



Agenda Item 6

August 20, 2013

ITEM NAME: Proposed Regulations to Implement PEPRA

PROGRAM: Customer Account Services, Benefit Services

ITEM TYPE: Action

RECOMMENDATION

Approve regulatory action to be submitted to Office of Administrative Law (OAL) for its final review and addition to the California Code of Regulation (CCR) if approved. These regulations establish the California Public Employees' Retirement System's (CalPERS) implementation and interpretation of certain provisions within Assembly Bill 340, known as the Public Employees' Pension Reform Act (PEPRA) of 2013, and related pension reform changes to the Public Employees' Retirement Law (PERL).

EXECUTIVE SUMMARY

The proposal to add subdivision (b) to 579.2 and add sections 579.3, 579.21, 579.22, and 579.25 to Chapter 2 of Division 1 of the CCR was approved at the CalPERS Board of Administration meeting on May 15, 2013. These regulations were then posted by the OAL for a 45-day public comment period from June 14, 2013, through July 29, 2013. CalPERS received no comments during the public comment period. With Board approval, this regulatory action will be submitted to OAL for its final review and addition to the CCR if approved.

STRATEGIC PLAN

This item is presented in support of CalPERS implementation of PEPRA and related pension reform changes to the PERL and in accordance with two of CalPERS Strategic Plan Goals. First, within Goal A which is to improve the long-term pension and health benefit sustainability, the proposed regulations support the Strategic Objective by implementing the new pension reform changes and by educating employers and other stakeholders of the new provisions and CalPERS interpretations so they can make informed decisions about retirement security and understand how pension reform changes may impact retirement benefits. Second, within Goal C which is to engage in State and national policy development to enhance the long-term sustainability and effectiveness of our programs, this item supports both objectives by clarifying and communicating CalPERS interpretation of certain pension reform provisions, and providing education and outreach to members, employers, and stakeholders to promote the uniform application of certain pension reform provisions.

BACKGROUND

At the May 15, 2013, CalPERS Board of Administration meeting, the Board approved the proposed regulatory action, and subsequently, the Notice of Proposed Regulatory Action was filed with OAL which initiated the 45-day written comment period where interested parties could submit public comments relevant to the proposed regulatory action. The written public comment period ended July 29, 2013, with no comments received.

ANALYSIS

Many of the new pension reform provisions apply to “new members” (a term defined by Government Code (GC) section 7522.04(f)) and not to existing or “classic members” (those members who entered into membership with a retirement system on or before December 31, 2012, who do not meet the definition of a “new member” in Section 7522.04(f) as defined in previously-proposed regulation section 579.1). The distinction between the two types of members is very important when it comes to determining the member’s appropriate retirement formula, final compensation periods, caps on compensation, and other rights to and limitations on retirement benefits. It is therefore important CalPERS have a well-defined implementation plan to establish the clear meaning of key terms that will be required to make such determinations.

By way of background, the term “new member” (as defined in GC section 7522.04(f)) includes three groups:

- An individual (with no prior membership in any public retirement system) who becomes a member of any public retirement system for the first time on or after January 1, 2013.
- An individual (with prior membership in a public retirement system) who becomes a member of any public retirement system for the first time on or after January 1, 2013, provided the person is not subject to reciprocity (under 7522.02(c)).
- An individual who was an active member in a public retirement system and who, after a break in service greater than six months, returns to active membership in that system with a new employer. However, a person who moves between State agencies or departments within the State, or from one school employer to another is not considered to be a “new member” regardless of the length of the break in service.

These five proposed regulations (which include one amendment to a previously approved proposed regulation) interpret and clarify various terms used to: 1) define the term retirement plan; 2) clarify the phrase subject to reciprocity and define procedures and related document retention requirements; 3) clarify procedures utilized for final compensation period and application of compensation limits; and, 4) apply the restrictions on post-retirement employment.

CalPERS is continuing to engage in outreach to educate our members, employers and stakeholders on changes related to pension reform and the regulatory development process. The outreach includes training classes, materials posted on the CalPERS website, meetings with stakeholders, and presentations. As previously mentioned, we will continue outreach throughout the regulatory process.

The Notice of Proposed Regulatory Action (Attachment A) was published in the California Regulatory Notice Register 2013, No. Z2013-0604-03, on June 14, 2013 (Attachment B). In the Notice of Proposed Regulatory Action, it was indicated that *“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.”* By 15-days prior to the close of the written comment period (July 14, 2013), and even through closure of the complete 45-day comment period ending July 29, 2013, no request has been received for a public hearing. The initial 45-day written comment period for the proposed regulatory action began on June 14, 2013, and closed on July 29, 2013. No comments were received. The proposed PEPRAs regulations are included as Attachment C.

BUDGET AND FISCAL IMPACTS

As CalPERS moves forward with the implementation of the pension reform legislation and accompanying proposed regulations, it expects to incur one-time costs to update my|CalPERS, create forms and update publications distributed in both print and electronic form, and perform employer outreach and training. It may also incur ongoing postage costs should employers request blank hard copy forms or publications. Implementation of PEPRAs has resulted in increased staffing requirements; however, all costs, at this time, are anticipated to be absorbed within the existing CalPERS budget. CalPERS will continue to monitor additional requirements to determine if an augmentation is necessary.

BENEFITS/RISKS

As previously provided, the proposed regulations are designed to implement the new pension reform provisions. By interpreting certain phrases and outlining processes, the proposed regulations will provide clarity and uniformity for CalPERS, its members, employers and stakeholders and should help avoid protracted litigation over disputes relating to how the new pension reform provisions should be interpreted. The proposed regulations will also ensure individuals are properly enrolled into membership from the start of their employment so that proper contributions are collected on their behalf, and the proposed regulations will help ensure the correct level of benefits will be provided to these individuals at the time they retire and that the appropriate restrictions on post-retirement employment are observed. Additionally, the proposed regulations make clear various processes that

will be used by CalPERS to implement the pension reform laws which should make administration of these new statutes more efficient.

Without the adoption of the proposed regulations, there are significant risks. Not all CalPERS-covered employers may interpret the new legislation consistent with CalPERS interpretation, and that could lead to inconsistent application of these new laws. Moreover, without the proposed regulations, employers might interpret certain phrases in a manner that could be potentially detrimental to CalPERS members. Further, should the proposed regulations not be promulgated, there could be confusion amongst CalPERS-covered employers when enrolling members, which could lead to members being improperly enrolled as new members when they should have been enrolled as classic members, or vice versa. Proper enrollment is critical to ensuring members receive the correct benefit formula, final compensation period, and applicable cap on pensionable compensation, as well as ensuring that members pay the statutorily required amount of member contributions amounts. Finally, without the proposed regulations, legal challenges may be undertaken to resolve disputes over the meaning of various key phrases used in the pension reform statutes.

ATTACHMENTS

Attachment A – Notice of Proposed Regulatory Action

Attachment B – Published CA Regulatory Notice Register

Attachment C – Proposed PEPRA Regulations (no changes have been made since the Board approved the proposed regulatory action on May 15, 2013)

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