

TEACHERS' RETIREMENT BOARD

REGULAR MEETING

Item Number: **4**

SUBJECT: Adoption of Employer Direct Reporting Regulations

CONSENT: ___

ATTACHMENT(S): 2

ACTION: X

DATE OF MEETING: September 3, 2015/15 mins

INFORMATION: ___

PRESENTER: Ed Derman

PURPOSE

The purpose of this item is to seek the board's adoption of regulations that define the criteria to approve or disapprove a school district or a community college district as a direct report and the circumstances under which the board may withdraw its approval.

BACKGROUND

In [November 2013](#), the CalSTRS Legislative Committee (no longer a committee) directed staff to proceed with the drafting of regulations that would establish criteria that CalSTRS will use to assess whether an employer can be accepted as a direct report.

In [April 2015](#), the board reviewed the draft regulations and directed staff to proceed with the formal rulemaking process. The public comment period for these regulations ended on June 8, 2015, and a hearing was held on June 17. No comments, objections or recommendations related to the proposed regulations were received.

DISCUSSION

The proposed final regulations are attached. The regulations text is unchanged since the board first reviewed the text in April 2015. The documents that make up the rulemaking record—including the Notice of Proposed Rulemaking, the Initial and Final Statement of Reasons, the Economic and Fiscal Impact Statement, a recording of the hearing, the Updated Informative Digest and the Statement of Mailing Notice—are available for the board's review.

Following the board's adoption, with the approval of the Office of Administrative Law, these regulations will become effective January 1, 2016.

RECOMMENDATION

Staff recommends that the board adopt the attached draft resolution to adopt the proposed regulations.

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Title 5. Education. Division 3. Teachers' Retirement System.

All new text to be added to the California Code of Regulations follows, under new Article 1 in new Chapter 3.

Chapter 3. Employer Reporting

Article 1. Employer Direct Reporting

§ 27700. Definitions.

(a) As used in this chapter:

- (1) Unless otherwise specifically named, “board” means the Teachers’ Retirement Board.
- (2) “County” means the county superintendent of schools.
- (3) “County governing authority” means the county board of education, or, if in possession of the relevant authority to perform the activities specified in this Article, the county superintendent of schools.
- (4) “Direct report” means an elementary, high school, or unified school district, or a community college district, that is approved to report directly to the system such information as that the Teachers’ Retirement Board may require in the administration of the State Teachers’ Retirement Plan.
- (5) “District” means an elementary, high school, or unified school district, or a community college district.
- (6) “System” means the California State Teachers’ Retirement System.

Note: Authority cited: Sections 22207, 22213 and 22305, Education Code. Reference: Section 23004, Education Code.

§ 27701. Effective date.

- (a) The regulations shall be effective for districts that are currently approved as direct reports and to those that apply or are in the process of applying to become direct reports to the Defined Benefit Program on or after January 1, 2016.
- (b) The effective date of becoming a new direct report shall be July 1 of the year specified in the resolution adopted by the district governing board.

Note: Authority cited: Sections 22207, 22213 and 22305, Education Code. Reference: Section 23004, Education Code.

§ 27702. Prerequisites to approval.

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- (a) A district may apply to be a direct report to the system. The Teachers' Retirement Board may approve or may deny a district as a direct report based on the criteria in subdivisions (b) and (c).
- (b) An applicant to become a direct report shall be in compliance with all of the following requirements. Failure to comply with the requirements of this subdivision shall result in the denial of the application to become a direct report.
 - (1) The district has submitted the applicable resolutions by the district's governing board and the county governing authority required under Section 27703, and there has been no change to the correctness of each of the declarations therein.
 - (2) The district has demonstrated the ability to successfully transmit the following files to the system:
 - (A) An encrypted sample file formatted according to the F496 file format specifications incorporated by reference pursuant to Section 27000.
 - (B) An encrypted file containing member information related to accounts receivable to identify that a member is set up with automatic deduction to purchase service time through the employer.
 - (C) An encrypted file containing physical address details associated with the member.
 - (3) If the district was previously terminated as a direct report, more than five fiscal years have elapsed since the effective date of the termination.
 - (4) In the 36 months preceding its application to become a direct report, the district had an audit conducted by the system that demonstrated full compliance with reporting the following consistent with the Teachers' Retirement Law:
 - (A) Mandatory membership.
 - (B) One-time or limited-term payments reported to the Defined Benefit Supplement Program.
 - (C) Outgrowth activities as creditable service.
 - (D) Information regarding the compensation to be paid to employees, including, but not limited to, employment contracts, written agreements, salary schedules, and board minutes.
 - (5) A review conducted by the system demonstrates sustained compliance with all of the following over the 12-month period preceding the district's application:
 - (A) Responding to the system's requests for adjustments within 60 days.
 - (B) Providing acceptable annotations to employer-approved edits in the F496 file format electronically in an encrypted format provided by the system.
 - (C) Reporting full-time minimum standards consistent with a written agreement with an exclusive representative.
 - (D) Providing the system with information regarding the compensation to be paid to employees within 30 days of a request by the system.

