



## Agenda Item 7

March 19, 2014

**ITEM NAME:** Revision to Board Governance Policy – Ensuring an Ethical Environment

**PROGRAM:** Board Governance

**ITEM TYPE:** Action

### **RECOMMENDATION**

Staff recommends amending the Board Governance Policy to remove the provision requiring staff to certify each year in arrears that they are free of undue influence.

The recommended approach is to ensure that staff immediately report incidents of perceived undue influence for timely handling. Accordingly staff recommends that the Board not require certification for the calendar years 2012 and 2013 in order to achieve our desired outcome of immediate reporting of incidents.

### **EXECUTIVE SUMMARY**

This agenda item provides an overview of CalPERS efforts to promote an ethical environment that is free of undue influence and our assessment of critical policy implementation outcomes, including recommendations to enhance staff awareness and understanding.

### **STRATEGIC PLAN**

This item supports CalPERS Strategic Plan Goal B: Cultivate a high-performing, risk-intelligent and innovative organization.

### **BACKGROUND**

In 2012, CalPERS established the annual free of undue influence certification and reporting procedures and made corresponding changes to the Board Governance Policy. The annual certifications were intended to provide additional assurance that staff had not experienced undue influence in the prior year.

Following the implementation of the Annual Certification beginning with the 2011 calendar year, the CalPERS Board of Administration and the Executive Team engaged in an evaluation of the process designed to achieve the desired outcome of providing an ethical environment at CalPERS that is free of undue influence.

### **ANALYSIS**

Our evaluation of the Annual Certification process identified the lack of timely reporting as our top concern. Untimely reporting could result in the potential loss of evidence, affecting CalPERS ability to make accurate determinations and take

appropriate disciplinary or other remediating actions. Additional implications include the inability to effectively change past decisions which may significantly impact CalPERS.

Pursuant to our review, we believe the best approach moving forward, and reflective of best practices, is to focus on education and awareness and to ensure that staff immediately report incidents of perceived undue influence for timely handling, rather than certifying in arrears about an incident or event. For these reasons, we recommend that the Board not require certification for the calendar years 2012 or 2013 and instead adopt the proposed revisions to the Board Governance Policy as referenced in Attachment 1 to reflect a commitment to education and the immediate reporting of perceived incidents of undue influence, in order to achieve our desired outcome.

To carry out the proposed year-round process, CalPERS will provide for enhanced education and outreach activities to help staff become more knowledgeable about undue influence and their reporting obligations, update and socialize the CalPERS Integrity Policy to address appropriate measures to take and encourage continuous reporting by staff of perceived incidents of undue influence using any one of the following venues:

- Direct supervisor or manager (if not involved in the allegation)
- Anonymous 24-hour ethics helpline
- Chief Compliance Officer and Chief Risk and Compliance Officer
- Closed session meetings with the Board, pursuant to section IX. F of the Board Governance Policy

## **BUDGET AND FISCAL IMPACTS**

Not Applicable

## **BENEFITS/RISKS**

The Annual Certification Process includes the following benefits:

- Documented attestation to policy knowledge and reporting of incidents in prior years.

The Annual Certification Process includes the following risks:

- Staff concerns about retaliation may result in false certifications, diminishing the reliability of the certification process as a form of assurance.
- Staff may delay reporting activities until the annual certification process, resulting in:
  - Potential loss of evidence, affecting CalPERS ability to make accurate timely determinations and take appropriate disciplinary or other remedial actions (if warranted)

- Inability to effectively change past decisions
- Potential significant impacts to CalPERS resulting from staff making decisions they believe are inconsistent with CalPERS best interests.

The Year-Round Process without annual certification includes the following benefits:

- Consistent with best practice
- Simplified process, consistent with other types of reporting of ethical conduct
- Ability to address potential issues timely, improving effectiveness and range of options
- Better decision making, resulting from improved ability to resolve allegations before a final decision is made
- Avoids potentially significant financial costs to CalPERS resulting from staff making decisions they believe are inconsistent with CalPERS best interests.

The Year-Round Process without annual certification includes the following risks:

- Staff will not report because the lack of certification may diminish the importance of reporting undue influence
- Staff will not report because of fear of retaliation
- Staff will not report without periodic education including reminders that they should report instances of undue influence.

#### **ATTACHMENTS**

Attachment 1 – CalPERS Board of Administration Governance Policy (Proposed Revisions)

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