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September 13, 2021

Jeff Zimmer
Director, Employer Services
California Teachers' Retirement System
100 Waterfront Place
West Sacramento, CA
Via email to all recipients

Subject: Stakeholder Engagement on Member Overpayments and Employer Reporting.

Dear Mr. Zimmer,

In your capacity as business lead for the Employer Reporting Final Benefit Project, we write on behalf of the undersigned stakeholder organizations representing active members, retired members, and employers. The purpose of this letter is to memorialize and reflect on the meetings between our organizations and staff from the California Teachers' Retirement System (CalSTRS).

From the perspectives of stakeholders, the goal of these meetings was to determine whether CalSTRS was prepared to engage collaboratively on the six concept beliefs that unify your system's major stakeholders. In short, we recognize CalSTRS has taken steps to improve their internal understanding and alignment of business practices on the topics discussed. We remain disappointed and frustrated, however, that the work is not further along and does not, as of today, satisfy the tenets we presented in May. Our organizations nevertheless remain committed to ongoing collaboration with CalSTRS to address the needs of the educators we represent.

- a. The Teachers' Retirement Board directed CalSTRS staff to engage with stakeholders to address retired member overpayment liability, employer reporting supports, and other topics.**

At the December 9, 2020, meeting of the Teachers' Retirement Board (TRB), the TRB was presented with an item recommending they sponsor legislation to protect CalSTRS' authority to collect overpayments from retired members and their beneficiaries, as well as seek changes to the existing process for employer reporting.¹

This proposal would have enshrined the current practice of leaving retired teachers and their families liable for potentially significant sums due to CalSTRS audits or investigations that occur after they retire. It also made no effort to mitigate the root cause of those liabilities, so-called employer reporting "errors," notwithstanding employers' continued plea that CalSTRS provide consistent, timely, and accurate reporting guidance to reduce reporting that CalSTRS later deems inaccurate.²

In light of several factors, including the nearly unanimous opposition from active members, retired members, and employers, the TRB took no action on the proposed legislation. Instead, they acknowledged stakeholders' concerns and directed CalSTRS staff to review internal system practices and engage with stakeholders to address our concerns. "The board directed staff to keep it informed of its progress and return no later than November with recommendations."³

b. A diverse coalition of stakeholders presented a unified set of "Concept Beliefs" to CalSTRS in May of 2021.

Major legislation requires intensive study, collaboration, and negotiation. It requires engagement between parties, early and often. Stakeholders had heard CalSTRS was studying their internal system practices, a process that was to precede stakeholder engagement. Due to the significant amount of time this process was taking, however, stakeholders proactively submitted to CalSTRS staff a set of six "Concept Beliefs" in an effort to advance the dialogue collaboratively. We were concerned CalSTRS' internal discussion was occurring absent a dialogue with stakeholders.

The motivating principle behind each Concept Belief is equity. Equity for our retired educators who are unfairly penalized for reasons unrelated to them or their careers of public service. The full Concept Beliefs document provides further detail and explanation to each belief.⁴ What follows is the top-line summary of beliefs.

1. Retired members must not be held liable for prior overpayments.
2. CalSTRS must be accountable for guidance later determined to be erroneous.
3. CalSTRS must regularly update an official guidance document governing employer reporting.
4. Any changes to CalSTRS' interpretation of creditable compensation laws must be preceded by prior notice.
5. All audit reports shall be published on CalSTRS' website.
6. The CalSTRS Appeal process must allow all individuals impacted by an audit the right to appeal.

As a coalition, we believe these Concept Beliefs are not severable.

Every party to these beliefs agrees that retired members should bear no liability for errors by CalSTRS or employers. Every party agrees that CalSTRS must proactively reduce errors by providing employer reporting guidance that is timely, consistent, and accurate. Legislation or regulations to address one belief is not appropriate until stakeholders and CalSTRS agree to satisfy the objectives of each belief.

We wish to underscore just how rare it is for a coalition of employee, retiree, and employer organizations agree on such a sweeping set of principles. We continue to stand together.

c. Meetings with stakeholders have identified, to date, opportunities and deficiencies.

