INITIAL STATEMENT OF REASONS

Proposed Amendment to add Article 1.5 to Subchapter 2 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations (CCR) and to adopt section 592.1 under Article 1.5.

The proposed regulation establishes a fee structure necessary for the continued administration of the State Social Security Administrator (SSSA) program. The California Public Employees' Retirement System (CalPERS) Board of Administration serves as the SSSA and administers the SSSA program established pursuant to Government Code (GC) sections 22200 and 22204.

PROBLEMS THE PROPOSED REGULATION INTENDS TO ADDRESS

The Social Security Administration requires each state to designate an official to administer the state's Section 218 Agreement. A Section 218 Agreement is a voluntary agreement between the state and the Social Security Administration (SSA) to provide Social Security and Medicare coverage for state and local government employees. In 1955, the Governor's Office designated CalPERS as the SSSA for the State of California per GC sections 22200 and 22204. CalPERS' SSSA program processes requests from public agencies for coverage under the State of California's Section 218 Agreement and for modifications thereto, executes annual employer information requests, responds to employer inquiries, and performs education and outreach.

Between 1955 and 1986, the SSSA was also responsible for collecting Social Security and Medicare taxes from all public agencies in California. CalPERS stopped collecting taxes from public agencies when the Omnibus Budget Reconciliation Act of 1986 moved the responsibility of collecting taxes from CalPERS to the Internal Revenue Service. The SSSA has been operating since 1987 using the interest that was earned in the Old Age and Survivors' Insurance (OASI) Revolving Fund per GC section 22601. The OASI Fund reserves have diminished and the SSA does not provide any funding for the SSSA program. GC sections 22551, 22552, and 22560, however, authorize CalPERS to collect fees from public agencies to cover the costs associated with administering the SSSA program. This proposed regulation would establish a new fee structure to fund the SSSA program for public agencies whose employees are or will be covered by the State's Section 218 Agreement.

PURPOSE, BENEFITS, OR GOALS OF THE AUTHORIZING STATUTES

GC section 22500 authorizes the Board to make rules and regulations to administer provisions of Part 4, "Federal Old Age and Survivors' Insurance", under Division 5 of Title 2 of the Government Code.

GC sections 22551, 22552, and 22560 authorize CalPERS to collect fees from public agencies to cover the costs associated with administering the SSSA program as the SSA does not provide any funding for the SSSA program. The

SSSA program is currently funded by the balance in the OASI Fund, which is nearly depleted. For CalPERS to continue administering the SSSA program, it requires fees from public agencies to cover program costs.

RATIONALE FOR DETERMINATION THAT ADOPTION IS REASONABLY NECESSARY TO ADDRESS THE PROBLEM

The proposed regulation is necessary to generate the funds needed to administer the SSSA program. CalPERS estimates that total program costs to operate the program are over $1 million annually. The fees in the proposed regulation will cover CalPERS' annual program costs to administer the SSSA program. If CalPERS is unable to assess the fees, CalPERS will no longer be able to administer the SSSA program and would be out of compliance with its delegated authority.

This regulatory action also provides clarity and transparency to public agencies by identifying the fees and the inflation adjustment calculation.

SPECIFIC PURPOSE FOR THE ADOPTION OF THE PROPOSED REGULATION

Purpose of the Proposed Regulation

The purpose of CCR section 592.1(a) is to provide an overview of the regulation.

The purpose of CCR section 592.1(b) is to define public agencies for purposes of the regulation.

The purpose of CCR section 592.1(c) is to specify that public agencies that have or will have employees covered by the State's Section 218 Agreement are required to pay various fees to fund the SSSA program.

The purpose of CCR section 592.1(c)(1) is to specify the fee to establish initial coverage under the State's Section 218 Agreement.

The purpose of CCR section 592.1(c)(2) is to specify the fee to modify coverage under the State's Section 218 Agreement.

The purpose of CCR section 592.1(c)(3) is to specify a nine-tiered annual fee structure for the SSSA program based on the total number of persons employed by the public agency, including the specified agencies as listed in the California Department of Finance Salaries and Wages Supplement report, as well as any other public agency.

