

NOTICE OF PROPOSED RULEMAKING
TITLE 5. EDUCATION
DIVISION 3. TEACHERS' RETIREMENT SYSTEM
CHAPTER 1. TEACHERS' RETIREMENT SYSTEM
ARTICLE 16. PENALTIES AND INTEREST FOR LATE REMITTANCES AND
LATE AND UNACCEPTABLE REPORTING BY EMPLOYERS

The California State Teachers' Retirement System ("CalSTRS" or "the System") and the Teachers' Retirement Board ("Board") propose to adopt new regulations, in the form of sections 27000 through 27010 in new Article 16, Chapter 1, Division 3, Title 5 of the California Code of Regulations, after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

A public hearing will be held:

Date and Time:	June 3, 2011, 1:00 p.m. to 2:30 p.m.
Place:	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.

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 **May 2, 2011**. CalSTRS may only consider written comments received at CalSTRS' office address as reflected below by that time. Submit comments to:

Office of the General Counsel
California State Teachers' Retirement System
P.O. Box 15275, MS-03
Sacramento, CA 95851-0275
Fax: (916) 414-1722
E-Mail: Regulations@CalSTRS.com

AUTHORITY AND REFERENCE

The Board has exclusive authority to administer CalSTRS under Article XVI, section 17 of the California Constitution. In addition, California Education Code section 22207 authorizes the Board to perform any acts necessary for the administration of the System and the plan in carrying into effect the provisions of the Teachers' Retirement Law, California Education Code sections 22000 through 28101 ("the Law"). Education Code section 22305 provides that any rules and regulations adopted by the Board have the force and effect of law. These regulations would implement, interpret, and make specific

Education Code sections 23000, 23001, 23002, 23002.5, 23003, 23004, 23005, 23006, 23007, 23008, 23010, 26000.5, 26002, 26301, 26301.5, 26302, 26303, and 26303.5.

The Board approved the proposed regulations on February 11, 2011, and authorized the System to give public notice and schedule a public hearing before the Board.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California Constitution recognizes that the Board has “plenary authority and fiduciary responsibility for investment of moneys and administration of the system,” and charges the Board with “defraying reasonable expenses of administering the System” (Cal. Const., Art. XVI, § 17). The Education Code requires each employer to deduct Defined Benefit Program member contributions and remit these and the corresponding employer contributions to the System for deposit in the Teachers’ Retirement Fund (“the Fund”) at the State Treasury within five working days (Education Code §§ 22950, 22951, 23002). Each employer also must report the compensation upon which the contributions are based to the System within 30 days (Education Code §§ 22455, 22456, 23005). Requirements for the Cash Balance Benefit Plan are that employers remit and report contributions and salary to the System within 10 working days (Education Code §§ 26301, 26303). The Education Code authorizes the System to impose penalties and charge interest to employers for late and incorrect reporting and remittance of contributions (Education Code §§ 23003, 23006, 23008, 26301, 26303). Although the law is clear in regards to the System’s authority to impose these penalties and to assess interest, how those sums are imposed and calculated can benefit from additional clarification.

The proposed regulations provide that clarification and reflect the Board’s efforts over the past several years to reduce System administrative costs associated with late and incorrect contribution remittances and reporting from employers. In addition, the proposed regulations include penalties and interest to compensate the Fund for lost investment earnings. The Board wanted to establish timely, accurate, and transparent means for:

- Determining penalty and interest amounts due from employers for late and inaccurate contribution remittances and reporting;
- Determining applicable penalties for late or improper adjustments to contribution remittances and reporting; and
- Providing dispute and appeal processes for employers.

The Board now proposes to adopt regulations to outline and enforce compliance with these processes.

Sections 27000 through 27010 describe and implement procedures for the Board to assess, and the System to bill and collect, interest and penalties on late and incorrect contribution remittances and employer reports for both the Defined Benefit Program and Cash Balance Benefit Program. These processes clarify and refine the penalties and interest assessment guidelines included in the Education Code. Interest rates for penalty assessment are established by the Board annually.

The regulations provide for ongoing interest on outstanding penalty and interest assessments until paid by employers. The regulations also outline an avenue for an employer to dispute and then appeal the System's calculations of amounts due.

The regulations incorporate by reference two file specifications, which contain the rules for reporting employer and employee data to CalSTRS for the Defined Benefit Program and the Cash Balance Benefit Program. The two file specifications are:

- "CalSTRS F496 File Specification," revised on March 1, 2011.
- "CalSTRS VDF File Specification," revised on March 1, 2011.

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:**

In acquiring software for penalties and interest automation, CalSTRS anticipated leveraging the platform to provide the basis for the new Corporate Accounting and Resource Management system to replace multiple legacy tools. The implementation cost estimate for the penalties and interest automation component is approximately \$6 million over three years.

CalSTRS anticipates penalty and interest assessments collected to total approximately \$5.2 million over three years. CalSTRS also anticipates a reduction in lost state contributions, as well as additional investment returns from those contributions, due to more timely remittance and reporting practices. Given these outcomes, a reduction in the unfunded liability is also projected.

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:**

None.

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.

8. ADOPTION OF THESE REGULATIONS WILL NOT:

- (a) Create or eliminate jobs within California;
- (b) Create new businesses or eliminate existing businesses within California;
- (c) Affect the expansion of businesses currently doing business within California.

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 impacted by the statutes that these regulations are clarifying.

CONSIDERATION OF ALTERNATIVES

CalSTRS and the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

The System weighed the option of continuing to assess penalties and interest on a case-by-case basis. The System engaged in discussions, including reports from staff on the status of current collection efforts to recover overpayment amounts from members, the impact of overpayments on members, and the status of new Web site tools for employers. The System concluded that the only effective measure to ensure the fund receives all reports and contributions timely is to consistently assess the penalties and interest provided for under the Law.

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:

Tifani Vincent
Office of the General Counsel
California State Teachers' Retirement System
P.O. Box 15275, MS-03
Sacramento, CA 95851-0275
Telephone: (916) 414-1720
Fax: (916) 414-1722

E-Mail: Regulations@CalSTRS.com

The backup contact person for these inquiries is:

Joycelyn Martinez-Wade, Legislative Advocate
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 rulemaking documents or for any other information to Ms. Vincent 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. In addition, the entire rulemaking file is available for viewing on the System's Web site at www.CalSTRS.com using the menu on the left-hand side under Learn About > Legislation and then scrolling down to Regulations. As of the date this Notice is published in the California Notice Register, the rulemaking file consists of this Notice; the proposed text of new regulations; the Initial Statement of Reasons; the Fiscal Impact Statement; and the Statement of Mailing Notice. Copies are available by contacting Ms. Vincent using the contact information listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding its 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 Ms. Vincent using the contact information listed above for copies of modifications, if any.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon 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 System's Web site at www.CalSTRS.com.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of rulemaking documents can be accessed through the System's Web site at www.CalSTRS.com.