On July 23, July 28, and August 4, 2021, CalSTRS staff met with the following stakeholder organizations:

<u>Employee Organizations</u>	<u>Employer Organizations</u>	<u>Retiree Organizations</u>
California Teachers Association	California County Superintendents Educational Services Association	California Retired Teachers Association
California Federation of Teachers	Association of California School Administrators	
Faculty Association of California Community Colleges	California Association of School Business Officials	

We developed the agendas for all three meetings jointly with CalSTRS. CalSTRS brought forth two additional items for discussion: draft regulations for audit appeals and the conceptual framework of a benefit finalization proposal. Each session was scheduled for two hours. CalSTRS brought together subject matter experts from across the system to support the conversations.

The purpose of these meetings, from the perspective of stakeholders, was to determine whether CalSTRS was prepared to engage on the six Concept Beliefs discussed above. Engagement did occur. As seen in the “Concept Beliefs table with CalSTRS responses”⁵ and “CalSTRS Response to Belief Statement,”⁶ however, a substantial gap continues to separate our Concept Beliefs and actual outcomes from the system.

On our belief that retired members must not be held liable for prior overpayments, **Concept Belief (1)**, CalSTRS consistently noted that they could not engage in meaningful collaboration regarding retiree overpayments as a legal analysis had to first be finalized to shape their perspective and discussion. This analysis was shared with stakeholders after the conclusion of the meetings but the analysis was specifically viewing this issue under existing law. The entire purpose of this exercise in collaboration was to craft amendments to law that would allow us to address common goals to address this problem. It is unfortunate that CalSTRS has focused upon what they cannot do, rather than assess what they can. For example, during the stakeholder meetings, it was revealed that CalSTRS had not had any comprehensive meetings or discussions with CalPERS to understand how they are able to address this issue (or others we raised) for school employees covered by CalPERS, such as classified and administrative employees. Yet, the legal analysis provided by CalSTRS hinges upon the fact that CalSTRS does not have a mechanism to recoup overpayments from districts, instead of retirees. By remaining unyielding to consider internal change and focusing upon the existing structure as a legal basis for why retirees must continue to be the sole source of the solution to this dilemma, CalSTRS failed to recognize that this is primarily a legislative discussion that can reshape the internal processes that both school employers and CalSTRS must follow.

On our beliefs concerning timely, consistent, and accurate reporting guidance to employers, **Concept Beliefs (2)–(4)**, CalSTRS remains an outlier among public pension plans as it lacks publicly available guidance that provides a point-in-time definitive interpretation of relevant statutes and regulations relating to the treatment of compensation. And for the advice it does provide to employers, CalSTRS is not yet willing to be accountable for when CalSTRS auditors later deem the advice to be incorrect “notwithstanding the erroneous directives of CalSTRS and the harm caused to retired members by the mistaken reporting advice given to district” (Walnut Creek School District, Precedential Decision 19-02⁷). Similarly, CalSTRS still lacks a basic pre-

retirement audit to increase benefit security for members. The requests in Concept Beliefs (2)–(5) establish reasonable expectations for a major pension system and would benefit the members and the employers alike. These are attainable goals that we hope CalSTRS shares and will accomplish.

We acknowledge CalSTRS stated intent to improve and publicize audit data analysis to reduce future reporting errors, **Concept Belief (5)**, and an intent to move forward at a future date with audit appeal regulations, **Concept Belief (6)**, though we emphasize these six Concept Beliefs are not severable). Draft language and an explanatory table for the regulations was shared with stakeholders for feedback. In general, CalSTRS' response to multiple Concept Beliefs regarding employer concerns were met with a promise for future discussions under a conceptual agreement with no timelines or details on when these issues would be further discussed or when stakeholders would receive details.

At this time, stakeholders believe CalSTRS is not in a position to move forward with a comprehensive proposal — legislative or otherwise — to address the needs of the system nor the needs of stakeholders. As such, we remain committed to addressing our Concept Beliefs and look forward to collaboration as we move forward.

