



**TO:** The Honorable the Members of the Board of Regents

**FROM:** Sharon Cates-Williams *Sharon Cates-Williams*

**SUBJECT:** Proposed Technical Amendment of Section 170.12 of the Regulations of the Commissioner of Education Relating to School Districts' Exemption from the Establishment of an Internal Audit Function

**DATE:** March 3, 2022

**AUTHORIZATION(S):** *Donna B. [Signature]* *Betty [Signature]*

### SUMMARY

#### **Issue for Decision (Consent)**

Should the Board of Regents adopt the proposed amendment of section 170.12 of the Regulations of the Commissioner of Education relating to school districts' exemption from the establishment of an internal audit function?

#### **Reason(s) for Consideration**

Required by State statute (Education Law §2116-b).

#### **Proposed Handling**

The proposed amendment is presented to the Full Board for adoption as a permanent rule at its March 2022 meeting. A copy of the proposed rule is included (Attachment A).

#### **Procedural History**

A Notice of Proposed Rule Making was published in the State Register on December 1, 2021. Following publication in the State Register, the Department received no comments on the proposed amendment. Therefore, an Assessment of Public Comment is not required and no changes to the proposed amendment are needed. A Notice of Adoption will be published in the State Register on March 30, 2022. Supporting materials are available upon request to the Secretary of the Board of Regents.

## **Background Information**

Chapter 263 of the Laws of 2005 (Chapter 263) added section 2116-b to the Education Law, requiring that each school district establish an internal audit function. Subdivision two of such section provides an exemption for the internal audit function for school districts that meet certain criteria. Chapter 263 provides that school districts with fewer than 8 teachers, less than \$5 million in general fund expenses in the previous year, or fewer than 300 enrolled students in the previous year are exempt from the internal audit requirements. The 2013 Enacted State Budget (Chapter 57 of the Laws of 2013) amended Education Law §2116-b(2) by increasing the number of enrolled students to be eligible for an exemption to the internal audit function requirement from 300 to 1,500 students. Due to an oversight, section 170.12(b)(3) of the Commissioner's regulations was never updated to reflect this change.

Therefore, to align the Commissioner's regulations with the amendments made to Education Law §2116-b(2), the Department proposes to amend section 170.12(b)(3) of the Commissioner's regulations to provide that districts with actual enrollment of less than 1,500 students in the previous school year are exempt from the internal audit function requirement.

## **Related Regents Items**

February 2006: [Proposed Amendment to Commissioner's Regulations Relating to School District and BOCES Financial Accountability](https://www.regents.nysed.gov/common/regents/files/documents/meetings/2006Meetings/February2006/0206emscvesida2.htm)  
(<https://www.regents.nysed.gov/common/regents/files/documents/meetings/2006Meetings/February2006/0206emscvesida2.htm>)

November 2021: [Proposed Technical Amendment to Section 170.12 of the Regulations of the Commissioner of Education Relating to School Districts' Exemption from the Establishment of an Internal Audit Function \(nysed.gov\)](https://www.regents.nysed.gov/common/regents/files/1121p12d1.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/1121p12d1.pdf>)

## **Recommendation**

It is recommended that the Board of Regents take the following action:

VOTED: That section 170.12 of the Regulations of the Commissioner of Education be amended, as submitted, effective March 30, 2022.

## **Timetable for Implementation**

If adopted at the March 2022 Regents meeting, the proposed rule will become effective March 30, 2022.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 305, and 2116-b of the Education Law.

1. Paragraph (3) of subdivision (b) of section 170.12 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(3) Exemption.

(i) The following school districts shall be exempt from the requirements of this subdivision:

(a) districts employing fewer than eight teachers;

(b) districts with actual general fund expenditures totaling less than \$5 million in the previous school year; or

(c) districts with actual enrollment of less than [300] 1,500 students in the previous school year.