

## **FINAL STATEMENT OF REASONS**

### **Adoption of CCR Section 27000 – 27010**

#### **PENALTIES AND INTEREST FOR LATE REMITTANCES AND LATE AND UNACCEPTABLE REPORTING BY EMPLOYERS**

##### **UPDATE OF INITIAL STATEMENT OF REASONS**

There have been no changes in the applicable laws or facts, or to the effect of the proposed regulations, from those described in the Initial Statement of Reasons except as described below.

##### **SENATE BILL 349**

Senate Bill (SB) 349 (Negrete McLeod) was adopted by the Legislature and signed by the Governor on October 9, 2011. The primary purpose of SB 349 was to make a number of technical changes to various sections of the Teachers' Retirement Law (Education Code § 22000 et seq.). Among the various changes, SB 349 eliminated the minimum penalty of \$500 for late reports by employers to CalSTRS, thereby ensuring that all late reporting penalties are based on interest charged on the sum of employer and employee contributions. SB 349 also provided CalSTRS with legal authority to impose certain penalties in accordance with regulations, thereby providing for exemptions from the penalties and interest for the Cash Balance Benefit Program. These exemptions matched those already in place for the Defined Benefit Program and were developed in consultation with and based upon comments submitted by employers and various stakeholders. The aforementioned amendments in SB 349 were intended to achieve uniform application of penalties and interest across the Defined Benefit Program and Cash Balance Benefit Program.

The majority of changes to the proposed regulations are technical in nature. As noted earlier and in accordance with the amendments in SB 349, the floor penalty of \$500 for a late report has been removed and exceptions to penalties for late reporting or remittance of contributions to the Defined Benefit Program have been extended to the Cash Balance Benefit Program. "Notification by the system" has been defined. References to employees "employed on a part-time basis" has been clarified to include substitute teachers.

##### **SUMMARY OF RESPONSE TO COMMENTS RECEIVED DURING AND AFTER THE 45-DAY COMMENT PERIODS OF MARCH 18, 2011 TO MAY 2, 2011; AND AUGUST 23, 2011 TO OCTOBER 6, 2011; AND NOVEMBER 2, 2011 TO NOVEMBER 16, 2011; AND DURING THE PUBLIC HEARING CONDUCTED ON JUNE 3, 2011**

Summaries of the comments received during the public notice periods and CalSTRS' responses are below. The comments themselves can be obtained by sending a request to [compliance@calstrs.com](mailto:compliance@calstrs.com).

##### **EFFECTIVE DATE OF THE REGULATIONS**

Some County Offices of Education expressed confusion over when the regulations would become effective.

#### RESPONSE

The regulations explicitly provide (see section 27010) that they will be effective as of July 1, 2012.

#### MONTHLY REPORT

Solano County Office of Education asked for clarification regarding what CalSTRS considers a “month” to be. Some comments inquired into when a report is actually received.

#### RESPONSE

CalSTRS is adhering to the definition of month in California Education Code section 22147, which states:

- (a) “Month” means 20 working days or four weeks of five working days each, including legal holidays, with respect to the computation and crediting of service.
- (b) “Month” for all other purposes, means a period commencing on any day of a calendar month and extending through the day preceding the corresponding day of the succeeding month, if there is any such corresponding day, and if not, through the last day of the succeeding calendar month.

CalSTRS does not need to know the payroll schedule or what a particular employer considers their “month” to be. CalSTRS will determine which month a report relates to based upon the service period dates being reported by the employer.

A report is considered received when it has been received by CalSTRS in compliance with section 27000 of these regulations.

#### NUMBER OF CALENDAR DAYS IN A MONTH

One comment noted that the initial draft of the regulations specified 30 calendar days in some places, where as some months contain 31 calendar days, and that this could unfairly punish employers acting on that timeframe.

#### RESPONSE

Staff agree and have changed the regulation to specify 31 calendar days rather than 30.

#### CONTRIBUTIONS AS EARNED VS. PAID

Some comments noted that treating contributions as due when earned rather than when paid would have negative financial repercussions on employers for contracts that specify payments crossing monthly boundaries, late timecards, human error and annual stipends.

#### RESPONSE

The Education Code requires that the reporting and remittance of contributions take place following the month or pay period when the contributions are earned. For contracts that provide for payment over a long period of time (e.g., an annual stipend that crosses over months), the payment will not be considered earned until the time when the contract requires payment to the employee. Regarding late time cards, staff has adopted an exception for part-time employees to provide additional time to reasonably accommodate issues associated with processing timecards. As for human error, staff believe that the exception to reporting penalties that provides employers with a 60 day reprieve from penalties following discovery of an error adequately addresses this concern. Late remittances are always subject to interest charges unless otherwise exempted herein; staff see no reason to exempt the categories of "late time cards" or "human error" from the interest charged on late remittances.

