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TO: All County Superintendents of Schools
District Superintendents of Schools
Charter School Administrators
Community College Districts and
Other Employing Agencies

FROM: Jack Ehnes
Chief Executive Officer

SUBJECT: Employer Directive 2017–03
Supersedes Employer Directive 2016–03
Postretirement Earnings Limit for the 2016–17 Fiscal Year, 2017–18 Fiscal Year, and 2017 Calendar Year

PURPOSE

This employer directive is intended to inform and remind employers of:

- The application of the earnings limit for retired CalSTRS members.
- The annual postretirement earnings limit for the 2016–17 fiscal year.
- The annual postretirement earnings limit for the 2017–18 fiscal year.
- Requirements for requesting an exemption from the annual postretirement earnings limit to assist schools that are in financial or academic distress. This exemption will sunset on June 30, 2017.
- The postretirement separation-from-service requirement for members and participants during the first 180-calendar days from their retirement date with CalSTRS.
- Requirements for requesting an exemption from the separation-from-service requirement.
- Restrictions on hiring retired CalSTRS members and participants in classified positions.
- Retirement incentive restrictions.
- Requirements for employer communication regarding the earnings limits and, if applicable, the retirement incentive restrictions when hiring CalSTRS members. Also, the employer requirements regarding maintaining accurate records and reporting postretirement earnings to CalSTRS.
- The CalSTRS postretirement excess earnings notification process.
- The disability retirement earnings limit for the 2017 calendar year.
- The disability allowance earnings limit for the 2016–17 and 2017–18 fiscal years.

SCOPE

This directive contains information for county superintendents of schools, school districts, charter schools, community college districts, and any agency that employs retired members of the Defined Benefit (DB) Program (referred to in this directive as "retired CalSTRS members") or retired participants of the Cash Balance (CB) Benefit Program (referred to in this directive as "retired CalSTRS participants") to perform creditable service or that employs CalSTRS members receiving either a Disability Allowance or Disability Retirement benefit in any capacity.

DISCUSSION

Application of Postretirement Earnings Limit

Sections 24214 and 24214.5 of the Education Code impose limitations on retired CalSTRS members who return to work and perform retired member activities. Section 22164.5 defines "retired member activities" as one or more of the activities identified in subdivision (b), (c) or (d) of Section 22119.5 or subdivision (b), (c) or (d) of Section 26113 when performed as either an employee of an employer, an employee of a third party (except under certain circumstances) or an independent contractor within the California public school system. The salary being paid for retired member activities may not be less than the minimum, nor can it exceed the maximum, paid by the employer to other employees performing comparable duties.

If a retired CalSTRS member earns compensation for performing retired member activities during the 180-calendar day separation-from-service period or in excess of the annual postretirement earnings limit, Education Code sections 24214(g) and 24214.5(h) require CalSTRS to reduce the member's retirement benefit dollar-for-dollar, up to a maximum of the member's retirement benefit, until the member has repaid the amount of compensation that was earned during the separation-from-service period or in excess of the earnings limit.

Postretirement Earnings Limit for the 2016–17 and 2017–18 Fiscal Years

The postretirement earnings limit for retired CalSTRS members for the 2016–17 *fiscal* year is $41,732.

The postretirement earnings limit for retired CalSTRS members for the 2017–18 *fiscal* year is $43,755.

The limit is adjusted annually by CalSTRS and is equal to one-half of the median final compensation amount for all members who retired for service during the fiscal year ending in the previous calendar year.

Exclusion When Working for a Third Party

Retired members employed by a third party are excluded from the postretirement earnings limit and related provisions provided they meet all of the following criteria:

- The retired member is employed by a third party that does not participate in a California public pension system;

- The activities performed by the retired member are not normally performed by the employees of an employer; and
- The activities are performed by the retired member for a limited term of 24 months or less.

Employer reporting of retired members who are employed by a third party under the narrow conditions above is not required. CalSTRS has not identified any example of service that would meet these criteria.