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- (c) The board may deny an application to become a direct report if it finds any of the following:
- (1) The district has any outstanding or unresolved audit findings from the system at any point during the application process.
 - (2) There are any accounts receivable 30 or more days past due to the system attributable to the district at any point during the application process.
 - (3) If the district was previously rejected by the system from entry as a direct report due to an audit or review finding under these regulations, and the rejection occurred within the previous five fiscal years.
- (d) The board may, at its discretion, defer consideration of an application until a future fiscal year.

Note: Authority cited: Sections 22207, 22213, 22305 and 23004, Education Code. Reference: Section 22458 and 23004, Education Code.

§ 27703. Documentation required with application to become a direct report.

- (a) An applicant to become a direct report shall submit the following documentation with the following content:
- (1) If contributions required to be paid by a member are picked up for the sole purpose of deferring taxes as authorized by Section 414(h)(2) of the Internal Revenue Code of 1986 (26 U.S.C.A Sec 414(h)(2)) and Section 17501 of the Revenue and Taxation Code, a resolution adopted by the district’s governing board certifying its intent to pick up member contributions in compliance with those provisions and the Teachers’ Retirement Law.
 - (2) A resolution adopted by the district’s governing board resolving to become a direct report to the system and certifying each of the following.
 - (A) “[District] hereby elects to become a direct report to the California State Teachers’ Retirement System, effective on July 1, [effective year].”
 - (B) “[District] has a payroll system independent of the county.”
 - (C) The district is fiscally accountable, fiscally independent, or both, as demonstrated by including the relevant statements from either of the following subdivisions:
 - (i) For a school district: “[District] is [fiscally accountable as defined in Section 42647/ fiscally independent as defined in Section 42650/ both fiscally accountable and fiscally independent as defined in Sections 42647 and 42650] of the Education Code.”
 - (ii) For a community college district: “[District] is [fiscally accountable as defined in Section 85266/ fiscally independent as defined in Section 85266.5/ both fiscally accountable and fiscally independent as defined in Sections 85266 and 85266.5] of the Education Code.”

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- (D) “[District] has the ability to be in full compliance with the F496 File Specifications.”
- (E) “[District] is responsible for submitting contribution data and remitting contributions in accordance with the Teachers’ Retirement Law.”
- (F) “[District] is responsible for submitting contribution data and remitting contributions for all adjustments to contributions that relate to service performed prior to the effective date of the direct reporting relationship as requested by the system or as identified by the district.”
- (G) “[District] is responsible for payment of any penalty assessments for contributions and data submitted as a direct report on or after the effective date of the direct reporting relationship.”
- (H) “[District] is responsible for submitting all contribution data and remitting all contributions on and after the effective date of becoming a direct report.”
- (I) “For the last five fiscal years, [District] has been issued an unqualified opinion on its annual financial audit pursuant to Section 41020 or 84040 of the Education Code.”
- (J) The district has maintained a status of acceptable standing with the most current accrediting body by affirming the relevant statement from either of the following subdivisions:
 - (i) For a school district: “[District] has not been on probationary accreditation status nor had its accreditation status withheld by the most current accreditation body sanctioned by the California Department of Education in the last five fiscal years.”
 - (ii) For a community college district: “[District] has not been ordered to show cause or been subject to the equivalent strictest sanctions applied from the most current accreditation body sanctioned by the Board of Governors of the California Community Colleges in the last five fiscal years.”
- (K) “[District] shall notify the system within three business days if its payroll operations are no longer independent of the county or if its fiscally accountable status or fiscal independence is revoked. If any of these occur, the district shall cease submitting contribution data and remitting contributions to the system directly and shall resume submitting contribution data and remitting contributions through [County] effective on the date following revocation.”
- (L) The relevant statement from either of the following subdivisions:
 - (i) For a school district: “[District] shall notify the system within three business days if it is placed on one-year probationary accreditation status or has its accreditation status withheld or an equivalent status by the accrediting body.”
 - (ii) For a community college district, “[District] shall notify the system within three business days if it is ordered to show cause or is placed on an equivalent status or sanction by the accrediting body.”

