

California Code of Regulations
Title 2. Administration
Division 1. Administrative Personnel
Chapter 2. Board of Administration of 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 take the regulatory action described below in the Informative Digest after considering public comments, objections, or recommendations regarding the proposed regulatory action.

I. PROPOSED REGULATORY ACTION

In this filing, the Board proposes to rename Article 6 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations (CCR) to "2013 Public Employees' Pension Reform Implementation," and proposes the addition of sections 579, 579.1, 579.2, 579.4, 579.5, and 579.24 under the aforementioned Article 6 of the CCR. By proposing these regulations in this Article, CalPERS seeks to implement, administer, interpret, and make certain the provisions contained within Assembly Bill (AB) 340 (Stats. 2012, Ch. 296) known as the California Public Employees' Pension Reform Act (PEPRA) of 2013 and the related pension reform changes to the Public Employees' Retirement Law (PERL) and the Legislators' Retirement Law (LRL).

II. WRITTEN COMMENT PERIOD

Any interested person may submit written comments relevant to the proposed regulatory action. The written comment period has been established commencing on **March 15, 2013** and closing on **April 29, 2013** at 5:00 pm. The Regulation Coordinator must receive all written comments by the close of the comment period. Comments may be submitted via fax at (916) 795-4607; E-mail at PEPRA_Regulations@CalPERS.CA.GOV or mailed to the following address:

Christina Nutley, Regulation Coordinator
California Public Employees' Retirement System
P.O. Box 942702
Sacramento, CA 94229-2702
Phone: (916) 795-2397

III. PUBLIC HEARING

Comments on the proposed regulatory action will also be taken at a public hearing to be placed on the agenda of the regularly scheduled meeting of the

CalPERS Board of Administration, on the following date at the location identified below:

May 14, 2013
10:00 a.m.
California Public Employees' Retirement System
Robert F. Carlson Auditorium
Lincoln Plaza North
400 P Street
Sacramento, CA 95811

IV. ACCESS TO HEARING ROOM

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

V. AUTHORITY AND REFERENCE

California Government Code section 7522.02 provides that the PEPR provisions (Government Code sections 7522 through 7522.74.) shall apply to all specified public retirement systems, including CalPERS. Specifically, Government Code section 7522.02(a)(1) provides in part that, "Notwithstanding any other law, except as provided in this article, on and after January 1, 2013, this article shall apply to all state and local public retirement systems and to their participating employers, including the Public Employees' Retirement System."

Additional pension reform changes undertaken by AB 340 to the PERL (Government Code sections 20281.5, 20516, 20516.5, 20677.96, 20683.2, 20791, 21076, 21076.5, and 21400) and the LRL (Government Code sections 9355.4 through 9355.45) must be administered by the Board pursuant to existing provisions in the PERL (Government Code sections 20000 et seq.) and in the LRL (Government Code sections 9350 et seq.). The Board's authority to add the proposed regulations (Sections 579 through 579.24) to the CCR derives from the Board's plenary authority and fiduciary responsibility over the assets of the public retirement system and exclusive responsibility to administer the System in a manner that will assure prompt delivery of benefits and related services to the members and their beneficiaries, pursuant to the California Constitution (Section 17 of Article XVI) and in accordance with the PERL (California Government Code Title 2, Division 5, Part 3, sections 20120-20124). The proposed regulations implement, interpret, and make specific several provisions of the PEPR.

VI. INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

As a result of the pension reform legislation that became effective January 1, 2013, CalPERS proposes six regulations that interpret and implement the certain

provisions in the pension reform statutes. CalPERS has received many questions related to the pension reform legislation which highlighted the need to pursue regulations for certain terms and phrases and to establish formal procedures for certain processes related to pension reform. The proposed regulations in this regulatory action establish the scope and authority for CalPERS regulations, and interpret key phrases and certain processes that CalPERS finds necessary for the implementation of the new pension reform laws. These proposed regulations will provide clarity and ensure uniformity in the application of key pension reform statutes for CalPERS, its members, and CalPERS-covered employers. The proposed regulations will also ensure that individuals are properly enrolled into CalPERS membership from the beginning of their employment so that proper contributions are collected from employees and their employers. The proposed regulations will also help make sure the correct level of benefits will be provided to these members at the time they retire. Additionally, the proposed regulations make clear the various processes that will be used by CalPERS to implement the pension reform laws which should make CalPERS administration of these new statutes more efficient.

