

One-time Correction Process for CalSTRS Noncreditable Positions

Revised

Background

In order for a position to be creditable to CalSTRS the position must be an academic position performing duties involved in the instruction, curriculum or material development, school health professionals, counselors, librarians or superintendents. A position that is responsible for supervising such positions is deemed to be an academic position therefore creditable to CalSTRS. **The specific title given the employee, whether it is, for example, director, dean, or chief, does not determine whether the service is creditable to CalSTRS. Rather, it is the nature of the duties performed by the employee that will determine whether the service is creditable to CalSTRS.** (CalSTRS EIC 28-1)

Districts and administrators should be aware that some positions previously considered certificated may, in fact, not be performing creditable service. In the event of an audit, the job description and employee interviews will be important pieces in determining whether the actual duties performed by the employee qualify as creditable service. Therefore, it is advisable to review the job description of any administrative position that is not clearly performing creditable service work to determine if corrective action may be needed. (Lozano Smith-ACSA Joint Alert)

Positions deemed non-academic are not subject to coverage by CalSTRS. However in some situations, if the employee is also a CalSTRS member based upon previous employment, the employee may be eligible to elect CalSTRS coverage. (CalSTRS EIC 28-1)

Education Code section 22508 provides that, when a CalSTRS member becomes employed at a position with the same or a different school district (or community college district or county superintendent) that requires membership in a different public retirement system, the employee may elect to have that service subject to coverage by the CalSTRS Defined Benefit Program by filing an election within 60 days of hire at the new position. (F3 NewsFlash 13-37)

Since the issuance of "Positions Not Eligible for Creditable Service" Employer Information Circular (EIC 28-1), it has come to the attention of CalSTRS that some members may not have been provided the *Retirement System Election* form when they began working in classified position, but continued to participate in CalSTRS Defined Benefit Program as contributing members. (CalSTRS EIC 29-3)

CalSTRS, in its November 25, 2013 circular, announced that it is allowing a one-time correction process beyond the 60-day statutory deadline, providing employers a 180-day period from the date of the circular to file the election form. In order to correct the error, a completed *Retirement System Election* form (ES372) must be submitted to CalSTRS within 180 days of the circular. The effective date of the election should be the date of hire in the position requiring membership in another system. (CalSTRS EIC 29-3, F3 NewsFlash 13-37)

The following procedure is recommended as a means of utilizing the one-time correction process. This procedure outlines the recommended district action and coordination with Marin COE. In addition, the procedure describes what conditions must be satisfied during implementation. Notably, the correction process must be completed by May 23, 2014. Form ES372 must be certified by district and county office personnel before Marin COE submits the form to CalSTRS.

Recommended Procedure

1. Compare job descriptions to the definition of “creditable service” per Education Code 22119.5. Definition provided on next page of this document.
2. Identify positions that do not clearly meet the definition (noncreditable positions).
3. Identify employees who were hired into these noncreditable positions after August 11, 1995 and reported to STRS.
4. Review employees’ STRS membership history: date of membership and if Form ES372 was submitted.
5. Compile data and determine which employees should have received Form ES372.

Eligible Employees:

- a. Were hired to perform noncreditable service after August 11, 1995.
 - b. Were active STRS members at the time of hire into a noncreditable position that required membership in PERS.
6. Request that eligible employees sign and return Form ES372 electing to receive STRS credit from the date of hire into their first noncreditable position. *Employee’s election will apply to all subsequent noncreditable positions listed on the Justification Letter (see below, 7a).*

Form ES372, Section 1 Information:

- a. Effective date of first noncreditable position.
 - b. Title of first noncreditable position.
 - c. Checkmark in “Classified” box.
7. The district should certify the returned ES372 forms and forward to Marin COE for certification and processing.

District Submission to Marin COE:

- a. Form ES732 with employee and district signatures.
- b. “Justification Letter” on district letterhead to accompany each Form ES372. Template available from Marin COE.
 - i. Member’s name and STRS ID or SSN.
 - ii. Member’s work history.
 - iii. Written explanation that the member was not provided the right of election at time of hire.

Definition of “Creditable Service”

Education Code 22119.5.

(a) “Creditable service” means any of the following activities performed for an employer in a position requiring a credential, certificate, or permit pursuant to this code or under the appropriate minimum standards adopted by the Board of Governors of the California Community Colleges or under the provisions of an approved charter for the operation of a charter school for which the employer is eligible to receive state apportionment or pursuant to a contract between a community college district and the United States Department of Defense to provide vocational training:

- (1) The work of teachers, instructors, district interns, and academic employees employed in the instructional program for pupils, including special programs such as adult education, regional occupation programs, child care centers, and prekindergarten programs pursuant to Section 22161.
- (2) Education or vocational counseling, guidance, and placement services.
- (3) The work of directors, coordinators, and assistant administrators who plan courses of study to be used in California public schools, or research connected with the evaluation or efficiency of the instructional program.
- (4) The selection, collection, preparation, classification, demonstration, or evaluation of instructional materials of any course of study for use in the development of the instructional program in California public schools, or other services related to school curriculum.
- (5) The examination, selection, in-service training, or assignment of teachers, principals or other similar personnel involved in the instructional program.
- (6) School activities related to, and an outgrowth of, the instructional and guidance program of the school when performed in addition to other activities described in this section.
- (7) The work of nurses, physicians, speech therapists, psychologists, audiometrists, audiologists, and other school health professionals.
- (8) Services as a school librarian.
- (9) The work of employees who are responsible for the supervision of persons or administration of the duties described in this section.

(b) “Creditable service” also means the work of superintendents of California public schools.

(c) The [CalSTRS] board shall have final authority for determining creditable service to cover any activities not already specified.

(Added by Stats. 1995, Ch. 394, Sec. 1. Effective August 11, 1995. Amended (as amended by Stats. 1996, Ch. 608) by Stats. 2002, Ch. 375, Sec. 1. Effective January 1, 2003.)

References

CalSTRS Form ES372 (rev 11/13), *Retirement System Election* (attached)

CalSTRS EIC 29-3, *Right of Retirement System Election When Changing Positions*

CalSTRS EIC 28-1, *Positions Not Eligible for Creditable Service*

F3 NewsFlash 13-37, *CalSTRS Provides 180-Day Period to Correct Potential Loss of Creditable Service For Administrators*

Lozano Smith-ACSA Joint Alert, *Election Remedy for CalSTRS Creditable Service Issue Forthcoming*

CalSTRS e-Bulletin 45, *Right of Election When Changing Positions*

ACSA Membership Advisory, *Protect Your CalSTRS Service Credit*