Exemption to the Annual Postretirement Earnings Limit

There is a narrow exemption from the annual postretirement earnings limit available through June 30, 2017, for certain appointments to assist schools in financial or academic distress. There are four specific appointments that are exempt:

- Appointment by the State Superintendent of Public Instruction as a trustee for a school district that has received an emergency apportionment.
- Appointment by a county superintendent of schools as a fiscal adviser or fiscal expert for a school district that must revise its budget or that may or will be unable to meet its financial obligations for the remainder of the fiscal year or the subsequent fiscal year(s).
- Appointment by the State Board of Education as a trustee or a receiver for a local educational agency that has been identified for corrective action under the federal No Child Left Behind Act of 2001.
- Appointment by the Board of Governors of the California Community Colleges as a special trustee for a community college district that fails to achieve fiscal stability or that fails to comply with the Board of Governors' recommendations.

To qualify for this exemption, the appointing authority must certify the following:

- The position was first advertised for appointment to current active or inactive members and no qualified person was available to fill the appointment.
- The appointing authority made a good faith effort to hire a retired member who would reinstate.
- The salary being paid does not exceed the salary that was offered as first advertised to current or inactive members.
- The retired member is normal retirement age when the compensation is earned (for 2% at 60 members, age 60; for 2% at 62 members, age 62).
- The retired member has not received financial inducement to retire, including, but not limited to, any form of compensation or other payment that is paid directly to or indirectly to the member, from any public employer in the previous six months.

When applying for the postretirement earnings limit exemption, employers must complete the *Request for Postretirement Earnings Limit Exemption* (SR 0164) form, which is available in "Reference Items" on the Secure Employer Website. In order for CalSTRS to consider an application for an exemption, we must receive this form and all required documentation before the retired member begins performing retired member activities. If CalSTRS does not receive the *Request for Postretirement Earnings Limit Exemption* form and required documentation prior to the beginning of a member's postretirement service for that position, CalSTRS will not accept the form for consideration, and the member will not be approved for the exemption.

If the exemption for the annual postretirement earnings limit, as outlined in Education Code section 24214, is approved, the member will only be exempt from the annual postretirement earnings limit. The separation-from-service requirement will still apply unless a member previously received a separation-from-service requirement exemption. In order to be exempt from the separation-from-service requirement, a separate exemption request must have been submitted by the employer and approved by CalSTRS.

Separation-From-Service Requirement
Pursuant to Education Code section 24214.5, there is a 180-calendar day separation-from-service requirement for all retired CalSTRS members, regardless of age, during which the postretirement compensation limit for the performance of retired member activities is zero dollars ($0).

If the retired CalSTRS member returns to work during this period, CalSTRS will reduce the member's retirement benefit by an amount equal to his or her earnings up to the benefit payable during that period. This restriction is in addition to the annual postretirement earnings limit. Any amount the retired CalSTRS member receives during the first 180 calendar days of retirement will also count against the annual postretirement earnings limit for the appropriate fiscal year.

Pursuant to Education Code section 26812, the 180-calendar day separation-from-service requirement applies to Cash Balance Benefit Program annuitants who retired on or after January 1, 2014, no matter their age. If a retired CalSTRS participant receives his or her retirement benefit as a lump sum, the benefit is not payable until 180 days after the date employment was terminate. If a participant electing a lump-sum benefit performs creditable service during the 180-calendar day separation-from-service period, his or her retirement application will be automatically canceled.

Exemption to the Separation-From-Service Requirement
There is a narrow exemption from the 180-calendar day separation-from-service requirement for a retired CalSTRS member or participant under certain circumstances. To qualify for this exemption, the retired CalSTRS member or participant must be at or above normal retirement age at the time the compensation is earned, and the employer must appoint the retired member or participant to a critically needed position that has been approved by the governing body of the employer in a public meeting as reflected in a resolution. The resolution of the appointment must be adopted before the retired CalSTRS member or participant begins performing retired member or participant activities under the exemption. The resolution approving the appointment may not be placed on a consent calendar.

The resolution must include the following specific information and findings:

- The intent to seek an exemption from the 180-calendar day separation-from-service requirement.
- The nature of the employment.

- A finding that the appointment is needed to fill a critically needed position before the 180-calendar day separation-from-service requirement is fulfilled.
- A finding that the member or participant did not receive a retirement incentive or any financial inducement to retire from any public employer.
- A finding that, by retiring, the member or participant did not create the vacancy the member or participant is now filling.

