EDMUND G. BROWN, JR., GOVERNOR

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PROPOSED ACTION ON REGULATIONS

(Continued on next page)

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Material***

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PROPOSED ACTION ON REGULATIONS

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TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest codes of the following:

CONFLICT OF INTEREST CODES

AMENDMENT

MULTI–COUNTY: Angiola Water District
Westlands Water District
Yucaipa Valley Water District

A written comment period has been established commencing on **June 14, 2013** and closing on **July 29, 2013**. Written comments should be directed to the Fair Political Practices Commission, Attention Adrienne Tackley, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45–day comment period, the proposed conflict of interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director of the Commission will review the above–referenced conflict of interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director of the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re–submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code(s). Any written comments must be received no later than **July 29, 2013**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re–submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to Adrienne Tackley, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322–5660.

AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Adrienne Tackley, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322–5660.

TITLE 2. PUBLIC EMPLOYEES' RETIREMENT SYSTEM

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 the amendment to section 579.2 to add subdivision (b), and the addition of sections 579.3, 579.21, 579.22, and 579.25, under the Article 6, "2013 Public Employees' Pension Reform Implementation," of the California Code of Regulations (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 June 14, 2013 and closing on July 29, 2013 at 5:00 p.m. 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

A public hearing will not be scheduled unless an interested person, or his or her duly authorized representative, submits a written request for a public hearing to CalPERS no later than 15 days prior to the close of the written comment period.

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 PEPRA 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 propose an amendment to section 579.2 and to add the proposed regulations sections 579.3, 579.21, 579.22, and 579.25 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 PEPRA.

VI. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

As a result of the pension reform legislation that became effective January 1, 2013, CalPERS proposes five regulations (which includes the amendment to one previously approved proposed regulation) that interpret and implement 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 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, and will help ensure that 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 proposed addition of subdivision (b) to section 579.2 to the CCR provides clarification to the term "retirement plan" as that term is used in PEPRA but not statutorily defined. The term "retirement plan" shall include all benefits as that term is defined by Government Code section 20020 and "optional benefits" which are additional benefits as established by the PERL that agencies may offer employees. In Government Code section 20020, "benefit" is defined as the "retirement allowance, basic death benefit, limited death benefit, special death benefit, any monthly allowance for survivors or a member or retired person, the insurance benefit, the partial disability retirement program payments, or refund of accumulated contributions." The optional benefits exist in numerous sections in the PERL (Government Code sections 20000 et seq.), and may be provided to employees either by contract amendment (through the Government Code section 20474 amendment process), by resolution (as provided for Employer Paid Member Contributions through regulation section 569), or by statute.

The proposed addition of section 579.3 to the CCR clarifies the term "subject to reciprocity" as the term will be interpreted by CalPERS and the procedure to be used by CalPERS–covered employers to determine whether members are "new members" therefore subject to PEPRA (Government Code section 7522.04(f)) or "classic members" subject to the PERL (2 C.C.R. section 579.1) to implement pension reform and to administer the System. At a minimum, "reciprocity" means recognition by CalPERS of a member's payrate during a period of service as a member of the other public retirement system for purposes of computing final compensation upon retirement. The proposed language of section 579.3 further clarifies that "reciprocity" is established by statute or by an agreement between CalPERS and the other public retirement system, which includes agreements between CalPERS and the California State Teachers' Retirement System, the Legislators' Retirement System, the Judges' Retirement System I, the Judges' Retirement System II, and the University of California Retirement Plan. "Subject to reciprocity" means that, on the "applicable date," an individual is eligible for reciprocity pursuant to the terms of a statute or reciprocity agreement to which CalPERS is a party, provided he or she did not have a break in service of more than six months immediately preceding the "applicable date." "Applicable date" for purposes of this section, shall mean the individual's appointment date for the most recent employment resulting in active membership in CalPERS; the "applicable date" may be a date later than the individual's original CalPERS membership date, such as when an individual was employed by a CalPERS covered employer prior to being a member of the reciprocal retirement system.

