

TEACHERS' RETIREMENT BOARD

REGULAR MEETING

Item Number: **4**

SUBJECT: Amendment to Penalties and Interest Regulation: Extra Late Penalty Rate – Second Reading

CONSENT:

ATTACHMENT(S): 2

ACTION: X

MEETING DATE: November 5, 2015 / 15 mins.

INFORMATION:

PRESENTER: Ed Derman

PURPOSE

The purpose of this item is to seek the board's adoption of amended regulations that specify the penalty rate employers are subject to when contributions are remitted after March 1 in the year following the fiscal year in which they were due ("extra late contributions").

BACKGROUND

The Education Code requires that penalties and interest be assessed on employers for late or inaccurate reporting of retirement data and payment of contributions. Effective July 1, 2012, [regulations](#) were adopted by the board to ensure consistent and transparent assessment of penalties and interest imposed for late and incorrect contribution remittances and employer reports for both the Defined Benefit Program and Cash Balance Benefit Program. Among those is a penalty imposed when contributions are received after March 1 in the fiscal year following the year in which they were due. This penalty is designed to recoup creditable compensation that is reported to CalSTRS too late to be reflected in the state's contribution to the Defined Benefit (DB) Program and the Supplemental Benefit Maintenance Account (SBMA), which funds the purchasing power protection program.

Under the contribution rate changes mandated by Assembly Bill 1469–Bonta (Chapter 47, Statutes of 2014), the state contribution rate increased, making the originally established 5 percent penalty for extra late contributions to the DB Program and SBMA insufficient to replace the lost revenue. In [November 2014](#), the board directed staff to proceed with drafting amendments to the penalty rate set for extra-late contributions to fully replace lost state contributions.

In [June 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 September 14, 2015, and a hearing was held on September 15. 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 June 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, staff will request an effective date outside of the default quarterly schedule specified in the Government Code to coincide with the existing March to February cycle of administration of this penalty, and with the approval of the Office of Administrative Law, these regulations will become effective March 1, 2016.

RECOMMENDATION

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

Title 5. Education. Division 3. Teachers' Retirement System.
Chapter 1. Teachers' Retirement System.
Article 15.5. Penalties and Interest for Late Remittances and Late and Unacceptable Reporting by Employers.

§ 27007. Assessment of Penalties for Late Contributions – Defined Benefit Program

(a) A late contribution shall be subject to a penalty ~~equal to 5% of the creditable compensation upon which the contribution was based~~ if that contribution is received after March 1st of the state fiscal year that immediately follows the state fiscal year in which the contribution was due.

(1) The penalty shall be assessed on the creditable compensation upon which the late contribution was based. For purposes of this subdivision, creditable compensation shall include only creditable compensation for which member contributions are credited under the Defined Benefit Program.

(2) The penalty shall be the greater of the following:

(A) The state appropriation rate, pursuant to Sections 22954, 22955 and 22955.1 of the Education Code, that is in effect on the first day of March immediately preceding the date the contribution was received.

(B) Five percent.

(b) Interest on late contributions shall be imposed as follows:

(1) If less than 95 percent of contributions due have been received by the ~~6th~~ sixth working day, interest shall be charged on the balance of those contributions due and compounded daily based on the regular interest rate in effect that day.

(2) For contributions received more than 15 working days after the date those contributions are due, interest shall be charged on the balance of contributions due and compounded daily based on the regular interest rate in effect that day.

(c) The penalty and interest assessed on late contributions provided for in this section shall not apply to adjustments made to contributions for a month prior to the effective date of this article.

(d) Adjustments to contributions remitted in a prior month shall not be subject to the penalty and interest assessed on late contributions provided for in this section if all of the following are true:

(1) The adjustments are made for all members of a class of employees;

(2) The adjustments are made pursuant to a written employment agreement with an employer or with an exclusive representative entered into by an employer, pursuant to Chapter 10.7

(commencing with Section 3540) of Division 4 of Title 1 of the Government Code;

(3) The adjustments become effective contemporaneously with the effective date of the written employment agreement or the effective date of the provision in the agreement providing for future increases in compensation; and

(4) The adjustments are remitted to the system within 90 days of the effective date of the written employment agreement or the effective date of the provision in the agreement providing for future increases in compensation.

(e) For an employee employed as a substitute teacher, or on a part-time basis or a full-time basis with an additional part-time position, contributions for the substitute or part-time position that are otherwise late shall not be subject to the penalty and interest assessed on late contributions provided for in this section if all of the following are true:

(1) The date the substitute or part-time position is paid is based upon a published salary schedule;

(2) That date is no more than 31 calendar days following the last day of the month in which the compensation being reported was earned; and

(3) ~~95% percent~~ of the contributions due are received five working days immediately following the date the substitute or part-time position is paid, and the balance of contributions due are received no more than 15 working days following the date the employee is paid.

(f) Contributions that are otherwise late shall not be subject to the penalty and interest assessed on late contributions provided for in this section during the following periods of time:

(1) The period of time beginning on the date an application for workers' compensation is filed with the Workers' Compensation Appeals Board until the date compensation is awarded, if the awarded compensation increases the amount of contributions due for that period of time. ~~95% percent~~ of the contributions that are exempt under this subdivision shall be due five working days immediately following the month in which compensation is awarded and shall be late thereafter, and the balance of contributions are due 15 working days following the month in which compensation is awarded and shall be late thereafter.

(2) Any period of time that directly results from the operation of a state or federal statute or regulation which requires a retroactive change in the creditable compensation paid to a member for prior service, if that retroactive change results in a change in the amount of contributions due for that period of time. ~~95% percent~~ of the contributions that are exempt under this subdivision shall be due five working days immediately following the month in which the period of time expires and shall be late thereafter, and the balance of contributions shall be due 15 working days following the month in which the period of time expires and shall be late thereafter.

Note: Authority: California Constitution, Article XVI, Section 17; and Sections 22207, 22213, 22214, 22250 and 22305, Education Code. Reference: Sections 22119.2, 22119.3, 22905, 23002, and 23003, Education Code.

RESOLUTION
OF THE
TEACHERS' RETIREMENT BOARD

SUBJECT: Adoption of Amendments to Penalties and Interest Regulations:
Extra Late Penalty Rate

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

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 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, on June 11, 2015, the board approved proposed amendments to the regulation setting the penalty rate that is assessed to employers under section 23003 of the Education Code and authorized CalSTRS to give public notice and hold a public hearing; 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 the accompanying amended section 27007 of the California Code of Regulations, and therefore, be it further

RESOLVED, that 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 November 5, 2015

Reviewed by:

Jack Ehnes
Chief Executive Officer

Brian J. Bartow
General Counsel