The purpose of CCR section 592.1(c)(3)(A) is to specify that CalPERS will use the California Department of Finance Salaries and Wages Supplement report to annually determine the number of persons employed per state department, University of California (UC) campus, UC Office of the President and

Universitywide Programs, California State University (CSU) campus, and CSU Chancellor's Office, for purposes of determining the fee in subdivision (c)(3).

The purpose of CCR section 592.1(c)(3)(B) is to specify that for each County Office of Education, school district, and all other public agencies not listed in subdivision (c)(3)(A), CalPERS will annually determine the number of persons employed per public agency based on a prioritized order of data sources, as specified, and if a data source does not contain complete information, CalPERS will use the next data source listed, for purposes of determining the fee in subsection (c)(3).

The purpose of CCR sections 592.1(c)(3)(B)(i) through 592.1(c)(3)(B)(v) is to specify the data sources, and the order in which CalPERS will rely upon each data source, to annually determine the number of persons employed for each public agency not specified in subsection (c)(3)(A) for purposes of determining the fee in subsection (c)(3).

The purpose of CCR section 592.1(d) is to specify how the fees will be reviewed to determine whether the fees are subject to an annual inflation adjustment by using the Consumer Price Index for All Urban Consumers: U.S. City Average, as reported by the United States Bureau of Labor Statistics (U.S. BLS).

The purpose of CCR section 592.1(d)(1) is to specify that if the recalculated fee for subsections (c)(1) and (c)(2) to establish or modify coverage under the State's Section 218 Agreement increases by $100 or more, the fee amounts in subsections (c)(1) and (c)(2) will be increased by the amount of such excess, rounded down to the next lower multiple of $100.

The purpose of CCR section 592.1(d)(2) is to specify that if the recalculated fee for the middle tier (Number of Employees 50-99) in subsection (c)(3) increases by $100 or more, all of the annual fee amounts in subsection (c)(3) will be increased by the amount of such excess, rounded down to the next lower multiple of $100.

BENEFITS ANTICIPATED FROM THE REGULATORY ACTION
The proposed regulation will benefit public employers with employees covered under the Section 218 Agreement by providing a sustainable funding source for the SSSA program, a transparent fee structure, and an inflation adjustment calculation.

NECESSITY
The proposed addition of CCR section 592.1(a) is necessary to provide an overview of the regulation and clarify that the CalPERS Board of Administration has the delegated authority to administer the SSSA Program, which includes charging fees to cover the costs of administering the program.

The proposed addition of CCR section 592.1(b) is necessary to define “public agency” for purposes of the regulation because there are many different types of public employers, such as, state departments, local government agencies, and school districts. This definition clarifies which public employers are subject to the requirements of this section by referring to certain statutes contained in Part 4, “Federal Old Age and Survivors’ Insurance”, under Division 5 of Title 2 of the Government Code.

The proposed addition of CCR section 592.1(c) is necessary to specify that each public agency that has requested or that will request that its employees be covered by the State’s Section 218 Agreement is required to pay various fees to fund the SSSA program. CalPERS needs a revenue source to cover the annual SSSA program administrative costs.

The proposed addition of CCR section 592.1(c)(1) is necessary to specify the fee required to establish initial coverage under the State’s Section 218 Agreement to ensure that public agencies are aware of the cost to establish initial coverage under the State’s Section 218 Agreement. CalPERS estimates that its average cost of assisting public agencies with establishing coverage under the State’s Section 218 Agreements is $620. GC section 22551 allows CalPERS to charge public agencies fees equivalent to the anticipated costs up to one year in advance, therefore the $650 fee is reasonable to cover current and future administrative costs for establishing initial coverages under the State’s Section 218 Agreement.

The proposed addition of CCR section 592.1(c)(2) is necessary to specify the fee required to modify coverage under the State’s Section 218 Agreement to ensure that public agencies are aware of the cost to modify coverage under the State’s Section 218 Agreement. CalPERS estimates that its average cost of assisting public agencies with modifying coverage under the State’s Section 218 Agreements is $620. GC section 22551 allows CalPERS to charge public agencies fees equivalent to the anticipated costs up to one year in advance, therefore the $650 fee is reasonable to cover current and future administrative costs for modifying coverages under the State’s Section 218 Agreement.

