

NOTICE OF PROPOSED REGULATORY ACTION

NOTICE IS HEREBY GIVEN that the Board of Administration (Board) of the California Public Employees' Retirement System (CalPERS) proposes to take the regulatory action described below in the Informative Digest after considering public comments, objections, or recommendations regarding the proposed regulatory action.

I. PROPOSED REGULATORY ACTION

In this filing, the Board proposes adding Article 1.5, "Administration", to Subchapter 2 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations and proposes adding section 592.1, "Social Security Administrative Fees" under Article 1.5. The proposed regulatory action seeks to establish fees payable by certain public agencies per Government Code (GC) sections 22551, 22552, and 22560, which is necessary for the continued administration of the State Social Security Administrator (SSSA) program.

II. WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action. The written comment period has been established commencing on **November 1, 2019** and closing on **December 17, 2019**. The Regulation Coordinator must receive all written comments by the close of the comment period. Comments may be submitted by e-mail to Regulation_Coordinator@calpers.ca.gov, or mailed to the following address:

Hoang Tran, Regulation Coordinator
California Public Employees' Retirement System
P.O. Box 942702
Sacramento, CA 94229-2702
Telephone: (916) 795-3038

III. PUBLIC HEARING

A public hearing will not be scheduled unless an interested person, or his or her duly authorized representative, submits a written request for a public hearing to CalPERS no later than 15 days before the close of the written comment period. Notice of the time, date, and place of the hearing will be provided to every person who has filed a request for notice with CalPERS.

IV. ACCESS TO HEARING ROOM

The hearing room will be accessible to persons with mobility impairments, and the room can be made accessible to persons with hearing or visual impairments upon advance request to the CalPERS Regulation Coordinator.

V. AUTHORITY AND REFERENCE

Under GC section 22500, the Board has authority to take regulatory action to carry into effect the provisions of Part 4, "Federal Old Age and Survivors' Insurance", under Division 5 of Title 2 of the Government Code. The proposed regulation establishes a fee to administer the SSSA program per GC sections 22551, 22552, and 22560.

VI. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

In 1955, the Governor's Office designated CalPERS as the SSSA for the State of California per GC sections 22200 and 22204. The Social Security Administration (SSA) 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 SSSA to provide Social Security and Medicare coverage for state and local government employees. 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 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.

Consistency Evaluation

CalPERS conducted a review for any related State regulation and found that there are no other State regulations concerning the implementation of fees for the SSSA program. Therefore, CalPERS has determined that the proposed regulation is not inconsistent or incompatible with existing regulations.

Anticipated Benefit

Adoption of this regulation will benefit public agencies by providing a sustainable funding source for the SSSA program, a transparent fee structure, and an inflation adjustment calculation.

VII. PRENOTICE CONSULTATION WITH THE PUBLIC

No prenotice consultation with the public was done, as all public comments and hearing requests can be submitted during the written comment period.

VIII. EFFECT ON SMALL BUSINESS

The regulatory action does not affect small private businesses. The proposed regulation only applies to public agencies that have requested or that will request that their employees be covered under the State's Section 218 Agreement.

IX. DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Board has made the following initial determinations:

- A. **MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS:** The proposed regulatory action does not impose mandates on local agencies and school districts.
- B. **COSTS OR SAVINGS TO ANY STATE AGENCY:** State agencies covered under the State's Section 218 Agreement will incur costs associated with this proposed regulation. There is an annual fee ranging from \$200 to \$2,500 depending on the number of employees per state agency.
- C. **COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT:** Local agencies and school districts that have requested or that will request to have their employees be covered under the State's Section 218 Agreement will incur costs associated with this proposed regulatory action. There is a \$650 fee to establish coverage or modify an existing coverage under the State's Section 218 Agreement and an annual fee ranging from

\$200 to \$2,500 depending on the number of employees per local agency or school district.

- D. **NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES:** Local agencies that have requested or that will request to have their employees be covered under the State's Section 218 Agreement will incur costs associated with this proposed regulation. There is a \$650 fee to establish coverage or modify an existing coverage under the State's Section 218 Agreement and an annual maintenance fee ranging from \$200 to \$2,500 depending on the number of employees per local agency.
- E. **COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE:** The proposed regulatory action will not result in costs or savings in federal funding to the State of California.
- F. **ADVERSE ECONOMIC IMPACT:** The proposed regulatory action will not have a significant statewide adverse economic impact affecting businesses including the ability of businesses in California to compete with businesses in other states.
- G. **COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:** CalPERS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action because the proposed regulatory action only applies to public agencies that have requested or that will request to have their employees be covered under the State's Section 218 Agreement.
- H. **RESULTS OF THE ECONOMIC IMPACT ANALYSIS:** The primary benefit of the proposed regulatory action is that it will generate needed revenue for the SSSA program while providing transparency and clarity for public agencies that have requested or that will request to have their employees be covered under the State's Section 218 Agreement. The proposed regulatory action is not intended to create or eliminate jobs within California; and will not: (1) create new businesses or eliminate existing businesses within California; (2) affect the expansion of businesses currently doing business within California; or (3) affect the health and welfare of California residents, worker safety, or the State's environment.
- I. **EFFECT ON HOUSING COSTS:** The proposed regulatory action has no effect on housing costs.
- J. **COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT WHICH MUST BE REIMBURSED IN ACCORDANCE WITH GC SECTION 17500 THROUGH SECTION 17630:** There are no costs to any local agency or

school district which must be reimbursed in accordance with GC section 17500 through section 17630.

X. CONSIDERATION OF ALTERNATIVES

In accordance with GC section 11346.5(a)(13), the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be:

- more effective in carrying out the purpose of the proposed action,
- as effective as, and less burdensome to affected private persons than the proposed action, or
- more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at a hearing or during the written comment period.

XI. CONTACT PERSON

Inquiries concerning the proposed administrative action may be delivered to:

Hoang Tran, Regulation Coordinator
California Public Employees' Retirement System
P.O. Box 942702
Sacramento, CA 94229-2702
Telephone: (916) 795-3038

The backup contact person for these inquiries is:

Anthony Martin
California Public Employees' Retirement System
P.O. Box 942702
Sacramento, CA 94229-2702
Telephone: (916) 795-3038

Please direct requests for copies of the proposed text of the regulation, the Initial Statement of Reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Hoang Tran, Regulation Coordinator at the above address.

XII. AVAILABILITY OF THE INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION, AND RULEMAKING FILE

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at 400 Q Street, Sacramento, CA 95811. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons. Copies may be obtained by contacting the CalPERS Regulation Coordinator at the mailing address or phone number listed shown in Section XI.

For immediate access, the regulatory material regarding this action can be accessed at CalPERS' website at <https://www.calpers.ca.gov/page/about/laws-regulations/regulatory-actions>.

XIII. AVAILABILITY OF CHANGED OR MODIFIED TEXT

After receiving comments from the public and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulation as revised. Please send requests for copies of any modified regulation to the attention of the CalPERS Regulation Coordinator at the mailing address shown in Section XI. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

XIV. AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the CalPERS Regulation Coordinator at the mailing address shown in Section XI.