Operations Support Services Division
P.O. Box 942702
Sacramento, CA, 94229-2702
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September 11, 2007

AGENDA ITEM 3

TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION COMMITTEE

I. SUBJECT: Public Hearing and Committee Recommendation: Proposed Amendments to Board of Administration Election Regulations

II. PROGRAM: Administration

III. RECOMMENDATION:

Staff recommends that, subject to the results of the public hearing, the Committee adopt the proposed amendments to Title 2 of the California Code of Regulations, Section 554.2, Notice of Election and Section 554.3, Nomination of Candidates. If the Committee wishes to proceed with the adoption of the proposed regulations, then the Committee should recommend adoption to the full Board.

IV. ANALYSIS:

On February 2, 2007, the Office of Administrative Law (OAL) published a final determination in response to a petition concerning underground regulations filed in July 2006. OAL determined certain CalPERS Board election forms and procedures constituted underground regulations pursuant to the Administrative Procedure Act (APA).

CalPERS Board election procedures at issue, as identified by OAL, are as follows:

- Notice of Election – schedule
- Nomination Petition – minimum signature requirements
- Nomination Petition – Social Security number and other signature verification requirements

The Legal Office recommended that CalPERS promulgate several amendments to the existing regulations.

The proposed amendments to existing regulations provide general parameters for the requirements to be set out in the Notice of Election for nomination petition signatures and the schedule of elections. In particular, California Code of Regulations, Title 2, Section 554.2, Notice of Election and Section 554.3, Nomination of Candidates, would be amended to provide general guidelines and criteria for determining the election schedule, setting the minimum number of petition signatures per candidate, and providing for identification information required in order to verify valid signatures on the petition. These proposed amendments provide the Board and staff with the flexibility necessary to conduct the election, and also clarify the basis on which the scheduling, signature and identification decisions are made.

At the June 2007 Benefit and Program Administration Committee, the proposed amendments to regulations Sections 554.2 and 554.3 were presented and discussed. The committee recommended beginning the regulatory process. The following day, the Board concurred with the Committee's recommendation.

V. DISCUSSION:

A Notice of Proposed Regulatory Action was published in the *California Regulatory Notice Register* (CRNR) 2007, No 28-Z, July 13, 2007 (Attachment A). A public hearing was noticed for today, September 11, 2007, at 9:00 AM. The written comment period for the proposed regulatory action closed on August 27, 2007. At the time this agenda item was prepared several written comments regarding the regulations had been received and are summarized below. Those written comments are included as Attachment B of this item. Any additional written comments received between the time this agenda item was completed and the end of the public comment period will be addressed verbally during the Committee meeting on September 11.

<u>Summary of Written Comments Submitted During 45 Day Written Comment Period</u>:

- Allow CalPERS to change nomination forms without going through the rulemaking process by specifying in the regulation's text the identifying information required to appear on the nomination forms.

- Delete provisions permitting CalPERS to determine at any "noticed public meeting of the Board" the required number of nominating signatures and what information regarding election schedule and procedures is required to appear on notices of election and on candidate nomination petitions.

- Clarify what part of the Social Security number is required for verification of nominee and member eligibility for nomination and to sign nomination petitions.

- Clarify how many valid signatures are required for nomination.

- Prevent adoption of procedures which put members at risk for identity theft.

- Specify qualifications and procedures to Board candidates in legally adopted regulations, not "underground regulations".

The purpose of the public hearing is to allow the public to present testimony regarding the proposed regulatory action. The Committee is not required to respond to these comments during the hearing; rather, all comments must receive a response from CalPERS as part of the final rulemaking file.

At the conclusion of the public hearing, this agenda item, and a summary of any public comments which have been received, along with the Committee's recommendation concerning this regulation will be sent to the Board for consideration. If the Board decides to adopt the proposed regulations, the rulemaking file will be forwarded to the Office of Administrative Law (OAL) for review and approval. Once OAL has approved the proposed amendment, it will be forwarded to the Secretary of State for filing and publication in the California Code of Regulations. The regulations will become effective 30 days after filing with the Secretary of State.

VI. STRATEGIC PLAN:

This item is not a specific product of the Strategic Plan, but is part of the regular and ongoing workload of the Operations Support Services Division.

VII. RESULTS/COSTS:

These amendments will not be implemented until the 2009 Member-At-Large election. There are no costs associated with these Board Election regulation amendments.

Rick Nelson, Chief
Operations Support Services Division

John Hiber
Assistant Executive Officer
Administrative Services Branch

BPAC

AGENDA ITEM # 3

ATTACHMENT A

NOTICE OF PROPOSED REGULATORY ACTION

ATTACHMENT A

Title 2. California Public Employees' Retirement System

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 amend the regulations described in the Informative Digest after considering public comments, objections, or recommendations regarding the proposed actions.

I. PROPOSED REGULATORY ACTION

In this filing, the Board proposes to amend CalPERS Board of Administration Election regulations to clarify and provide public notice regarding certain Board Election procedures adopted pursuant to Government Code section 20096, which requires the Board to develop election procedures, including amendments to California Code of Regulations, title 2, sections 554.2 and 554.3.

II. WRITTEN COMMENT PERIOD

Any person interested may submit written comments relevant to the proposed regulatory action. The written comment period closes at 5 p.m. on August 27, 2007. The Regulations Coordinator must receive all written comments by close of the comment period. Comments may be submitted via fax at (916) 795-4607; email at the following address: joe_parilo@calpers.ca.gov; or mail to the following address:

Joe Parilo, Acting Regulations Coordinator
California Public Employees' Retirement System
P.O. Box 942707
Sacramento, California 94229-2707
Telephone: (916) 795-3484

III. PUBLIC HEARING

Comments on the proposed actions will also be taken at a public hearing to be placed on the agenda of the regularly scheduled meeting of the Benefits and Program Administration Committee of the CalPERS Board:

September 11, 2007
9:00 a.m.
California Public Employees' Retirement System
Lincoln Plaza North, Auditorium
400 P Street, Sacramento, California, 95814.

IV. ACCESS TO HEARING ROOM

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

V. AUTHORITY AND REFERENCE

The CalPERS Board of Administration is obligated under Public Employees' Retirement Law (PERL) (California Government Code Title 2, Division 5, Part 3) section 20090, subdivision (g), to supervise the election of six members of the thirteen member board. Under Government Code section 20096, The Board has authority to develop election procedures for this purpose. Furthermore, pursuant to Government Code section 20095, the Board is required to hold special elections to fill vacancies which occur during the term of elected members of the Board.

VI. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

California Government Code section 20090 governs the make up of the Board of Administration of the Public Employees' Retirement System. Section 20090, subdivision (g), provides that, in addition to statutory members and appointees, the Board of Administration shall consist of six members elected under the supervision of the Board as follows:

(1) Two members elected by the members of this system from the membership thereof.
(2) A member elected by the active state members of this system from the state membership thereof.
(3) A member elected by and from the active local members of this system who are employees of a school district or a count superintendent of schools.
(4) A member elected by and from the active local members of this system other than those who are employees of a school district or a county superintendent of schools.
(5) A member elected by and from the retired members of this system.

Government Code section 20095 states the term of office of members of the Board is four years expiring on January 15 in the order fixed in section 20090, subdivision (g). Government Code section 20096 states the Board shall cause ballots to be distributed to each active and retired member of the system in advance of each election, shall provide for the return of voted ballots to the Board without cost to the member, and shall develop election procedures. The CalPERS Board is solely responsible for conducting the Board elections; prior to 1996, section 20096 (formerly section 20102) stated, in part, "The board shall adopt election procedures which shall be subject to review, approval and certification by the Secretary of State." In 1996, the Legislature, in Assembly Bill

Title 2. California Public Employees' Retirement System

NOTICE OF PROPOSED REGULATORY ACTION

No. 1700 (1995-1996 Reg. Session), amended section 20096 to read, in part: "The results shall be certified by the Secretary of State. . . . " thus eliminating any review of Board election procedures by the Secretary of State. (Stats. 1996, ch. 724, § 21, p. 3500.)

The Board of Administration has developed various election procedures codified in the California Code of Regulations, title 2, beginning at section 554. Section 554.2 provides guidelines for the Notice of Election, and section 554.3 provides guidelines for the nomination of candidates. Pursuant to its authority under Government Code section 20096, CalPERS has developed various forms and internal procedures to assist with conducting Board of Administration elections.

In February 2007, the Office of Administrative Law concluded certain forms and procedures utilized in Board of Administration elections constituted underground regulations under the Administrative Procedures Act. The proposed amendments to Board Election regulations are designed to address these issues by codifying pertinent Board Election procedures, to clarify various requirements for notification and candidate nomination and to provide further guidance to potential candidates and CalPERS voters regarding the Board Election process.

Proposed Amendment of section 554.2

Section 554.2 was adopted in 1982 and has not since been amended. This proposal would codify CalPERS' long standing policy of requiring the Board to adopt the Notice of Election as an agenda item at a regularly noticed public meeting of the Board prior to the nomination of candidates. The amendment specifies information to be contained in the Notice of Election, and provides guidelines for setting the election schedule. The amendment also clarifies the Election Coordinator's role in publishing the Notice of Election, as well as the Agency Election Officers' role in providing the Notice to active CalPERS members.

Proposed Amendment of section 554.3

Section 554.3 was adopted in 1982 and last amended effective September 2001. The proposal would codify CalPERS Nomination Petition procedures and requirements for both nominees and members and retired members signing the Nomination Petition. The proposal provides for various identifying information that may be required of both the nominee and members and retired members who sign the Nomination Petition, for the purpose of verifying eligibility. The proposal establishes a minimum number of signatures required for candidate nomination and guidelines for determining the appropriate number of required signatures. The proposal incorporates by reference both the Nomination Petition and Nomination Acceptance/Ballot Designation forms. Finally, the proposal reorganizes the section for clarity and ease of use.

VII. EFFECT ON SMALL BUSINESS

The proposed regulatory action does not affect small business because it applies only to CalPERS Board of Administration elections, open only to members and retired members of CalPERS.

VIII. DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

A. MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS: The proposed regulatory action does not impose a mandate on local agencies or school districts.

B. COST OR SAVINGS TO ANY STATE AGENCY: The proposed regulatory action does not impact costs or savings for any state agency.

C. COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT: The proposed regulatory action does not impose costs or savings for any local agency or school district, such that costs would qualify for reimbursement under Government Code section 17500 et.seq.

D. NONDISCRETIONARY COSTS OR SAVING IMPOSED ON LOCAL AGENCIES: The proposed regulatory action does not impose non-discretionary costs or savings on local agencies.

E. COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE: The proposed regulatory action does not impact any federal funding to the state.

F. ADVERSE ECONOMIC IMPACT: The proposed regulatory action has no significant statewide adverse economic impact directly affecting businesses, including the ability of business in California to compete with business in other states.

G. COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES: CalPERS is not aware of any cost impacts that representative private persons or businesses would necessarily incur due to the proposed regulatory action.

