

California Code of Regulations

Title 5. Education

Division 3. Teachers' Retirement System

Chapter 2. Compensation

Article 1. General Provisions

Article 2. Class of Employees

Article 3. Creditable Compensation

Article 4. Noncreditable Compensation

Article 5. Appropriate Crediting of Contributions

Notice published December 20, 2013

NOTICE OF PROPOSED RULEMAKING

The California State Teachers' Retirement System ("CalSTRS") and the Teachers' Retirement Board ("board") propose to adopt new regulations, in the form of sections 27200 through 27602 in new Articles 1 through 5 of new Chapter 2, Division 3, Title 5 of the California Code of Regulations, after considering all comments, objections and recommendations regarding the proposed action.

PUBLIC HEARING

The Teachers' Retirement Board will hold a public hearing:

Date and Time	February 6, 2014, 9:00-10:00 a.m. A hearing will be held during the Regular meeting of the board on February 6, 2014. This item may be scheduled or rescheduled to occur as early as 9 a.m. or as late as 4 p.m. as it is incorporated into the board agenda. Please consult the agenda for the meeting, which will be available at CalSTRS.com at least 10 days before February 6, 2014, to confirm the exact time at which the hearing will be held.
Location	California State Teachers' Retirement System Boardroom 100 Waterfront Place West Sacramento, CA 95605
Purpose	To receive comments about this action. Comments are limited to five minutes each and must not repeat comments already received in written or verbal form.
Accessibility	The hearing room is accessible to persons with mobility impairments, and it can be made accessible to persons with hearing or visual impairments upon advance request to the Regulations Specialist.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory actions to CalSTRS. The written comment period closes at **5:00 p.m. on February 3, 2014**. CalSTRS will only consider written comments received at CalSTRS' office address as reflected below by that time. Submit comments to:

Ellen Maurizio
Regulations Specialist, Legislative Affairs
California State Teachers' Retirement System
P.O. Box 15275, MS-14
Sacramento, CA 95851-0275
Fax: (916) 414-1993
E-Mail: Regulations@CalSTRS.com

AUTHORITY AND REFERENCE

California Education Code Section 22207 authorizes the board to perform any acts necessary for the administration of CalSTRS and the plan in carrying into effect the provisions of the Teachers' Retirement Law, California Education Code sections 22000 through 28101.

Education Code Section 22305 provides that any rules and regulations adopted by the board have the force and effect of law.

Education Code Section 22112.5 provides that the board may override a determination as to whether or not a group or an individual constitutes a "class of employees."

Education Code Section 22119.2 provides that the board may determine any payments that are and are not "creditable compensation," and CalSTRS may determine any creditable compensation that has been paid to enhance a benefit, and may determine the appropriate crediting of contributions between the Defined Benefit and the Defined Benefit Supplement programs.

Education Code Section 22119.5 provides that the board shall have final authority for determining creditable service to cover any activities not already specified in that section.

Education Code Section 22138.5 provides that the board has final authority to determine full time for purposes of crediting service.

Education Code Section 22213 provides that the board shall regulate the duties of employers, employing agencies and other public authorities.

These regulations would interpret and make specific Education Code Sections 22112.5, 22119.2 and 22905.

The board approved the proposed regulations on December 2, 2013, and authorized CalSTRS to give public notice and schedule a public hearing before the board.

The language referenced in this Notice, the Initial Statement of Reasons and the text of the regulations reflects the Education Code as of January 1, 2014, including changes resulting from Chapter 559, Statutes of 2013. The language of the Education Code in 2013, while still in place at the time of this Notice, will no longer be current once these regulations become effective.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law, the Teachers' Retirement Law, establishes the Defined Benefit Program of the State Teachers' Retirement Plan, which provides a defined benefit to members of the program. The defined benefit is based on final compensation, credited service and age at retirement. Existing law establishes the Defined Benefit Supplement Program, a cash balance plan, which provides supplemental benefits payable either in a lump-sum payment, an annuity or both. Contributions for creditable compensation are credited to either the Defined Benefit or the Defined Benefit Supplement account. Under the benefit structure in place for individuals not subject to the California Public Employees' Pension Reform Act of 2013 ("CalSTRS 2% at 60" members), compensation earned from service in one school year in excess of one year of service credit, limited-term pay and any other compensation that is found by the board to not support the integrity of the retirement fund are credited to the Defined Benefit Supplement.

