

**SUMMARY OF PUBLIC COMMENTS AND RESPONSES TO THOSE
COMMENTS FOR THE PUBLIC COMMENT PERIOD
MARCH 15, 2013 TO APRIL 29, 2013**

CalPERS received public comment communications from two persons – Autumn Acquistapace, a state employee, received at CalPERS on Friday, March 22, 2013 via regular mail and Michelle Ahlberg, a member of the public, received at CalPERS on Sunday, March 24, 2013 via email. A summary of comments received and a summary of the associated CalPERS response to each is provided below. No changes were required to the proposed regulations.

1. Ms. Acquistapace submitted three (3) comments in her communication.
 - a. Regarding “Break in Service”, if a person has been a state employee for over 16 years and wants to leave state service for about 5 years with plans on ultimately returning to state service would that still be considered a break in service? How would the new definition of a break in service impact that situation?

CalPERS responded that the “Break in Service” proposed regulation text is to address the term as used in PEPRA, specifically Government Code section 7522.04(f)(3). The statute requires an individual be classified as a “New” member if, after a break of service of more than six months, that member returns to active membership with a new employer. In the scenario provided, the member would be returning to the same employer (all state entities are one employer), thereby retaining “Classic” member status for newly earned service.

However, if a member separated from state service for longer than 6 months and was then employed by a different employer, they would then be enrolled in CalPERS as a “New” member for future service.

- b. Regarding “medical vesting”, if I were to leave state service for approximately 5 years and return again would my medical vesting requirements change?

CalPERS responded that the questions regarding medical vesting requirements are not impacted by the proposed regulations. However, medical vesting is based upon date of hire. The initial date of hire is retained even if an employee leaves state service for a period of time, and if the employee was to return to state service as an active employee he or she would retain that initial date of hire.

- c. Based upon the contract I came to work in state service under and have worked for all 16 years I would like to understand how the definition can

be changed after I have already worked under the criteria previously established.

CalPERS responded - if returning to the same public employer, the proposed regulation text would not be applicable. The individual would be identified as a “Classic” member and the requirements already in place in the Public Employees Retirement Law would govern benefits provided upon return.

2. Ms. Ahlberg submitted two (2) comments in her communication.

- a. Regarding “Break in Service”, a public employee who has had a break in service of more than six months would be able to evade the status of “New” member by returning to their former employer first, before continuing on with a career in public service at the more beneficial formula rates for “Classic” members. This results in a loophole to evade the effect of the pension reform legislation.

CalPERS responded that the proposed regulation for “Break in Service” is aimed at enabling CalPERS to distinguish between members who are subject to PEPR and should be classified as “New” members and those who are not and would be identified as “Classic” members. In the scenario provided with a member returning to active membership with their previous employer and then transitioning to a different employer, it is correct that a member would return as a “Classic” member and, if no further break in service greater than 6 months occurs, the member would retain “Classic” membership throughout the remainder of their service with any CalPERS-covered employer. The perceived gap described results from the statute language itself, not the regulation. CalPERS has written the proposed regulation text to align with the statute as provided.

- b. Regarding “Similarly Situated”, the proposed regulation is still not clear. The phrase “Similarly Situated” will determine the amount of the employee’s payroll deduction, and so it should be clearer.

CalPERS responded – Pending legislation (Senate Bill 13) may include an amendment to Government Code section 7522.30(c) which may remove the term “similarly situated” from this section which would render this proposed regulation inapplicable. Therefore, out of an abundance of caution CalPERS is removing Section 579.5 from the regulatory action.