When applying for the separation-from-service requirement exemption, the superintendent, the county superintendent of schools or the chief executive officer of a community college must complete the *Request for Separation-from-Service Requirement Exemption* (SR 1897) form, which is available in "Reference Items" on the Secure Employer Website. CalSTRS must receive this form and the aforementioned resolution indicating the above information to substantiate the eligibility of the retired CalSTRS member or participant for the exemption before the member or participant begins performing service under the exemption. CalSTRS must notify the employer and the retired CalSTRS member or participant within 30 days of receiving the resolution and all required documentation whether the service performed will be subject to or exempt from the 180-calendar day separation-from-service requirement.

If the separation-from-service requirement exemption is approved, the retired CalSTRS member or participant will only be exempt from the separation-from-service requirement. Any earnings during the 180-calendar day period will still be subject to the annual postretirement earnings limit. In order to be exempt from the annual postretirement earnings limit, a separate exemption request would need to be submitted by the employer and approved by CalSTRS.

Education Code sections 24214.5 and 26812 clarify what constitutes a "financial inducement to retire" that would prohibit a retired CalSTRS member or participant from being eligible for an exemption from the separation-from-service requirement.

<u>Classified Position Restrictions</u>
Education Code section 45134 precludes retired CalSTRS members from employment in classified positions in the California public school system. However, this section is outside of the Teachers' Retirement Law and therefore outside the purview of CalSTRS.

<u>Retired CalPERS Postretirement Employment Restrictions</u>
If the employee is a CalSTRS and CalPERS member, please ask the employee to contact CalPERS at 888-225-7377 to determine the impact that returning to work would have on his or her CalPERS benefit.

<u>Retirement Incentive Restrictions</u>
Members who retired with a CalSTRS retirement incentive under Education Code section 22714 will lose the increased service credit attributable to the retirement incentive if they return to employment in any job, including substitute teaching, within five years of receiving the incentive with the school district, community college district or county office of education that granted the retirement incentive. Education Code section 22461 requires the employer to notify retired

members of the employment restrictions in Education Code section 22714 upon retaining their services.

Employer Requirements for Notification of Postretirement Earnings and Employment Restrictions, and Required Reporting of Postretirement Earnings

Upon retaining the services of a retired CalSTRS member, Education Code section 22461 requires employers to notify that member of earnings limitations and employment restrictions for those who receive retirement incentives, regardless of whether the retired member performs the services as an employee of the employer, an employee of a third party or an independent contractor. Employers must also report the retired member's earnings to CalSTRS each month. All postretirement earnings must be reported with Member Code 2 and Assignment Code 61.

CalSTRS Postretirement Excess Earnings Notification Process

CalSTRS sends an *Initial Postretirement Earnings Letter* to the member when postretirement earnings are initially reported by the employer. The *Initial Postretirement Earnings Letter* informs the member of the current earnings limit and describes what occurs if the limit is exceeded. When the employer reports postretirement earnings equal to one-half of the annual postretirement earnings limit, CalSTRS sends a second letter, the *Postretirement Earnings Mid-Limit Letter,* notifying the member of the dollar amount reported to date and reminding the member of the consequences of exceeding the earnings limit.

When a member either violates the 180-calendar day separation-from-service requirement or exceeds the annual earnings limit, CalSTRS sends the member another letter notifying him or her that the excess earnings will be withheld from his or her monthly retirement benefit. CalSTRS gives at least a 30-day notice before commencing collection. If the earnings were reported to CalSTRS in error by a member's employer, the employer is responsible for correcting the previous reporting and notifying CalSTRS that corrected contribution lines were submitted.

Application and Amount of the 2017 Disability Retirement Earnings Limit

The disability retirement earnings limit for the 2017 *calendar* year is $29,550. The limit applies to all earnings regardless of whether the member is self-employed or employed in any capacity in either the public or private sector. The limit is adjusted annually by the Teachers' Retirement Board, if necessary, by the amount of change in the California Consumer Price Index.

