

TEACHERS' RETIREMENT BOARD

REGULAR MEETING

Item Number: **5**

SUBJECT: Adopt Amendments to Creditable Compensation Regulations

CONSENT: _____

ATTACHMENT(S): 2

ACTION: X

MEETING DATE: June 8, 2017/ 15 mins.

INFORMATION: _____

PRESENTER(S): Grant Boyken

PURPOSE

The purpose of this item is to seek the board's adoption of amendments to CalSTRS regulations related to creditable compensation.

DISCUSSION

Existing regulations clarify the criteria for creating a class of employees, identify characteristics of creditable compensation and describe whether contributions will be credited to the Defined Benefit Program or the Defined Benefit Supplement Program for CalSTRS 2% at 60 members. In general, the regulations apply to compensation paid for service performed on or after January 1, 2015.

In [April 2016](#), the board directed staff to engage with stakeholders in drafting language to clarify the creditable compensation regulations. In [September 2016](#), the board directed staff to begin the formal rulemaking process. A 45-day public comment period was noticed to the public, and the board conducted a hearing in November 2016. In [April 2017](#), the board directed staff to post further proposed amendments to the regulations based on feedback received, which can be reviewed in the linked item, for a 15-day public comment period. No further public comments were received.

The proposed final regulations are attached. In addition to the changes reviewed by the board in April 2017, the text includes nonsubstantive revisions that were also made available to the public during the comment period.

RECOMMENDATION

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

ATTACHMENTS

Attachment 1 – Final Proposed Text of Amended Creditable Compensation Regulations

Attachment 2 – Resolution of the Teachers' Retirement Board

**Title 5. Education. Division 3. Teachers' Retirement System.
Chapter 2. Compensation.**

Article 2. Class of Employees

§ 27300. Basis of Establishment of a Class of Employees

(a) One or more employees constitute a class of employees pursuant to Section 22112.5 of the Education Code ~~Section 22112.5~~ on the basis of any of the following:

(1) Similarity of the job duties being performed.

(A) Job duties are those activities described as creditable service in ~~subdivisions (a) and (b) of~~ Section 22119.5 of the Education Code.

(B) The job duties grouped within each paragraph ~~of subdivision (a) and within subdivision (b)~~ of Section 22119.5 of the Education Code are deemed similar for the purposes of this subdivision.

(C) An employer may establish a class that is comprised of employees whose assignment is a combination of two or more job duties.

(D) Employees performing similar job duties who are also performing activities that are related to, and an outgrowth of, the instructional and guidance program of the school described in paragraph (6) of subdivision (a) of Section 22119.5 of the Education Code ~~described in paragraph (6) of subdivision (a) of Section 22119.5 of the Education Code~~ belong to the class of employees performing the similar job duties, unless they are placed in a separate class pursuant to subparagraph (C).

(E) If an employer establishes a class comprised of one employee ~~pursuant to subdivision (b) of Section 22112.5 of the Education Code~~, the employer must demonstrate that job duties for that class are in common use by at least two other employers.

(2) Employment in the same type of program.

(A) A program is either of the following: ~~is any~~

(i) An educational program established pursuant to state or federal law.

(ii) An educational program established under a Local Control and Accountability Plan pursuant to Section 52060 of the Education Code.

(B) One or more employees may be considered a separate class because they work in a separate program as defined in subparagraph (A) from other employees who have similar job duties.

(3) The employees share other similarities related to the nature of the work being performed.

NOTE: Authority cited: Sections 22112.5, 22119.2, 22213 and 22305, Education Code.

Reference: Sections ~~4205~~, 22112.5 and 22119.5, Education Code.

§ 27301. Prohibited Classes of Employees

(a) An employer may not establish a class of employees that is distinguished by any of the following:

(1) The retirement benefit formula or retirement program.

