

California Code of Regulations
Title 2. Administration
Division 1. Administrative Personnel
Chapter 2. Board of Administration of Public Employees' Retirement System

NOTICE OF PROPOSED REGULATORY ACTION

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 to add the following Articles, Subchapters and Sections to Chapter 2 of Division 1 of Title 2 of the California Code of Regulations (CCR)

- Adoption of Article 1.5, "Plan Qualification Requirements for the Public Employees' Retirement Fund", and proposes the addition of Sections 553, 553.1, 553.2, 553.3, 553.4, and 553.6 under Subchapter 1;
- Adoption of Subchapter 2.1 "Supplemental Contributions Program", Article 1, "Plan Qualification Requirements for the Supplemental Contributions Program", and proposes the addition of Sections 599.100, 599.101 and 599.102;
- Adoption of Subchapter 2.2, "Judges' Retirement Fund Regulations", Article 1, "Plan Qualification Requirements for the Judges' Retirement Fund", and proposes the additions of Sections 599.120, 599.121, 599.122, 599.123 and 599.124;
- Adoption of Subchapter 2.3, "Judges' Retirement System II Fund", Article 1, "Plan Qualification Requirements for Judges' Retirement System II Fund", and proposes the additions of Sections 599.140, 599.141, 599.142, 599.143, 599.144, 599.145 and 599.146;
- Adoption of Subchapter 2.4, "Legislators' Retirement Fund Regulations", Article 1, "Plan Qualification Requirements for the Legislators' Retirement Fund", and proposes the additions of Sections 599.160, 599.161, 599.162, 599.163 and 599.164.

By proposing these regulations, CalPERS seeks to clarify and make explicit certain technical amendments to the plan provisions for the Public Employees' Retirement Fund (PERF), the Legislators' Retirement Fund (LRF), the Judges' Retirement Fund (JRF), the Judges' Retirement System II Fund (JRF II), and the Supplemental Contributions Program (SCP) (individually the "Plan", and collectively the "Plans") in accordance with the Internal Revenue Service (IRS)

rules. As tax-qualified plans, the CalPERS Plans are already subject to the technical IRS rules and comply with them in operation; the proposed regulations merely document these requirements by clarifying certain provisions to the Public Employees' Retirement Law (PERL), the Judges' Retirement Law (JRL), the Judges' Retirement System II Law (JRL II), and the Legislators' Retirement Law (LRL) to explicitly conform with federal law. The proposed regulations are consistent with existing law and are reasonably necessary to document these requirements.

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 **October 31, 2014** and closing on **December 15, 2014** at 5:00 pm. 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 Regulation_coordinator@calpers.ca.gov or mailed to the following address:

Anthony Martin, Regulation Coordinator
California Public Employees' Retirement System
P.O. Box 942702
Sacramento, CA 94229-2702
Phone: (916) 795-3038

III. PUBLIC HEARING

Pursuant to Government Code Section 11346.8, the Board has not scheduled a public hearing on this matter. However, if any interested person, or his or her duly authorized representative, submits in writing to the CalPERS Regulation Coordinator, a request for a public hearing at least 15 days prior to the close of the written comment period, December 1, 2014, a public hearing shall be scheduled before the CalPERS Pension & Health Benefits Committee. Notice of the time, date, and place of the hearing will be provided to every person who has filed a request for notice with CalPERS.

IV. ACCESS TO HEARING ROOM

To the extent a public hearing is timely requested, 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

The Board's authority to add the proposed regulations 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 Plans 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 20120-20122). In addition, other Sections of California Government Code that provide authority include Sections 9353, 9354.1, 22970.30, 22970.31, 75002, 75005, 75502 and 75505.

Reference citations: California Government Code Sections 7513, 9350.2, 9353, 9354.1, 20001, 20002, 20021, 20058, 20132, 20151, 20170, 20171, 20176, 21350, 20731, 22970, 22970.2, 22970.21, 22970.61, 75000, 75502, 75005, 7505, 75085.1, 75088.3 and 75521.

VI. INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

By proposing these regulations, CalPERS seeks to clarify and make explicit certain technical provisions required of tax-qualified plans in accordance with the IRS rules. As tax-qualified plans, the CalPERS Plans are already subject to the technical IRS rules and comply with them in operation; the proposed regulations merely document these requirements by clarifying certain provisions to the PERL, the JRL, the JRL II, and the LRL to explicitly conform with federal law. Accordingly, the proposed regulations will not have a practical effect on how CalPERS administers the Plans.

The proposed adoption of Article 1.5, "Plan Qualification Requirements for the Public Employees' Retirement Fund", enables CalPERS to promulgate a set of regulations that is specific to the "Plan Qualification" status of the PERF so the technical IRS language is explicitly incorporated into this individual Plan.

The proposed adoption of Subchapter 2.1, "Supplemental Contributions Program", Article 1, "Plan Qualification Requirements for the Supplemental Contributions Program", enables CalPERS to promulgate a set of regulations that is specific to the "Plan Qualification" status of the SCP so the technical IRS language is explicitly incorporated into this individual Plan.

The proposed adoption of Subchapter 2.2, "Judges' Retirement Fund Regulations", Article 1, "Plan Qualification Requirements for the Judges' Retirement Fund", enables CalPERS to promulgate a set of regulations that is specific to the "Plan Qualification" status of the JRF so the technical IRS language is explicitly incorporated into this individual Plan.