The proposed addition of CCR section 592.1(c)(3) is necessary to specify the annual fees required for maintaining coverage under the State’s Section 218 Agreement. This nine-tiered fee structure mirrors the firm size class tiers utilized by the U.S. BLS for the National Business Employment Dynamics Data by Firm Size Class. A nine-tier fee structure is necessary to support equity among public agencies of different employee sizes.

This fee structure specifies the annual fees required based on the total number of persons employed by the public agency, including the specified agencies as listed in the California Department of Finance Salaries and Wages Supplement report, as well as any other public agency that has coverage under the State’s

Section 218 Agreement. In addition, this subsection clarifies that each state department, University of California (UC) campus, UC Office of the President and Universitywide Program, California State University (CSU) campus, and CSU Chancellor's Office will be charged a separate annual fee. The SSSA program will cost approximately $1 million to operate for Fiscal Year 2019-20. There are approximately only 10 requests a year to establish or modify coverage under the State's Section 218 Agreement and the revenue that would be collected from the fees to establish or modify coverage alone would not be enough to cover the annual SSSA program administrative costs. Therefore, the annual fee is necessary to generate enough revenue to administer the SSSA program.

The proposed addition of CCR Section 592.1(c)(3)(A) is necessary to specify that CalPERS will use the California Department of Finance Salaries and Wages Supplement report to annually determine the number of persons employed per state department, UC campus, UC Office of the President and Universitywide Programs, CSU campus, and CSU Chancellor's Office, for purposes of determining the fee in subsection (c)(3). The California Department of Finance Salaries and Wages Supplement report was selected because it is updated annually and contains a breakdown of the number of persons employed per each public agency listed in the report.

The proposed addition of CCR section 592.1(c)(3)(B) is necessary to specify and clarify the methodology CalPERS will use to determine the number of persons employed for each County Office of Education, school district, and all other public agencies not listed in subsection (c)(3)(A). Annually, CalPERS will determine the number of persons employed per public agency in this subsection based on a prioritized order of data sources as specified in subsections (c)(3)(B)(i) through subsection (c)(3)(B)(v), for purposes of determining the annual fee in subsection (c)(3).

The proposed addition of CCR sections 592.1(c)(3)(B)(i) through 592.1(c)(3)(B)(v) is necessary to specify the data sources, and the order in which CalPERS will rely upon each data source, CalPERS will use to annually determine the number of persons employed for each public agency not specified in subsection (c)(3)(A) for purposes of determining the fee in subsection (c)(3). The order of priority of the data sources is based on how readily available the information is for CalPERS. These subsections clearly communicate to those public agencies the data sources CalPERS will rely upon, which also supports the need for accurate data reporting to CalPERS.

The proposed addition of CCR section 592.1(d) is necessary to specify and clarify the calculation methodology CalPERS will use to determine whether the fees are subject to an annual inflation adjustment. This subsection further clarifies that CalPERS will use the Consumer Price Index for All Urban Consumers: U.S. City Average, as reported by the U.S. BLS in the inflation adjustment calculation. Accounting for inflation is necessary to ensure that the SSSA program is properly funded in the future.

The proposed addition of CCR section 592.1(d)(1) is necessary to specify and clarify the methodology CalPERS will use to determine when and how the fees in subsections (c)(1) and (c)(2) will be increased and communicate how inflation may change the amount of future fees. To reduce administrative complexity, CalPERS will only adjust the fees in subsections (c)(1) and (c)(2) when the recalculated fees increase by $100 or more. To further reduce administrative complexity, when the recalculated fees increase by $100 or more, the fee amounts in subsections (c)(1) and (c)(2) will be increased by the amount of such excess, rounded down to the next lower multiple of $100. Accounting for inflation is necessary to ensure that the SSSA program is properly funded in the future.

The proposed addition of CCR section 592.1(d)(2) is necessary to specify and clarify the methodology CalPERS will use to determine when and how the annual fees in subsection (c)(3) will be increased and communicate how inflation may change the amount of future annual fees. To reduce administrative complexity, CalPERS will only adjust all of the annual fees in subsection (c)(3) when the recalculated fee for the middle tier (Number of Employees 50-99) increases by $100 or more. To further reduce administrative complexity, all of the annual fee amounts in subsection (c)(3) will be increased by the amount of such excess, rounded down to the next lower multiple of $100.