H. IMPACT ON JOBS AND BUSINESSES WITHIN CALIFORNIA: The proposed regulatory action will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

I. EFFECT ON HOUSING COSTS: The proposed regulatory action has no effect.

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IX. CONSIDERATION OF ALTERNATIVES

The Board must determine 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 for which the action is proposed, or would be as effective as and less burdensome to affected private persons than the proposed action.

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

X. CONTACT PERSONS

Please direct inquiries concerning the substance of the proposed regulatory action to:

Joe Parilo, Manager, Board Elections Office
California Public Employees' Retirement System
P.O. Box 942707
Sacramento, California 94229-2707
Telephone: (916) 795-3484

Please direct requests concerning processing of this regulatory action to Joe Parilo, Acting Regulations Coordinator, at (916) 795-3484 or joe_parilo@calpers.ca.gov.; or Andrea Lugo-Thielen, at (916) 795-1471 or andrea_lugo-thielen@calpers.ca.gov.

XI. AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The entire rulemaking file is available for public inspection through the Acting Regulations Coordinator at the address shown above. To date the file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons (ISR). A copy of the proposed text and the ISR is available at no charge upon telephone or written request to the Acting Regulations Coordinator.

The Final Statement of Reasons (FSR) can be obtained, once it has been prepared, by written request to Joe Parilo, Acting Regulations Coordinator, at the address shown in Section II.

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XII. AVAILABILITY OF MODIFICATIONS TO PROPOSED AMENDMENT

The Board may, on its own motion or at the recommendation of any interested person, modify the proposed amendment to the regulation after the public comment period has closed. It may amend CCR sections 554.2 and 554.3 as modified, if the changes are sufficiently related to the original text so the public could have anticipated them.

If the Board modifies its regulatory action in this manner, it will prepare a comparison of the original proposed text and the modifications for an additional public comment period of not less than 15 days prior to the date on which the board adopts, amends, or repeals the resulting regulation. A copy of the comparison text will be mailed to all persons who submitted written comments, who testified or submitted written comments at the public hearing, or asked to be kept informed as to the outcome of this regulatory action.

XIII. One can access the regulatory material regarding this action at www.calpers.ca.gov; *About CalPERS; Legislation, Regulations, and Statutes; Regulatory Actions; Current Regulatory Actions.*

PROPOSED REGULATORY ACTION BY CALPERS

Amend Sections 554.2 and 554.3 of Title 2 of the California Code of Regulations

Amend Section 554.2, "Notice of Election," as follows:

Amend the section by changing the overall format of the regulation from the current straight paragraph style to lettered subdivisions (a), (b), (c), (d), (e), and (f).

Relocate duties ascribed to the Election Coordinator in paragraph 1 of the existing section 554.2 to new subdivision (e).

Add subdivisions (a), (b), (c), (d), and (f) as follows:

(a) Before each election for a Board member identified in Government Code 20090, subdivision (g) or a special election to fill a vacancy pursuant to Government Code section 20095, the Board shall adopt a Notice of Election. The complete text of the Notice of Election shall be adopted as an agenda item at a regularly noticed public meeting of the Board.

(b) The Notice of Election shall contain:
   i. A statement of whether, at the time of the adoption of the Notice of Election, the incumbent intends to be a candidate for reelection;
   ii. The election schedule, including without limitation, the date for submission of Nomination Petition forms, Nomination Acceptance/Ballot Designation forms, and the dates of the election;
   iii. Eligibility criteria for candidates and voters;
   iv. Candidate nomination and election procedures;
   v. Information required by the Nomination Petition;
   vi. The minimum number of signatures required for nomination; and
   vii. Such other information as determined by the Board at the noticed public meeting.

(c) The election schedule shall provide the Board adequate time and flexibility to accommodate the nomination and candidate statement arbitration processes, various administrative procedures and voting periods, including the opportunity for a run-off election, if necessary, and to seat the newly elected Board members by statutory deadlines. In no event shall ballots be distributed to voters earlier than 60 days after the adoption of the original Notice of Election.

(d) Any amendment to the Notice of Election, including amendments to the election schedule, shall be set forth in an Amended Notice of Election, adopted at a noticed public meeting of the Board.

(e) The Election Coordinator shall ~~distribute a~~ publish the Notice of Election ~~in advance of~~ before each election, ~~containing candidate nomination and election procedures, eligibility criteria for candidates and voters, and the schedule of events. The Notice shall contain a statement whether or not the incumbent intends to be a candidate for reelection.~~ using methods designed to provide adequate notice to potential candidates and voters, including but not limited to:
   i. Posting the Notice of Election on the CalPERS website.

ii. Mailing the Notice of Election directly to eligible retired members.
iii. Providing employers with sufficient copies of the Notice of Election to allow widespread notice to employees.

(f) Agency Election Officers shall provide ~~such~~ notification to eligible active members by direct distribution of the Notice of Election to members or by posting the Notice of Election in employee work areas. ~~The Election Coordinator shall provide employers with sufficient copies of the Notice of Election to allow widespread notice to employees.~~

Delete the final sentence of existing section 554.2, the substance of which is included in subdivision (e), subpart (ii), above.

~~The Election Coordinator shall cause the Notice of Election to be mailed directly to eligible retired members by PERS.~~

Amend NOTE to read:
NOTE: Authority cited: Section 20121, Government Code. Reference: Sections 20090, 20095, and 20096, Government Code.

{HISTORY Remains Unchanged except to add the date of this amendment}

Amend Section 554.3, "Nomination of Candidates," as follows:

Amend the section by changing the overall format of the regulation from the current straight paragraph style to lettered subdivisions (a), (b), (c), (d), (e), (f), and (g)

Language in last paragraph in existing section 554.3, relocated at subdivision (f), remains unchanged.

(a) ~~Members shall qualify~~ A person qualifies for nomination if ~~they~~ he or she meets the eligibility criteria ~~adopted in advance of each election and publicized by the Board in the Notice of Election~~ set forth in Government Code section 20090, subdivision (g), for the Board member position that is the subject of the election. To qualify for candidacy, a nominee must complete the procedures for nomination set forth in the Notice of Election. An individual ~~candidate~~ nominee may not be a candidate for more than one Board member position during any particular election.

(b) Nomination shall be by petition, on the Nomination Petition form(s) provided by the System, addressed to the Board and signed by ~~members eligible to vote in the election being conducted~~ the nominee. The Nomination Petition form shall include all information required by this section as provided in the Notice of Election or any Amended Notice of Election. The petition shall identify clearly the specific Board member position for which the ~~candidate~~ nominee seeks election. The petition shall also set forth information required to validate the nominee's eligibility. The required information shall be determined at a noticed public meeting of the Board and specified in the Notice of Election, and may include, but is not limited to, the nominee's full name, partial Social Security number, System identification number, date of birth, employer or employer at retirement, and contact information.

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(c) A member or retired member shall be eligible to sign a Nomination Petition if he or she meets the eligibility criteria set forth in Government Code section 20090, subdivision (g), for the Board member position that is the subject of the election. Members or retired members signing a Nomination Petition shall provide identifying information for the purpose of validating membership in the System. The required information shall be determined at a noticed public meeting of the Board and specified in the Notice of Election, and may include, but is not limited to, the member's or retired member's full name, partial Social Security number, System identification number, date of birth, employer or employer at retirement, and address.

(d) The minimum number of petition signatures required shall be determined by the Board at a noticed public meeting and specified in the Notice of Election. In setting the minimum number of petition signatures, the Board will consider the goals of ensuring candidates have a minimum level of support and providing members and retirees access to candidacy. In no event shall less than 250 signatures be required. Only those petitions received in the Sacramento office of the System by the date and time specified in the Notice of Election shall be accepted.

(e) Each nominee shall certify, on the Nomination Acceptance/Ballot Designation form provided by the System, that ~~the nominee~~ he or she accepts the nomination, consents to serve if elected and agrees to abide by a drawing of lots by the Secretary of State in case of a tied vote. The nomine~~es~~ shall return ~~this certification on the form provided by the System~~ the Nomination Acceptance/Ballot Designation form by the date and time specified in the Notice of Election to have ~~their~~ his or her name~~s~~ placed on the ballot.

(f) Amendments to this section adopted on March 21, 2001 shall become operative on January 16, 2002. The amendments to Section 554.3 filed July 2, 1982, shall remain in effect until that time.

(g) Amendments to this section adopted September 12, 2007, shall become operative January 16, 2008.

{NOTE and HISTORY Remain Unchanged except to add the date of this amendment}

INITIAL STATEMENT OF REASONS

Amendment of CCR sections 554.2 and 554.3

SPECIFIC PURPOSE OF THE REGULATION:

The California Public Employees' Retirement system (CalPERS) is administered by a 13-member Board of Administration. Six of these members are elected by various constituency groups within CalPERS' membership base. (Govt. Code § 20090, subd. (g).) The elected Board members each serve four-year terms pursuant to Government Code section 20095.

The Board has enacted procedural regulations that generally govern the conduct of its elections, at sections 554 to 554.10, in title 2 of the California Code of Regulations. These regulations are designed to assist the Board of Administration with conducting each of the six elections over the course of four-year cycles. Each of the elections requires a different set of rules based on which members or retired members are eligible to be nominated as candidates, and which members or retired members are eligible to vote, as specified in Government Code section 20090, subdivision (g).

Current regulations describe procedures involved in conducting the Board of Administration elections. However, the proposed amendments to sections 554.2 and 554.3 codify, for the benefit of CalPERS members and retired members, as well as employers, the method for adopting the Notice of Election and procedural requirements for the nomination of Board of Administration candidates. The proposed amendments also re-organize these sections for clarity purposes, and have made other non-substantive changes which further assist nominees, members, retired members, and employers, to understand procedural requirements of the nomination process.

CCR Section 554.2 Purpose of Proposed Amendments

Prior to each election cycle the Board adopts a Notice of Election in which specific requirements for the given election cycle, including requirements for candidate nomination, a statement of whether the incumbent intends to be a candidate for re-election, and the election schedule, are provided to members and retired members. Currently, section 554.2 states the Election Coordinator shall distribute this Notice of Election in advance of each election and specifies information that will be contained in the Notice. Existing section 554.2 states the Agency Election Officers shall provide notification to eligible active members, and that the Election Coordinator will provide employers with sufficient copies of the Notice to allow widespread notice to employees. Finally, the current section 554.2 states the Election Coordinator shall mail the Notice directly to eligible retired members.

The proposed amendments to section 554.2 include changing the overall format of the regulation from the current straight paragraph style to lettered subdivisions (a), (b), (c), (d), (e), and (f).

Proposed subdivision (a):

Existing section 554.2 provides that the Election Coordinator will distribute the Notice of Election, but does not specify procedures for its adoption. This amendment incorporates the Notice of Election by reference and specifically provides for the manner in which the Notice of Election is adopted by the Board of Administration for each election cycle, including a special election to fill a vacancy pursuant to Government Code section 20095.