Sincerely,



Seth Bramble
Legislative Advocate
California Teachers Association



Derick Lennox
Senior Director, Governmental Relations and
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California County Superintendents
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Ivan Carrillo
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Tristan Brown
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Stephanie Goldman
Associate Director
Faculty Association of California Community
Colleges



Sara Bachez
Chief Governmental Relations Officer
California Association of Chief Business
Officials

cc: Cassandra Lichnock, Chief Executive Officer, CalSTRS
Harry M. Keiley, Chair, Teachers' Retirement Board
Members, Teachers' Retirement Board

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1. TRB Regular Meeting, Agenda Item Number 2, "Consideration of Board-Sponsored Legislation" (December 9, 2020), <https://resources.calstrs.com/publicdocs/Page/CommonPage.aspx?PageName=DocumentDownload&Id=c2578c1d-3102-4a72-8ba4-1913a031dc85>.
 2. Letter from Statewide Educational Organizations and Local Educational Agencies to Board Chair Harry M. Keiley (November 24, 2020), <https://drive.google.com/file/d/1cyAENmS2IbCnfc9qx8GPwhtlRBTERxkf/view?usp=sharing>.
 3. TRB Regular Meeting, Agenda Item Number 6b, "Approval of Minutes of the December 9, 2020, Regular Meeting – Open Session" (January 28, 2021), <https://resources.calstrs.com/publicdocs/Page/CommonPage.aspx?PageName=DocumentDownload&Id=062804bb-cdd5-4c31-81da-f956811f8b46>.
 4. "Concept Beliefs" as submitted to CalSTRS staff (May 2020), *see* **Appendix A**.
 5. "Concept Beliefs" table with CalSTRS responses, *see* **Appendix B**.
 6. CalSTRS Response to "Concept Belief" Statement, *see* **Appendix C**.
 7. *In the Matter of the Statement of Issues Against: Walnut Creek School District*, Precedential Decision No.19-02 (December 5, 2019), <https://www.calstrs.com/sites/main/files/file-attachments/precedential-decision-19-02.pdf?1576532736>.

Appendix A

Retirement Coalition and K-14 School Employers Concept Beliefs on Overpayment Liability and Compensation Reporting

1. **Retired members must not be held liable for prior overpayments.**
 - a. Retired members shall not be held financially liable for any overpayments deemed by CalSTRS to be received in error, except in cases of “member error.”
 - b. Liability due to system error shall be paid exclusively by CalSTRS, including the three most recent years of overpayment.
 - c. Upon implementation of the reforms in (2) through (5) below, the liability due to employer error shall be paid to CalSTRS exclusively by the local education association (LEA) or community college district (CCD) that misreported the data, including the three most recent years of overpayment.
2. **CalSTRS must be accountable for guidance later determined to be erroneous.**
 - a. Upon written request by a LEA or CCD, CalSTRS shall issue a written statement that interprets and applies creditable compensation laws to the LEA’s represented set of facts.
 - b. When CalSTRS provides compensation reporting advice in response to an employer’s request for guidance, and that advice is later determined to be erroneous, resulting in harm to a retired member, the error shall be a “system error,” not an “employer error.” CalSTRS, not the employer, is liable for a system error.
3. **CalSTRS must regularly update an official guidance document governing employer reporting.**
 - a. CalSTRS must produce and regularly update a publicly available written guidance document—whether through regulations, precedential decisions, Employer Information Circulars, a Guide, or a combination thereof—that provides a point-in-time definitive interpretation of relevant statutes and regulations relating to the treatment of compensation.
 - b. LEAs and CCDs shall be held responsible for the rules in effect at time the compensation is reported for purposes of subsequent audits or other corrective activity by the system, except when expressly superseded by state or federal law.
4. **Any changes to CalSTRS’ interpretation of creditable compensation laws must be preceded by prior notice.**
 - a. New or different interpretations of creditable compensation statutes and regulations:
 - i. Become effective on January 1 of the fiscal year following the public notice, or when an employee collective bargaining agreement or memorandum of understanding expires, whichever is later (“effective date”).
 - ii. May not be applied to compensation reported prior to effective date, unless specifically required by state or federal law. LEAs and CCDs are held responsible for the rules in effect at time the compensation is reported for purposes of subsequent audits or other corrective activity by the system, except when expressly superseded by state or federal law.
 - iii. Must be publicly noticed to the field prior to their effective date.
 - iv. Must be included in the official guidance document (see (3) above).
5. **All audit reports shall be published on CalSTRS’ website.**
 - a. All audit reports must be made publicly available on the CalSTRS website with privacy redactions where appropriate.