Over the years, employers have requested guidance in applying provisions of the Education Code to specific situations. Due to the variety of ways compensation is structured, it has become difficult to ensure consistent and uniform reporting of creditable compensation without providing more clarity and direction.

The regulations proposed in this rulemaking action clarify the authority of the Teachers' Retirement Board and CalSTRS to override an employer's determination of a class of employees, determine creditable compensation and credit contributions to either the Defined Benefit Program or the Defined Benefit Supplement Program.

Education Code Section 22112.5 defines a class of employees as a number of employees considered as a group because they are employed to perform similar duties, are employed in the same type of program or share other similarities related to the nature of the work being performed. The terms "similar duties" and "same type of program" are not defined in the statute. The regulations proposed in this rulemaking action would promote consistent understanding of those terms by interpreting and defining them. The regulations would additionally specify prohibited classes of employees.

Education Code Section 22119.2 defines creditable and noncreditable compensation. It contains terms, including "salary," "remuneration that is paid in addition to salary," "fringe benefits," "expenses paid or reimbursed by an employer" and "not deducted from the member's salary," that are not defined in the statute.

The regulations proposed in this rulemaking action would define and clarify those terms by describing identifying characteristics of each type of compensation to promote consistent understanding and application of each term.

Education Code Section 22905 describes the allocation of contributions to the Defined Benefit Program and Defined Benefit Supplement accounts. The statute contains the phrase, “compensation that is paid for a limited number of times as specified by law, a collective bargaining agreement, or an employment agreement.” This phrase is not defined in the statute.

The regulations proposed in this rulemaking action would define and clarify “compensation that is paid for a limited number of times,” providing specific guidance on payments from state Lottery proceeds and parity pay, and describing identifying characteristics of compensation that is paid a limited number of times.

CONSISTENCY EVALUATION

While developing the text of these regulations, CalSTRS searched other state regulations that related to the topics addressed in these regulations and concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

ANTICIPATED BENEFITS

Anticipated benefits of these regulations include: Consistent, fair and equitable reporting of the compensation used for retirement purposes of California educators by all employers; clear guidance for reportable compensation, thereby reducing errors and the resulting penalties payable by CalSTRS employers; transparent evaluation of consistency and allocation of accounts by CalSTRS; reduced incidences and opportunities for manipulation of retirement compensation through late career contract changes and pay increases (“spiking” of salary to increase retirement benefits); and broad and consistent application of the statutory principles that support the integrity of the retirement fund.

DISCLOSURES REGARDING THE PROPOSED ACTION

CalSTRS has made the following initial determinations, as required by the California Administrative Procedure Act and Office of Administrative Law regulations:

1. **MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS:**

None.

2. **COST OR SAVINGS TO ANY STATE AGENCY:**

Savings to the state based on estimated reduction to CalSTRS unfunded actuarial obligation of \$66 million over 30 years.

3. **COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT WHICH MUST BE REIMBURSED IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE (“GC”) SECTIONS 17500 THROUGH 17630:**

None.

4. OTHER NONDISCRETIONARY COST OR SAVINGS IMPOSED ON LOCAL AGENCIES:

Savings to school employers estimated at up to \$1.6 million during first full year of implementation due to reduction in contributions they are required to remit to CalSTRS.

5. COST OR SAVINGS IN FEDERAL FUNDING TO THE STATE:

None.

6. SIGNIFICANT, STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS INCLUDING THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES:

None.

7. COST IMPACTS ON A REPRESENTATIVE PRIVATE PERSON OR BUSINESS:

The board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed regulations only affect CalSTRS, CalSTRS-covered employers and CalSTRS members.

8. RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Adoption of these regulations will not:

- Create or eliminate jobs within California;
- Create new businesses or eliminate existing businesses within California;
- Affect the expansion of businesses currently doing business within California.