A sample Notice of Election is hereby attached as Exhibit A and is being made available for purposes of public comment. Please note, the standard size for this document is 8.5 x 14, but is being attached as an 8.5 x 11 document.

Proposed subdivision (b), subparts (i) through (vii):

This amendment more clearly explains what information will be contained in the Notice of Election, stating that the Notice shall contain a statement of whether, at the time of the adoption of the Notice of Election, the incumbent intends to be a candidate for reelection, the election schedule, eligibility criteria for candidates and voters (which changes each election cycle depending on which Board member seat is up for election), candidate nomination and election procedures, information required by the Nomination Petition, the minimum number of signatures required for nomination, and other information as determined by the Board at a noticed public meeting.

Proposed subdivision (c):

The amendment provides parameters for the setting of the election schedule, while allowing the Board to tailor the schedule to certain needs based on which Board member seat(s) are up for election in any given year. Proposed subdivision (c) also states ballots shall not be distributed to voters earlier than 60 days after the adoption of the original Notice of Election.

Proposed subdivision (d)

Existing section 554.2 does not address the potential need to adopt an amended Notice of Election. However, there have been years in which, because of a court order or as a result of the candidate arbitration process, the Board must amend the election schedule or make other changes to the Notice of Election. This amendment provides that any amendment to the Notice of Election shall be set forth in an Amended Notice of Election for the Board's adoption.

Proposed subdivision (e)

The amendment clearly delineates CalPERS' Election Coordinator's role in publishing the Notice of Election before each election, and the methods for publishing the Notice, in subparts (i) through (iii).

Proposed subdivision (f):

This subdivision maintains the current role of Agency Election Officers.

CCR section 554.3 Purpose of Proposed Amendment

To be nominated as a candidate for election, a member must qualify for the Board member seat which is the subject of the election pursuant to Government Code section 20090, subdivision (g). Existing section 554.3 states that members qualify for nomination if they meet the eligibility criteria adopted in advance of each election and publicized by the Board in the Notice of Election. Existing section 554.3 states that nomination shall be by petition, addressed to the Board and signed by members eligible to vote in the election being conducted. Currently, section 554.3 requires that the petition shall clearly identify the specific Board member position for which the candidate seeks election, and that an individual candidate may not be a candidate for more than one Board member position during any particular election. Existing section 554.3 states the minimum number of petition signatures shall be determined by the Board and specified in the Notice of Election.

Existing section 554.3 states that only petitions received in the Sacramento office of the System by the date specified in the Notice of Election shall be accepted. Existing section 554.3 requires the nominee to certify that he or she accepts the nomination and consents to serve if elected and agrees to abide by a drawing of lots by the Secretary of State in the event of a tied vote. The certification must also be returned by the date specified in the Notice of Election.

The proposed amendments to section 554.3 include changing the overall format of the regulation from the current straight paragraph style to lettered subdivisions (a), (b), (c), (d), (e), (f), and (g). The proposed amendment refers consistently to the member running for election as a "nominee" prior to nomination, whereas existing section 554.3 refers to the member running for election as a "nominee" or "candidate" interchangeably.

Proposed subdivision (a):

Clarifies that a person qualifies for nomination if they meet election criteria set forth in Government Code section 20090, subdivision (g), and that to qualify for candidacy, the nominee must complete the procedures for nomination set forth in

the Notice of Election. Guidelines for these procedures are now specified in proposed subdivisions (b) through (e) of section 554.3. The amendment maintains the existing requirement that an individual nominee not be a candidate for more than one Board member position during any particular election.

Proposed subdivision (b):

Specifies that Nomination shall be by petition and incorporates by reference the Nomination Petition form provided by CalPERS (referred to as "the System"). The proposed amendment specifies that the Nomination Petition shall include all information required by section 554.3 as provided in the Notice of Election. The amendment maintains the requirement in the existing regulation that the petition clearly identify the specific Board member position for which the nominee seeks election.

The proposed amendment specifies that the Nomination Petition will require certain information for the purpose of verifying the nominee's eligibility. While the proposed amendment provides some flexibility for the Board to require additional information if necessary, it permits the Board to require certain information that has been used to validate eligibility in the past, including but not limited to, the nominee's full name, partial Social Security number, System identification number, date of birth, employer or employer at retirement, and contact information. The proposed amendment maintains a level of flexibility for the Board because it is hoped that, as technology develops, the System may require less information to verify nominee eligibility. For example, rather than requiring a member to provide the last six digits of a his or her Social Security number, the proposed amendment allows the Board the flexibility to one day require only the last four digits, or no Social Security number at all. The proposed amendment states that all decisions regarding information required to verify eligibility will be determined at a noticed public meeting and specified in the Notice of Election.

A sample Nomination Petition is hereby attached as Exhibit B and is being made available for purposes of public comment.

Proposed subdivision (c):

This proposed subdivision sets out requirements for members or retired members who intend to sign a Nomination Petition. The proposed amendment states that a member or retired member is eligible to sign a Nomination Petition if he or she meets the eligibility criteria set forth in Government Code section 20090, subdivision (g). Existing section 554.3 does not specify any information required by individuals signing a Nomination Petition apart from that person's signature. However, the System requires additional information in order to verify the person signing the petition is indeed an eligible member of the System. This amendment states that members or retired members shall provide identifying information for the purpose of validating membership in the System, and that

required information shall be determined at a noticed public meeting of the Board and specified in the Notice of Election. The proposed amendment states that required information may include, but is not limited to, information such as the member's or retired member's full name, partial Social Security number, System identification number, date of birth, employer or employer at retirement and address.

Proposed subdivision (d):

Existing section 554.3 provides only that the Board shall determine the minimum number of petition signatures required and state that number in the Notice of Election. Due to the nature of Board Elections, which involve a different voting constituency for each election, it is necessary for the Board to be permitted flexibility to set the minimum number of signatures so as to permit members sufficient access to nomination, while maintaining a number of candidates that is manageable by the system. For example, in the 1993 Member-at-Large election, when the minimum signatures required was 100, 96 candidates ran for Board Election. This number of candidates is unmanageable from not only a procedural standpoint but from a voter standpoint, as well. Since that time, the Board has required 250 signatures for nomination.

This amendment provides guidelines for the determination of the minimum number of signatures required, but states that in no event shall less than 250 signatures be required. The amendment maintains provisions in the current section 554.3 that state that only those petitions received in the Sacramento office of the system by the date specified in the Notice of Election shall be accepted. The amendment also requires the petition be received at the time specified in the Notice of Election.

Proposed subdivision (e):

This amendment maintains, for the most part, requirements for certification in existing section 554.3. The amendment incorporates by reference the Nomination Acceptance/Ballot Designation form provided by the System, on which the nominee certifies he or she accepts the nomination and consents to serve if elected. The proposed amendment also requires the Nomination Acceptance/Ballot Designation form be received by the System on the date and time specified in the Notice of Election.

A sample Nomination Acceptance/Ballot Designation form is hereby attached as Exhibit C and is being made available for purposes of public comment.

Proposed subdivision (f):

This subdivision is different from the existing regulation only in that it is set apart in a subdivision. Otherwise the language is unchanged from current section 554.3, paragraph 4.

Proposed subdivision (g):

This new subdivision states that amendments to the section adopted on September 12, 2007 shall become operative January 16, 2008, which is after the current election cycle.

NECESSITY

These amendments are necessary to respond to the Office of Administrative Law's February 2, 2007 Determination, and, pursuant to that determination, to make Board Election procedures consistent with Administrative Procedures Act requirements, and to provide notice regarding the CalPERS Board Election process.

TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS

Not Applicable

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

CalPERS believes it has the statutory authority to establish Board election procedures and that existing regulations provide adequate notice regarding these procedures to CalPERS members, retired members, and employers. However, in light of the February 2, 2007, Office of Administrative Law determination, CalPERS considered alternatives to this proposal, and determined the proposed regulatory amendments are consistent with the determination.

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

The proposed action has no cost impact on either small businesses or on persons in the private sector.

EXHIBITS A, B, & C

EXHIBIT A

Rob Feckner, President
Marjorie Berte
John Chiang
George Diehr
David Gilb
Bill Lockyer
Priya Sara Mathur

BOARD OF ADMINISTRATION
California Public Employees' Retirement System
(916) 795-3952
(800) 794-2297

Robert F. Carlson, Vice President
Tony Oliveira
Mike Quevedo, Jr.
Kurato Shimada
Maeley L. Tom
Charles P. Valdes

MAILING ADDRESS:
P.O. Box 942702
Sacramento, CA 94229-2702

OFFICE ADDRESS:
Lincoln Plaza
400 Q Street, Room W2580
Sacramento, CA 95814

January 29, 2007

NOTICE OF ELECTION
2007 RETIRED MEMBERS BOARD ELECTION

Eligible retired members (excluding survivors and beneficiaries) of the California Public Employees' Retirement System (CalPERS) will have an opportunity this year to elect a representative for the CalPERS Board of Administration. The term of the incumbent, Robert F. Carlson, will expire on January 15, 2008. The new term of office will begin January 16, 2008, and run through January 15, 2012. Robert F. Carlson has announced that he will not seek re-election. The Political Reform Act (at Government Code section 81000 et seq.) requires candidates for the position of elective CalPERS Board member to file campaign statements of contributions and expenditures with the Secretary of State, among other things. Required forms will be distributed to candidates as part of the nomination forms package, but candidates are encouraged to contact the Fair Political Practices Commission for a full understanding of their legal obligations under the Political Reform Act. For more information, contact the Fair Political Practices Commission (FPPC) in Sacramento at (916) 322-5660 or toll-free at (866) 275-3772. See also www.fppc.ca.gov. Persons interested in obtaining the CalPERS Board election regulations should contact the Board Elections Office at the telephone numbers listed at the top of the page.

PROCEDURES FOR BECOMING A CANDIDATE

Eligibility—An eligible retired member may be nominated if the retiree's name appears on the System's retirement rolls for the month of January, 2007, (received a retirement benefit payment dated February 1, 2007) and the retiree will be a resident of the State of California during his or her term of office.

Nomination—Each potential candidate must submit a Nomination Petition form (CalPERS-BRD-74), which is endorsed by at least 250 retired members of CalPERS (excluding survivors and beneficiaries). ONLY Nomination Petitions supplied by CalPERS or copies of that form will be acceptable. Nomination Petitions are available through the Board Elections Office at the above address or phone number and on CalPERS' web site at **www.calpers.ca.gov**. **All Nomination Petitions containing original signatures (no photocopied, faxed, or otherwise reproduced petitions) must be received at the CalPERS headquarters office in Sacramento no later than the March 23, 2007, 5:00 p.m. deadline.**

In the event an incumbent who declares intention to run for re-election in this Notice of Election does not submit a Nomination Petition form by the March 23, 2007, 5:00 p.m. deadline, the nomination period for that position shall be extended for an additional 10 days. Notification of this nomination period extension shall be made on the Board Elections phone numbers listed above, and CalPERS' website at **www.calpers.ca.gov**. In that event, all extended Nomination Petitions containing original signatures must be received at the CalPERS headquarters office in Sacramento no later than April 2, 2007, at 5:00 p.m.

