Credible compensation regs FAQ

Creditable compensation regulations are effective Jan. 1, 2015, and in some instances may lower creditable compensation for some administrators.

Following are common questions received by ACSA and its legal experts since the regulations were approved on Sept. 4, 2014. However, it should be noted that these matters are complex and often very fact-dependent. ACSA encourages its members to seek legal counsel before making bargaining changes to compensation with teachers unions or restructuring administrator contracts based on the information below.

Q: What does “class of employees” mean?
A: Under the Teacher’s Retirement Law, compensation must be paid the same throughout a class of employees. A class of employees can generally be described as a group of employees performing similar duties, employed in the same type of educational program or sharing similarities related to the nature of the work they perform. The definition of a creditable compensation regulation provides guidance on the class of employees.

See CALSTRS, page 8

Commitment builds for ensuring equity

ACSA’s Equity, Achievement and Diversity for Success Committee has been busy working to ensure all students have equal opportunities to succeed.

The EADS Committee has long advocated for an education system where all students are held to high standards and have access to rigorous curriculum and quality instruction supported by policies and practices that lead to excellent delivery of services for all students.

To that end, the committee, in partnership with ACSA Diversity and Equal Access Executive Nicole Anderson, has developed an action plan to make those goals a reality.

The Equity and Diversity SMART Goals/Action Plan was created to “bring to life” the 2005 ACSA Equity Position Paper, said EADS Committee Chair Kimberly Hendricks, director of Accountability and Assessment at Moreno Valley USD. “As a committee we wanted to ensure that the equity work continued after our terms,” she said. “We believed it would only continue if we created a document that was updated, monitored and revised annually.”

The SMART goals – Specific, Measurable, Achievable, Realistic and Time Oriented – support ACSA’s beliefs on equity and achievement and have been created around the focus areas outlined in the position paper. The focus areas include the following:

• Membership: Recruitment, Hiring and Coaching/Mentoring.
• Community Engagement and Relationships.
• Professional Learning and Leadership.
• Standards-based Curriculum and Assessment.
• Resources and Support Structures.
• Best Practices.
• Communication.

Hendricks said the action plan is aligned with ACSA’s mission, which states ACSA’s purpose of calculating retirement benefits, and its legal experts received by ACSA.

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See CALSTRS, page 8

ACSA testifies on LCFF/LCAP

ACSA member Ellen Dougherty, superintendent of Lawndale ESD, was in Sacramento last week to speak before the Senate Education Committee on the subject of the Local Control Funding Formula and its attendant Local Control and Accountability Plan.

“This is one of my most exciting times as an educator,” Dougherty told the committee prior to discussing challenges districts have faced in putting together their LCAPs.

“Superintendent Council, acknowledged the purpose of LCAP is to ensure each of California’s 6.2 million K-12 students receive the resources they need to get a good education. She told the committee one of the biggest challenges districts have faced is getting sufficient parent engagement in the process. Although many parents, students and the Lawndale local community were excited about being involved, other districts found it challenging just to ensure a sufficient number of parents were included in the process.

Dougherty noted that when there is high parent involvement, districts have been able to develop a three-year plan meeting the

See LCFF/LCAP, page 3
CalSTRS
Continued from page 1

types of classes that can be established.
Importantly, a class cannot be established based on whether an employee is subject to the Public Employes Pension Reform Act, age or amount of service credit. Further, a class cannot be established based on work year unless certain criteria are met.

Q: How is "salary" defined for the purposes of the regulations?
A: Salary is compensation paid in cash to an employee performing creditable service. It must be characterized as salary by contract or salary schedule and paid without a requirement for proof of expense. Importantly, it must be used as a basis for future pay increases, unless paid for a narrow set of activities characterized as "outgrowth" (i.e., extra-duty) work.

Generally, "salary" under the regulations is the base salary on the certificated salary schedule based on education and years of experience, or as listed in certified management salary schedules and administrator contracts.

Q: How does "salary" differ from "remuneration in addition to salary"?
A: Remuneration in addition to salary is compensation that does not meet the salary requirements described above, but which also counts as creditable for purposes of retirement. Examples include longevity pay, off-duty schedule pay or pay received for achieving a performance benchmark, such as reaching a district-wide student academic performance score.

Q: What is non-creditable compensation?
A: Non-creditable compensation is all compensation that does not meet the definition of salary or qualify as remuneration in addition to salary under the new regulations.