#### LATE REMITTANCE AND REPORTING TIMEFRAMES

Several comments noted that there is a divergence under the Defined Benefit Program between the amount of time to report late data regarding contributions (60 days following discovery or notification) and the amount of time to remit those contributions (5 days for 95% of contributions, 15 days for the remainder) before either are late and subject to penalties. Others expressed concern about being able to comply with the requirement under the Cash Balance Benefit Program that contributions and reporting are due to CalSTRS 10 working days following the applicable pay period.

#### RESPONSE

This was not an arbitrary choice by staff, but reflects the underlying statutes in the Education Code which provide for these explicit timeframes. Requiring a tighter deadline for remittance of contributions also accords with CalSTRS obligation to prudently invest those contributions. The penalties and interest assessed for late remittances are, among other things, intended to replace lost investment earnings which could have been obtained had the contributions been remitted on time.

As to concern with reporting and remittance timeframes in the Cash Balance Benefit Program, the 10 working days deadline is established by statute, not by regulation, and is therefore an existing obligation of employers that predates these regulations.

#### ADJUSTMENTS OF CONTRIBUTIONS

Several comments expressed confusion over how penalties would be assessed on adjustments to contributions that were not exempt under one of the exemptions provided.

#### RESPONSE

Once the employer is notified by CalSTRS of the need for an adjustment, or discovers the need for an adjustment on their own, they have 60 days to report the correction before they will be assessed interest for late reporting. Interest is always assessed on late contributions and is assessed from the day contributions were first due.

#### CALCULATION OF PENALTIES AND INTEREST FOR LATE REPORTS THAT ADJUST CONTRIBUTIONS

Glendale College expressed frustration with the fact that the penalty for a late report that adjusts contributions is calculated based upon the absolute value of the adjustment, which would penalize an employer who had paid more contributions than were required.

#### RESPONSE

CalSTRS has a fiduciary duty to maintain accurate data regarding its members and to invest their contributions in a prudent manner. CalSTRS ability to act in accordance with that duty is hampered when inaccurate information is reported to the system. Imposing a penalty on any inaccurate contribution information is consistent with applicable statutes and with goal of encouraging and ensuring accurate reporting.

#### COMMUNICATION OF DISCOVERY DATE AND OTHER INFORMATION

Some comments inquired into how the date an employer discovers late contributions would be determined. These comments also sought clarification regarding how employers would inform CalSTRS that data was discovered and therefore not subject to penalties (and similarly for exceptions like periods of time relating to a workers' compensation award, etc.).

#### RESPONSE

Staff has no plans at this time to add new reporting codes to convey discovery dates or inform CalSTRS that reporting data relate to a workers' compensation claim. CalSTRS automated system will instead treat such data and remittances as subject to penalties and CalSTRS will work with employers to filter out such legitimate exceptions.

#### ADJUSTMENTS OF CONTRIBUTIONS FOR SALARY CLASSIFICATION CHANGE DUE TO CONTINUING EDUCATION

Several comments expressed concern over the assessment of penalties on retroactive increases in contributions and corresponding reporting stemming from a retroactive increase in compensation for educators who take college courses over the summer and then submit a transcript in the fall. Glendale also noted that some collective bargaining agreements permit employees to submit transcripts and receive retroactive credit for the corresponding pay increase a few months past the summer in which the classes were completed.

#### RESPONSE

Staff do not think that collective bargaining should justify non-compliance with employers' reporting and contribution remittance obligations under the California Education Code. Adequate funding and supporting reports must be received by the system in a timely manner in order to maximize investment returns and ensure proper payment of benefits. CalSTRS does not believe that these examples will result in significant penalties or that they will occur frequently, and in the future employers can bargain to comply with the Education Code and these regulations.

#### BARGAINED CLASS OF EMPLOYEES EXCEPTION TO PENALTIES FOR LATE REPORTS OR LATE CONTRIBUTIONS – WHEN ADJUSTMENTS ARE REPORTED TO THE SYSTEM

Several comments expressed concern that 60 days would not be sufficient time to engage in the requisite procedures to ensure contributions and reporting are submitted to CalSTRS following the effective date of a written employment agreement. The Ventura County Office of Education noted that some agreements contain provisions that approve future increases if funds are available, and that these provisions would be subject to penalties because they would likely become operable more than 60 days after effective date of the agreement. Some comments also inquired about when an agreement is considered effective.