Nomination Petition Requirements-

1. The Petition will include the following information about the Nominee:
   a. First name, middle initial, last name; the last name will be used to **verify** membership against CalPERS' database;
   b. **Last six numbers of the Social Security Number** which will be used to **verify** membership against CalPERS' database;
   c. Agency where employed at retirement;
   d. Address, telephone number, e-mail address and fax number;
   e. Signature of Nominee consenting to nomination.
2. The Petition must contain **original** signatures, endorsed by at least two hundred and fifty (250) eligible retired CalPERS members (excluding survivors and beneficiaries) which includes:
   a. Clearly printed or typewritten name of each member; the last **name** will be used to **verify** membership against CalPERS' database;
   b. Clearly printed last **six numbers of the Social Security Number** which will be used to **verify** membership against CalPERS' database; and,
   c. Signature of each member beneath the printed or typewritten name, endorsing the Nominee.

Nomination Acceptance/Ballot Designation and Candidate Statement Forms—The Nomination Acceptance/Ballot Designation and Candidate Statement forms will be provided to the Nominee with the Nomination Petition when requested by phone or correspondence through the Board Elections Office, or, the forms are available on CalPERS' web site at **www.calpers.ca.gov**. The Nominee will be notified by phone as to whether or not the eligibility and nomination petition requirements have been met.

Nomination Acceptance/Ballot Designation Form—Each candidate must **certify** on a form provided by CalPERS that he/she accepts the nomination and consents to serve if elected by a majority vote, 50 percent of votes cast plus one vote. **Candidates must return the original Nomination Acceptance/Ballot Designation Form, which must be received at the CalPERS headquarters office in Sacramento no later than the April 6, 2007, 5:00 p.m. deadline.** A candidate who decides to withdraw candidacy after submitting his/her certified Nomination Acceptance/Ballot Designation Form must notify the CalPERS Election Coordinator by phone and follow-up in writing within five (5) working days following the nomination acceptance deadline date in order to have his/her name removed from the ballot and Candidate Statement Booklet.

Candidate Statement Form—Each candidate may submit a candidate statement of no more than 200 words. **The Candidate Statement Form is to be submitted with the Nomination Acceptance/Ballot Designation Form, which must be received at the CalPERS headquarters office in Sacramento no later than the April 6, 2007, 5:00 p.m. deadline.** Nominees are encouraged to return completed forms prior to the April 6, 2007, deadline.

Addendum to Candidate Statement—Following the distribution of all the draft candidate statements of the Retired election to all the candidates of the Retired election, a candidate may submit an addendum of no more than 100 words. The 100 word addendum is in addition to the initial 200 word candidate statement. **The addendum must be received at the CalPERS headquarters office in Sacramento no later than 10 calendar days following the distribution of the draft candidate statements to all the candidates.** Thereafter, all the draft candidate statements plus addenda will be provided to all the candidates. The final candidate statements plus addenda will be distributed with the ballot.

VOTER ELIGIBILITY

Retired members (excluding survivors and beneficiaries) whose names appear on the System's retired rolls for the month of June, 2007 (received a retirement benefit payment dated July 1, 2007) are eligible to vote in this election. If a runoff election is needed, retired members (excluding survivors and beneficiaries) whose names appear on the System's retired rolls for the month of September, 2007 (received a retirement benefit payment dated October 1, 2007) are eligible to vote in this runoff election.

ELECTION SCHEDULE

DEADLINE	ACTION
March 23, 2007	Deadline for CalPERS' receipt of Nomination Petitions.
April 6, 2007	Deadline for CalPERS' receipt of the Nomination Acceptance/Ballot Designation and Candidate Statement forms. Thereafter, addenda to the candidate statements, if any, must be filed within 10 calendar days following the distribution of the draft candidate statements to all candidates.
April 30, 2007	Random drawing for the order of candidate names on the ballot.
August 20, 2007	Ballots mailed directly to eligible retired members (excluding survivors and beneficiaries).
September 10, 2007	Eligible retired members not receiving a ballot by this date should contact the Board Elections Office at the phone number on the reverse side.
September 28, 2007	Voted ballots must be postmarked or received by CalPERS in the postage paid envelope, or another comparable envelope, on or before this date to be counted. For comparable envelopes, the words "CalPERS Retired Election Ballot Enclosed" should be boldly printed on the outside of the envelope. The reverse side of the postage paid envelope or comparable envelope **MUST BE SIGNED** by the member who voted the enclosed ballot certifying under penalty of perjury that the member is eligible to participate in the election and that the member personally voted the enclosed ballot and sealed it in the envelope.
October 1, 2007	Beginning the morning of October 1, 2007, at the location designated by CalPERS, the sealed, signed envelopes containing the voted ballots will be opened and the ballots removed. Thereafter, the ballots will be tabulated. The candidate having the majority vote, 50% plus one of votes cast, will be certified by the Secretary of State, as having been elected.
November 9, 2007	If a runoff election is needed, then runoff ballots will be mailed directly to eligible retired members (excluding survivors and beneficiaries).
November 20, 2007	Eligible retired members not receiving a runoff ballot by this date should contact the Board Elections Office at the phone number on the reverse side.
December 7, 2007	Voted runoff ballots must be postmarked or received by CalPERS on or before this date. Runoff ballots are subject to the same procedures described above for September 28th.
December 10, 2007	Beginning the morning of December 10, 2007, at the location designated by CalPERS, the sealed, signed envelopes containing the voted runoff ballots will be opened and the ballots removed. Thereafter, the runoff ballots will be tabulated. The candidate having the majority vote, 50% plus one of votes cast, will be certified by the Secretary of State, as having been elected.
January 16, 2008	The newly elected Board member will be seated on the CalPERS Board of Administration in accordance with the Public Employees' Retirement Law, Government Code section 20095. The new term of office begins January 16, 2008 and ends January 15, 2012.

For questions, general information, nomination petitions, a ballot, or CalPERS Board election regulations, contact the Board Elections Office through the automated phone system at the phone numbers on the reverse side or write to the Board Elections Office at the address on the reverse side.

EXHIBIT B

California Public Employees' Retirement System

NOMINATION PETITION

IMPORTANT: THE NOMINATION PETITION, ENDORSED WITH **AT LEAST 250 ORIGINAL SIGNATURES OF ELIGIBLE RETIREES,** MUST BE RECEIVED BY THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (CalPERS) AT THE ADDRESS BELOW **NO LATER THAN MARCH 23, 2007, 5:00 P.M. FIRM.** THE NOMINATION PETITION PROVIDES FIFTY (50) ADDITIONAL NAME/SIGNATURE LINES. ONLY NOMINATION PETITIONS SUPPLIED BY CalPERS WILL BE ACCEPTABLE.

California Public Employees' Retirement System
Attention: CalPERS Election Coordinator
Lincoln Plaza - 400 Q Street, Room W2580
P.O. Box 942702
Sacramento, CA 94229-2702
Telephone: (916) 795-3952, local, or (800) 794-2297 toll free

---

NOMINATION

WE, THE UNDERSIGNED, RETIRED MEMBERS OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM, PLACE IN NOMINATION _____
AS A MEMBER TO THE BOARD OF ADMINISTRATION, CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM. NOMINEE IS RETIRED FROM (AGENCY) _____

_____
Nominee's Street Address

XXX - - ____ ____ - - ____ ____ ____ ____
Last Six Positions of the Social Security Number*

_____
City State Zip Code

_____
Signature of Nominee Consenting to Nomination

(_____)_____
Nominee's Daytime Telephone Number

(_____) _____
Nominee's Fax Number

_____
Nominee's E-Mail Address

INFORMATION NEEDED FOR VERIFICATION OF SYSTEM MEMBERSHIP

	NAME* (Type/Print) & SIGNATURE	LAST SIX POSITIONS OF THE SOCIAL SECURITY NUMBER*	RETIRED FROM (AGENCY NAME)
1.	_____ (Type/Print Name) _____ (Signature)	XXX-- ___ ___ -- ___ ___ ___ ___	_____

* **NOTE:** The last name and the last six positions of the social security number information is being sought for the sole purpose of verifying CalPERS membership against the CalPERS database. Be advised that in some cases, the information provided may not be sufficient to verify CalPERS membership or may delay verification of eligible signers. In the event CalPERS membership cannot be verified, the signature will be deemed invalid and not counted.

EXHIBIT B

NOMINATION PETITION FOR: _____ **for CalPERS Board of Administration**

	NAME* (Type/Print) & SIGNATURE	LAST SIX POSITIONS OF THE SOCIAL SECURITY NUMBER*	RETIRED FROM (AGENCY NAME)
2.	_____ (Type/Print Name) _____ (Signature)	XXX-- ___ ___ -- ___ ___ ___ ___	_____
3.	_____ (Type/Print Name) _____ (Signature)	XXX-- ___ ___ -- ___ ___ ___ ___	_____
4.	_____ (Type/Print Name) _____ (Signature)	XXX-- ___ ___ -- ___ ___ ___ ___	_____
5.	_____ (Type/Print Name) _____ (Signature)	XXX-- ___ ___ -- ___ ___ ___ ___	_____
6.	_____ (Type/Print Name) _____ (Signature)	XXX-- ___ ___ -- ___ ___ ___ ___	_____
7.	_____ (Type/Print Name) _____ (Signature)	XXX-- ___ ___ -- ___ ___ ___ ___	_____
8.	_____ (Type/Print Name) _____ (Signature)	XXX-- ___ ___ -- ___ ___ ___ ___	_____

NOMINATION PETITION FOR: _____ **for CalPERS Board of Administration**

* **NOTE:** The last name and the last six positions of the social security number information is being sought for the sole purpose of verifying CalPERS membership against the CalPERS database. Be advised that in some cases, the information provided may not be sufficient to verify CalPERS membership or may delay verification of eligible signers. In the event CalPERS membership cannot be verified, the signature will be deemed invalid and not counted.

EXHIBIT C

CalPERS

NOMINATION ACCEPTANCE/BALLOT DESIGNATION FORM

IMPORTANT: COMPLETE AND FILE THIS FORM NO LATER THAN APRIL 6, 2007, 5:00 P.M. FIRM, (CERTIFIED MAIL IS RECOMMENDED) TO:

California Public Employees' Retirement System
ATTENTION: CalPERS Election Coordinator
Lincoln Plaza West - 400 Q Street, Room W2580
P.O. Box 942702
Sacramento, CA 94229-2702

NOMINATION ACCEPTANCE/NON-ACCEPTANCE

Please select either Item #1 or #2 below by marking the appropriate box.

