



California Public Employees' Retirement System
P.O. Box 942709
Sacramento, CA 94229-2709
(888) CalPERS (or **888-225-7377**)
TTY: (877) 249-7442
www.calpers.ca.gov

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Circular Letter

May 16, 2013

TO: ALL PUBLIC AGENCIES AND SCHOOL EMPLOYERS

SUBJECT: NEW APPLICANT QUESTIONNAIRE FOR ENTITIES REQUESTING TO PARTICIPATE IN CALPERS BENEFIT PLANS

This Circular Letter is a follow-up to Circular Letter 200-013-12, dated April 20, 2012, entitled Internal Revenue Service Advance Notice of Proposed Rulemaking Regarding Definition of a Governmental Plan (CL-200-013-12). Internal Revenue Code ("IRC") section 414(d) generally defines the term "governmental plan" as a plan established and maintained for its employees by the government of the United States, the government of any State or political subdivision thereof, or by any of their agencies or instrumentalities. As discussed in CL-200-013-12, the Internal Revenue Service ("IRS") and the Treasury Department initiated a rulemaking process pursuant to IRC section 414(d) in order to provide additional clarity and guidance to employers regarding their status under IRC section 414(d) and their eligibility to participate in governmental plans. The first step in this process was the issuance of the Advance Notice of Proposed Rulemaking (the "Notice") and the draft proposed regulations included in the Notice (the "Proposed Regulations").

This Circular Letter is intended to provide you with additional information regarding how the Notice and the Proposed Regulations impact the application process for entities' requesting to participate in CalPERS benefit plans (collectively the "CalPERS Plans"). This Circular Letter is not intended to be an analysis of the Proposed Regulations or a definitive statement of their impact on CalPERS or its members and employers, nor should it be relied upon as such.

When an entity requests to participate in a CalPERS Plan, that entity's eligibility must be established. Therefore, each applicant is reviewed individually against CalPERS' eligibility criteria to determine whether it may participate in the CalPERS Plans. Although the Proposed Regulations are not final, and could be revised during the official regulatory process, in order to mitigate potential risks to the CalPERS Plans, its members and employers, CalPERS has decided to incorporate the Proposed Regulations into our existing eligibility review process.

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As discussed in CL-200-013-12, the Proposed Regulations include a “facts and circumstances test” to determine whether an entity is an “agency or instrumentality of a State or a political subdivision of a State,” for purposes of IRC section 414(d). Below is a brief summary of the main and other factors that make up this facts and circumstances test.

The first group of the following five factors, which are categorized as “main factors,” include whether:

- The entity’s governing board or body is controlled by a State or political subdivision thereof;
- The members of the governing board or body are publicly nominated and elected;
- A State (or political subdivision thereof) has fiscal responsibility for the general debts and other liabilities of the entity (including funding responsibility for the employee benefits under the entity’s plan);
- The entity’s employees are treated in the same manner as employees of the State (or political subdivision thereof) for purposes other than providing employee benefits (for example, the entity’s employees are granted civil service protection); and
- In the case of an entity that is not a political subdivision, the entity is delegated, pursuant to a statute of a State or political subdivision, the authority to exercise sovereign powers of the State or political subdivision (such as, the power of taxation, the power of eminent domain, and the police power).

The second group of the following eight factors, which are categorized as “other factors,” include whether:

- The entity’s operations are controlled by a State (or political subdivision thereof);
- The entity is directly funded through tax revenues or other public sources;
- The entity is created by a State government or political subdivision of a State pursuant to a specific enabling statute that prescribes the purposes, powers, and manners in which the entity is to be established and operated;
- The entity is treated as a governmental entity for Federal employment tax or income tax purposes (such as, the authority to issue tax-exempt bonds under section 103(a)) or under other Federal laws;
- The entity is determined to be an agency or instrumentality of a State (or political subdivision thereof) for purposes of State laws;
- The entity is determined to be an agency or instrumentality of a State (or political subdivision thereof) by a State or Federal court;
- A State (or political subdivision thereof) has the ownership interest in the entity and no private interests are involved; and
- The entity serves a governmental purpose.

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CalPERS has developed a revised Applicant Questionnaire based on the Proposed Regulations that agencies will be required to complete as a first step in the application process. Though at this time we are not asking existing participating agencies in the CalPERS Plans to complete the Applicant Questionnaire, we are providing you with a copy as an attachment to this Circular Letter. In addition, the Applicant Questionnaire will be available on the CalPERS website. CalPERS recommends that all applicants consult with independent legal counsel if they have questions regarding the Applicant Questionnaire or their eligibility to participate in the CalPERS Plans.

