination under subdivisions d(1) or d(2)(C) of this section, the applicant may request an administrative hearing.

(e) The request for an administrative hearing shall be directed to CalSTRS Legal Services within ninety (90) days of the date of the Determination signed by the Program Executive. The request shall be in writing and mailed to the following address: CalSTRS Legal Services, PO Box 15275, MS #3, Sacramento, CA 95851. If the applicant fails to make a written request for administrative hearing within the time prescribed, the Program Executive's Determination shall be final and the right to an administrative hearing shall be deemed waived.

Note: Authority: California Constitution, Article XVI, Section 17; Sections 22219 and 26002, Education Code.

Reference: Sections 22207, 22250, 22303, 22375, 22450, 22455, 24003, 24103, 26002, 26132, and 26301, Education Code; Section 11415.40, and 11505(b), Government Code.

§ 27102 Administrative Remedy for Audits

(a) If an applicant, as defined in Section 27100, subdivision (a) or an entity, including but not limited to a public agency or employer, is affected by the preliminary findings of an audit pursuant to Education Code section 22206, the applicant or the entity may provide a written

response to the preliminary audit findings. A final audit report is a Determination and is not subject to internal review by a Program Executive (“Executive Review”) or the Director of Audit Services.

(b) CalSTRS will inform the applicant or entity of the applicant’s or entity’s right to an administrative hearing. CalSTRS will also refer the applicant to the Office of Administrative Hearings (OAH) for information pertaining to administrative hearings and provide notification of the right to self-representation or counsel at their own expense and that CalSTRS will be represented by counsel.

(c) If an applicant or entity disagrees with the final audit Determination, the applicant or entity may request an administrative hearing. The request for an administrative hearing shall be directed to the CalSTRS Legal Services within ninety (90) days from the date of the final audit Determination. The request shall be in writing and mailed to the following address: CalSTRS Legal Services, PO Box 15275, MS #3, Sacramento, CA 95851. If an applicant or entity fails to request an administrative hearing within the time prescribed, such Determination or action shall be final and the right to an administrative hearing shall be deemed waived.

Note: Authority: California Constitution, Article XVI, Section 17; and Section 22219, Education Code.

Reference: Sections 22206, 22375, Education Code; Section 11505(b), Government Code.

§ 27103 Administrative Hearing

Following the timely receipt of an administrative hearing request, the CalSTRS Legal Services or the Attorney General's Office will process the request for hearing in accordance with the provisions of Education Code section 22219, subdivision (b) relating to administrative litigation.

Note: Authority: California Constitution, Article XVI, Section 17; and Section 22219, Education Code; Section 11501, Government Code.

Reference: Section 22219, Education Code.

Minutes Open Session	Regular Meeting Teachers' Retirement Board	November 4, 2011 Friday
LOCATION: Board Room, 100 Waterfront Place, West Sacramento, CA		

BOARD MEMBERS PRESENT

Dana Dillon, Chairperson
Harry Keiley, Vice Chairperson
Kathy Brugger
Jerilyn Harris
Beth Rogers
Terry McGuire, representing the State Controller, John Chiang
Grant Boyken, representing the State Treasurer, Bill Lockyer
Michelle Zumot, representing the Superintendent of Public Instruction, Tom Torlakson

OTHER BOARD MEMBERS PRESENT

Robert Biegler, representing the State Treasurer, Bill Lockyer

BOARD MEMBERS ABSENT

Carolyn Widener
Pedro Reyes, representing the Director of Finance, Ana Matosantos

STAFF PRESENT

Jack Ehnes, Chief Executive Officer
Christopher Ailman, Chief Investment Officer
Brian J. Bartow, General Counsel
Ed Derman, Deputy Chief Executive Officer, Plan Design and Communication
Chris Ford, Chief of Staff
Janice Hanson, Deputy Chief Executive Officer, Enterprise Initiatives and Technology
Cassandra Lichnock, Human Resources Executive Officer
Robin Madsen, Chief Financial Officer
Peggy Plett, Deputy Chief Executive Officer, Benefits and Services
Rick Reed, System Actuary
Art Martinez, Assistant Director, Accounting
Jennifer Plescia, Staff Counsel
Robert Carlin, Staff Counsel
Jennifer Yamane, Staff Counsel III