1. ☐ I accept the nomination for election as a member of the Board of Administration to fill the position whose term will begin January 16, 2008, and expire on January 15, 2012. I consent to serve if elected and agree to abide by the result of a drawing of lots by the Secretary of State in case of a tied vote. I submit the following information:

   Name and proposed Ballot Designation as I wish it shown on the ballot:

   Name: _____
   (Please type or print)

   Proposed Ballot Designation: _____
   (See attached criteria)

   Employer At Retirement: _____

   Job Classification at Retirement : _____

   Total years of CalPERS-covered service in California: _____

2. ☐ I do not accept the nomination for the terms as set forth above.

I understand that if I decide to withdraw my candidacy after submitting this certified form, if I checked box #1 above, I must notify the CalPERS Board Election Coordinator by phone at (916) 795-3952 and follow-up in writing at the address shown above within five (5) working days following the April 6, 2007, nomination acceptance deadline date in order to have my name removed from the ballot and candidate statement information.

➔ Turn this form over. Read and complete the **CANDIDATE STATEMENT/ADDENDUM** and **CERTIFICATION** section.

EXHIBIT C

CANDIDATE STATEMENT/ADDENDUM

I understand that the California Public Employees' Retirement System will distribute with the ballot for the election (and runoff election if one is held) a candidate statement and candidate statement addendum for candidates who prepare them. I understand that the statement(s) must be truthful, and shall contain no obscene, vulgar, profane, libelous, or defamatory matter. The statement(s) shall not include any remarks or questions that are inherently misleading, including rhetorical remarks and questions that are inherently misleading.

I understand that once filed, the statement(s) may not be changed or withdrawn except as provided in CalPERS regulations at Title 2 California Code of Regulations Section 554.4(d), (e) Candidate Statements. I further understand that if candidate statement arbitration is conducted, and if I participate in the candidate statement arbitration, then, as stated in regulation Section 554.4(d), (e)(6):

- I will bear my own expenses in connection with the preparation and presentation of my case at the arbitration proceedings.
- The fees and expenses of the arbitrator and all other expenses of the arbitration shall be borne equally by each candidate participating in the arbitration.

I ☐ expect to ☐ expect not to be submitting a statement/addendum.

CERTIFICATION

My signature below certifies my understanding of the information on this form regarding nomination acceptance/non-acceptance, withdrawing candidacy and the candidate statement. My signature below also certifies that I have completed the information on this form.

SIGNATURE: _____

ADDRESS: _____

_____

TELEPHONE NUMBER: (____)_____

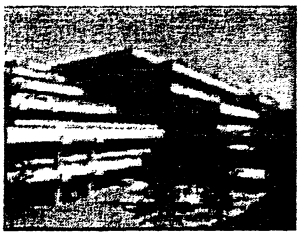
DATE: _____

BPAC

AGENDA ITEM #3

ATTACHMENT B

WRITTEN COMMENTS SUBMITTED DURING 45 DAY WRITTEN COMMENT PERIOD



PersWatch

Enhancing Benefits Through Increased Accountability

Joe Parilo, Acting Regulations Coordinator
California Public Employees' Retirement System
P.O. Box 942707
Sacramento, CA 94229-2707

August 8, 2007

Dear Mr. Parilo:

On behalf of the PERSWatch e-mail group with several hundred CalPERS members, thank you for the opportunity to comment on California Public Employees' Retirement System (CalPERS) proposed amendments to California Code of Regulations (CCR), title 2, sections 554.2 and 554.3.

We are primarily concerned with the likelihood of identity theft because of the rulemaking's apparent use of the last six digits of Social Security numbers and with CalPERS' continued refusal or inability to recognize when it is required to go through the Administrative Procedure Act (APA).

For many years, CalPERS argued it was exempt from such laws because of Constitutional provisions granting it "plenary authority and fiduciary responsibility for investment of moneys and administration of the system." That argument was thoroughly rejected by the Superior Court in Connell v. CalPERS and 1999 OAL Determination No. 18, filed by James McRitchie. Yet, now CalPERS proposes regulations authorizing the Board to change the criteria used to qualify as a Board nominee without going through the rulemaking process, as if such changes were neither rules of general application nor of public importance.

The following outlines the rationale behind four concerns leading to our suggested amendments (Attachment 1, in double underline and double strikeout format). We hope you will take these under serious consideration and believe these suggested amendments constitute a reasonable alternative that is potentially less costly to members who risk identity theft if they comply with the regulations proposed by CalPERS. The proposed alternative should be addressed under the provisions of Government Code sections 11346.2(b)(3) and 11346.5(a)(13).

1. Incorporation of Forms

The Notice of Proposed Regulatory Action (Notice) says, "the proposal incorporates by reference both the Nomination Petition and Nomination

Acceptance/Ballot Designation forms." First, since CalPERS failed to actually include this provision in its proposed regulation text, this appears to be a violation of CCR, title 1, section 20.

Second, and more importantly, the Board should have flexibility to change these forms without going through the rulemaking process. If CalPERS insists on incorporating them by reference, then each time a form needs to be changed it must go through the entire rulemaking process.

Because of this inconvenience, a preferred alternative is to specify the information required in the regulation's text. Note: under this option members are under no obligation to use CalPERS' forms, although most will probably choose to do so. If they do, they would be only obligated to provide those items on the form that are specifically required by the regulation text. See Government Code section 11340.9(c).

2. License to Write Underground Regulations

In its determination that certain CalPERS election forms and procedures constitute underground regulations (2007 OAL Determination No. 1, filed by James McRitchie), the Office of Administrative Law (OAL) noted that CalPERS could adopt a regulation "establishing the criteria for setting the dates for submission of documents and the election itself." They provided an example of the date of the election, which could be set at "three months before expiration of the term for which the election is held." However, OAL warned that "to the extent that requirements in the Notice of Elections meet the definition of a 'regulation' that information must be adopted pursuant to the APA."

In proposed amendments to CCR, title 2, section 554.3, subdivisions (b), (c) and (d), CalPERS includes language to allow the Board to amend its regulations without going through the requirements of the Administrative Procedure Act (APA). Use of the phrases "shall be determined at a noticed public meeting of the Board" and "may include, but is not limited to" seek to sanction future violations of the APA, since setting the requirements to validate a nominee's eligibility or a member's eligibility to nominate, the number of signatures required to run for office, and delineating what part of a Social Security number will be required on petitions are all clearly regulations.

For example, if the Board decides to require the last 6 digits of the Social Security number for petitions, it is setting a "standard of general application" that applies to the whole class of CalPERS members eligible to sign such petitions. Second, the rule implements, interprets or makes specific the law administered by CalPERS, since requiring the last 6 digits is not something specified in law. Third, pursuant to Government Code section 11346, the procedures established in the APA "shall not be superseded or modified by any subsequent legislation except to the extent that the legislation shall do so expressly." The proposed

amendments are not rules relating only to "internal management," as that term is used in Government Code section 11340.9, subdivision (d), since neither nominees nor members are part of "internal management." Additionally, in the words of Poschman v. Dumke, these are matters of "serious consequence involving an important public interest," since the Board's actions impact all Californian's, as well as people throughout the world. CalPERS cites no exception to the need to meet APA requirements and none apply.

3. Partial Social Security Number

Section 554.3, subdivisions (b) and (c) are unclear with reference to the term "partial Social Security number." The August 1, 2007 version of AB 1168, for example, defines "truncated social security number" to mean a social security number that displays only the last four digits of the number. No such clear definition is included in the proposed CalPERS rules. Again, the proposed CalPERS rules have apparently been left ambiguous in anticipation of future underground regulations to be promulgated, without complying with the APA, "at a noticed public meeting of the Board." "Partial Social Security number" fails to meet the clarity standards of CCR, title 1, section 16. On its face, it can reasonably be interpreted to have more than one meaning (from 1 digit to 8 digits). In conclusion, the term has no clear meaning to those "directly affected" by the rule.

These provisions also fail the "necessity" standard of Title 1, section 10, since the Initial Statement of Reasons contains no substantial evidence as to why six Social Security number digits are needed to validate eligibility instead of four or any of a number of other options.

CalPERS' Exhibit B, which is implied by the Notice to be incorporated by reference – although the text fails to do so, requires nominees and members to list the last six "positions" of their social security number, by which CalPERS appears to mean the last six digits. To add to the confusion, the Initial Statement of Reasons terms the forms incorporated by reference "sample forms." It is, therefore, unclear if these are the "real" forms or if they are included simply to give a "flavor" of what they Board may promulgated "at a noticed public meeting of the Board."

CalPERS staff analysis, dated May 16, 2006 (Attachment 2) asks, "Is there an alternative method for verifying system membership, for purposes of candidate endorsement, than using the last six digits of the individual's Social Security number?" (page 5) Out of a sample of 364, 304 could be verified using six digits, whereas only 200 could be verified using three digits. The staff report also says using the six SSN digits "provides the best opportunity to validate CalPERS membership without breaching the confidentiality of the member's identity" and recommends the "Board should continue to use last name and six digits of the SSN for purposes of validation of CalPERS membership."

However, as I testified to the Benefits and Program Administration Committee on May 16, 2007 (Attachment 3), using the last 6 digits does breach confidentiality, since the first digits are assigned based on the region in which you apply for an SSN. Up until 1972, the first three digits were assigned based on the local Social Security office. After 1972 they were assigned based on zip code. (See http://www.ssa.gov/history/ssn/geocard.html, Attachment 4) If you know, or can guess, where a person lived when they registered and you have access to the last six digits, you know their entire number.

A recent Federal Trade Commission survey reported that between 1998 and 2003, 27.3 million Americans were victims of identity theft. A report by CALPIRG and the Privacy Rights Clearinghouse (http://www.pirg.org/consumer/credit/theft.htm, Attachment 5) finds the average consumer spends 175 hours and $808 "out-of-pocket" to remedy identity theft. Many cases run considerably higher. Total costs to society are $50 billion annually.

The Constitution provides the Board of Administration with sole fiduciary duty over the system. "Participants and their beneficiaries shall take precedence over any other duty." Yet, in this rulemaking the Board places more importance on having to collect a few less signatures than it does on protecting the financial solvency of its members from identity theft. Even this sad logic is not included in the Initial Statement of Reasons, which fails the necessity test. Please urge the Board not to breach their fiduciary duty to members. Require the last four digits of the SSN, not up to eight as proposed.

4. Number of Petition Signatures Required

Section 554.3, subdivision (d) is unclear with reference to how many signatures shall be required on nomination petitions. Again, the proposed CalPERS rules have apparently been left ambiguous in anticipation of future underground regulations to be promulgated without complying with the APA, "at a noticed public meeting of the Board." At that meeting the Board must "consider the goals of ensuring candidates have a minimum level of support and providing members and retirees access to candidacy." While the Initial Statement of Reasons provides some elaboration, stating that 96 candidates is unmanageable, it offers no real clarity as to how the number of signatures is to be determined.