- (2) A minimum or maximum threshold for age or service credit.
- (3) The characterization or restructuring of compensation, in the absence of the criteria described in Section 27300.
- (4) An option or requirement for one or more employees who perform similar job duties to work a longer or shorter day, or work more or fewer days per year, performing similar job duties, in the absence of the criteria described in paragraph (2) of subdivision (a) of Section 27300, except as provided in subdivision (c) of Section 22138.5 of the Education Code for the minimum standard for full time in community colleges.
- (5) Performing only activities ~~described in paragraph (6) of subdivision (a) of Section 22119.5 of the Education Code because those activities must be~~ related to, and an outgrowth of, the instructional and guidance program of the school, ~~because those activities must be and~~ performed in addition to other activities described in Section 22119.5 of the Education Code in order to be creditable service.

NOTE: Authority cited: Sections 22112.5, 22119.2, 22207, 22213 and 22305, Education Code.
Reference: Sections 22112.5, 22119.5 and 22138.5, Education Code.

Article 3. Creditable Compensation

§ 27400. Salary

(a) Salary is compensation that meets all of the following requirements:

- (1) ~~Paid~~ Is paid in cash by an employer to an employee in accordance with a publicly available written contractual agreement.
- (2) Is paid for the performance of creditable service activities described in Section 22119.5 of the Education Code.
- (3) Is any of the following:
 - (~~2~~**A**) Explicitly characterized as salary in the ~~on a contract, salary schedule or employment agreement,~~ and used
 - (~~3~~) Used as a basis for future pay increases, ~~with one exception. It is not required that compensation paid to execute duties~~
 - (**B**) Paid to perform creditable service activities that are related to, and an outgrowth of, the instructional and guidance program of the school, ~~pursuant to paragraph (6) of subdivision (a) of Section 22119.5 of the Education Code be used as the basis of future pay increases.~~
 - (**C**) Paid to perform creditable service activities that are related to the examination, selection, in-service training, mentoring, or assignment of teachers, principals, or other similar personnel involved in the instructional program.
- (4) Paid without a requirement by the employer for proof of expenditure.
- (b) The employer must establish a compensation earnable for all assignments for which an employee will earn salary.

(1) If an employer provides ~~additional~~ compensation in exchange for performing activities described in ~~subparagraph (B) or (C) of paragraph (3) of subdivision (a)~~ paragraph (6) of subdivision (a) of Section 22119.5 of the Education Code, the ~~additional~~ compensation is for ~~additional~~ service, and the employer must establish a compensation earnable for those activities.

(c) If compensation is restructured into salary, regardless of how it was paid previously, the compensation will be considered salary beginning on the effective date of the restructure.

(d) Salary includes amounts deducted from salary at the discretion of the employee.

NOTE: Authority cited: Sections 22119.2, 22119.5, 22138.5, 22207, 22213, 22214, 22215, 22305 and 22458, Education Code. Reference: Sections 22115, 22119.2, 22119.5, 22138.5 and 22138.6, Education Code.

§ 27401. Remuneration that is Paid in Addition to Salary

(a) Remuneration in addition to salary is compensation that meets all of the following requirements:

~~(1) , when paid~~ Is paid in cash in accordance with a publicly available written contractual agreement where applicable and required by law, ~~includes the following compensation that is~~

~~(2) Is~~ not associated with the performance of additional service, ~~provided that it is~~

(A) When the contractual full time is based on load credits or a similar non-time based measure, additional service includes any service that is associated with earning those credits.

(3) Is paid to all persons who are in a class of employees, in the same dollar amount, same percentage of salary or same percentage of amount being distributed.

(4) Is paid in the same manner to all members of the class of employees, and is not available in an alternative form that is subject to choice on an individual basis by an employee or an employer.

(5) Is paid without a requirement by the employer for proof of expenditure.

~~(16)~~ Is paid contingent on either of the following:

(A) Availability of funds.

(B) Compensation for m Meeting any of the following qualifications or requirements:

(A) Possession or attainment of a certificate, license, special credential or advanced degree.

(B) Career or service longevity.

(C) Hiring, transfer or retirement.

(D) Employment in a position that is hazardous or difficult to staff.

(E) Employment in an assignment in which the number of students enrolled exceeds the contractual ~~amount~~ class size maximum.

(F) Achievement of a performance benchmark.