6. **The CalSTRS Appeal process must allow all individuals impacted by an audit the right to appeal.**
 - a. All individuals that may be impacted by the final results of an audit must receive timely notification that an audit is taking place and must be presented with the process and their rights.
 - b. All individuals must be provided written and/or electronic communication regarding the audit and must be provided an opportunity to appeal to the Teachers' Retirement Board with adequate time to appeal based upon when they were informed of negative audit findings.
 - c. The cost and burden of member notification belongs to CalSTRS.

Appendix B

CalSTRS Stakeholder Engagement Meetings

This chart was developed on August 4, 2021 with **CalSTRS staff and stakeholders** including CTA, CFT, FACCC, CalRTA, CCSESA, ACSA, CSBA, CASBO. The chart represents a **shared understanding** of CalSTRS response to stakeholder concept beliefs as a result of three meetings held on July 23, July 28, and August 4 of 2021.

Concept Belief	Session	CalSTRS Feedback	Discussion
1. Retired members must not be held liable for prior overpayments.	Session #3	CalSTRS legislative proposal last year represents a shift: away <u>from</u> member accepting entirety for liability of overpayments <u>to</u> member accepting liability only for prior three years. Additionally, CalSTRS has introduced a new benefit finalization proposal prohibiting most unexpected adjustments to member benefits after X years. CalSTRS indicates that they cannot proceed in implementing this concept belief #1 until they have completed a legal analysis, and no date was provided for when this legal analysis will be complete. Stakeholders will provide feedback on benefits finalization proposal at their earliest opportunity, which was received by stakeholders on August 3, 2021.	Concerns expressed by CalSTRS about concept belief #1: Legal concerns are being analyzed related to whether accomplishing concept belief #1 would threaten their tax qualified status with the IRS, as well as concerns related to CalSTRS fiduciary responsibility, gift of public funds, and moral hazard issues. CalSTRS stated that regarding IRS rules, they do not believe they could write off 100% in the case of "system error", but in the case of employer error, the employer could pay for 100% of the liability for overpayment.
a. Retired members shall not be held financially liable for any overpayments deemed by CalSTRS to be received in error, except in cases of "member error."	Session #3		
b. Liability due to system error shall be paid exclusively by CalSTRS, including the three most recent years of overpayment.	Session #3		
c. Upon implementation of the reforms in (2) through (5) below, the liability due to employer error shall be paid to CalSTRS exclusively by the local education association (LEA) or community college district (CCD) that misreported the data, including the three most recent years of overpayment.	Session #3		
2. CalSTRS must be accountable for guidance later determined to be erroneous.	Session #1	Conceptual agreement - CalSTRS will respond to concept belief #2 in writing, but did not provide a timeline for when the response would be shared.	CalSTRS does not want to get in the middle of negotiations, and wants to pilot a program to respond to inquiries.
a. Upon written request by a LEA or CCD, CalSTRS shall issue a written statement that interprets and applies creditable compensation laws to the LEA's represented set of facts.	Session #2	Concept belief #2 can likely be accomplished through regulation or internal policies/process. No timeline was provided regarding when a draft of regulations or procedure changes could be shared for stakeholders to provide feedback.	CalSTRS asks (1) How formalize this belief through a process? (2) How can we ensure CalSTRS has the necessary information from the employer to provide LEA or CCD correct interpretations? (3) Don't these interpretations apply only to the specific facts at a point in time?
b. When CalSTRS provides compensation reporting advice in response to an employer's request for guidance, and that advice is later determined to be erroneous, resulting in harm to a retired member, the error shall be a "system error," not an "employer error." CalSTRS, not the employer, is liable for a system error.	Session #2	CalSTRS asserts that we need to collaborate to define "erroneous."	
3. CalSTRS must regularly update an official guidance document governing employer reporting.	Session #1	Conceptual agreement. CalSTRS will respond to concept belief #3 in writing, but did not provide a timeline for when the response would be shared.	CalSTRS will continue their past practice of publishing common audit findings.
a. CalSTRS must produce and regularly update a publicly available written guidance document—whether through regulations, precedential decisions, Employer Information Circulars, a Guide, or a combination thereof—that provides a point-in-time definitive interpretation of relevant statutes and regulations relating to the treatment of compensation.	Session #2	Concept belief #3 can likely be accomplished through regulation, but will not happen anytime soon (likely not in 2021).	CalSTRS wants to work with employers to define areas that cause the most problems. There are dozens of problems, and we need to collaborate regarding where we want to focus our efforts. CalSTRS wants to discuss best formats for guidance with stakeholders.
b. LEAs and CCDs shall be held responsible for the rules in effect at time the compensation is reported for purposes of subsequent audits or other corrective activity by the system, except when expressly superseded by state or federal law.	Session #2		