The middle tier was selected to ensure a reasonable inflation adjustment is applied, while maintaining equity among employers of different sizes. Using the highest tier would increase the fees at a more rapid pace than the lowest tier. For example, if the calculated inflation adjustment factor is 20 percent, applying the inflation adjustment factor to the lowest tier (Number of Employees 1-4) would result in a recalculated fee of $240, a $40 increase, which would not trigger a change in fee structure. If that same inflation adjustment factor is applied to the highest tier (Number of Employees 1,000 and over), the resulting recalculated fee would be $3,000, a $500 increase. That $500 increase would be applied to all tiers, which would increase the lowest tier by 350 percent. However, applying that same inflation adjustment factor to the middle tier would result in a recalculated fee of $600, a $100 increase. Using the middle tier would result in all annual fees increasing by $100. Accounting for inflation is necessary to ensure that the SSSA program is properly funded in the future.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS RELIED UPON BY THE AGENCY

The following documents were relied upon in developing this proposed regulation:

- California Department of Finance. *Salaries and Wages Supplement.* Fiscal year 2017-18.

- U.S. Bureau of Labor Statistics. *Consumer Price Index for All Urban Consumers: U.S. City Average.* Last updated September 12, 2019.
- U.S. BLS. *National Business Employment Dynamics Data by Firm Size Class*. Last modified July 24, 2019. Available at https://www.bls.gov/bdm/bdmfirmsize.htm.
- Economic and Fiscal Impact Statement (STD. 399)

BUSINESS IMPACT

The regulatory action does not impact private businesses. It will only impact public agencies that have requested or that will request that their employees be covered under the State's Section 218 Agreement, and not private businesses.

ECONOMIC IMPACT ASSESSMENT

The proposed regulation is consistent with existing law and is necessary to establish a fee per GC sections 22551, 22552, and 22560. In accordance with GC section 11346.3(b), CalPERS has made the following assessments regarding the proposed regulation:

Creation or Elimination of Jobs within the State of California

The proposed regulation is not intended to create or eliminate any jobs within the State of California. It will only impact public agencies that have requested or that will request that their employees be covered under the State's Section 218 Agreement, and not private businesses.

Creation of New Businesses or Elimination of Existing Businesses within the State of California

No new businesses will be created and no existing businesses will be eliminated by this proposed regulation. This regulation will only impact public agencies that have requested or that will request that their employees be covered under the State's Section 218 Agreement.

Expansion of Businesses within the State of California

The proposed regulation will not expand or prevent the expansion of any existing businesses within the State of California. The proposed regulation will only impact public agencies that have requested or that will request that their employees be covered under the State's Section 218 Agreement, and not private businesses.

Benefit of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The proposed regulation will not affect the health and welfare of California residents, worker safety, or the State's environment. The proposed regulation will only impact public agencies that have requested or that will request that their employees be covered under the State's Section 218 Agreement.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The proposed regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of businesses in California to compete with businesses in other states. The intent of the proposed regulation is to establish a fee per GC sections 22551, 22552, and 22560 by establishing a fee structure necessary for CalPERS to continue administering the SSSA program. The proposed regulation will only impact public agencies that have requested or that will request that their employees be covered under the State's Section 218 Agreement, and not private businesses.

ALTERNATIVES TO THE REGULATORY ACTION AND CALPERS' REASON FOR REJECTING THOSE ALTERNATIVES

CalPERS did not deem any alternatives to be as efficient or as effective as the proposed regulation. Regulatory action was determined to be the most transparent and consistent means of implementing fees pursuant to GC sections 22551, 22552, and 22560. CalPERS will consider any reasonable alternatives proposed through the public comment period associated with this regulatory action.

ALTERNATIVES TO THE REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The proposed regulations do not impact small private businesses. The proposed regulation uses a tiered fee structure to support equity among public employers of different sizes by allowing smaller public employers to pay a lesser fee than larger public employers. This tiered fee structure was designed to lessen any adverse impact on small public employers. CalPERS has not identified any reasonable alternatives that would lessen the impact on small businesses.