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- (M) “If [district] is terminated as a direct report, [County] shall be responsible for submitting or remitting any missed reports, adjustments, contributions, penalties, and interest associated with the time period that the district was a direct report.”
- (N) “[District] may terminate the direct reporting relationship only when the system, the district, and [County] have agreed to the employer terminating the relationship.”
- (3) A resolution adopted by the county governing authority authorizing the district to become a direct report to the system and certifying each of the following:
- (A) “On [date district’s governing board approved resolution], [District] elected to become a direct report to the system effective on July 1, [effective year].”
- (B) “[District] meets the eligibility requirements of the system, as specified on a resolution adopted by the district’s governing board to become a direct report pursuant to paragraph (2) or subdivision (a) of Section 27703 of the California Code of Regulations.”
- (C) “[County] is not responsible for submitting contribution data and remitting contributions, including adjustments to contribution data and contributions made prior to the effective date of [District] becoming a direct report.”
- (D) “[County] is not responsible for any penalty or interest assessments for contributions and data submitted by [District] as a direct report on or after the effective date of becoming a direct report for the duration of the direct reporting relationship.”
- (E) “[County] shall notify the system within three business days of revocation should the district’s fiscally accountable status or fiscal independence be revoked, and shall resume submitting contribution data and remittance on behalf of the district on the revocation effective date.”
- (F) “If [District] is terminated as a direct report, [County] is responsible for submitting and remitting any and all reports, adjustments, contributions, penalties and interest to the system.”

Note: Authority cited: Sections 22207, 22213, 23004 and 22305, Education Code. Reference: Section 23004, Education Code.

§ 27704. Termination of direct reporting relationship.

- (a) The system may initiate termination of a direct reporting relationship at any time if any of the criteria or requirements for approval or responsibilities as a direct report are not met.
- (b) The system may terminate the direct reporting relationship if the district does not respond through compliance to an audit finding by the system by the due date specified on the audit determination letter, or through appeal within 90 days.
- (c) The district may voluntarily terminate the direct reporting relationship only when the system, the district’s governing body, and the county governing authority have mutually agreed to

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terminate the relationship, documented by a resolution specifying the effective date of the termination and approved by the district governing body, the county governing authority, and the Chief Executive Officer of the system or his or her designee. The resolution shall certify each of the following:

- (1) “WHEREAS, [District] desires to terminate the relationship as a direct report that reports Defined Benefit contribution data and remits contributions directly to CalSTRS; and”
- (2) “WHEREAS, the system Chief Executive Officer or his or her designee authorizes the District to terminate the relationship to report directly to the system; and”
- (3) “WHEREAS, [County] does hereby affirm that [County] is responsible for submitting and remitting any and all reports, adjustments, contributions, penalties and interest beginning on the effective date of the termination and covering all time periods, including the period that [District] was a direct report to the system.”
- (4) “THEREFORE, BE IT RESOLVED that the California State Teachers’ Retirement System and [County] authorize [District] to discontinue as a direct report to the system.”

Note: Authority cited: Sections 22207, 22213, 23004 and 22305, Education Code. Reference: Section 23004, Education Code.

§ 27705. Review of termination of direct reporting relationship.

- (a) A district may request a review, in writing, the decision by the system to terminate the direct reporting relationship, within 30 days of receipt of a relationship termination letter, to the Chief Executive Officer of the system, or his or her designee. The resulting decision after such a review shall be final.

Note: Authority cited: Sections 22207, 22213, 23004 and 22305, Education Code. Reference: Section 23004, Education Code.

RESOLUTION
OF THE
TEACHERS' RETIREMENT BOARD

SUBJECT: Adoption of Employer Direct Reporting Regulations

RESOLUTION NO. _____

WHEREAS, Section 22207 of the California Education Code authorizes the Teachers' Retirement 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; and

WHEREAS, Section 22213 of the Education Code provides that the board shall regulate the duties of employers, employing agencies and other public authorities and shall require reports from them; and

WHEREAS, Section 22305 of the Education Code provides that any rules and regulations adopted by the board for the administration of the pension system have the force and effect of law; and

WHEREAS, Section 22458 of the Education Code requires that employers provide CalSTRS with information regarding the compensation to be paid to employees subject to the Defined Benefit Program annually as determined by the board; and

WHEREAS, Section 23004 of the Education Code requires a school district or community college district, with approval by the board, to submit a report monthly to the system containing information as the board may require in the administration of the plan; and

WHEREAS, on April 1, 2015, the board approved proposed regulations to make the criteria for acceptance by the board under section 23004 specific and authorized CalSTRS to give public notice and schedule a public hearing before the designee of the board; and

WHEREAS, the Teachers' Retirement Board has provided an opportunity for public comment regarding the proposed regulations, and no comments, objections or recommendations were received; therefore, be it

RESOLVED, that the Teachers' Retirement Board adopts sections 27700, 27701, 27702, 27703, 27704 and 27705 of Article 1, Chapter 3, Division 3, Title 5, California Code of Regulations, and therefore, be it further

RESOLVED, that staff is instructed to submit the adopted regulations to the Office of Administrative Law (OAL) for final approval, and therefore, be it further

RESOLVED, that if, during the approval process, CalSTRS staff or the OAL determines that nonsubstantive corrections to the language of the regulations or supporting documentation are needed for clarity or consistency, the Chief Executive Officer or his designee may make such changes.

Adopted by:
Teachers' Retirement Board
on September 3, 2015

Reviewed by:

Jack Ehnes
Chief Executive Officer

Brian J. Bartow
General Counsel