



## MWA Board Report

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December 10, 2020

### MWA Chief Financial Officer Report

Wallace Wei

#### State Budget Update

On September 18, 2020 the Governor signed **Senate Bill (SB) 820**, an Education Trailer Bill, which made several key changes to provisions of the state budget adopted in June. Changes include:

- Growth funding accommodations for eligible LEAs.
  - Only partially eases the growth cap due to the imposition of high statewide absence factor.
  - MWA is eligible for the growth funding and submitted the application on November 5<sup>th</sup>.
- No ADA collected in 2020-21 for apportionment purposes.
- Extended deadline to spend several Covid-19 relief funds.
- Requirement to update the *Budget Overview for Parents* template to reflect alignment with 2021 *Learning Continuity and Attendance Plan*.

While the Governor still seeks support from the federal government for COVID-19 relief, revenue reductions have been shifted to cross-year cash deferrals beginning in February and are projected to continue through June.

#### Government Revenues Outlook

The latest news in the Department of Finance (DOF) monthly report on state general fund revenue collections for August indicates that the pandemic's initial impact on California's economy and state revenues peaked in the second quarter of 2020. California has now recovered one-third of the jobs lost in March and April for an unemployment rate of 11.4% in August. While this recovery is good news, it is far from the 4% unemployment rate reported a year ago. It is becoming clearer that COVID-19 will be a multiyear problem affecting all aspects of school operations and finance.

Given this economic outlook, the reliance on one-time funds including reserves, and the magnitude of deferrals required to maintain LCFF funding, we used relatively conservative government revenue assumptions in MWA's first interim budget based on the recommendations from Fiscal Crisis and Management Assistance Team (FCMAT). If the economic recovery continues, MWA could receive up to \$400k more government revenues as compared with the first interim budget estimate.

Funding picture for 2021-22 and beyond is subject to many variables, but some of the known pluses and minuses include:

- *Known Pluses*
  - Economy currently performing better-than-anticipated.
  - 2020 budget legislation calls for boosting K-12 funding from 38% to 40% of state budget, phasing in 2022-24. This will increase MWA's LCFF funding rate by roughly 5%, or \$500/ADA.
- *Known minuses*
  - The state is starting about \$11 billion in the hole to backfill deferrals next year.
  - It is unlikely we will receive additional federal stimulus money in 2021-22 and beyond.
  - CalSTRS employer rates can increase faster than previously projected starting in FY22 because the budget trailer bill redirects funding that previously was allocated to reduce long-term employer contribution rates to state pension systems, instead providing near-term relief in FY21.
  - Prop. 15 was rejected in 2020 California election. Proposition 15 would require reassessing commercial properties every three years at market value. If it were to pass, the change would significantly raise businesses' property taxes and boost K-12 funding rate.
  - Sluggish state revenue growth is expected for the next several years, according to the latest report by the state's Legislative Analyst's Office, while costs are projected to rise significantly for Medi-Cal, prisons, etc.

### **FY 2019-20 Financial Audit Update**

The FY 2019-20 financial audit went smoothly this year despite a much broader audit scope than prior years due to the federal single audit. The federal single audit is triggered when a school received more than \$750,000 federal grant in a year.

On November 19th, the audit partner Ms. Lili Huang from CLA reviewed the draft Independent Auditor's Report and MWA financial statements with the audit committee, noting that (i) she and her team had encountered no difficulties or disagreements in dealing with MWA management while performing and completing the audit of MWA financial statements; that (ii) no deficiencies were found, i.e., there were no findings or questioned costs; and that (iii) the financial statements, in all material respects, fairly present the financial position of MWA.

At the meeting, Ms. Huang also let us know that she cannot issue the final audit report until the compliance supplement addendum is released from the federal government for the CARES ACT Audit. Since many schools are waiting for this compliance supplement addendum to finalize their audit report, the deadline for a charter school to submit FY 2019-20 audit report to its chartering authority is postponed to March 31st, 2021. At the time this report was drafted, the auditor just received the compliance supplement addendum and was in the process of finalizing the audit report. The board will receive the final audit report for approval at the January board meeting.

### **First Interim Budget**

On November 19th, the Finance Advisory Committee reviewed the First Interim Budget for FY21 and recommended they be approved by the board. This topic is more fully covered in a separate report since it is an action item.

## CalSTRS External Audit and Internal Review

In October 2019, CalSTRS conducted an external audit to assess the completeness and accuracy of MWA CalSTRS members' creditable compensation reported in FY 2018-19. In July 2020, we received a notification from CalSTRS indicating MWA missed reporting two eligible compensations. While addressing the findings from the external audit in the fall, we also conducted a comprehensive internal review on CalSTRS compliance, based on recommendations from our attorney. Throughout the process, the board president and finance advisory committee had been advised in real time of the issues of and progresses made on both the external audit and internal review.

A key change to CalSTRS eligibility criteria in January 2016 led to the internal finding of not properly classifying a few CalSTRS eligible positions. We had never been notified of the change of the eligibility criteria by CalSTRS or by our authorizer and therefore were acting in good faith throughout.