OTHERS PRESENT

Ian Lanoff, Groom Law Group	Joseph Dion, CalRTA
Dr. Robert Yetman, ARM Committee Financial Expert	Ken Hewitt, CalRTA
Luke Bierman, Cohen Milstein	Bill Kipp, CalRTA
Suzanne Dugan, Cohen Milstein	Paula Weiss, CalRTA
Polly Bacich, CalRTA	Irene Wetzal, CalRTA
	John Anderson, CTA

Jennifer Baker, CTA
Steve DePue, CTA
Phyllis Hall, CTA
Sharilynn Russo, CTA

Sandy Keaton, UTLA-A
Loretta Toggenburger, UTLA-R
Sharon Hendricks, AFT 1521

A quorum being present, Chairperson Dillon called the Open Session meeting of the Teachers' Retirement Board to order at 10:05 a.m.

I. APPROVAL OF BOARD AGENDA /WORK PLAN (Item 1)

MOTION duly made by Ms. Rogers, seconded by Ms. Brugger, and carried to approve the Board agenda/Work Plan.

II. ADOPTION OF PROPOSED FY 2012-13 OPERATING BUDGET (SECOND READING) (Item 2)

The board received an overview of the 2012-13 Operating Budget from Ms. Madsen, including the restructuring of the Enterprise Program Investment Council and the five percent increase to the Deferred Compensation Fund to accommodate extra cash revenue. The board discussed the change from the prior reading concerning the full time positions for Investments and use of reappropriation to address those positions if needed. The board further discussed the basis for the increased costs to use the State Office of Technology Services mainframe processor and the future plans for CalSTRS to address this increasing cost.

MOTION duly made by Mr. Keiley, seconded by Ms. Harris, and carried to adopt the fiscal year 2012-2013 Operating Budget.

III. ADOPTION OF REGULATIONS ON PENALTIES AND INTEREST (Item 3)

The board received an update on the status of the regulations on penalties and interest from Ms. Madsen and Mr. Carlin. The board discussed how employers may address practical problems, such as working with multiple employer reportings and communication challenges that may arise, and how staff has been collaborating with the districts to address these potential challenges. The board also discussed the need to clarify to districts that there will be no changes to their payroll practices, provided that the practices are consistent with the employee contracts.

MOTION duly made by Ms. Brugger, seconded by Ms. Harris, and carried to adopt the rulemaking package, provided no adverse comments are received.

MOTION duly made by Ms. Harris, seconded by Ms. Zumot, and carried to delegate the authority to adopt the regulations on penalties and interest to the Chief Executive Officer, provided no adverse comments are received, and submit the rulemaking package to the Office of Administrative Law.

IV. ADOPTION OF REGULATIONS ON INTERNAL ADMINISTRATIVE APPEAL (Item 4)

The board received an update on the status of the regulations on internal administrative appeal from Ms. Plescia, including the lack of comments concerning the regulations and the steps needed to finalize the regulations.

MOTION duly made by Ms. Rogers, seconded by Ms. Brugger, and carried to adopt the Regulations on Internal Administrative Appeal and authorize staff to submit the final rulemaking package to the Office of Administrative Law.

V. CONSENT AGENDA (Item 5)

a. Committee Reports

1. Appeals Committee: The Appeals Committee met on Wednesday, November 2, 2011 and took the following actions: (1) the committee considered and adopted the proposed decision in the case of Wendell Chun, and (2) the committee considered and adopted the proposed decision in the case of Don Low with minor technical changes. The committee also received a brief report on the number of post retirement earnings exemptions granted or rejected by CalSTRS.
2. Audits and Risk Management Committee: The Audits and Risk Management Committee met on Wednesday, November 2, 2011. The committee received an overview of the financial statements for the fiscal year ending June 30, 2011. The committee received and adopted the (1) independent auditor's report on CalSTRS financial statements, (2) independent auditors report internal control over financial reporting and compliance and (3) the report to the committee by the financial auditors. The committee also received an update on, and discussed, the internal audit processes, including the progress report on the audit plan for school employer audits, internal audits and global equities audit. Finally the committee received an update on and discussed the Quality Assurance Review Corrective Action Plan progress.