#### RESPONSE

Staff has extended that window of time from 60 days to 90 days. In addition, the language has been changed to indicate that adjustments must be reported within 90 days of the effective date of the agreement or the provision contained within the agreement, if the provision in the agreement provides for multiple increases with separate effective dates.

Comments received after the change from 60 days to 90 days sought to have the window of time extended to 120 days. Staff consulted with several stakeholder groups before increasing the window of time to 90 days and believe that it is sufficient time for employers to report these adjustments.

An agreement (or provisions contained within) becomes effective once it becomes actionable, i.e., nothing beyond the act of paying the monies agreed upon is required for payment to commence.

#### PART-TIME EMPLOYEE EXCEPTION TO PENALTIES FOR LATE REPORTS OR LATE CONTRIBUTIONS – SUBSTITUTE TEACHERS

Several comments inquired into whether substitute teachers would be considered part-time for purposes of the Part-Time Employee Exception.

#### RESPONSE

The language in the regulations has been amended to make it clear that substitute teachers are included in the group of employees eligible for the Part-Time Employee Exception.

#### PART-TIME EMPLOYEE EXCEPTION TO PENALTIES FOR LATE REPORTS OR LATE CONTRIBUTIONS – PUBLISHED SALARY SCHEDULE

San Diego Community College District expressed concerns about their ability to meet the requirement in the Part-Time Employee Exception that the date a part-time position is paid is based upon a published salary schedule. Specifically, they indicated that dates of payment could be contained within a bargaining agreement and not necessarily on a payroll calendar.

#### RESPONSE

If the salary schedule is contained within a bargaining or employment agreement, this is sufficient to make the salary schedule “published” and meet that requirement in the Part-Time Employee Exception.

#### RIGHT TO AN ADMINISTRATIVE HEARING

A few commenters were unsure whether a district that does not report directly to CalSTRS would have the right to request an administrative hearing to contest penalties. Some also noted increased workload that would result from the review and appeal process.

#### RESPONSE

Employers who report through their County Office of Education will not have the right to request an administrative hearing. Penalties would also not be assessed against the employer who reports through their County Office of Education, and would instead be imposed upon the County Office of Education that reports directly to CalSTRS. There will be personnel costs to districts for engaging in the appeal process, but the process is intended for the benefit of employers to ensure that they have received due process of law in the assessment of penalties and interest.

#### **SUMMARY AND RESPONSE TO COMMENTS RECEIVED AT THE PUBLIC HEARING**

A public hearing was held on June 3, 2011. At that meeting there was one public comment. The Solano County Office of Education sent a representative who delivered an oral comment. That comment sought clarification as to how penalties or interest incurred would be collected from employers.

#### RESPONSE

Once CalSTRS has determined that an employer that reports directly to the system has incurred penalties or interest, written notice will be mailed to the employer of those penalties and interest along with information about submitting payment. Employers will have the opportunity to appeal any penalties or interest they dispute. CalSTRS will pursue appropriate legal remedies to recover any outstanding monies owed pursuant to these regulations.

#### **INCORPORATION BY REFERENCE**

As noted in the Initial Statement of Reasons, pursuant to 1 CCR 20, CalSTRS has incorporated by reference the F496 file specification (Defined Benefit Program) and the VDF file specification (Cash Balance Benefit Program). These specifications set forth the format and rules employers must comply with when reporting contribution-related information to CalSTRS. These specifications are being incorporated by reference due to their collective length (200 pages) and the technical nature of the content, as well as the cost of providing multiple 200-page copies of the specifications presently and whenever the file specifications are revised in the future (CalSTRS recognizes that subsequent modifications to the file specifications will require a new rulemaking process).

Employers currently report to CalSTRS through CalSTRS Secure Employer Website (SEW) using an earlier version of these file specifications. Copies of the proposed regulations and the revised file specifications which are incorporated by reference have been available to employers through SEW and have also been available on the CalSTRS website ([http://www.calstrs.com/Legislation/proposed\\_regulations\\_penalties\\_interest.aspx](http://www.calstrs.com/Legislation/proposed_regulations_penalties_interest.aspx)) since the inception of the rulemaking process, along with all other rulemaking materials.

#### **ALTERNATIVES DETERMINATION**

CalSTRS has determined that no reasonable alternative considered by the Teachers' Retirement Board or that has otherwise been identified and brought to the attention of the Board 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.

**LOCAL MANDATE DETERMINATION**

The proposed regulations do not impose any mandate on local agencies or school districts.