~~(2) Compensation that is paid contingent upon availability of funds.~~

(b) If compensation is restructured into remuneration in addition to salary, regardless of how it was paid previously, the compensation is remuneration in addition to salary beginning on the effective date of the restructure.

(c) Remuneration in addition to salary does not include the following as described in Sections 27501 and 27502:

(1) Cash paid by an employer to an employee who receives cash in lieu of a fringe benefit, or cash in lieu of an expense paid or reimbursed by the employer.

(2) Cash paid by an employer on behalf of an employee for a fringe benefit, expense or reimbursement.

(3) Cash paid by an employer to an employee that is the remainder from money allocated for fringe benefits or expenses that are paid by the employer.

NOTE: Authority cited: Sections 22119.2, 22119.5, 22207, 22213, 22214, 22215, 22305 and 22458, Education Code. Reference: Section 22119.2, Education Code.

Article 5. Appropriate Crediting of Contributions

§ 27600. Consistent Treatment of Compensation

(a) In assessing the consistency of an increase that occurs during the period of time specified in subdivision (f), an increase is consistent if the employer demonstrates that it is due to any of the following:

(1) A restructure of compensation that is a permanent change, as indicated by not meeting either of the criteria for inconsistency described in subdivision (d).

(2) A salary deferral due to a reduction in school funds.

(3) A commensurate percentage increase in compensation earnable for the majority of members employed by the same employer.

(4) A change in duties required of the employee that is incorporated in the first contract for the immediate successor to the position.

(5) An increase in responsibility of the employee that is incorporated in the first contract for the immediate successor to the position.

(6) Attainment of an educational or performance benchmark.

(7) An increase that establishes pay parity as demonstrated by any of the following:

(A) Commensurate compensation earnable for that same position in the past.

(B) Commensurate compensation earnable for other employees performing similar duties for the same employer or other employers.

(8) A commensurate compensation earnable for the immediate successor.

(9) A commensurate compensation earnable for the immediate predecessor.

(10) More education or experience than the immediate predecessor.

(11) An increase in compensation that is required to recruit for a position which is directly responding to a specific time-bound financial crisis, not to exceed 150 percent of the base

compensation earnable of the predecessor in the position or the most similar position prior to the crisis. For the purposes of this paragraph, a specific time-bound financial crisis is, for school districts, a negative certification of financial obligations pursuant to Section 1240 of the Education Code or, for community college districts, a finding of serious hardship of financial condition as defined in subdivision (c) of Section 59204 of Subchapter 4, Chapter 10, Division 6 of this Title.

~~(b) Notwithstanding paragraph (2) of subdivision (d), in~~ In assessing the consistent treatment of compensation for a position, if the successor's ~~compensation is structured such that~~ the compensation earnable is lower than the member's, ~~and the reduction in successor pay is attributable to less education or experience, it~~ the member's compensation shall not be presumed to be ~~consistent~~ inconsistent solely by reason of the reduced successor pay.

(c) In assessing the consistency of an increase that occurs during the period of time specified in subdivision (f), an increase that is not due to any of the circumstances listed in subdivision (a) is presumed to be inconsistent.

(d) A restructure of compensation pursuant to paragraph (1) of subdivision (a) is inconsistent if either of the following ~~apply~~ applies:

(1) The restructure is effective on or after January 1, 2016, and is outside of that employer's standard bargaining or employment contract negotiation time frames.

(2) The restructure is implemented for a class of one, and the change is reversed upon hire and negotiation of the first contract of the immediate successor.

(e) Notwithstanding subdivision (a), if there is determined to be a pattern of late career changes that result in additional compensation that the system determines was paid to enhance a member's benefits, such as, but not limited to, assignment of duties or responsibilities by an employer to employees during the final compensation period, the additional compensation for those duties is presumed to be inconsistent.

(f) (1) For a member whose initial final compensation after his or her most recent retirement is calculated using a period of ~~three consecutive school years~~ 36 or 12 consecutive months pursuant to Section 22134, 22134.5 or 22135 of the Education Code, the period of time is seven years preceding and including the last day used to calculate final compensation.