These proposed regulations are not inconsistent or incompatible with existing law or existing state regulations. There are no other comparable existing State regulations that address the topics at issue here and therefore pursuant to Government Code section 11346.5, subdivision (a), paragraph (3)(D) there are no other comparable existing regulations.

The amendment to Article 6, to rename it to “2013 Public Employees’ Pension Reform Implementation” enables CalPERS to promulgate a set of regulations that are specific to pension reform and place all pension reform regulations together within one Article, so that it will be easier for members, employers, and CalPERS staff to locate all regulations related to the pension reform legislation in one place within the CalPERS regulations.

The proposed addition of section 579 to the CCR provides the scope of the authority for the proposed regulations added to this Article. This proposed regulation establishes that these regulations (and additional regulations to be proposed at a later time that will be housed within this Article) interpret and implement the PEPRA (Government Code sections 7522 through 7522.74) and related pension reform statutes in Government Code sections 9355.4 through 9355.45 (LRS provisions), and Government Code sections 20281.5, 20516, 20516.5, 20677.96, 20683.2, 20791, 21076, 21076.5, and 21400 (PERL provisions).

The proposed addition of section 579.1 to the CCR clarifies the terms “new member” and “classic member” as those terms will be used by CalPERS to implement pension reform and to administer the System. CalPERS’ use of the term “new member” is synonymous with the definition of “new member” in Government Code section 7522.04(f). In order to distinguish between a “new

member” and a member not subject to the provisions of PEPRA, CalPERS will use the term “classic member” to identify those members who do not meet the definition of a “new member.” This proposed regulation also clarifies that the proposed regulations contained in Article 6 apply exclusively to new members unless expressly stated otherwise.

The proposed addition of section 579.2 to the CCR seeks to implement CalPERS interpretation of the phrase “active member” as that phrase is used in Government Code section 7522.04(f). This regulation will likely be amended in the future to include other necessary pension reform definitions. The term “active member,” as used in Government Code section 7522.04(f)(3), shall mean a member, as defined by Government Code section 20370, who is employed by a CalPERS-covered employer.

The proposed addition of section 579.4 to the CCR seeks to implement CalPERS interpretation of the phrase “break in service” as that phrase is used in Government Code section 7522.04(f). Government Code section 7522.02 establishes to whom PEPRA applies and specifically provides that the newly-described benefit plan shall apply to public employees who are “new members” (as defined in Section 7522.04(f)). The Section 7522.04(f) definition of “new members” includes a reference to a “break in service” as a part of that definition. The proposed regulation defines “break in service” to mean a permanent separation from service and clarifies that separations that are temporary in nature and result in absences from employment, such as leaves of absence or maternity/paternity leave as provided in Government Code sections 20990 through 21013, do not constitute a “break in service.”

The proposed addition of section 579.5 to the CCR seeks to implement CalPERS interpretation of the meaning of the phrase “similarly situated” (as used in Government Code section 7522.30(c)) for the purpose of determining the member contribution rate for “new members.” Section 7522.30 sets the contribution rates for certain new members (those employed by public agencies, school employers, California State University, and the judicial branch) as the greater of either 50 percent (50%) of the normal cost rate or the contribution rate established for similarly situated employees. The proposed regulation defines the phrase “similarly situated” to mean members with the same retirement benefit formula and who share similarities in job duties, work location, collective bargaining unit, or other logical work-related characteristics.