The clarity standards of Title 1, section 16, require that terms used in the regulations should be meaningful to those "directly affected" by the rule. It is highly unlikely that any two people reading this provision requiring specified considerations would arrive at the same number of required signatures. The provision has no real meaning, since one person could be interpreted as lending a "minimal level of support" and a requirement of one signature would certainly provide "members and retirees access to candidacy." The only provision needed

it also the only one contemplated that meets the clarity standard – 250 "valid" signatures. Adding the word "valid" would clarify that signatures that can't be validated don't count.

These provisions also fail the "necessity" standard of title 1, section 10, since the Initial Statement of Reasons contains no substantial evidence as to why the same number of signatures cannot be applied to all Board elections. In fact, since 1993 every Board election has required 250 signatures and that number has not varied based on the type of election.

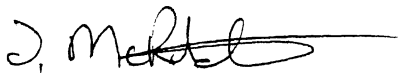
It is highly unlikely that CalPERS will ever again see anything like 96 candidates in one election because candidates are now required to comply with the Political Reform Act (at Government Code section 81000 et seq.) and to file campaign statements of contributions and expenditures, among other things. CalPERS offers no substantial evidence or even speculation as to the necessity of why more than 250 signatures would ever be needed to ensure a minimum level of support and provide access to candidacy.

California Code of Regulations, title 2, sections 554.3, should be amended to:

1. Allow CalPERS to change forms in the future without going through the rulemaking process.
2. Delete provisions, which appear to assert that CalPERS has the authority to amend its regulations at any "noticed public meeting of the Board."
3. Clarify what part of the Social Security number is required for verification of nominee and member eligibility for nomination and to sign nomination petitions.
4. Clarify how many validated signatures are required to meet the requirements for nomination.

The CalPERS Board of Administration has authority to make these amendments under Government Code section 20096. Presented in Attachment 1 are our suggested changes. Thank you for your consideration. Please contact me at (916) 869-2402 with any questions you may have concerning these comments or the suggested changes.

Sincerely,



James McRitchie

Attachments

Suggested Amendments
James McRitchie

Attachment 1

§ 554.3. Nomination of Candidates

....

(b) Nomination shall be by petition, ~~on the Nomination Petition form(s) provided by the System,~~ addressed to the Board and signed by ~~members eligible to vote in the election being conducted~~ the nominee. The Nomination Petition form shall include all information required by this section as provided on the Notice of Election ~~or any Amended Notice of Election~~. The petition shall identify clearly the specific Board member position for which the ~~candidate~~ nominee seeks election. The petition shall also set forth information required to validate the nominee's eligibility. The required information shall be ~~determined at a noticed public meeting of the Board and specified in the Notice of Election, and may~~ include~~,~~ ~~but is not limited to,~~ the nominee's full name, ~~partial~~ last four digits of Social Security number~~,~~ or System identification number, date of birth, employer or employer at retirement, and contact information.

(c) A member or retired member shall be eligible to sign a Nomination Petition if he or she meets the eligibility criteria set forth in Government Code section 20090, subdivision (g), for the Board member position that is the subject of the election. Members or retired members signing a Nomination Petition shall provide identifying information for the purpose of validating membership in the System class eligible to elect the director. The required information shall ~~be determined at a noticed public meeting of the Board and specified in the Notice of Election, and may~~ include~~, but is not limited to,~~ the member's or retired member's full name, ~~partial~~ last four digits of Social Security number~~,~~ or System identification number, date of birth, employer or employer at retirement, and address.

(d) The minimum number of validated petition signatures required shall be ~~determined by the Board at a noticed public meeting and specified in the Notice of Election. In setting the minimum number of petition signatures, the Board will consider the goals of ensuring candidates have a minimum level of support and providing members and retirees access to candidacy. In no event shall less than~~ 250 ~~signatures be required~~. Only those petitions received in the Sacramento office of the System by the date and time specified in the Notice of Election shall be accepted. ...

C James McRitchie

Attachment 2

Operations Support Services Division
P.O. Box 942707
Sacramento, CA 94229-2702
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May 16, 2006

AGENDA ITEM 11

TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION COMMITTEE

I. SUBJECT: Board Member Elections

II. PROGRAM: Administration

III. RECOMMENDATIONS: Various (See Attachment A)

IV. ANALYSIS:

After the 2005 Board Election cycle, members of the Board requested that staff research the feasibility and desirability of making certain changes to the Board Election process. The various proposals would require a mixture of procedural, statutory, and regulatory changes. The Operations Support Services Division (OSSD) researched the implications of each of the proposals as outlined below.

Background

The recently completed 2005 Member-At-Large (MAL) Board election was the first election fully conducted and completed under the amended regulations approved in 2001. The 2005 MAL election schedule was significantly changed from previous schedules as a result of the addition of the following new election activities: a 100-word candidate statement addendum; a candidate statement arbitration process for candidates to resolve controversies related to the statements; and a change from plurality vote to majority vote to determine a winner in a Board election.

b) Can the name and or purpose of the nomination form be included on each page?

c) Can there be a clearer separation between individuals signing the nomination form?

Unless otherwise directed by the Board, the Board Elections Office will address these three candidate Nomination Petition (CalPERS-BRD-74) form issues for the next election.

d) Is there an alternate method for verifying system membership, for purposes of candidate endorsement, than using the last six digits of the individual's Social Security number?

Currently, only a partial social security number is used for purposes of verifying membership. The usage of six digits, in place of the full nine digit social security number, began in the 2001 Member-At-Large election.

The present method using member's first and last name and six digits of the SSN provides the best opportunity to validate CalPERS membership without breaching the confidentiality of the member's identity. Anything less than six digits will result in the greater possibility of not validating CalPERS membership. For instance, during the last round of nomination petitions, an average of 364 names were submitted by the candidates. By using name and six digits of SSN, an average of 304 signatures were verified. Using fewer SSN digits reduces the number of signatures that will qualify, e.g., using three digits in this sample validates only 200 signatures of the required 250, too few to qualify.

Using name and date of birth, instead of digits of SSN in this sample, validated 278 signatures. In the 1999 Retired Election the option of date of birth was allowed in place of the full nine-digit SSN. The date of birth can be more reliable, in place of SSN, only when the member's name is provided exactly as it appears on the CalPERS member database, along with accurate employer information. Any variations in these criteria, which don't match the CalPERS member database, will increase the possibility of invalidating the endorsement of a legitimate CalPERS member.

RECOMMENDATION (A-5d): The Board should continue to use last name and six digits of the SSN for purposes of validation of CalPERS membership.

Draft Testimony of James McRitchie
BPAC, Agenda Item 11, May 16, 2006

A. 5. d. Is there an alternative method of verifying membership than last six digits of SSN? Staff report says using the last 6 SSN digits provides the best opportunity to validate membership "without breaching the confidentiality of the member's identity."

1. Using the last 6 digits does breach confidentiality, since the first digits are assigned based on the region in which you apply for an SSN. (was local office, after 1972 based on zip code) A recent Federal Trade Commission survey reported that, between 1998 and 2003, 27.3 million Americans were victims of identity theft. A report by CALPIRG and the Privacy Rights Clearinghouse (http://www.pirg.org/consumer/credit/theft.htm) finds the average consumer spends 175 hours and $808 "out-of-pocket" to remedy identity theft. Total costs to society are $50 billion annually.
2. The requirement that nomination petitions include SSN is an underground regulation. "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure. (Government Code section 11342.600) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a "regulation" under the APA unless it has been adopted as a regulation and filed with the Secretary of State pursuant to the APA. (Government Code section 11340.5(a)) CalPERS is not exempt. (1999 OAL Determination No. 18, initiated by J. McRitchie)
3. Your duty as board members isn't to make it easy for candidates. Your Constitutional duty to "participants and their beneficiaries shall take precedence over any other duty." Collecting an extra 100-200 signatures isn't that big of a deal compared to putting members at risk for identity theft. Perhaps date of birth and zip code would be a better means of verification.

B. 7. Should the Board consider IRV or ranked voting?

1. IRV can result in no winner being selected. Yes, same as run-off. You could have a tie.
2. Fringe voters decide the winner.
   a. The same "fringe voters" decide a runoff (assuming those who voted for candidates who make it to the runoff don't change their votes); it just takes longer.
   b. "Fringe" is code for Green or other 3rd party. The dominant parties don't want IRV because voters can vote for who they really want, without fear of helping to elect the candidate they least want.
   c. In San Francisco "it took days for the final results." Yes, as in most elections, unofficial election results were posted on election night. As in any other election, they continued counting absentee and provisional ballots for a couple weeks.
   d. In the 11 recent public IRV elections (7 for supervisor in 2004 in SF, 3 citywide races in 2005, and 1 Burlington mayoral race in 2006), the candidate with the most first choices won every race, and every incumbent got re-elected. No "fringe candidates won."
3. Staff report says San Francisco approval "has not been extended." IRV vote is in San Francisco Charter, Section 13.102. (http://www.sfgov.org/site/election_index.asp?id=27564) RCV/IRV "shall be use for the general municipal election in November 2002 and all subsequent elections." With 61% preferring IRV compared to 13% preferring a second ballot, changing the charter isn't likely.
4. Voter education.
   a. Ranking preferences is an easy concept, understood by most 3 year olds.
   b. The postcard mentioned in item A4 could serve a dual purpose, including education, or CalPERS could simply include instructions with the ballot.
   c. Confusion could lead to lower turnout. Use of Ranked Choice Voting (RCV) in San

Francisco's November 2005 election increased voter participation in the decisive round of the Assessor-Recorder race by an estimated 120,000 voters. (Ranked Choice Voting and Voter Turnout in San Francisco's 2005 Election http://www.sfrcv.com/reports/turnout.pdf) I have never seen any evidence of lower turnout in IRV elections. What is your evidence?

B. 9. Should regulation be amended to delete reference to staff "directly involved in conducting a CalPERS election"?

1. The rule conflicts with other legal requirements, violating Government Code section 19990, subdivision (a), and California Code of Regulations, title 1, section 11342.2.
    a. By limiting the prohibition against using his/her official position to those "directly involved in conducting a CalPERS election," CalPERS clearly implies that staff not directly involved are free to use the prestige or influence of their appointing authority to the advantage of one of the candidates. The rule conflicts with Government Code section 19990, subdivision (a), which prohibits State agency staff from "using the prestige or influence of the state or the appointing authority for the officer's or employee's private gain or advantage or the private gain of another."
    b. California Code of Regulations, title 1, section 11342.2 establishes that "no regulation adopted is valid or effective unless consistent and not in conflict with the statute."
2. Who is "directly involved"? Where is that term defined in the CalPERS regulations? With regard to the comment there is no showing of necessity, consider the following:
    a. A violation of the law should be necessity enough to change the regulations.
    b. Examples from the 1998 elections for the state member seat.
        i. Staff produced a CalPERS newsletter, distributed just before the elections, prominently featuring the incumbent in a 3-page cover article. Were they "directly involved" in the election?
        ii. The Chief of Public Affairs tried to get the incumbent's challenger to remove information from his Internet site concerning his efforts and success in obtaining closed door minutes and potential conflicts of interest. Was she "directly involved" in election?
        iii. The CEO attacked the incumbent's challenger in the press, implying he was unqualified to comment on the legality of actions supported by the incumbent, which were later overturned in court. Was he "directly involved" in the election?
        iv. The Chief Counsel, whose salary was in part determined by the incumbent, allowed the incumbent to violate the rules by changing his statement after the legal deadline so that he could address issues raised by the challenger. Was she "directly involved" in the election?
        v. The Board allowed the Chief Counsel to appoint a protest panel to determine, in part, if she had violated Board rules. Were they "directly involved"?
    c. What legitimate reason does the Board have for allowing CalPERS staff to use their official position to influence the outcome of CalPERS elections?