(2) For a member whose initial final compensation after his or her most recent retirement is calculated using ~~any three years~~ nonconsecutive periods of time due to a reduction in school funds ~~pursuant to Section 22136 of~~ as permitted by the Education Code section 22134, the period of time begins four years prior to the first day used to calculate final compensation and ends on the last day used to calculate final compensation.

NOTE: Authority cited: Sections 22119.2, 22207, 22215, 22250, 22305 and 22458, Education Code. Reference: Sections 22112.5, 22119.2, 22458 and 22905, Education Code.

§ 27601. Appropriate Crediting of Contributions

(a) Upon determination that compensation was treated inconsistently, except in cases where an adjustment to the crediting of contributions would not result in a change to a member's final compensation, CalSTRS shall limit the amount of contributions that are credited to the Defined Benefit Program during the period of time specified in subdivision (b).

(1) If the inconsistent treatment of compensation is the result of a restructure of compensation, the employer shall report the amount that was restructured to the member's Defined Benefit Supplement account.

(2) If the inconsistent treatment of compensation is not attributable to a restructure, the employer shall report the portion of compensation in excess of the following thresholds to the member's Defined Benefit Supplement account:

(A) For inconsistent compensation increases concurrent with a change in position, the threshold for the fiscal year in which the inconsistent compensation increase occurred is the immediate predecessor's salary increased by the percentage calculated pursuant to paragraph (3). The resulting amount is the baseline on which the percentage increase calculated pursuant to paragraph (4) shall be applied to determine the threshold for each subsequent fiscal year.

(B) For inconsistent compensation increases not concurrent with a change in position, the threshold for the fiscal year in which the inconsistent compensation increase occurred is the member's compensation earnable for the year prior to the year in which the inconsistent increase occurred increased by the percentage calculated pursuant to paragraph (3). The resulting amount is the baseline on which the percentage increase calculated pursuant to paragraph (4) shall be applied to determine the threshold for each subsequent fiscal year.

(3) For the purposes of subparagraphs (A) and (B) of paragraph (2), the percentage increase to establish the baseline amount shall be the greater of either (A) or (B), whichever is applicable, or (C), as follows:

(A) 150 percent of the median percentage increase of the compensation earnable of the members at the member's employer between that fiscal year and the previous fiscal year, if that employer has at least 30 members.

(B) 150 percent of the median percentage increase of the compensation earnable of the members within the member's county between that fiscal year and the previous fiscal year, if the member's employer has less than 30 members.

(C) 150 percent of the median percentage increase of the compensation earnable of active members statewide, or zero, whichever is greater.

(4) For the purposes of subparagraphs (A) and (B) of paragraph (2), the percentage increase applied during each subsequent fiscal year shall be calculated as follows:

(A) For each subsequent inconsistent increase that is not concurrent with a change in position, the percentage calculated pursuant to paragraph (3) is applied to the prior year's threshold amount.

- (B) For each subsequent inconsistent increase that is concurrent with a change in position, the percentage calculated pursuant to paragraph (3) is applied to the immediate predecessor's salary.
- (C) For each subsequent consistent increase that is not concurrent with a change in position, the same percentage increase that the member earned is applied to the prior year's threshold amount.
- (D) For each subsequent consistent increase that is concurrent with a change in position, the thresh-old amount is the actual compensation earnable for that new position.
- (b) (1) For a member whose initial final compensation after his or her most recent retirement is calculated using a period of ~~three consecutive school years~~ 36 or 12 consecutive months pursuant to Section 22134, 22134.5 or 22135 of the Education Code, the period of time shall not exceed the seven years preceding and including the last day used to calculate the member's final compensation.
- (2) For a member whose initial final compensation after his or her most recent retirement is calculated using ~~any three years~~ nonconsecutive periods of time due to a reduction in school funds pursuant to ~~Section 22136~~ of as permitted by the Education Code section 22134, the period of time shall not exceed the number of years that begins four years prior to the first day used to calculate final compensation and ends on the last day used to calculate final compensation.

NOTE: Authority cited: Sections 22119.2, 22207, 22213 and 22305, Education Code. Reference: Sections ~~1205, 2574,~~ 22112.5, 22119.2 and 22458, Education Code.