Concept Belief		Session	CalSTRS Feedback	Discussion
4. Any changes to CalSTRS' interpretation of creditable compensation laws must be preceded by prior notice.		Session #1	Conceptual agreement - CalSTRS will respond to concept belief #4 in writing, but did not provide a timeline for when the response would be shared.	CalSTRS seeks to align guidance and training to meet these requests.
a. New or different interpretations of creditable compensation statutes and regulations:		Session #2	Concept belief #4 can likely be accomplished through regulation or legislation. No timeline was provided regarding when a draft of regulations or legislation could be shared for stakeholders to provide feedback.	
i. Become effective on January 1 of the fiscal year following the public notice, or when an employee collective bargaining agreement or memorandum of understanding expires, whichever is later ("effective date").		Session #2		There was consensus to use July 1 instead of January 1.
ii. May not be applied to compensation reported prior to effective date, unless specifically required by state or federal law. LEAs and CCDs are held responsible for the rules in effect at time the compensation is reported for purposes of subsequent audits or other corrective activity by the system, except when expressly superseded by state or federal law.		Session #2		
iii. Must be publicly noticed to the field prior to their effective date.		Session #2		
iv. Must be included in the official guidance document (see #3 above).		Session #2		
5. All audit reports shall be published on CalSTRS' website.		Session #1	CalSTRS will respond to concept belief #5 in writing, but did not provide a timeline for when the response would be shared.	
a. All audit reports must be made publicly available on the CalSTRS website with privacy redactions where appropriate.		Session #1	On CalSTRS.com there is a description of audit process and ways employers can prepare and members will understand. CalSTRS intends to include a schedule of assigned audits to include the number of active, retired members impacted. They intend to report on concluded audits, types of findings, systemic issues; the report will be updated periodically (more frequently than ARM committee). CalSTRS will report on audits with no findings. CalSTRS estimates this will go public in August 2021.	
6. The CalSTRS Appeal process must allow all individuals impacted by an audit the right to appeal.		Session #3	CalSTRS provided proposed regulatory language and a chart diagramming how feedback from stakeholders was incorporated. CalSTRS will put together a timeline diagram to better understand the dates, by the end of this week.	Stakeholders note that not all of stakeholder concerns have been incorporated into the proposed regulatory language, and that they will get feedback to CalSTRS at earliest opportunity.
a. All individuals that may be impacted by the final results of an audit must receive timely notification that an audit is taking place and must be presented with the process and their rights.				
b. All individuals must be provided written and/or electronic communication regarding the audit and must be provided an opportunity to appeal to the Teachers' Retirement Board with adequate time to appeal based upon when they were informed of negative audit findings.				
c. The cost and burden of member notification belongs to CalSTRS.				

