To: Assistant Superintendents, Business
    Assistant Superintendents, Human Resources
    Vice Chancellors, Business
    Vice Chancellors, Human Resources

From: Wendy Benkert, Ed.D.
    Associate Superintendent, Business Services

Date: November 13, 2012

Subject: Requirement for Publicly Available Salary Schedule
         (CalPERS Circular Letter 200-050-12)

CalPERS distributed a notice on October 25, 2012 to remind public employers of the requirement to maintain publicly available salary schedules pursuant to Section 570.5 of the California Code of Regulations (CCR), which took effect in August 2011. The public salary schedule requirement in this statute applies to all positions within public agencies.

In the attached Circular Letters (200-050-12 and 200-056-11), CalPERS reminds public employers of their intent to enforce the statutes of CCR 570.5 when determining compensation that is credited toward pension benefits and in calculating retirement benefits for current and future members.

Considering the central role that publicly available salary schedules will have in determining creditable compensation and pension benefits, it is important that all school districts review their salary schedules in order to ensure that they meet the requirements of CCR 570.5. A summary of the regulations is provided below. Detail for each item can be found in the attached notice.

Summary of Regulations / Requirements:
- Government Code (GC) Section 20636.1 defines earnable compensation, salary / pay rates, and special compensation for school employees.
- Pay rates and special compensation must be listed separately on a publicly available salary schedule which has been adopted by the employer’s governing board.
**Summary of Regulations / Requirements (continued):**

- Salary schedules must include the position title, pay rate, time base (hourly, daily, monthly, annually), and other details (see attached notice) for all positions.
- Every position within the organization must be listed on a publicly available salary schedule, including Cabinet-level positions with contracts approved by the local governing board.
- All other documents, such as contracts and Board approvals may not be accepted in lieu of publicly available salary schedules. Acceptance of these documents is at the discretion of the CalPERS Board.
- Salary schedules must be posted on a public website or physically posted at the organization so that the schedules are available for public review.
- Salary schedules and all changes must be retained for a period of 5 years.

Compliance with CCR 570.5 may require school districts to change current policies regarding salary schedules and how they are posted. The regulations also introduce a new requirement to publish salary schedules for Cabinet-level positions which may have negotiated contracts. Our office will be working with CalPERS and CalSTRS in order to obtain guidance for creating salary schedules for such positions.

Please be advised that while the notice of regulation was distributed by CalPERS, there are indications that CalSTRS will adopt similar regulations in the near future.

In order to comply with these regulations, districts will need to evaluate the different types of compensation paid to all employees and ensure that such payments are supported by information found on a publicly available salary schedule. Failure to do so may result in this compensation being excluded from pensionable earnings and final benefits received by retired staff members.

Additional information and notices are expected as pension reform legislation and other regulations continue to be refined by both CalPERS and CalSTRS. Our office will continue to provide this information to school districts and support district staff members in adjusting to these changes.

Please contact Gary Stine at gstine@ocde.us or (714) 966-4253 if you have any questions or if we may be of further assistance in this matter.

Cc: Superintendents
    Chancellors
Circular Letter

October 25, 2012

TO: ALL CALPERS EMPLOYERS

SUBJECT: STATUTORY AND REGULATORY REQUIREMENTS FOR PUBLICLY AVAILABLE PAY SCHEDULES

The purpose of this Circular Letter is to remind CalPERS employers that only those pay amounts that meet the definition of compensation earnable can be used when calculating retirement benefits.

Compensation earnable is defined in statute and further clarified by California Code of Regulations (CCR) Section 570.5. Specifically, this Circular Letter seeks to address the requirements related to publicly available pay schedules.

Compensation Earnable & The Requirement For Publicly Available Pay Schedules

The Public Employees’ Retirement Law (PERL) Government Code Sections 20636 and 20636.1 define compensation earnable for State, School, and Public Agency members. In order to meet the definition of compensation earnable, an amount of pay must either constitute payrate or special compensation as defined in the statutes. Section 20636(d) further requires that payrate and special compensation schedules, ordinances, or similar documents be public records available for public scrutiny.

Section 20636(b)(1) (applicable to Public Agency members) and 20636.1(b)(1) (applicable to School members) require pay amounts to be paid pursuant to publicly available pay schedules. For example, section 20636 (b)(1) states:

“Payrate means the normal monthly rate or pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules. “Payrate,” for a member who is not in a group or class, means the monthly rate of pay or base pay of the members, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full-time basis during normal working hours, subject to the limitations of paragraph (2) of subdivision (e).” (Emphasis added.)