§ 27602. Compensation that is Paid a Limited Number of Times

- (a) Compensation is creditable to the Defined Benefit Supplement account if compensation was restructured into salary or remuneration in addition to salary as described in subdivision (c) of Section 27400 or subdivision (b) of Section 27401, and is paid a limited number of times, has a specified end date, or is otherwise not permanent.
- (b) Contributions for remuneration in addition to salary that is paid pursuant to Section 27401 shall be credited to the member's Defined Benefit Supplement account if ~~both paragraphs (1) and (2) are met:~~
- ~~(1) T~~ the compensation is not ongoing, as limited by either of the following:
- (A) The number of times is specified in law or in a publicly available written contractual agreement.
- (B) The compensation is not scheduled to continue.
- ~~(2) The compensation is paid to an individual contingent upon either of the following:~~
- ~~(A) Availability of funds.~~
- ~~(B) Meeting any of the following qualifications or requirements:~~
- ~~(i) Possession or attainment of a certificate, license, special credential or advanced degree.~~
- ~~(ii) Career or service longevity.~~
- ~~(iii) Hiring, transfer or retirement.~~
- ~~(iv) Employment in a position that is hazardous or difficult to staff.~~

- ~~(v) Employment in an assignment in which the class size exceeds the contractual amount.~~
- ~~(vi) Achievement of a performance benchmark.~~

NOTE: Authority cited: Sections 22119.2, 22305 and 22458, Education Code. Reference:
Sections 22119.2 and 22905, Education Code.

RESOLUTION
OF THE
TEACHERS' RETIREMENT BOARD

SUBJECT: Adoption of Amendments to Creditable Compensation Regulations:

RESOLUTION NO. ____

WHEREAS, Section 22112.5 of the California Education Code provides that the board may override a determination as to whether or not a group or an individual constitutes a class of employees; and

WHEREAS, Section 22119.2 of the California Education Code provides that the board may determine any payments that are and are not “creditable compensation”; and

WHEREAS, Section 22119.5 of the California Education Code provides that the board shall have final authority for determining creditable service to cover any activities not already specified in that section; and

WHEREAS, Section 22138.5 of the California Education Code provides that the board has final authority to determine full time for purposes of crediting service; and

WHEREAS, Section 22207 of the 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 22214 of the Education Code provides that the board may take any action it deems necessary to ensure the continued right of members or beneficiaries to receive monthly payments; and

WHEREAS, Section 22215 of the Education Code provides that the board shall determine the service performed by members to be credited toward qualification for retirement; and

WHEREAS, Section 22250 of the Education Code provides that the board and its officers and employees shall discharge their duties with respect to the system and the plan solely in the interest of its members, participants and beneficiaries, and for the exclusive purpose of providing benefits and defraying reasonable costs of administering the plan; and

WHEREAS, Section 22305 of the Education Code provides that any rules and regulations adopted by the board 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; and

WHEREAS, on September 15, 2016, the board approved the initially proposed amendments updating sections 27300, 27301, 27400, 27401, 27600, 27601 and 27602 of Articles 2, 3 and 5 of Chapter 2, Division 3, Title 5, California Code of Regulations, and directed CalSTRS staff to give public notice and schedule a public hearing before the board; and

WHEREAS, the board held a public hearing on November 17, 2016; and

WHEREAS, on April 7, 2017, the board approved additional proposed amendments to sections 27401 and 27600 of the regulation and directed CalSTRS staff to hold a 15-day public comment period; and

WHEREAS, the Teachers' Retirement Board has provided an opportunity for public comment regarding the proposed regulations, and duly considered all comments, objections or recommendations received; therefore, be it

RESOLVED, that the Teachers' Retirement Board adopts the accompanying amended sections 27300, 27301, 27400, 27401, 27600, 27601 and 27602 of Articles 2, 3 and 5 of Chapter 2, Division 3, Title 5, California Code of Regulations; and therefore, be it further

RESOLVED, that CalSTRS staff is instructed to submit the adopted regulation 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 regulation 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 June 8, 2017

Reviewed by:

Jack Ehnes
Chief Executive Officer

Brian J. Bartow
General Counsel