

FINAL STATEMENT OF REASONS

UPDATE OF INITIAL STATEMENT OF REASONS

SECTION 557. The proposed regulation as originally noticed to the public did not include the authority and reference. This text was added to the regulation after a comment from a member of the public.

LOCAL MANDATE DETERMINATION

The proposed regulation does not impose any mandate on local agencies or school districts.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF APRIL 4, 2014 THROUGH MAY 19, 2014.

COMMENT NO. 1: "The proposed text of the regulation does not comply with 1 CCR § 8(a)(1) because it does not include the authority and reference."

Response: CalPERS agrees with the comment and has included the authority and reference in the proposed regulation.

COMMENT NO.2: "The Notice of Proposed Regulatory Action ("Notice") does not include a clear and concise summary of existing laws and regulations related directly to the proposed rule making as required by Cal. Gov't Code § 11346.5(a)(3)(A). In particular, the Notice does not describe (a) Securities and Exchange Commission ("SEC") rules requiring disclosure by exempt reporting advisers; and (b) 10 CCR § 260.204.9 mandating disclosure by private fund advisers. The statement that "there are no related regulations dealing with conflicts of interest of External Investment advisers" is simply incorrect. For example, under the SEC's new exempt reporting adviser rules, exempt reporting advisers are required to file, and periodically update, reports with the SEC, using Form ADV – the same form registered advisers are required to file. According to the SEC, "An exempt reporting adviser must provide information about the private funds the adviser manages and about other business activities that the adviser and its affiliates are engaged in that present conflicts of interest that may suggest significant risk to clients."

Response: CalPERS acknowledges the comments and notes that CalPERS relies on the Form ADV, the primary SEC disclosure document for the majority of its External Investment Resource's, as the first method of disclosure.

COMMENT NO.3: "Because there is no indication that CalPERS considered either the SEC's exempt reporting advisers rule or 10 CCR § 260.204.9, the Notice contains an inaccurate evaluation of whether the proposed regulation is inconsistent/incompatible with existing state regulations. See Cal. Gov't Code § 11346.5(a)(3)(D)."

Response: See Response to Comment No. 2.

COMMENT NO.4: "The Notice includes a negative finding with respect to economic impact, but the Initial Statement of Reasons ("ISR") does not set forth facts, evidence, documents, testimony or other evidence relied upon. See Cal. Gov't Code § 11346.2(b)(5)."

Response: CalPERS discloses in the Notice that the majority of its' External Investment Resources already send their Form ADV to CalPERS and therefore there will be no economic impact. For those External Investment Resources who do not file a Form ADV, there will be no economic impact because the Standard 213 contract that each External Investment Resource signs requires that they inform CalPERS of conflicts.

COMMENT NO.5: "The Notice does not include either (a) a description of all cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action, or (b) a statement that CalPERS does not know of any such cost impacts. See Cal. Gov't Code § 11346.5(a)(9)."

Response: The results of the Economic Impact Analysis are included in the Notice. An Economic Impact Assessment was also included in the regulatory package.

COMMENT NO.6: "Given the inadequacy of CalPERS' survey of existing regulations, CalPERS should consider whether the alternative of not taking action would be more effective. As is evidenced by these regulations, CalPERS is not a regulatory agency and has no experience in the administration and enforcement of laws and rules governing securities professionals. Rather than attempting to create yet another set of regulations, CalPERS should work with the SEC and the Department of Business Oversight to develop rules, to the extent necessary, that are clear and non-duplicative of existing regulations."

Response: CalPERS considered this comment and respectfully disagrees. The original discussion contained in the Initial Statement of Reasons is sufficient. See also the discussion below regarding Alternatives Determination.

COMMENT NO.7: "The proposed definition of "disclosable interest" does not meet the clarity standard set forth in Cal. Gov't Code § 11349(c). Almost any interest or circumstance may give rise to a potential or perceived "Conflict". The proposed definition doesn't specify by whom the conflict must be perceived. Also, the term "Conflict" is not defined in the proposed rule ("Conflict of Interest" is defined)."

Response: CalPERS considered this comment and respectfully disagrees. "Conflict" is defined in the regulation. See the definition of "Conflict of Interest".

COMMENT NO.8: "The proposed definition of "Conflict of Interest" does not meet the clarity standard set forth in Cal. Gov't Code § 11349(c). The rule does not explain what would constitute a "significant likelihood" or by whom the significance would be determined. Is this a more-likely-than not standard or some other standard?"

Response: CalPERS considered this comment and respectfully disagrees. The text of regulation asks that the spirit be considered when considering conflicts. This language would help clarify what actions an External Investment Resource should take in the instance the regulation is found vague.

COMMENTS RECEIVED DURING THE PERIOD THE MODIFIED TEXT WAS AVAILABLE TO THE PUBLIC

The text of the regulation was not modified and therefore there was no modified text to make available.

ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS

No alternatives were proposed that would lessen any adverse economic impact on small business.

ALTERNATIVES DETERMINATION

CalPERS has determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective 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 regulation adopted by CalPERS is the only regulatory provision identified by CalPERS that accomplish the goal of improving processes regarding identifying and evaluating Conflicts of Interests of External Investment Resources in that CalPERS will be able to collect and evaluate information on potential or actual Conflicts of Interest which are specific to a particular assignment performed for CalPERS by an External Investment Resource. Except as set forth and discussed in the summary and responses to comments, no other alternatives have been proposed or otherwise brought to CalPERS attention.