On October 29<sup>th</sup>, I shared a memo with the finance advisory committee on the CalSTRS external audit and internal review (attached below) that summarizes the findings, fiscal impact, and action plan to ensure future compliance with CalSTRS:

### **Findings**

We were selected to undergo an **external audit** by CalSTRS in the fall of 2019. During this audit it was determined that the Special Temporary Cost of Living Allowance was initially deemed "creditable compensation". However, we successfully disputed this finding so that this allowance is NOT viewed as creditable compensation. The Content Lead and Grade Level Lead leadership stipends were deemed as creditable. This was not a matter of dispute.

After being selected for an external audit, we made the decision to conduct our own **internal review** to make sure we uncovered any other potentially creditable positions. During the internal review we found some positions were not properly classified as creditable. During this process we learned that the criteria changed in 2016 and allowed for certain non-credentialed, student facing positions to be deemed as creditable.

### **Fiscal Impact**

- Avoided paying about **\$1.1M** in disputing one of the external audit findings
- About **\$500K-\$550K** for all late payments, interest, and penalties (see more details below)
- About **\$95K** additional costs annually moving forward for CalSTRS employer contributions starting from this year

Out of the total fiscal impact, about \$80K are due to late contributions per Education Code section 27007:  
*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.*

I reached out to CalSTRS Employer Helpdesk about the possibility of getting a waiver on the penalties because we were acting in good faith. While the CalSTRS representative said there is no formal waiver (which our attorney confirms), she indicates that disputed matters may be resolved through an informal process before an

executive decision review and/or appeal are necessary. Given this, we have started the process to dispute the penalties through the Contra Costa County Office of Education.

According to our attorney, if that informal process does not work, we can request an Executive Review from CalSTRS within 45 days of a formal decision. Thereafter, we can file an appeal within 90 days if the decision is not set aside. The appeals process is conducted through the Office of Administrative Hearings.

**Action Plan**

I developed an action plan moving forward that details plans for ongoing review of creditable positions and reporting out to the finance advisory committee on the results of the internal reviews for the next three years.

## MAKING WAVES ACADEMY MEMORANDUM

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**TO:** FINANCE ADVISORY COMMITTEE  
**FROM:** WALLACE WEI, MWA CFO  
**SUBJECT:** CALSTRS EXTERNAL AUDIT AND INTERNAL REVIEW  
**DATE:** 10/29/2020  
**CC:** ALTON B. NELSON, JR., MWA CEO

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In this Memorandum, I provide an update on:

- The FY 2018-19 CalSTRS Audit
- The findings of our internal review of CalSTRS compliance
- Our plans to ensure future compliance with CalSTRS

### ***CalSTRS Audit***

In October 2019, CalSTRS conducted an external audit to assess the completeness and accuracy of MWA CalSTRS members' creditable compensation reported in FY 2018-19. In July 2020, we received a notification from CalSTRS indicating we missed reporting the following two eligible compensations:

- **Special Temporary Cost of Living Allowance (STCOLA) as creditable compensation for CalSTRS members.**
  - This is the \$12K/year allowance every full-time employee receives on top of their base salary or hourly wage. The STCOLA was established three years ago to help our staff offset the increasing cost of living in the Bay Area, to remain competitive in our compensation and benefits for hiring, and to create flexible instrument that could be responsive to the needs of our employees without permanently changing our salary scales for exempt and non-exempt employees.
- **Content Lead and Grade Level Lead Stipend as creditable compensation for CalSTRS members.**
  - These stipends are for teacher leadership positions. These teacher leaders receive their base salary aligned with their Step Scale for MWA along with a stipend that compensates them for some of the additional leadership responsibilities they take on these roles.

We have successfully disputed the first finding about the STCOLA, with the help of our attorney, by citing the following reasons:

- The STCOLA is designed as a cost of living adjustment, or “allowance”, that is available to all employees, and is not linked to the performance of creditable service.

- The STCOLA is particularly intended to assist employees with housing expenses associated with the high cost of living in the Bay Area.
- The STCOLA constitutes a fringe benefit rather than salary or remuneration in addition to salary.
- The STCOLA is not 'permanent' and is subject to School discretion.

As a result of the successful dispute, MWA avoided paying about \$1.1M for missed contributions, penalties, and interest.

However, we were not successful in disputing the claim for the Content and Grade Level Lead stipends. CalSTRS continues to maintain that Content Lead and Grade Level Lead Stipends are creditable compensations, even though our attorney suggests that there is some ambiguity regarding the extent of creditability of the stipend, depending on whether the stipend is paid in a lump sum or prorated.

As a result of CalSTRS' insistence on this finding, MWA is liable to CalSTRS for the employee and employer contributions of the stipend that were paid **from 2016 to 2019, plus interest and a penalty equal to 5% of the total stipend upon which the contribution was based**. We are currently working with the CalSTRS county representative to correct the missed contributions.