MOTION duly made by Ms. Rogers, on behalf of the Committee, and carried to adopt the Independent Auditor's Reports (1) on CalSTRS Financial Statements ending June 30, 2011, (2) on Internal Control over Financial Reporting and Compliance, and (3) to the ARM Committee by Financial Auditors.

3. Benefits and Services Committee: The Benefits and Services Committee met on Wednesday, November 2, 2011. The committee discussed and adopted the updates to the 2011-12 Member Service Performance Objectives, which included an evaluation of Community Property's levels of service. The committee also discussed the future opening of the Member Service Center in Glendale and received a demonstration of the online Retirement Application.

MOTION duly made by Mr. Boyken, on behalf of the Committee, and carried to adopt the 2011-12 Member Service Performance Objectives.

4. Board Governance Committee: The Board Governance Committee met on Thursday, November 3, 2011, and received information from a panel on the composition of public pension boards. The committee received and adopted revisions to the Board's Strategic Plan Policy.

MOTION duly made by Ms. Brugger, on behalf of the Committee, and carried to adopt the recommended revisions to the Board's Strategic Plan Policy in Section 500, Subsection L of the Teachers' Retirement Board Policy Manual.

5. Corporate Governance Committee: The Corporate Governance Committee met on Thursday, November 3, 2011. The committee received the 2010-11 Engagement Plan, the Corporate Governance Activity Report, an update on the Diversity on Corporate Boards Project, and an update on Sustainability Risk Management. The Committee received a report on the proxy voting activities of the CalSTRS' Corporate Governance staff over the past fiscal year.
 6. Investment Committee: The Investment Committee met on Thursday, November 3, 2011. The committee approved the issuance of a Request for Proposal to hire a Private Equity consultant for the Investment Committee. The committee also received and accepted the Annual Report on Currency Management, the State Lands Portfolio Report and policy revisions for Fixed Income, Real Estate, and Corporate Governance. In addition, the committee received the Chief Investment Officer's report, a second presentation on risk based asset investment strategies, and the Cost Effectiveness Measurement for 2010. Finally, the committee heard the first reading of the Investment Policy and Management Plan revisions for Risk Strategies, as well as the first reading of policy revisions for Global Equity and the Currency Management Program.
 7. Legislative Committee: The Legislative Committee met on Friday, November 4, 2011 and received a report on federal legislation.
- b. Approval of Minutes of the September 8, 2011 Regular Meeting - Open Session
 - c. Board Member Education
 - d. Contracts Requiring Board Approval
 - e. FY 2010-11 Incentive Compensation Disclosure

MOTION duly made by Ms. Zumot, seconded by Ms. Harris, and carried to adopt the Consent Agenda.

VI. **CHIEF EXECUTIVE OFFICER REPORT (Item 6)**

The board received an update from Mr. Ehnes regarding the highlights of the upcoming February meetings, including Milliman's quadrennial experience study. The board also received a presentation from Mr. Ehnes on a study by the National Institute on Retirement Security, The Three R's of Teacher Pension Plans: Recruitment, Retention and Retirement, concerning the total costs involved in teacher turnover and how retention equals higher productivity. The board discussed the importance and value of retaining teachers. The board received another update from Mr. Ehnes regarding Governor Brown's Twelve Point Pension Reform Plan, including detailed information on the points that apply to CalSTRS. The board also received an article from the Santa Rosa paper, the Press Democrat, entitled "Lost in Pension Debate: CalSTRS", addressing how CalSTRS is different from other public pensions. The board discussed whether there were studies that track where people peak in their careers, and use the information to address the concerns around the appropriate retirement age. The board further discussed the need to address public perception about what a fiduciary can actually do regarding the pension fund and dialogue about the need to focus on a funding strategy. Last, the board heard from Mr. Ehnes and Mr. Derman about two new initiatives affecting CalSTRS concerning (1) a defined benefit similar to social security where there is a cost shift to the employee and (2) a hybrid plan where there is equal share allocation. The board discussed what other information is needed in order to have a reasoned discussion regarding the initiatives, the potential obligations of fiduciaries to take positions on initiatives affecting pension plans, and the obligations of fiduciaries to address initiatives affecting the funding of its plan.

RECESS

The board recessed at 11:50 a.m. and reconvened at 12:25 p.m. Friday, November 4, 2011.