CCR 570.5 was adopted April 13, 2011, with an effective date of August 10, 2011. CCR 570.5 sought to clarify the requirement of publicly available pay schedules.
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October 25, 2012
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After CCR 570.5 was adopted, CalPERS sent Circular Letter #200-056-11 dated August 19, 2011, notifying all employers of the requirements of CCR 570.5.

**Importance of Correct Reporting**

Due to the importance of correct payroll reporting in administering the PERL and member benefits, CalPERS is sending this additional Circular Letter to remind all employers of the criteria for reporting compensation earnable.

CCR 570.5 outlines the required elements necessary to meet the definition for a publicly available pay schedule as follows:

(a) For purposes of determining the amount of “compensation earnable” pursuant to Government Code Sections 20630, 20636, and 20636.1, payrate shall be limited to the amount listed on a pay schedule that meets all of the following requirements:

1. Has been duly approved and adopted by the employer’s governing body in accordance with requirements of applicable public meeting laws;

2. Identifies the position title for every employee position;

3. Shows the payrate for each identified position, which may be stated as a single amount or as multiple amounts within a range;

4. Indicates the time base, including, but not limited to, whether the time base is hourly, daily, bi-weekly, monthly, bi-monthly, or annually;

5. Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer’s internet website;

6. Indicates an effective date and date of any revisions;

7. Is retained by the employer and available for public inspection for not less than five years; and


All eight (8) requirements must be met in one salary schedule for each member’s pay, in order for CalPERS to approve the pay amount as payrate and reportable compensation earnable.

**No Applicable Pay Schedule**

If an agency cannot provide a document meeting the requirements for a publicly available pay schedule, then CalPERS must determine that the pay amount fails to meet the definition of payrate. CCR 570.5 (b)(1)-(4) outlines the process by which
CalPERS may determine a member’s payrate when there is no publicly available pay schedule provided.

CCR 570.5 (b) states:

(b) Whenever an employer fails to meet the requirements of subdivision (a) above, the Board, in its sole discretion, may determine an amount that will be considered to be payrate, taking into consideration all information it deems relevant including, but not limited to, the following:

1. Documents approved by the employer’s governing body in accordance with requirements of public meeting laws and maintained by the employer;

2. Last payrate listed on a pay schedule that conforms to the requirements of subdivision (a) with the same employer for the position at issue;

3. Last payrate for the member that is listed on a pay schedule that conforms with the requirements of subdivision (a) with the same employer for a different position;

4. Last payrate for the member in a position that was held by the member that is listed on a pay schedule that conforms to the requirements of subdivision (a) of a former CalPERS employer.

It is important that all employers comply with the compensation earnable provisions and corresponding regulations of the PERL. Where employers fail to comply, pay amounts will be determined to not constitute payrate and accordingly CalPERS will be unable to use such pay amounts when calculating members’ retirement benefits.

It is therefore critical that employers review their pay schedules to verify that all members’ pay amounts are included within a publicly available pay schedule. For assistance or questions related to the development of a publicly available pay schedule, please direct your inquiries to the CalPERS Compensation and Employer Review Unit.

If you have any questions, please contact the CalPERS Customer Contact Center at 888 CalPERS (or 888-225-7377).

KAREN DeFRANK, Chief
Customer Account Services Division
Circular Letter

August 19, 2011

TO: ALL CALPERS EMPLOYERS

SUBJECT: ADOPTION OF CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 570.5 AND AMENDED CCR 571, SUBDIVISION (b)

The purpose of this Circular Letter is to inform you of the newly enacted California Code of Regulations, (CCR) Title 2, Section 570.5 and amendments to CCR Section 571, subdivision (b). On April 13, 2011 the CalPERS Board of Administration adopted the proposed regulation and regulatory amendments to clarify existing law and make specific the requirements for publicly available pay schedule as that phrase is used in the definition of “payrate,” and written labor policy or agreements as used in the definition of special compensation. The regulations became effective August 10, 2011.

The addition of Section 570.5 and amendments to Section 571, subdivision (b) will ensure consistency between CalPERS employers and enhance the disclosure and transparency of public employee compensation by requiring that the payrate or item of special compensation be listed on a pay schedule or in a document meeting criteria set forth in the regulations.