Examples include fringe benefits, such as the cost of health benefit contributions or professional dues paid by school districts, receipt of cash in lieu of any benefit, or reimbursed business expenses. However, the most significant change under the new regulations relates to allowances. Allowances are no longer creditable as of Jan. 1, 2015.

Q: If I attend a work conference and I am given a $1,000 travel advance, but spend only $800, is any portion creditable?
A: Compensation paid for expense reimbursement, even if advanced to the employee, is not creditable compensation. In general, if you have to provide proof of an expenditure, then the compensation is not creditable to CalSTRS regardless of whether you use the full amount provided.

Q: If I am given $500 for a car allowance, but my car expenses only average $300/month, is any portion of the allowance creditable?
A: Allowances of any kind, no matter the amount or purpose, are not creditable compensation under the new regulations.

Q: As an administrator, should I restructure my contract?
A: Before the end of 2015, administrators with any non-creditable forms of compensation in their contracts should consider whether a restructure of compensation is right for them.

Several options are available for restructuring compensation, each with varying levels of risk to the administrator. Restructures should be analyzed under the new regulations on a case-by-case basis. Any restructuring should be carefully executed in consultation with legal counsel and ACSA representatives.

Q: What recommendations does ACSA have for administrators considering a restructure?
A: Administrators currently working under contracts should think very carefully about their individual situations before restructuring their own contracts. They should start with reviewing those elements in the contract that upon restructuring might positively impact their final creditable compensation number, and whether the change falls within the complex requirements as outlined in the new regulations. These include recognizing the changes being made are permanent in the business practice and will they meet the "consistent treatment" test?

Q: What does "consistent treatment" mean?
A: There are two tests for consistent treatment under the regulations. One relates to structures of non-creditable compensation into base salary. Those must take place before Jan. 1, 2016 and must be a permanent change in business practice to avoid risk of being deemed "inconsistent" under the new regulations.

The second relates to all other increases to compensation. For these increases, the regulations provide "get out of jail free" cards, which allow such increases to be deemed consistent. For example, an increase to base salary for an administrator that matches the increase negotiated with a bargaining unit will likely be deemed consistent.

Any increase to compensation should be reviewed under the new regulations to ensure consistent treatment. Any compensation deemed inconsistent will be re-directed from the Defined Benefit Program to the Defined Benefit Supplement account, or may be disallowed entirely if non-creditable.

Q: What about compensation paid a limited number of times?
A: Compensation paid a limited number of times, such as one-time bonuses, are creditable to the DBS account for classic members. Such compensation is not creditable at all for new members. This retirement distinction will likely spark discussion at the bargaining table as more and more new members make up bargaining units and unit leadership.

Q: How is compensation for extra-duty or "outgrowth" work credited?
A: Compensation for extra-duty assignments will be creditable if it relates to projects considered to be outgrowths of the instructional program (e.g., departmental chair positions, coaching pay, club or extra-curricular supervisory duties). For full-time staff, such compensation will be routed to the DBS account. For part-time staff, such compensation will be routed to the DBS account until a full-time equivalent is reached.

Q: As an employer, how do I handle "buying-out" of a teacher's prep period?
A: Employers may lawfully "buy-out" preparation periods. Compensation, preparation periods, and the weekday are all terms subject to negotiation with teacher's unions under the Education Employer Relations Act. Accordingly, buy-outs should be negotiated with the teacher's union involvement and be memorialized in writing.

From a retirement perspective, such compensation will be routed to the DBS account for classic members. For new members, such compensation is likely not creditable unless structured to be paid over time as work is performed. Lump sum or ad-hoc payments are not creditable for new members.

Q: What do these regulations attempt to accomplish? Is CalSTRS simply trying to penalize members?
A: CalSTRS has an obligation to audit school employers, employees and retirees. CalSTRS also has an obligation to counsel its members, not only about financial plans but also on changes to the retirement law.

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Lozano Smith attorneys are available to fully draft to avoid unintended retirement meeting minutes to explain the reason for will be helpful for the board packet or minutes of approval. In certain instances, it meeting agendas and board meeting minutes, which track all contracts, addendums to be prepared in the event of a CalSTRS not expected to be collected from the retiree school district employer to pay any amount after retirement. CalSTRS will require the district employer may also owe money to contract the retiree's monthly allowance on a prospective basis and the CalSTRS retiree will be required to pay any monies already received at a rate of 5 percent per month deducted from the retiree's monthly allowance. Interest is not charged. The school dis- trict employer may also owe money to CalSTRS if compensation is disallowed after retirement. CalSTRS will require the school district employer to pay any amount not expected to be collected from the retiree based on actuarial information on expected age at death.