VII. **MEDICARE PREMIUM PAYMENT PROGRAM ELIGIBILITY (Item 7)**

The board received an update on member eligibility for the Medicare Premium Payment Program from Mr. Derman, which requires a statutory change to provide an extension for members retiring after July 1, 2012. The board discussed the population of members who are affected by this termination, the funding mechanism behind the statute, and the interaction between the statutes funding and authorizing the benefit. The board discussed the potential ramifications of seeking a statutory change after July 1, 2012, the possibility of continuing the program notwithstanding the statutory language, and the communication efforts to members and employers concerning the impending sunset date.

VIII. **FINANCIAL STATEMENT REVIEW – FISCAL YEAR ENDED JUNE 30, 2011 (Item 8)**

The board received an overview of the Financial Statements from Ms. Madsen and Dr. Yetman. The board discussed the Pension2 balances and how it reflects the performance of the plan and the rate of participants. Dr. Yetman commended the board for hearing the

review, rather than delegating it to the Audits and Risk Management Committee, and recommended the board continue to hear the full Financial Statement Review.

IX. GASB HEARING UPDATE (Item 9)

The board received an update of the GASB hearing, held October 13, 2011, and the efforts by staff to address the new GASB proposals, from Ms. Madsen, Mr. Reed, Mr. Martinez, and Dr. Yetman. The board heard about the participation in the field test, including the impact to districts and interaction between CalSTRS and the districts. The board discussed the impact of the new proposals on cost sharing plans, and whether this would result in performing individual actuarial analyses on each employer. The board discussed GASB as an accounting issue, rather than addressing funding concerns, and the potential increase to administrative budgets to address the changes. The board considered the intent of the new proposals, including determining liabilities and stating such liabilities on financial reports, and how the reporting of liabilities may result in unintended consequences, such as the potential effect on the bond market.

The board heard from Ms. Jennifer Baker, CTA, who commended staff for working on the GASB proposals and CalSTRS for its transparency, on how the new proposals may have the opposite effect from transparency and that the school districts may also not be able to get the appropriate accreditation, due to the liabilities that will be put on their financial reports.

X. BOARD EDUCATION: ANNUAL ETHICS TRAINING (Item 10)

The board received the annual ethics training from Ms. Dugan and Dr. Bierman of Cohen Milstein, including various current examples of ethical situations of other pension funds and recommendations on how to best implement a culture of ethical conduct. The board heard about articulating the fund's mission, and valuing a culture of ethics by providing resources and a method of reporting to best encourage transparency.

XI. ITEMS REFERRED BY COMMITTEE FOR BOARD DECISION (Item 11)

There were no items referred by any of the committees for board discussion.

XII. NEW BUSINESS/REVIEW INFORMATION REQUESTS (Item 12)

There was a request from Item 2 to see a comparison of CalSTRS' annual budget against other funds, such as Texas Teachers or CalPERS, including specific items such as full time employees.

There was a request from Item 5 to discuss how to best update board members of what went on during committee meetings.

There was a request from Item 6 for an in depth analysis on Governor Brown's Twelve Point Pension Reform Plan and the 2 new initiatives affecting CalSTRS.

There was a request from Item 7 for the General Counsel to review possible alternative remedies to address the continuing eligibility for the Medicare Premium Payment Program.

XIII. DRAFT AGENDA FOR THE NEXT REGULAR MEETING (Item 13)

There were no changes to the draft agenda for the next regular meeting.

RECESS

The board recessed into Closed Session 2:30 p.m. and reconvened into Open Session at 2:48 p.m. Friday, November 4, 2011.

Chairperson Dillon reported that there was nothing to report from Closed Session.

XIV. OPPORTUNITY FOR STATEMENTS FROM THE PUBLIC

Following Item 6, Mr. Joe Dion, president of CalRTA, presented a check for nearly \$50 million, representing the volunteer hours from CalRTA members last year. Ms. Harris expressed her thanks to all the teachers for their efforts.

XV. ADJOURNMENT

There being no further business to conduct, Chairperson Dillon adjourned the meeting at 2:48 p.m.