Section 579.3 further clarifies that to be "subject to reciprocity," an individual need not have made an affirmative election to invoke reciprocity rights at such time, nor must the individual actually exercise the reciprocity rights when he or she retires. Lastly, the proposed language of section 579.3 outlines the procedure that shall be used to determine whether a newly hired individual is "subject to reciprocity" pursuant to Government Code sections 7522.02(c) and 7522.04, and the proposed regulation also provides a list of information that the newly hired individual must provide to his or her employer to assist CalPERS in making such a determination, and states that the information shall be retained by the employer.

The proposed addition of section 579.21 to the CCR seeks to clarify how CalPERS will determine the final compensation amounts for new members as required by Government Code section 7522.32. Section 7522.32 establishes a 36–month final compensation period for new members and Government Code section 7522.10 caps the amount of pensionable compensation that can be used for the purposes of calculating retirement benefits for new members. Read together, these provisions therefore require CalPERS to establish the process it will use to calculate final compensation for new members. Under the process articulated in the proposed regulation, CalPERS will determine the new member's final compensation by calculating the member's total final compensation and divide it by three to represent the annual average of the member's total final compensation over the three year period; CalPERS will use three years instead of thirty–six months because final compensation is calculated on an annual basis and not monthly.

The proposed addition of section 579.22 to the CCR seeks to clarify the process to be used to limit pensionable compensation and associated contributions for "new members." Government Code section 7522.10(a) requires each public retirement system to modify its plan to comply with the requirements of Government Code section 7522.10. This regulation seeks to accomplish that requirement. Government Code section 7522.10 establishes caps on the amounts of pensionable compensation that can be used to calculate retirement benefits for new members. It also requires retirement systems to adjust the cap on January 1st each year as provided for in the statute. The final compensation period (as provided for in Government Code section 7522.32) for a new member will span either the 36–month period immediately preceding the member's retirement date, or the 36–month period resulting in the highest pensionable compensation, if different. Since the 36–month period typically begins on a date other than January 1, CalPERS must establish the process to be used for determining the caps on pensionable compensation for new members so that the member's final compensation can be appropriately calculated.

The method in this proposed regulation section 579.22 works in tandem with the proposed regulation section 579.21 above regarding the calculation of final compensation. Under the process articulated in the proposed regulation: if the 36–month final compensation period spans four (4) calendar years (where the period begins on a date other than January 1st), one hundred percent (100%) of the pensionable compensation cap will be applied for each of the two full calendar years within the 36–month period. For the two portions of the remaining calendar years within the 36–month period, CalPERS will take the maximum pensionable compensation cap for the particular calendar year, and multiply the cap by a fraction (which is the number of days of the final compensation period that falls within that calendar year divided by the total number of days of that calendar year). The resulting amount will be the portion of the pensionable compensation cap that applies for purposes of determining a new member's final compensation calculation according to the method described in proposed regulation section 579.21. This interpretation provides the highest possible final compensation for the new member based on actual contributions made to the retirement system.

The proposed addition of section 579.25 to the CCR seeks to implement CalPERS interpretation of the meaning of the phrase "public safety officer" (as the term is used in Government Code section 7522.56 (f)(4)) for the purpose of determining which retirees may be eligible for the exception to the 180–day wait period for post–retirement employment. The proposed regulation defines the phrase "public safety officer" to include all peace officers identified in Government Code section 3301 for purposes of the exception to the 180–day wait period required by PEPRA for post–retirement employment. Government Code section 3301 defines the scope of the term "public safety officers" in the Public Safety Officers Procedural Bill of Rights Act (Gov. Code sections 3000–3313).

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, at this point, CalPERS is unable to determine 1) the extent of the impacts, if any, that may specifically arise as a result of the proposed regulatory action; 2) whether the workload impacts might result in costs or savings to any State agency; or 3) whether the State agencies may be able to absorb these impacts, if any, with existing resources.

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) create or 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 COSTS: 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,
PEPRA Implementation 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.