Estimated Fiscal Impact for the Content and Grade Level Lead Stipend Finding = \$60K

MWA did not interpret these stipends as additional core compensation, and therefore, did not seek an additional opinion about them as creditable services when they were created.

According to Sarah Cassady, the labor law attorney at YM&C, the ambiguity of CalSTRS eligibility issue is that there are several laws, rewrites of the laws, Employer Directives, advice memorandums, and California Code of Regulations (CCRs) that tie together very closely but at times are in conflict. She mentioned it is not a totally sound or clear system in her experience.

***Internal Review***

Because of the external CalSTRS audit and its findings, the potentially large fiscal impact of non-compliance, as well as the ambiguity and complexities of some of the CalSTRS regulations, we made the decision to conduct a comprehensive internal review on CalSTRS compliance for all MWA positions and types of compensations, based on recommendations from our attorney.

As an overview, Education Code section 47611 states if a charter school makes STRS available, all employees who perform creditable service shall be required to enroll in STRS. In other words, membership is mandatory if an employee is eligible; they cannot opt-in or opt-out. The only exception to this rule is for part-time employees and employees who are coming to the School from a PERS position (but only if the employer offers PERS). In such cases, those employees can choose to enroll in STRS (or for the PERS employee, to remain in PERS).

Eligible members include employees that perform "creditable service" for a charter school employer under the provisions of an approved charter. (Ed. Code § 22119.5) "creditable service" under Education Code section 22119.5 includes "any employee who performs work related to teaching, counseling, planning or evaluating

instructional programs or curriculum, selecting or training teachers, personnel management of staff, supervising persons or administrative duties, and like duties”.

As of January 1, 2016, STRS no longer requires an employee to both possess a credential and work in a position which requires a credential as a condition of membership in STRS. Instead, if an employee is performing creditable service as defined above, whether or not they have a credential or work in a position requiring a credential, the employee would be eligible to participate in STRS.

Historically, however, we were still considering a credential as *necessary* in determining CalSTRS eligibility after 2016, and thus, did not enroll a few positions that would otherwise be eligible for CalSTRS membership. We have no documentation of having received notification of this change in 2016, and we did not, at the time, seek to consult with CalSTRS or our county representative for CalSTRS, to help us determine if any new positions added after 2016 were creditable.

After reviewing with our attorney the full list of MWA positions and types of compensations and verifying directly with CalSTRS Employer Helpdesk, we identified the following positions that shall be eligible for CalSTRS, but we did not report since 2017:

- *Associate Director of College and Career Counseling*
- *Career Services Coordinator*
- *Academic Advising Coordinator*
- *College & Career Counseling Coordinator*
- *Social Worker*
- *Dean of Students*

We provide an estimate of the total fiscal impact of missed contributions, penalties and interest for these six positions below. MWA is liable for both employee and employer contributions dating back to 2017.

Estimated Fiscal Impact for Missed CalSTRS Contributions = **\$450K-\$500K**

The breakdown of the fiscal impact is summarized in the table below:

<b>Employee Contribution</b>	<b>Employer Contribution</b>	<b>Penalty</b>	<b>Interest*</b>	<b>Total</b>
\$120K	\$200K	\$80K	\$50K-100K	<b>\$450K-500K</b>

***\*Estimated***

As of October, 2020, we have enrolled all of these eligible employees (a total of eight) into CalSTRS. We estimate that the cost of CalSTRS employer contributions will increase annually due to these newly enrolled positions.

Estimate of Additional Cost for CalSTRS Employer Contributions Moving Forward = **\$95K**

## **Future Compliance**

To ensure we correctly enroll all eligible employees and comply with all applicable CalSTRS regulations in the future, we plan to take the following actions:

- **Training** – Have both the HR and Business team attend a CalSTRS training by the end of 2020 to gain a solid understanding of current CalSTRS regulations (CalSTRS already offered to provide such a training to MWA). At least one member from both the HR and Business team will attend a CalSTRS training (from CalSTRS directly, or from a reputable law firm) to learn any new regulations every year in the future.
- **Checklist** – Develop a checklist that shows CalSTRS eligibility for all MWA existing positions and types of compensations with the help of our attorney. The checklist will be shared between the HR and Business department.
- **Onboarding** – HR will use the checklist to determine CalSTRS eligibility for any new employees prior to onboarding and enroll those who are eligible upon onboarding.
- **New Positions** – For any new positions, HR will check with CalSTRS Employer Helpdesk to determine the eligibility and update the checklist.
- **Payroll Verification Process** – Payroll will verify CalSTRS eligibility for all new employees based on the checklist when processing the first paycheck.
- **Internal Audits** – The CFO and Director of HR will conduct an internal audit every other year to verify CalSTRS eligibility through random sampling.
- **Report Out to the Finance Advisory Committee** – The CFO will provide updates to the Finance Advisory Committee (via memo or written report to be discussed at a Finance Advisory Committee meeting) the results of the internal audits of CalSTRS eligibility for the next three years. The CFO will also alert the Finance Advisory Committee, annually, of any substantive or material changes for the eligibility criteria for CalSTRS.