Jack Ehnes, Chief Executive Officer
And Secretary to the Teachers' Retirement Board



Dana Dillon, Chairperson

Prepared by: Jennifer Yamane, Staff Counsel III

TEACHERS' RETIREMENT BOARD

REGULAR MEETING

SUBJECT: Regulations on Internal Administrative Appeal

ITEM NUMBER: 4

CONSENT: _____

ATTACHMENT(S): 1

ACTION: X

DATE OF MEETING: November 4, 2011/ 15 mins.

INFORMATION: _____

PRESENTER: John Weech/Jennifer Plescia

PURPOSE

This item is presented to the board for adoption of the proposed executive review/internal appeal regulations.

BOARD STRATEGIC PLAN GOAL

Goal 3	Ensure a supportive and efficient organization and to be an employer of choice.
Objective E	Enhance the scope and quality of internal controls, internal audits and external audits.

BACKGROUND AND DISCUSSION

The attached proposed regulations are being presented to the board for adoption as the final step before staff submits the rulemaking packet to the Office of Administrative Law. The regulations reflect a structure that guides the member through an administrative remedy process. The regulations are drafted to assist the member in moving their request or contention forward within CalSTRS in a transparent and prescribed manner. The regulations also benefit CalSTRS business practice in that the regulations provide a framework to follow on behalf of the member.

At the April 2011 board meeting, the board approved the draft proposed regulations, approved commencing the formal rulemaking process, and delegated the Chief Executive Officer the authority to facilitate the public hearing for the regulations. The rulemaking process included the written comment period and the public hearing. The written comment period closed on August 29, 2011. No written comments were submitted. The public hearing occurred on September 22, 2011. No comments were made at the public hearing. As a result, no changes have been made to the draft regulations presented in April.

SUMMARY OF REGULATIONS

Section 27100 “Definitions” defines the following terms: applicant, Program Executive, Decision, Determination, System Headquarters, and Field Office. Said terms are defined for clarity and used throughout the regulations.

Section 27101 “Administrative Remedy for Benefits & Services and Financial Services” applies to any requests or disputes falling under the Benefits & Services program area or the Financial Services program area. Subdivision (1) regulates how and when a member may disagree with a Decision made by a Director of the Program Area. Subdivision (2) provides an opportunity for the Program Executive to decide that the member may go directly to administrative hearing instead of a higher review. Subdivision (3) outlines Determinations the Program Executive may make with the additional information provided. The Determinations include providing the member with the opportunity to go directly to administrative hearing or CalSTRS conducting an informal investigation regarding the member’s request or dispute. Subdivision (4) clearly outlines when a member is entitled to request an administrative hearing and how to request an administrative hearing and what the member can expect from CalSTRS regarding the administrative hearing process.

Section 27102 “Administrative Remedy for Audits” regulates the process an entity may exhaust its administrative remedies as pertaining to an audit. Subdivision (1) cross-references the definition of an applicant and states who may appeal an audit. It further defines what a final audit report is and whether it is subject to an internal review. Subdivision (2) explains how an applicant or entity may proceed to challenge a final audit Determination and what the member can expect from CalSTRS regarding the administrative hearing process.

Section 27103 “Administrative Appeals” states that CalSTRS Legal Services or the Attorney General’s office will process the appeal in accordance with the provisions of the Education Code and Administrative Procedures Act.

SUMMARY OF COMMENTS

No comments were submitted during the written comment period or made at the public hearing.

NEXT STEPS

Upon the board’s approval of the attached regulations, staff will complete and submit the final rulemaking packet to the Office of Administrative Law (hereinafter OAL). The final rulemaking packet includes but is not limited to Form 400 (Regulations Submission), final regulation text, notice of proposed rulemaking, initial statement of reasons, and final statement of reasons.

The Office of Administrative Law will review the regulations packet and notify the agency of any deficiencies within three (3) working days of the receipt. Thereafter, the OAL will either approve the regulations and transmit it to the Secretary of State for filing or disapprove it within thirty (30) working days after review. If the regulations are disapproved, the OAL will provide the adopting agency with a written decision detailing the reasons for disapproval. Depending on

the reasons for disapproval, the agency may have to comply with the formal regulatory process after the regulations are rewritten to address the OAL's reasons for disapproval.

RECOMMENDATION

Staff recommends the board adopt the attached proposed regulations and approve staff to commence completing the final rulemaking package for submission to the Office of Administrative Law.