The proposed addition of section 579.24 to the CCR seeks to clarify the process that will be used by CalPERS where a member has accrued service credit both as a “new member” and as a “classic member.” The calculated final compensation amount for each period of service may differ because different laws apply to each type of service. Pensionable compensation for a new member may be limited and may not include all of the compensation amounts that can be used to determine final compensation for a classic member under

the existing PERL provisions. In those instances where members have earned service as both a “classic member” and as a “new member,” CalPERS will determine two final compensation amounts. The first final compensation amount will be determined for the service earned as a “classic member,” using the statutes applicable to classic members, and the second final compensation amount will be determined for the service earned as a “new member” using the pension reform statutes. Those two final compensation amounts will then be used to calculate the member’s retirement benefit allowance.

VII. EFFECT ON SMALL BUSINESS

The proposed regulatory action does not affect small business because it applies only to CalPERS-covered employers and CalPERS members.

VIII. DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

- A. **MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS:** The proposed regulatory action does not impose mandates on local agencies and school districts.
- B. **COSTS OR SAVINGS TO ANY STATE AGENCY:** State agencies may incur minimal costs to implement internal processes in support of these proposed regulations. However, these costs result from the underlying pension reform legislation and not from the proposed regulations themselves.
- C. **COSTS TO ANY LOCAL AGENCY OR SCHOOL DISTRICT:** Though the proposed regulatory action may result in minimal costs associated with complying with the proposed regulations to local agencies or school districts that participate in CalPERS, the proposed regulatory action does not result in costs or savings for any local agency program or school district that would qualify for reimbursement under Government Code section 17500, et seq.
- D. **NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES:** The proposed regulatory action does not impose nondiscretionary costs or savings on local agencies.
- E. **COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE:** The proposed regulatory action will not result in costs or savings in federal funding to the State of California.
- F. **ADVERSE ECONOMIC IMPACT:** The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses including the ability of business in California to

complete with businesses in other states. CalPERS relied upon the plain text of the statutes and the proposed regulations to make this determination.

- G. **COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:** CalPERS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action because the pension reform laws and the proposed regulatory action only apply to CalPERS, CalPERS-covered employers and CalPERS members.
- H. **RESULTS OF THE ECONOMIC IMPACT ANALYSIS:** The proposed regulatory action will not: (1) eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; (3) affect the expansion of businesses currently doing business within California; or (4) affect the health and welfare of California residents, worker safety, or the state's environment.
- I. **EFFECT ON HOUSING COST:** The proposed regulatory action has no effect on housing costs.

IX. CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the regulatory action is proposed, or would be as effective as, and less burdensome to, affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the above-mentioned public hearing or during the written comment period.

X. CONTACT PERSON

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

Renee Ostrander, PEPR Legislative Coordinator
California Public Employees' Retirement System
P.O. Box 942715
Sacramento, CA 94229-2715
Telephone: (916) 795-7373
Fax: (916) 795-2330
E-Mail: Renee_Ostrander@calpers.ca.gov

Please direct requests concerning the processing of this regulatory action to Christina Nutley, Regulation Coordinator, at the address shown above in Section II.

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

The entire rulemaking file is available for public inspection through the Regulation Coordinator at the address shown in section II. To date, the file consists of this Notice, the proposed text of the regulations, the Initial Statement of Reasons (ISOR), and the Economic Impact Assessment. A copy of the proposed text, the ISOR, and the Economic Impact Assessment is available at no charge upon telephone or written request to the Regulation Coordinator. The Final Statement of Reasons can be obtained, once it has been prepared, by written request to Christina Nutley, Regulation Coordinator, at the address shown above in Section II.

For immediate access, the regulatory material regarding this action can be accessed at CalPERS' website at www.calpers.ca.gov.

The Board may, on its own motion or at the recommendation of any interested person, modify the proposed text of the regulations after the public comment period closes.

If the Board modifies its regulatory action, 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 or asked to be kept informed as to the outcome of this regulatory action.