Q: What steps can administrators take to be prepared in the event of a CalSTRS audit?
A: We recommend administrators keep files, which track all contracts, addendums and revisions along with associated board meeting agendas and board meeting minutes of approval. In certain instances, it will be helpful for the board packet or meeting minutes to explain the reason for an increase, but language should be care- fully drafted to avoid unintended retirement consequences. ACSA representatives and Lozano Smith attorneys are available to assist with advising on necessary language. Additionally, public retirement is an area of law subject to frequent and sweeping changes. Keeping abreast of those changes is key to understanding the risks in the event of an audit. Below we provide information on how you can stay up-to-date.

Q: Where can administrators get more information on retirement law changes?
A: ACSA and Lozano Smith have col- laborated to provide reference materials such as articles and webinars on a variety of issues related to retirement law. Those materials can be found on our websites, www.acsa.org and www.lozanosmith.com. Additionally, if you have not yet signed up for ACSA's e-alerts or Lozano Smith's Client News Briefs, you can do so via our website to ensure you receive future announcements on this topic. Lozano Smith attorneys and ACSA representatives are available to advise on the retirement implications of compensation packages negotiated at the bargaining table and in administrator contracts. In addition, several county offices of edu- cation across the state have provided infor- mation through their individual circulars or websites as well as trainings that have been conducted locally. Check with your county office for more information.

Staying informed and up-to-date will require all administrators and school boards across the state to be educated on these very complex retirement laws and regula- tions. These sets of rules impact the whole educational system, not just the CalSTRS member.

Ashley Emerzian is an associate in Lozano Smith’s Fresno office. She regularly provides counsel regarding CalSTRS and CalPERS laws governing creditable service, creditable compensation and retirement employ- ment. She also advises on negotiations, collec- tive bargaining and administrator contracts. In 2013 and 2014, Emerzian was named a Rising Star by Super Lawyers Magazine.

Updates from the California Department of Education’s California Assessment of Student Performance and Progress include the following:

In preparing to administer the Smarter Balanced summative assessments for English-language arts and mathematics, be sure to visit the CAASPP web page at www. caaspp.org for new and updated resources and information.

Beginning Jan. 26, in-person workshops for the online test administration can be held for local CalSTRS coordinators. On Jan. 28 at 1 p.m., a live webcast of the Test Administration Workshop will be provided at www.caaspp.org. A Test Administration Manual should also be available by this date. Local Education Agency CAASPP coor- dinators are urged to make sure their site coordinators and test administrators have been added as users in the Test Operations Management System. Jan. 28 is the much-anticipated tar- get release date for interim assessments, including the Interim Comprehensive Assessments, select Interim Assessment Blocks, and the Interim Handscoring Module. Interim assessment student reports will be available in late February.

The Smarter Balanced Digital Library is an important collection of online resourc- es for K-12 teachers using the formative assessment process to achieve teaching in ways that improve and enhance student learning of the knowledge and skills in the standards.

Since its creation in 2010, more than 2,000 resources have been added. Visit www.cde.ca.gov/ta/tg/dl/ calda.asp to learn more about the Digital Library. Questions about the resource should be directed to the Digital Library Help Desk at (855) 631-1510 or by e-mail to CalTAC@ cde.ca.gov.

To join the CDE’s CAASPP/Smarter Balanced parents group, interested in finding out more about ACSA’s Education Legal Support Fund, please go to www.acsa.org/ elsf.

ACSA’s latest newsletter from the Education Legal Support Fund has just been sent out to members. It contains news about ELSF efforts in legal pro- ceedings on such issues as CalSTRS, the education funding system, school bond allocations, and statewide benefit charities.

The newsletter also provides insight into cases the ELSF is monitoring: Vergara v. State of California, and Cruz v. State of California.

ACSA’s Education Legal Support Fund was founded in 2006. School dis- tricts and county offices of education are encouraged to join. Dues are determined based on size of the district or county office.

The ACSA Board of Directors serves as the steering committee to determine the fund’s participation in various legal issues. Involvement in legal cases is prioritized based on potential statewide precedent or importance of pre-K-adult education. ACSA’s ELSF works closely with CSBA’s Education Legal Alliance.

Pivot Education is one of many resources available through the Center for Equitable Spending at edspending.org. The Center is an online, one-stop shop for free district, school and community planning and budgeting resources.