**California Code of Regulations
Title 5. Education
Division 3. Teachers' Retirement System
Chapter 1. Teachers' Retirement System
Article 17. Member's Right to Internal Informal Appeal
of a Determination by CalSTRS Staff of a Right to a Benefit or Obligation**

§ 27100 Definitions

- (1) For purposes of this regulation, an applicant for an administrative remedy is defined as any member, former member, participant, former participant, or beneficiary with respect to payment of allowances, benefits or refunds, or with respect to crediting service, or correction of records pursuant to Parts 13, 13.5 and 14 of Division 1 of Title 1 of the Education Code and section 20520 of the California Code of Regulations.
- (2) For purposes of this regulation, Program Executive is defined as the CalSTRS Executive, or his/her designee, overseeing the Program Area to which the administrative matter was assigned, as deemed appropriate by the System.
- (3) For purposes of this regulation, a Decision means a decision designated as final by a Director of the Program Area, or his/her designee, to which the administrative matter was assigned, as deemed appropriate by the System.
- (4) For purposes of this regulation, a Determination means a determination made by the Program Executive, the Director of Audit Services, or his/her designee.
- (5) For purposes of this regulation, System Headquarters is defined by Education Code section 22375.

(6) For purposes of this regulation, a Field Office is a retirement counseling office defined by Education Code section 22303 which is either established by contract or by the System.

Note: Authority: California Constitution, Article XVI, Section 17; and Section 22219, Education Code.

Reference: Sections 22107, 22146, 22108, 22161.5, 22174, 22303, 22375, 26132, 22375, Education Code; Section 20520, Title 5, Division 3, Chapter 1, Article 2 of the California Code of Regulations.

§ 27101 Administrative Remedy for Benefits & Services and Financial Services.

(1) Any applicant who disagrees with a Decision, excluding audit findings as referenced in section 27102, may request a review of that Decision by the Program Executive. The request for review must be:

(a) Made in writing;

(b) Addressed to the Program Executive; and,

(c) State all facts, any basis in the Education Code or other law that applicant believes are relevant, and any other pertinent information, which may include but is not limited to medical records, which the applicant relies on to dispute the Decision.

(i) The stated facts, law, and pertinent information, which may include but is not limited to medical records, must be submitted with all documentary evidence applicable to the disputed Decision. If there is no documentary evidence, the writing should expressly state there is an absence of such evidence.

(ii) It is the applicant's burden to show that the facts, law, and pertinent information would provide a legal basis for CalSTRS to reverse the Decision.

(d) Received within forty-five (45) days after the date of the disputed written Decision by the System Headquarters or by a CalSTRS Field Office or at the following email address: [CalSTRSInternalReview@calstrs.com].

(2) If the applicant's request for review by a Program Executive ("Executive Review") does not contain additional information or legal basis for review beyond the facts and/or documentary evidence previously provided to or obtained by the program area and merely repeats information previously provided, the applicant's request for Executive Review by the Program Executive shall be denied and the applicant may request an administrative appeal. The Program Executive may consult with CalSTRS staff prior to denying applicant's request for Executive Review.

(3) If the Program Executive determines that the applicant has provided sufficient additional information or legal basis for review, the Program Executive will review the Decision and make one of the following Determinations:

(a) Based upon review of the law and facts, including any additional information provided by applicant, applicant has not provided a legal basis to reverse the Decision and has therefore failed to meet his or her legal burden. The Program Executive shall inform the party in writing of the Determination and the applicant's right to an administrative appeal.

(b) Informal fact finding is necessary in regard to the applicant's dispute with the Decision and the matter is referred to staff for investigation. The informal factual investigation may include, but is not limited to, inquiries made to the applicant and requests for further documentary evidence pursuant to Education Code sections 22207, 22250, 22450, 24003, 24103, and 26002. The applicant must in good faith cooperate with and respond to staff.

(i) The applicant must respond in writing, either through mail, facsimile or email, to any inquiries made and/or requests for further documentary evidence. If the applicant fails to respond in writing or produce documentary evidence within forty-five (45) days after the inquiry or request was made, the applicant shall be deemed to have waived the right to pursue any additional administrative remedies. Accordingly, the Decision will be deemed to be a Determination by the Program Executive.