Appendix C

Response to Belief #1:

100% write-offs and maintaining overpaid monthly allowances due to system error are not possible due to the plan's tax-qualified status. We believe employers can cover 100% of overpayment liabilities due to employer error.

In lieu of 100% system write-off and the inability to maintain inaccurate benefits, the benefit finalization legislative concept could potentially alleviate some of these concerns regarding overpayments to members. The look-back period specified in the Employer Audit Appeals regulations may also help with the concerns.

We also continue legal research that ensures we maintain our fiduciary responsibility to the fund and compliance with applicable tax law.

Response to Belief #2:

A formalized process (i.e., regulations) would be required to implement requests for guidance and responses, including applicable disclaimers and provisions relating to the time period in which the response would be valid and a method to expire specific written guidance when new rules supersede that particular guidance, among other considerations. Additionally, further research and clarification will be needed to define "represented set of facts" and understand that the statement would be based on facts presented and subject to change if other facts arose.

The formal process would need to include agreement at the time of response that a response given the provided facts would only apply to that situation and would not be considered erroneous if other facts arose or the statement was used to guide reporting with a different set of facts.

Response to Belief #3:

We currently are reviewing all our training methods and documents to meet our employer partner and member needs for more specificity and detailed explanation within the bounds of what we can legally provide while maintaining the employer's ultimate responsibility for accurate reporting.

To provide effective guidance and long-lasting resolution to these concerns, CalSTRS is actively reviewing creditable compensation and service reporting issues raised by employers and related issues raised by members and developing potential clarifications to law and/or regulations that may address many of the other statements in these beliefs. CalSTRS is in the process of compiling an inventory of the most common complex reporting topics and will present these to and seek feedback from our employer partners about additional topics that can be explored.

An actual guide or set of documents may not be the final form (i.e., it may be links or references to the sources mentioned such as Circulars and regulations), but whatever we produce will be discussed with employers and member organizations and contain reference to clarified law and/or regulation.

LEAs and CCDs are currently held responsible for the rules in effect at the time of reporting.

Response to Belief #4:

CalSTRS can provide changed interpretations to be in effect the next school year (July 1). Changed or clarified interpretations will be published via Employer Circulars and incorporated into new versions of

training and job aids. LEAs and CCDs are currently held responsible for the rules in effect at the time of reporting.

Response to Belief #5:

Later this month, an Audits webpage will go live on CalSTRS.com. The webpage is expected to include a description of the audit process, why an employer might be audited, and general audit information for member context. Also expected to be included are the number of active and retired members impacted by each audit, a table of in progress and recently concluded audits, types of findings, and systemic issues. The webpage will be updated periodically with ARM committee reports. The webpage is not expected to include links to final audit reports.

The Employer Audit Appeals draft regulations require the employer to post the final audit report on its website.

Response to Belief #6:

The Audits webpage on CalSTRS.com can help with early notification of audits in progress. Under the Employer Audit Appeals draft regulations, the employer must post the final audit report to its website within 30 days of the date of the final audit report. This occurs later than sampled members currently receive the draft audit report with an opportunity to respond to CalSTRS in writing because, at the time of the draft audit report, CalSTRS does not know the affected members, and believes notifying all members (rather than just the affected members) may cause undue alarm. Also, CalSTRS needs to notify all affected members at the same time for equity and fairness reasons.

After the employer receives the final audit report and certifies the list of all affected members, CalSTRS notifies all identified members and beneficiaries of the audit. A Determination is issued once the list of affected members is received, which starts the 45-day period for the member to request an administrative hearing. This follows the employers' opportunity to appeal the findings in the final audit report. If an affected member is identified later, a Determination will be issued and will outline the appeals process with 45 days to respond. The member cannot appeal the validity of the finding, only the applicability of the finding to their own benefits.

The cost of notification and Determination letters described above is borne by CalSTRS. The employer is responsible for posting the final audit report on its website as outlined in the current Employer Audit Appeals draft regulations.