



The following information was recently provided to NYSTRS' participating employers. As a Retirement System delegate, it is important that you are aware of these issues.

Delegate News

Issue No. 2007-7

June 2007

Reporting of Summer Program Earnings

We are aware of various **summer programs** held on the grounds of our participating employers that are not the traditional summer school programs approved by the State Education Department pursuant to Part 110 of the Commissioner's regulations. These non-approved programs are often referred to as "enrichment" programs.

We have found the following to be generally true of these programs:

- The program has been validly authorized by the employer's governing board, and the employer has full control of and full legal responsibility and liability for the program.
- Instruction of district students is the primary purpose of the program.
- The programs are carried out on school premises.
- The monies are paid to System members via regular district payroll.
- The curriculum coincides with the regular components of the district's educational program.
- The services rendered by System members are reasonably incidental to the duties of a full-time teacher or administrator of the district.
- Generally, certified teachers of the district teach the individual courses.
- Service in the programs may be covered within district collective bargaining agreements.
- An employee-employer relationship exists between the district and the program's employees.
- The schools do not make a profit as a result of the program.

Because the structure, objectives and functions of these extra-curricular programs may vary considerably, questions have arisen as to whether System members who participate in such programs earn salary and service credit reportable to NYSTRS. Our position on this matter is as follows:

As long as such programs have the above described attributes, NYSTRS has determined the money teachers and administrators earn from such programs is regular in nature. Therefore, it is reportable for all tiers and usable in a three-year final average salary (FAS) calculation. The monies paid to members for these programs should be reported as "C — Instructional Pay" on your district reports.

(please see reverse)

The System reserves the right, however, to request additional information relating to any such program and may determine such payments are not reportable in any or all of the following circumstances, since any such payments would artificially inflate the FAS:

- When negotiated on the eve of retirement;
- When requiring resignation within a certain window of time;
- When it is subject to terms and conditions restricting coverage to only a select group of retirement-eligible employees; and/or,
- When it is paid in other circumstances indicating an attempt to inflate a member's FAS.

Additionally, the System reserves the right to treat as non-reportable compensation payment for services in programs that, though operated on employer premises and under employer auspices, are in substance programs of third parties, not the employer.

As the System is a defined benefit plan, pensions for its members are necessarily calculated according to formulas that incorporate certain actuarial assumptions. Chief among those assumptions is the expectation that compensation earned during the three-year FAS period is reasonably representative of career earnings. Payments that are not representative of actual teaching service performed during the career are potentially harmful to the actuarial soundness of the plan, and cannot therefore be included in the three-year calculation.