The Applicant Questionnaire is only the first step in the eligibility review process and we may require additional documentation from entities during the application process. CalPERS' receipt and review of the Applicant Questionnaire and/or supporting documentation is not an offer to contract, nor is there any guarantee that an applicant will be eligible to participate in the CalPERS Plans.

If you have any questions, please call our CalPERS Customer Contact Center at **888 CalPERS** (or **888-225-7377**).

KAREN DeFRANK, Chief
Customer Account Service Division

Enclosure:
[Applicant Questionnaire](#)



California Public Employees' Retirement System
Customer Account Services Division
P.O. Box 942704
Sacramento, CA, 94229-2704
TTY: (877) 249-7442
888 CalPERS (or 888-225-7377) phone • (916) 795-4019 fax
www.calpers.ca.gov

APPLICANT QUESTIONNAIRE

Thank you for your interest in the California Public Employees' Retirement System (CalPERS) benefit programs. Please complete this Applicant Questionnaire (the "Application") as thoroughly as possible and provide supporting documentation for all responses. Applications cannot be reviewed until all requested information has been provided. Therefore, it is important to provide clear, unambiguous, and complete answers to avoid delays in the review of your Application. In addition, please be aware that this Application is only the first step in the application process and we may require additional information or supporting documentation from you as part of the application process.

Please note that the application process can take a significant amount of time. In addition, please be advised that there is no guarantee that the Employer will be eligible to contract with CalPERS for participation in the CalPERS benefit plans (the "CalPERS Plans"). This Application is not an offer to contract. Therefore, you should not withhold CalPERS retirement contributions from any employees of the Employer in anticipation of eligibility to participate in the CalPERS Plans, nor should you report the Employer's employees under any other agency currently participating in the CalPERS Plans.

Agency Contact Information

Official Agency Name: _____
Mailing Address: _____
Street Address: _____
City, State, Zip: _____
County: _____

Authorized Agency Representative

Name: _____
Title: _____
Telephone: _____
E-Mail: _____

Please provide complete copies of the Employer’s JPA agreement, Articles of Incorporation, Bylaws, any amendments, and any filings with the Secretary of State, as applicable. Please feel free to provide your answers on additional pages, if necessary.

Political Subdivisions:

1. Is the entity a City or County?

No.

Yes. If yes, you do not need to answer any additional questions. Please proceed to signing the attached “Employer Certification” on page 8 of this Application along with your supporting documentation (e.g. charter, formation documents).

2. What type of entity is the Employer?

Joint Powers Authority (JPA) Non-Profit Corporation Other: Describe:

3. Please list:

- ◆ the current members of the Employer’s governing board or body
- ◆ the date each individual was elected or appointed, and
- ◆ The individual’s current job/title.

Current Members of Employer’s Governing Board or Body	Date Each Individual was Elected or Appointed	Current Job/Title

4. Please indicate whether the members of the Employer’s governing board or body are Elected or Appointed?

If appointed, who has the power to appoint members of the Employer’s governing board or body?

5. Does any person or entity have the power to remove members of the Employer's Governing board or body?

No.

Yes. If yes, please describe in detail and include references to Bylaws, contracts or agreements, or other governing documents:

6. Please list other individuals or entities that have control or voting powers or that have ownership or other interests in the Employer:

- ◆ describe the powers or interests in detail
- ◆ include references to Bylaws, contracts or agreements, or other governing documents.

Individuals/Entities	Powers/Interests	References

7. Please list:

- ◆ any entity(ies) or organization(s) that is/are related to or affiliated with the Employer
- ◆ describe the relationship between the Employer and such entity(ies) or organization(s) in detail
- ◆ include references to Bylaws, contracts or agreements, or other governing documents.

Affiliated Entities / Organizations	Relationship	References

8. Does the State (or a City or County or other political subdivision of the State) have fiscal responsibility for the general debts and other liabilities of the Employer?

No.

Yes. If yes, please describe in detail and include references to Bylaws, contracts or agreements, or other governing documents

9. Please describe in detail:

- ◆ All governmental or quasi-governmental powers exercised and functions performed by the Employer. Please make sovereign powers explicit (e.g. police, taxation, eminent domain)
- ◆ Include references to statutes, Bylaws, contracts or agreements, or other governing documents relating to the Employer's powers and functions.

Sovereign Powers	Governmental Functions Performed	References Related to Powers/Functions

10. Was the Employer created by a specific enabling statute that prescribes the purposes, powers, duties, or obligations of the Employer?