As I have previously indicated to members of the Committee, I will be filing a petition for reconsideration under Government Code section 11340.7 and will also raise the issue of underground regulations in advance of filing a request for a determination with the Office of Administrative Law. I've already discussed the SSN requirement on nomination petitions. Two other significant underground regulations are the number of signatures required for such petitions and the election schedule. Changing the election schedule caused significant problems for David Miller, who had spent all or nearly all of his campaign funds, when the Board moved back the election dates in 2002.

In summary, the Board should: protect the financial assets of members from identity theft; avoid wasting money on an unnecessary second ballot; and provide for fair elections, free from staff interference and without illegal underground regulations.

Social Security Online

History Home

History

This is an archival or historical document and may not reflect current policies or procedures

Social Security Numbers

The SSN Numbering Scheme

Number Has Three Parts

The nine-digit SSN is composed of three parts:

- The first set of three digits is called the **Area Number**
- The second set of two digits is called the **Group Number**
- The final set of four digits is the **Serial Number**

Area Number

The Area Number is assigned by the geographical region. Prior to 1972, cards were issued in local Social Security offices around the country and the Area Number represented the State in which the card was issued. This did not necessarily have to be the State where the applicant lived, since a person could apply for their card in any Social Security office. Since 1972, when SSA began assigning SSNs and issuing cards centrally from Baltimore, the area number assigned has been based on the ZIP code in the mailing address provided on the application for the original Social Security card. The applicant's mailing address does not have to be the same as their place of residence. Thus, the Area Number does not necessarily represent the State of residence of the applicant, either prior to 1972 or since.

Generally, numbers were assigned beginning in the northeast and moving westward. So people on the east coast have the lowest numbers and those on the west coast have the highest numbers.

Note: One should not make too much of the "geographical code." It is not meant to be any kind of useable geographical information. The numbering scheme was designed in 1936 (before computers) to make it easier for SSA to store the applications in our files in Baltimore since the files were organized by regions as well as alphabetically. It was really just a bookkeeping device for our own internal use and was never intended to be anything more than that.

Group Number

Within each area, the group number (middle two (2) digits) range from 01 to 99 but are not assigned in consecutive order. For administrative reasons, group numbers issued first consist of the ODD numbers from 01 through 09 and then EVEN numbers from 10 through 98, within each area number allocated to a State. After all numbers in group 98

of a particular area have been issued, the EVEN Groups 02 through 08 are used, followed by ODD Groups 11 through 99.

Group numbers are assigned as follows:
ODD - 01, 03, 05, 07, 09------EVEN - 10 to 98 EVEN - 02, 04, 06, 08------ODD - 11 to 99

See the latest Social Security Number Monthly Issuance Table for the latest SSN area ranges issued to date. Alleged Social Security numbers containing area numbers other than those found on that table are impossible.

Serial Number

Within each group, the serial numbers (last four (4) digits) run consecutively from 0001 through 9999.

Debunking a Myth About Social Security Numbers

The State PIRG Consumer Protection INSIDE PAGES

Credit Report and Identity Theft Pages

1. Preventing Identity Theft

Credit Report and Identity Theft Pages Home

1) Prevent ID Theft Page

2) Clean Up ID Theft Page

3) All About Bureaus and Credit Reports Page

State Model Law Page

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- Identity Theft in the Workplace
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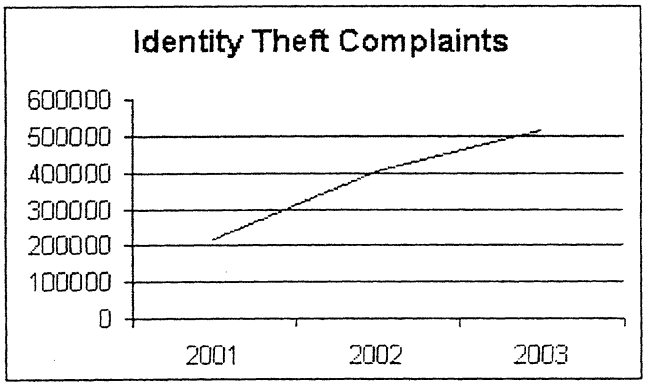
- Phishing Scams
- Read Website Privacy Policies
- Beware Debit Cards
- All About Credit Cards
- Protect Your Accounts
- Opt-out!
- Should You Buy Identity Theft Insurance or Credit Monitoring Services? We Don't Think So.
- Some Warning Signs You Have Been A Victim of Identity Theft.

What Is Identity Theft?

Identity theft is the crime of stealing an individual's personal identifying information for the purpose of committing fraud or theft. According to a Federal Trade Commission (FTC) survey, the most common types of identity theft are credit card fraud, utility fraud, bank fraud, employment-related fraud, government document or benefit fraud, and loan fraud. While it may be impossible to completely prevent identity theft and it may not be worth it to take every possible preventative step, this page describes some reasonable low cost or no-cost steps to reduce your risk.

Identity Theft: The Crime of the New Millennium



Identity theft is one of the fastest growing crimes in the United States. A recent FTC survey reported that, between 1998 and 2003, 27.3 million Americans were victims of identity theft. During 2003, over half a million Americans filed complaints of consumer fraud and identity theft with the FTC. Approximately 42 percent of all complaints filed were in regard to identity theft. The FTC estimates that ten million Americans were victims of identity theft in 2003.

Costs to Consumers

Fraud costs consumers almost half a billion dollars annually. According to a major report by CALPIRG and the Privacy Rights Clearinghouse, the average consumer spends 175 hours and $808 "out-of-pocket" to remedy identity theft. In total, this crime drains the economy of over $50 billion annually, and some of that cost is borne directly by consumers.

Even if the theft is discovered, consumers may continue to experience negative effects, such as increased insurance or credit card fees, higher interest rates, and persistent collection agencies that refuse to clear false records. Furthermore, the emotional and psychological impact suffered by identity theft victims cannot be understated. They must struggle for months or even years to restore their good name.

You can find out more about federal identity theft and fraud statistics, broken down

by state and city, by going here to the Federal Trade Commission's ID Theft Clearinghouse Back to Top

Check Up On The Credit Bureaus. Get Your Free Credit Report.

See PIRG's main Credit Report and Identity Theft page for the details on how to get free credit reports on request or go directly to Annualcreditreport.com, how to get free credit reports after credit denial or for other reasons. Check your credit card for fraudulent accounts. If you suspect identity theft, you are eligible for additional free reports.

Protect Your Social Security Number and Your Personal Information

Limit exposure of your Social Security number by giving it only when it is absolutely necessary. Look in your wallet-- see if it is printed on any identifying cards. Get those cards changed, especially your drivers' license if it still has a Social Security Number on it. Do not ask your financial institutions to print your SSN or drivers' license number on your personal checks. Saving time at checkout isn't worth the increased risk of id theft. In fact, why print any details on your checks? If a business requests your SSN for check cashing purposes, ask to use another type of identifying information. Urge universities and other schools, employers, health clubs, video clubs and other organizations not to use Social Security Numbers on your ID or membership cards. If they do, ask to use an alternate identifier.

The FTC advises consumers not to give personal information, like bank account numbers and Social Security Numbers, over the phone, through the mail, or on the Internet to individuals or businesses, unless the consumer has initiated the contact or is certain of the business's trustworthiness.

When Giving Out Your Social Security Number Gains Privacy

When you contact the credit bureaus to obtain your credit report, or to "opt-out" of receiving so-called credit and insurance offers (see below), the bureaus ask for your Social Security Number. In this case, if you are sure you have reached the bureaus (and aren't a victim of a "phishing scam," we do recommend giving out your Social Security Number. After all, the credit bureaus already have it and are using it to verify your identity. Obtaining your credit report or opting out of credit and insurance offers are two ways to increase your privacy. PIRG will continue to lobby the FTC to urge that the bureaus be prohibited from using the SSN as a unique identifier. It's not a good one: it is too easy to obtain because too many firms and agencies use it. The FTC is currently considering improving opt-out notices. Back to Top

Identity Theft in the Workplace

According to a 2002 report by the credit bureau Trans Union, theft of business records is the number one source of identity theft. The FTC reports that 90 percent of business record theft involves stealing payroll or employment records. In addition, there are reported cases of thieves obtaining employment in small businesses such as doctors' offices to gain access to, or "harvest," patient or customer records.

Employees should ask what policies are in place to protect their personal information. Privacy policies should:

- Prohibit the use of SSNs as an identifier.
- Restrict access to employees' and customers' personal information.
- Detail basic security precautions, such as locking storage areas where sensitive information is kept, using passwords to access personal information, and training employees who handle sensitive information.
- Guard against identity theft by employees of third-party vendors, like temporary or contract workers.
- Require destruction of personal information once it is no longer needed.

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Be Careful Online

In recent years, identity thieves have been using the Internet to perpetrate their crimes. In 2003, 55 percent of consumer fraud complaints reported to the FTC were Internet-related, accounting for $200 million in losses.

There are several steps you can take to protect yourself. First, do not download or open files from strangers; opening a file could expose your computer system to a virus that allows strangers to access your personal information. Second, use a "firewall" for high-speed Internet connections, and use a secure browser that encrypts, or scrambles, information you send over the Internet. Finally, if you are making purchases online, use a credit card, not a debit card. Credit cards provide more consumer protection and less liability in the event of theft. **Back to Top**

Phishing's The Name; Scamming's The Game

Beware of a new type of scam known as "phishing." In these scenarios, thieves set up look-alike websites of legitimate businesses and trick consumers into entering their personal information by sending them e-mail messages that warn them that their account is about to expire. Never "click-through" an e-mail link in a message purporting to be from your bank to get to your supposed bank or other financial institution's security department to verify your account.

Remember that phishing scams are extremely sophisticated. When you click through, the outer "frame" of the site you are taken to looks very professional for one reason—it may actually be (not simply appear to be) your bank's site, but the trick is this: data entry box where you type your confidential information is not. Instead, it transports your information to the scammer's computer, often in another country. Don't fall for it!