Benefits of the proposed action:

The proposed action will clarify the standards for, and promote clear and consistent reporting of, compensation and remittance of appropriate contributions by public school employers. The board anticipates that the clarification will result in a reduction of reporting of compensation that is currently paid for cash in lieu of benefits. This is expected to result in a slight reduction to both the unfunded liability and the state's required contribution to the fund. The effect on California residents as taxpayers, though minor, would be generally positive, contributing to the welfare of California residents.

9. SIGNIFICANT EFFECT ON HOUSING COSTS:

None.

10. SMALL BUSINESS DETERMINATION:

The board has determined that the proposed regulations do not affect small business as small businesses are not governed or affected by the statutes that these regulations are clarifying.

CONSIDERATION OF ALTERNATIVES

CalSTRS and the board must determine that no reasonable alternative considered or otherwise identified and brought to its attention would be:

- More effective in carrying out the purpose for which the action is proposed,
- As effective and less burdensome to affected private persons than the proposed action, or
- More cost effective to affected private persons and equally effective in implementing the statutory policy.

CalSTRS weighed the option of continuing to determine whether or not a class of employees is valid on a case-by-case basis. CalSTRS determined that the ambiguity in the law promoted inconsistent understanding among employers and that the only way to ensure consistent establishment of valid classes of employees is to define the terms used in the Education Code through regulation.

CalSTRS considered the option of continuing to determine creditability of compensation on a case-by-case basis. CalSTRS concluded that the only effective way to ensure reporting requirements are consistently understood is by clarifying them through regulation.

CalSTRS reviewed the option of continuing to determine the appropriate crediting of contributions to the Defined Benefit Supplement Program on a case-by-case basis. CalSTRS resolved that clarifying its standards for determining inconsistent treatment of compensation and establishing a consistent formula to be used in cases of inconsistent treatment through regulation would be the most effective method to implement this authority with transparency and equity.

CalSTRS and the board invite interested persons to present any statements or arguments that would support an alternative to the proposed regulations in the form of written comments or attendance at the public hearing.

CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Ellen Maurizio
Regulations Specialist, Legislative Affairs
California State Teachers' Retirement System
P.O. Box 15275, MS-14
Sacramento, CA 95851-0275
Telephone: (916) 414-1994
Fax: (916) 414-1993
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The backup contact person for these inquiries is:

Joycelyn Martinez-Wade

Manager, Legislative Affairs
California State Teachers' Retirement System
P.O. Box 15275, MS-14
Sacramento, CA 95851-0275
Telephone: (916) 414-1994
Fax: (916) 414-1993
E-Mail: Regulations@CalSTRS.com

Please direct requests for copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to the Regulations Specialist using the contact information listed above.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

CalSTRS will have the entire rulemaking file available for public inspection and copying throughout the rulemaking process at its offices at the address listed above. As of the date this notice is published in the California Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the Initial Statement of Reasons, the Economic and Fiscal Impact Statement (STD 399) with an accompanying letter from the consulting actuary, and the relied-upon document *Creditable Compensation – Policy Issues* presented at the meeting of the California State Teachers' Retirement System Benefits and Services Committee, Item 5a, April 11, 1996.

Copies of this notice, the proposed text of the regulations, the Initial Statement of Reasons and the Economic and Fiscal Impact Statement are available at no charge by contacting the Regulations Specialist using the contact information listed above.

In addition, the entire rulemaking file is available for viewing on the CalSTRS website at www.CalSTRS.com/legislation under "Current Regulatory Activity."

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the board may adopt the proposed regulations substantially as described in this Notice or may, on its own motion or at the recommendation of any interested person, modify the proposed regulations.

If the board makes modifications that are sufficiently related to the original proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before adopting the regulations as revised. The board will accept written comments on the modified regulations for 15 days after the date on which they are made available. Please contact Ellen Maurizio using the contact information listed above for copies of modifications, if any.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, CalSTRS will have the Final Statement of Reasons available for public inspection and copying at its offices at the address listed above. In addition, the Final Statement of Reasons will be available for viewing on the CalSTRS website at www.CalSTRS.com.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of rulemaking documents can be accessed through the CalSTRS website at www.CalSTRS.com.