No.

Yes. If yes, please describe in detail:

11. Does the State (or a City or County or other political subdivision of the State) exercise control over the Employer's operations or property or have the right to exercise such control?

No.

Yes: If yes, please describe in detail and include references to Bylaws, contracts or agreements, or other governing documents

12. Are the Employer's employees treated the same as State, City or County employees for purposes other than providing employee benefits? Please describe in detail.

Examples:

- ◆ Are the Employer's hiring practices subject to a competitive examination process? If so, please provide an example.
- ◆ Are employees subject to civil service law and rules
- ◆ Are employees subject to collective bargaining laws (e.g. Miles-Milias-Brown Act)
- ◆ Are the Employer's employees' salaries and benefits subject to collective bargaining? If so, please provide the name of employee organization group(s) who represent the Employer's employees in collective bargaining.
- ◆ What grievance procedures and administrative appeals rights are made available by the Employer?

No.

Yes. Describe:

13. Please provide a detailed description of all sources of revenue or funding, including a description of any non-public sources, received or expected to be received by the Employer to establish or operate the Employer.

- ◆ Please include the percentages of total funding coming from all sources.

Sources of Revenue/Funding	Percentage of Total Funding (all sources)

14. Is the Employer treated as a governmental entity for any other purposes? Please describe in detail.

Examples:

- ◆ For federal employment or income tax purposes (such as the authority to issue tax-exempt bonds under Internal Revenue Code section 103(a))?
- ◆ Is the Employer subject to open meeting laws (such as the Brown Act), the California Public Records Act or similar laws?
- ◆ Are the Employer's employees subject to the California Political Reform Act? Please provide a copy of the Employer's current Conflict of Interest Code.
- ◆ Does the State Attorney General represent the Employer in court under a statute that only permits representation of State entities?
- ◆ Has any State or federal court or administrative agency made a formal written determination that the Employer is a governmental entity for any purpose?

No.

Yes. Describe:

15. Does the Employer currently have employees?

No.

Yes. If yes, please address the questions below:

- ◆ If so, how many? Number of current employees:
- ◆ How many employees does the entity expect to have once it is fully operational?

16. Do any of the Employer's employees perform services for one or more other entities or organizations that are related to or affiliated with the Employer?

No.

Yes. If yes, please describe in detail.

17. Does any other entity perform Human Resources or Payroll functions for the Employer?

No.

Yes. If yes, please describe in detail:

18. Are any of the Employer's employees currently participating in or reported to CalPERS by or through another entity?

No.

Yes. If yes, please explain the current arrangement and identify any other entity(ies) or organization(s) involved.

19. Please submit your recent Independent Auditor's Report.

Employer Certification

The undersigned hereby agrees and acknowledges that Employer is aware and understands that the participation of its employees and retirees in one or more of the CalPERS benefit plans (the "CalPERS Plans") is subject to, among other things, the determination of Employer's eligibility to participate in a governmental plan pursuant to the Internal Revenue Code (the "Code"). Employer acknowledges that the Internal Revenue Service (the "IRS") is in the process of drafting regulations under Section 414(d) of the Code and that these regulations, when final, may impact Employer's eligibility to participate in the CalPERS Plans.

Employer understands that even if CalPERS determines that Employer is eligible to participate in the CalPERS Plans based upon its good faith interpretation of existing IRS guidance, upon publication of final Treasury Regulations pursuant to Section 414(d) of the Code (the "Final Regulations"), it may be determined that Employer would not be eligible to participate in a governmental plan under such Final Regulations. Employer further understands that in the event of such a determination, CalPERS will be obligated to comply with the Final Regulations and, if required, terminate the Employer's participation in the CalPERS Plans, including cancellation of all benefits for employees and retirees of the Employer (the "Termination").

By executing this Certification below, the undersigned certifies that all information provided to CalPERS in connection with Employer's application to contract, including all information provided in this Application, is true and correct. The undersigned agrees to update the information contained in this Application within ten (10) calendar days of the date the undersigned knows or should have known of any error or change to any information provided to CalPERS.

The undersigned certifies that he or she has been duly authorized by Employer to execute this Certification on behalf of Employer.

I, the official named below, acknowledge and declare I have read and understand the Application and Employer Certification. I am duly authorized to make this declaration on behalf of the above-named Employer, and declare the foregoing is true and correct as of the date of execution of this document. I further acknowledge my Employer's responsibility to provide updates in the event this information is determined to be incorrect or has changed.

Signature: _____

Name: _____

Title: _____

Date: _____