Consumer groups suggest that if you get an e-mail message requesting your account information, or other personal information, you should call the business at its published phone number – look on the back of your credit card or at your statement. Or, separately log onto the business' website by typing its known address yourself, not by clicking the bogus link in the e-mail message.

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Read Website Privacy Policies:

A website's privacy policy should address the following:

- How and why is personal information being collected?
- How is the information used? Is it for a purpose other than that for which it was provided?
- Is encryption used when transmitting information?
- Do you have the option of prohibiting any secondary use or of not providing any personal information?
- If you must provide personal information, can you access and correct it, and how long will it be stored?
- How can you bring a complaint? **Back to Top**

Watch Out For Debit Cards and Don't Use Them On The Internet

A debit card is an enhanced ATM card. It can be used in an ATM machine with a secret secure PIN, but it can also be used at merchants, with or without a PIN. When you use it without a PIN, you run a greater risk of fraud. Remember, debit card fraud, even if ultimately reimbursed by your bank, often involves the thief vacuuming out your bank account (and sometimes your attached overdraft line of credit). So, even if your bank makes good, you will face hassles, such as other checks bouncing.

PIRG strongly recommends using credit cards, not debit cards, in Internet transactions. (Even then, if you don't feel right about a transaction, find another merchant!) Your liability when you use a credit card is clearly limited by law to only $50, and rarely do you even pay this in fraud situations. Plus, when you use a credit card, you have the legal right to dispute with you're your credit card company payment for items that do not arrive, arrive damaged, or do not work as promised.

Your legal rights when you use a debit card are less. Debit cards are governed by the weaker"Electronic Funds Transfer Act," while credit cards by the stronger Truth In Lending Act. Although PIRG believes all plastic cards should give you the same rights (debit rights should be upgraded), that is not the case in law.

Although debit cards may be more convenient than other types of payment, consumers should be cautious when using them. Debit cards are legally riskier than traditional ATM cards or credit cards. Banks may claim to give equal rights to debit cards, but that is by contract and policy, not by law. While you are only liable for $50 if your credit card is used fraudulently, you may be liable for $500 or more (all the money in your account plus your overdraft line) if your debit card is misused. Furthermore, laws regulating credit cards offer consumers protection if the goods they order are defective or don't arrive; these protections aren't available

if you use a debit card. Visa and Mastercard claim to require that their card-issuing banks offer greater debit card protection in SOME circumstances, but remember, even if they honor their promise, you are still going to face the hassle of getting your own money back after your checking account is vacuumed out.

It is best not to use a debit card at all. You can tell your bank not to issue a debit card for your account. Ask for a plain old, PIN-only, ATM card.

If you do use a debit card, make sure you always keep it in your possession. If your ATM or debit card has been stolen or misused, report it immediately to your bank branch and request a fraud affidavit. Obtain a new card, account number, and password.

Another problem with debit cards is that some merchants-- gas stations, restaurants, hotels, car rental agencies) often place estimated "blocks" on cards that sometimes aren't cleared properly or promptly. Since these blocks are generally larger than the actual transaction, consumers may bounce checks inadvertently. For example, gas stations presume everyone drives a tractor-trailer truck, or at least an SUV, and block $50-100 or more even if you only buy $10 worth of gas. The transaction may not clear for several days-- it is not instantaneous. Hotels may block for several extra days, plus estimated use of the "mini-bar" and telephone, and don't unblock until after you settle up. A car rental firm may choose to block the value of the deductible on your car rental insurance ($500-1000 or more). These blocks are not adequately disclosed nor are they removed promptly, and some banks will bounce other checks and transactions against blocked funds. Here's more PIRG information about debit card rights. **Back to Top**

Credit Cards

Limit the number of credit cards you carry every day.

Keep a list of your credit card and bank accounts in a secure place that can be easily accessed in case you are a victim of theft. Include account numbers, expiration dates, and telephone numbers of customer service and fraud departments. Do not carry this list in your wallet, and if you store it on a handheld computer, make sure the information is encrypted.

If you are expecting a new or reissued credit card, contact the issuer if the card does not arrive when you expect it.

You have the right to cancel inactive credit cards. If you no longer receive regular monthly statements because you do not use a card with a zero balance, you may not notice unusual or fraudulent activity until it is too late.

For more information and helpful tips to avoid the credit card debt trap, where you run up massive balances at high interest rates, see PIRG's Truth About Credit Pages. **Back to Top**

Keeping Track of Financial Accounts

Reconcile your check, credit card, and other account statements on a regular basis and notify businesses or banks of any mistakes. Review your utility and subscription bills to make sure any charges are yours. Make a list of your bills and

the approximate time of month you receive them. If you do not receive billing statements, notify the company immediately.

Personal Documents

A number of states require credit card number truncation on receipts. In a few years, it will be required everywhere. But it still makes sense, especially if you travel, to use common sense: After making transactions at an ATM or business, take your credit card, debit card, and ATM receipts. Do not dispose of these receipts or any documents with personal identifying information in public receptacles. "Dumpster divers" may use your information to order credit cards or gain access to your bank account.

When you order new personal checks, pick them up at the bank rather than having them sent to your home. When you close a checking account, destroy all of the checks immediately. **Back to Top**

Opt-Out-- Stop Receiving Solicitations

An effective way to protect yourself from fraud, and to reduce the amount of junk mail you receive, is to opt out of junk mail. If it is not discarded properly, junk mail can be a source of personal information for thieves. Likewise, telemarketers may ask for personal information that could be used fraudulently.

To stop receiving pre-approved credit or insurance solicitations derived from credit reports, you can "opt-out" for five years or permanently. Listen carefully for the "opt-out permanently" option when you call – you'll need to receive and sign a notice of election sent through the mail. Contact the credit bureaus' joint notification system at 1-888-5-OPTOUT or 1-888-567-8688.

To discontinue non-credit offers generated by lists kept by the major credit bureaus, write to each.

- Experian: Consumer Opt-Out, 701 Experian Parkway, Allen, TX 75013
- Equifax: Options, P.O. Box 740123, Atlanta, GA 30374
- TransUnion: Marketing List Opt Out, P.O. Box 97328, Jackson, MS 39288

To be removed from mail, e-mail, and telephone marketing lists, visit the Direct Marketing Association website.

The Federal Do-Not-Call List: 888-382-1222 (TTY 866-290-4236)..

To protect your mail, install a lockable mailbox. If you are going on vacation, have your mail held at your local Post Office, or picked up by a person you trust. When mailing, use a USPS mailbox. **Back to Top**

Should You Subscribe To Credit Monitoring Services?

No. When you seek to obtain your free report by law, you will be offered the "opportunity" to instead purchase a credit monitoring service that allows you multiple copies of your report or perhaps other bells and whistles, such as email notification anytime there is a "ding" to your report. PIRG believes that federal law provides you with adequate opportunities to obtain your credit report for free. Don't pay extra for a credit monitoring service. We are disappointed that the credit

bureaus use scare tactics to sell these products ("Your report could be full of mistakes!" "You could be a victim of identity theft!") even though their sloppy practices are the real problem that has led to the ID theft epidemic.

Should You Buy Identity Theft Insurance?
Probably not. PIRG believes that insurance should be designed and priced to prevent certain serious risks. Identity theft insurance doesn't meet that test. However, some consumers may gain peace of mind by purchasing a low-cost ($25 or so) add-on rider to their reputable homeowners' insurance or tenant insurance policy for identity theft. PIRG has no information, at this time, about positive or negative experiences with identity theft policies-- please let us know.

Warning Signs of Identity Theft May Include The Following:
Phone calls from your bank's security department asking about purchases you did not make, phone calls from debt collectors about debts you do not owe, your card being rejected in a merchant transaction, the appearance of odd accounts on your credit report, receiving bills for accounts you did not open, etc. If you have any suspicion that any odd occurrence -- one of these or something else that doesn't smell right -- contact the credit bureaus and exercise your rights!

Identity theft can strike anyone at anytime. Did you do all this and were you still victimized? Go to PIRG's Cleaning Up Identity Theft Pages

Return To PIRG's Main Credit Reporting and Identity Theft Pages

Parilo, Joe

From: MIRAMONTES, Esthermarie [Esthermarie.MIRAMONTES@treasurer.ca.gov]

Sent: Thursday, August 09, 2007 9:17 AM

To: Parilo, Joe

Subject: Amended Board Election Regulation

The qualifications and procedures to Board candidates should be specified in legally adopted regulations, not "underground regulations." Additionally, CalPERS should not enact rules that put members at risk from identity theft. Personally, I would not participate in any nomination petition that required me to release part of my social security number.

Please accept the suggested amendments submitted by Mr. McRitchie on August 8, 2007.

Esthermarie Miramontes
CalPERS member

Parilo, Joe

From: Farr, Greg (Department of Transportation)
Sent: Thursday, August 09, 2007 9:28 AM
To: Parilo, Joe

The qualifications and procedures to Board candidates should be specified in legally adopted regulations, not "underground regulations." Additionally, CalPERS should not enact rules that put members at risk from identity theft. Please accept the suggested amendments submitted by Mr. McRitchie on August 8, 2007.

Parilo, Joe

From: Clarkson, Susan (Department of Transportation)
Sent: Thursday, August 09, 2007 1:00 PM
To: Parilo, Joe
Subject: Board Rules

The qualifications and procedures to Board candidates should be specified in legally adopted regulations, not "underground regulations." Additionally, CalPERS should not enact rules that put members at risk from identity theft. Please accept the suggested amendments submitted by Mr. McRitchie on August 8, 2007.

Susan Clarkson
Data Integration and Reporting Branch
Office of Performance Measures and Data Analysis
Division of Transportation System Information
California Department of Transportation
(916) 654-2927
(916) 654-6583 fax

Parilo, Joe

From: Robert Bernstein [RBernste@cde.ca.gov]
Sent: Monday, August 27, 2007 12:10 PM
To: Parilo, Joe
Subject: proposed regulations

Proposed rules regarding CalPERS elections should be modified so that CalPERS does not put us at risk from identity theft by requiring any digits of the Social Security number in nomination petitions and should place all requirements to run for office in regulations, rather than allowing the Board to change such standards without going through the rulemaking process.

Robert O. "BERNIE" Bernstein
Education Research and Evaluation Administrator
Academic Accountability Unit (AAU)
Policy and Evaluation Division
California Department of Education
1430 N Street, Suite 4206
Sacramento, CA 95814
Phone: (916) 319-0863
Fax: (916) 319-0152

Parilo, Joe

From: Gorham, Robert (Board of Equalization)
Sent: Monday, August 27, 2007 12:15 PM
To: Parilo, Joe
Subject: Rule Change

With identity theft on the upswing and the recent mistake by Cal PERS in sending ballots to members with their social security numbers exposed maybe it is time to add a rule assigning each Cal PERS member a secondary number or position number so instead of using their social security number you would use the persons secondary number or position number when mailing them information. This could either be a rule change or a policy change

Thank you.

Robert Gorham, Active Cal PERS State Member
Sacramento, CA 95831