CCR 570.5 – Requirement for a Publicly Available Pay Schedule

This regulation requires that each pay schedule include:

- position title for every employee position
- payrate for each position
- time base for each payrate

This regulation also contains criteria for ensuring the pay schedule is publicly available and does not permit a reference to another document in lieu of disclosing the payrate. Further, the regulation clarifies that “compensation earnable” will be limited to the amount listed on a pay schedule that meets all of the established criteria, and identifies how payrate may be determined where employers fail to meet the requirements.

This regulation applies to all employers reporting compensation to CalPERS.
**CCR Section 571, Subdivision (b) Amendment – Special Compensation**

This amendment clarifies existing law by ensuring greater transparency and disclosure of special compensation items in written labor policies or agreements. The labor policy or agreement must include:

- the conditions for payment of the item of special compensation
- eligibility requirements and amount for each special compensation item

The written labor policy or agreement cannot reference another document in lieu of disclosing the details of the special compensation. In addition, the written labor policy or agreement must be duly approved, posted or immediately accessible and available for public review, retained for not less than five years, and include an effective date.

CCR Section 571, subdivision (b) applies to all schools and public agencies reporting compensation to CalPERS.

**Conclusion**

These regulations benefit the public, employers, members, and CalPERS staff by clarifying existing law, ensuring consistency in the reporting of compensation and enhancing disclosure and transparency of public employee compensation.

We have attached CCR sections 570.5 and 571 for your convenience.

If you have any questions, please call the CalPERS Customer Contact Center at **888 CalPERS** (or **888-225-7377**).

DARRYL WATSON, Chief
Customer Account Services Division

Enclosure
[California Code of Regulations 570.5 and 571](PDF, 12 KB)
PUBLICLY AVAILABLE PAY SCHEDULE AND WRITTEN LABOR POLICY OR AGREEMENT REGULATIONS

California Code of Regulations, title 2, §§ 570.5 and 571

Title 2. Administration
Division 1. Administrative Personnel
Chapter 2. Board of Administration of Public Employees' Retirement System
Subchapter 1. Employees' Retirement System Regulations
Article 4. Contracts

ADD 2 CCR § 570.5

§ 570.5. Requirement for a Publicly Available Pay Schedule.

(a) For purposes of determining the amount of "compensation earnable" pursuant to Government Code Sections 20630, 20636, and 20636.1, payrate shall be limited to the amount listed on a pay schedule that meets all of the following requirements:

1. Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;
2. Identifies the position title for every employee position;
3. Shows the payrate for each identified position, which may be stated as a single amount or as multiple amounts within a range;
4. Indicates the time base, including, but not limited to, whether the time base is hourly, daily, bi-weekly, monthly, bi-monthly, or annually;
5. Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
6. Indicates an effective date and date of any revisions;
7. Is retained by the employer and available for public inspection for not less than five years; and

(b) Whenever an employer fails to meet the requirements of subdivision (a) above, the Board, in its sole discretion, may determine an amount that will be considered to be payrate, taking into consideration all information it deems relevant including, but not limited to, the following:

1. Documents approved by the employer's governing body in accordance with requirements of public meetings laws and maintained by the employer;
2. Last payrate listed on a pay schedule that conforms to the requirements of subdivision (a) with the same employer for the position at issue;
3. Last payrate for the member that is listed on a pay schedule that conforms with the requirements of subdivision (a) with the same employer for a different position;
4. Last payrate for the member in a position that was held by the member and that is listed on a pay schedule that conforms with the requirements of subdivision (a) of a former CalPERS employer.

AMEND §571(b)

§ 571. Definition of Special Compensation.

(a) -- (No changes).

(b) The Board has determined that all items of special compensation listed in subsection (a) are:
   (1) Contained in a written labor policy or agreement as defined at Government Code section 20049, provided that the document:
       (A) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;
       (B) Indicates the conditions for payment of the item of special compensation, including, but not limited to, eligibility for, and amount of, the special compensation;
       (C) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
       (D) Indicates an effective date and date of any revisions;
       (E) Is retained by the employer and available for public inspection for not less than five years; and
       (F) Does not reference another document in lieu of disclosing the item of special compensation;
   (2) Available to all members in the group or class;
   (3) Part of normally required duties;
   (4) Performed during normal hours of employment;
   (5) Paid periodically as earned;
   (6) Historically consistent with prior payments for the job classification;
   (7) Not paid exclusively in the final compensation period;
   (8) Not final settlement pay; and
   (9) Not creating an unfunded liability over and above PERS' actuarial assumptions.

(c) -- (No changes).

(d) -- (No changes).


Research Note: - (No changes).