(ii) At the discretion of the Program Executive an extension to respond to any inquiries made and/or requests for further documentary evidence may be granted if the request for an extension is made prior to the last day to respond, in writing, and received at the System Headquarters, at a CalSTRS field office, or at the following email address: [CalSTRSInternalReview@calstrs.com].

(c) Upon completion of the informal factual investigation, the Program Executive will conduct a review of the additional information, the legal basis for review that applicant believes are relevant, and the information gathered through investigation. The review may include consultation with, including but not limited to, staff, the Ombudsman, a Legal Services representative, and a representative from the relevant program area. After the review is complete, the Program Executive shall make a Determination and shall inform the applicant in writing within fifteen (15) days.

(4) If the applicant disagrees with the Program Executive's Determination under subdivisions 3(a) or 3(c) of this section, the applicant may request an administrative appeal. The request for an administrative appeal shall be directed to CalSTRS Legal Services within ninety (90) days of the date of the Determination signed by the Program Executive. The request shall be in writing and

mailed to the following address: CalSTRS Legal Services, PO Box 15275, MS #3, Sacramento, CA 95851.

(a) If the Determination does not grant the applicant's request, CalSTRS will inform the applicant of the applicant's right to an administrative hearing. CalSTRS will also refer the applicant to the Office of Administrative Hearings (OAH) for information pertaining to administrative hearings, notify the applicant that the applicant has a right to self-representation or counsel at their own expense and that CalSTRS will be represented by counsel.

(b) If the applicant fails to make a written request for administrative appeal within the time prescribed, the Program Executive's Determination shall be final and the right to an administrative appeal shall be deemed waived.

Note: Authority: California Constitution, Article XVI, Section 17; and Sections 26002 and 22219, Education Code.

Reference: Sections 22207, 22250, 22303, 22375, 22450, 22455, 24003, 24103, 26002, 26132, 26301 Education Code; Sections 11415.40, 11505(b) Government Code; Section 1015, Title 1, Division 2, Chapter 1 of the California Code of Regulations; Section 20520, Title 5, Division 3, Chapter 1, Article 2 of the California Code of Regulations.

§ 27102 Administrative Remedy for Audits.

(1) If an applicant, as defined in Section 27100, subdivision (1) or an entity, including but not limited to a public agency or employer, is affected by the preliminary findings of an audit pursuant to Education Code section 22206, applicant or the entity may provide a written response to the preliminary audit findings. A final audit report is a Determination and is not subject to internal review by a Program Executive ("Executive Review") or the Director of Audit Services.

(2) If an applicant or entity disagrees with the final audit Determination, the applicant or entity may request an administrative appeal. The request for an administrative appeal shall be directed to the CalSTRS Legal Services within ninety (90) days from the date of the final audit Determination. The request shall be in writing and mailed to the following address: CalSTRS Legal Services, PO Box 15275, MS #3, Sacramento, CA 95851. If an applicant or entity fails to request an administrative appeal within the time prescribed, such Determination or action shall be final and the right to an administrative appeal shall be deemed waived.

(a) If the Determination does not grant the applicant's or entity's request, CalSTRS will inform the applicant of the applicant's right to an administrative hearing. CalSTRS will also refer the applicant to the Office of Administrative Hearings (OAH) for information pertaining to administrative hearings, notify the applicant that the applicant has a right to self-representation or counsel at their own expense and that CalSTRS will be represented by counsel.

Note: Authority: California Constitution, Article XVI, Section 17; and Section 22219, Education Code.

Reference: Sections 22206, 22375 Education Code; Section 1015, Title 1, Division 2, Chapter 1 of the California Code of Regulations; Section 20520, Title 5, Division 3, Chapter 1, Article 2 of the California Code of Regulations; Section 11505(b) of the California Government Code.

§ 27103 Administrative Appeals

Following the timely receipt of an administrative appeal request, the CalSTRS Legal Services or the Attorney General's Office will process the appeal in accordance with the provisions of Education Code section 22219, subdivision (b) relating to administrative litigation.

Note: Authority: California Constitution, Article XVI, Section 17; and Section 22219, Education Code; Commencing with Section 11500 of Part 1 of Division 3 of Title 2, Government Code.

Reference: Section 22219, Education Code.