Application and Amount of the 2016–17 and 2017–18 Disability Allowance Earnings Limit

The disability allowance earnings limit for the 2016–17 and 2017–18 *fiscal* years is calculated individually for each member based on the member's indexed final compensation amount. Members receiving a disability allowance benefit are also subject to individual monthly and continuous six-month earnings limits based on the member's indexed final compensation. The various limits apply to all earnings regardless of whether the member is self-employed or employed in any capacity in either the public or private sector.

SUMMARY OF REQUIRED ACTIONS

In accordance with Education Code section 22461, upon retaining the services of a retired member either as an employee of an employer, an employee of a third party or as an independent contractor within the California public school system, the employer is required to:

- Notify the retired member of all earnings limits and also the retirement incentive employment restrictions, if applicable.
- Maintain accurate records of the retired member's earnings.
- Report those earnings to the retired member and to CalSTRS monthly, using Member Code 2 and Assignment Code 61, regardless of the method of payment or the fund from which the payments were made.

To learn more about postretirement limitations, please visit CalSTRS.com/general-information/working-after-retirement. If you have questions regarding the postretirement earnings limit, contact Postretirement by email at postretirement@calstrs.com or leave a voicemail at 916-414-5967.

Postretirement Earnings Limit Exemption Matrix

- **Exemption forms AND additional required documentation must be received by CalSTRS before the retired member begins service.**
- **Qualification for an exemption is subject to CalSTRS approval. After completing its review, CalSTRS sends a letter to the member or participant and his or her employer approving or denying the exemption request.**

	Narrow Exemption for Working in Distressed Schools	**Exemption from the Separation-From-Service Requirement**
Details	Four specific appointments are exempt: • Appointment by the State Superintendent of Public Instruction as a trustee for a school district that has received an emergency apportionment. • Appointment by a county superintendent of schools as a fiscal adviser or fiscal expert for a school district that must revise its budget or that may or will be unable to meet its financial obligations for the remainder of the fiscal year or the subsequent fiscal year(s). • Appointment by the State Board of Education as a trustee or a receiver for a local educational agency that has been identified for corrective action under the federal No Child Left Behind Act of 2001. • Appointment by the Board of Governors of the California Community Colleges as a special trustee for a community college district that fails to achieve fiscal stability or that fails to comply with the Board of Governors' recommendations.	In order to qualify for this exemption, the employer must appoint a member to a position that has been approved by the governing body of the employer in a public meeting as reflected in a resolution. The resolution must be adopted before the member begins performing creditable service under the exemption. A member can qualify for this exemption only if he or she has reached normal retirement age (for 2% at 60 members, age 60; for 2% at 62 members, age 62).
Education Code	§24214	§24214.5
Required CalSTRS Form	*Request for Postretirement Earnings Limit Exemption* form *(SR 0164)*	*Request for Separation-from-Service Requirement Exemption* form *(SR 1897)*
Additional Required Documentation	The appointing authority must certify that: • The position was advertised to active or inactive members and no qualified person was available to be appointed. • The appointing authority made a good faith effort to hire a retired member who would reinstate. • The salary being paid does not exceed what was advertised or is currently paid for that position. • Must be normal retired age (for 2% at 60 members, age 60; for 2% at 62 members, age 62) when compensation is earned. • The member did not receive a retirement incentive or any financial inducement to retire from any public employer.	The resolution must specify the following: • The intent to seek an exemption from the 180-calendar day separation-from-service requirement. • The nature of the employment. • The appointment is needed to fill a critically needed position before the 180-calendar day separation-from-service requirement is fulfilled. • The member did not receive a retirement incentive or any financial inducement to retire from any public employer. • The member did not create the vacancy the member is now filling.
Expiration of Exemption and Additional Restrictions	This exemption applies only to the annual postretirement earnings limit. If applicable, the retired member will still be subject to the separation-from-service requirement. To exempt a member from both limitations, the employer must apply for both exemptions separately. This exemption will become inoperative as of July 1, 2017.	This exemption only applies to the separation-from-service requirement. The retired member will still be subject to the annual postretirement earnings limit. To exempt a member from both limitations, the employer must apply for both exemptions separately.