The proposed adoption Subchapter 2.3, “Judges’ Retirement System II Fund”, Article 1, “Plan Qualification Requirements for Judges’ Retirement System II Fund”, enables CalPERS to promulgate a set of regulations that is specific to the “Plan Qualification” status of the JRF II so the technical IRS language is explicitly incorporated into this individual Plan.

The proposed adoption of Subchapter 2.4, “Legislators’ Retirement Fund Regulations”, Article 1, “Plan Qualification Requirements for the Legislators’ Retirement Fund”, enables CalPERS to promulgate a set of regulations that is specific to the “Plan Qualification” status of the LRF so the technical IRS language is explicitly incorporated into this individual Plan.

The proposed addition of Sections 553, 599.100, 599.120, 599.140 and 599.160 to the CCR provide definitions for the terms “board,” “the plan” and “system,” as applicable.

The proposed addition of Sections 553.1, 599.101, 599.121, 599.141 and 599.161 to the CCR make explicit that each Plan is intended to satisfy the requirements of a tax-qualified plan in accordance with IRC Section 401(a) by meeting the requirements of a “governmental plan” within the meaning of IRC Section 414(d). As a governmental plan, the CalPERS Plans are exempt from certain IRC provisions otherwise applicable to tax-qualified plans.

The proposed addition of Sections 553.2, 599.102, 599.122, 599.142 and 599.162 to the CCR make explicit that the reversion of the each Plan’s trust fund assets is prohibited except as permitted in very narrow circumstances by Revenue Ruling 91-4.

The proposed addition of Sections 553.3, 599.123, 599.143 and 599.163 to the CCR make explicit that a member’s right to his or her accrued benefits is non-forfeitable upon attainment of normal retirement age to the extent funded and subject to certain forfeiture exceptions currently provided for by statute.

The proposed addition of Sections 553.4, 599.124, 599.144 and 599.164 to the CCR make explicit that distributions from the Plans will be made in accordance with a reasonable and good faith interpretation of the minimum distribution requirements under IRC Section 401(a)(9).

The proposed addition of Section 553.5 to the CCR makes explicit that member contributions to the PERF will be made in accordance with the Internal Revenue Code (IRC) Section 415(c) limits to the extent applicable. While we do not necessarily anticipate a situation where this limit will apply to member contributions in the current environment, this language is consistent with the IRS rules and required nevertheless.

The proposed addition of Section 553.6 to the CCR makes explicit that the actuarial assumptions used to pay definitely determinable benefits from the PERF in accordance with IRC Section 401(a)(25) are not subject to employer discretion, but are instead set by the Board in accordance with Section 20132 of the California Government Code and Article 16, Section 17(e) of the California Constitution.

The proposed addition of Section 599.145 incorporates IRC Section 401(a)(17) compensation limits into JRF II so it is explicit that the amount of compensation used in a member's benefit calculation will be limited accordingly.

The proposed addition of Section 599.146 to the CCR makes explicit that in instances where a member does not make an election to take a mandatory distribution from JRF II directly or elect to roll it over to another eligible retirement plan, the distribution will be paid directly to an individual retirement plan designated by the Board if the amount exceeds \$1,000.

Consistency Evaluation

The 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.

Anticipated Benefit

The primary benefit of approving the proposed regulatory action is that CalPERS will be making technical amendments to the Plans in accordance with the IRS rules. Federal tax law regulates pension plans generally and regulates public pension plans specifically based on their status as a governmental plan. The proposed regulations clarify certain provisions to the PERL, the JRL, the JRL II, and the LRL to explicitly conform with federal law and provide further assurances as to the tax-qualified nature of the Plans.

PRENOTICE CONSULTATION WITH THE PUBLIC

As tax-qualified plans, the CalPERS Plans are already subject to these technical IRS rules and comply with them in operation; the amendments merely document these requirements. Accordingly, the proposed regulations contain technical changes to clarify the Plan terms so they are explicit with federal law. Therefore, the proposed regulations will not have a practical effect on how CalPERS administers the Plans, and no pre-notice consultation was done with the public.

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 any mandates on local agencies and school districts.
- B. **COSTS OR SAVINGS TO ANY STATE AGENCY:** The proposed regulatory action will not result in any additional costs or savings to any State agency.
- C. **COSTS TO ANY LOCAL AGENCY OR SCHOOL DISTRICT:** The proposed regulatory action will not result in any costs on any local agency or school district.
- D. **NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES:** The proposed regulatory action does not impose any 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 additional costs or savings in federal funding to the State.
- F. **ADVERSE ECONOMIC IMPACT:** The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to complete with businesses in other states.
- 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.
- H. **RESULTS OF THE ECONOMIC IMPACT ANALYSIS:** The proposed regulatory action: (1) will not create or eliminate jobs within California; (2) will not create new businesses or eliminate existing businesses within California; (3) will not affect the expansion of businesses currently doing business within California; and (4) will benefit the health and welfare of California residents by ensuring that the Plans' provisions are consistent with IRS rules and thus provide further assurance concerning the integrity and tax qualified status of the Plans.

- I. EFFECT ON HOUSING COST: The proposed regulatory action has no effect on housing costs.
- J. COSTS TO ANY LOCAL AGENCY OR SCHOOL DISTRICT WHICH MUST BE REIMBURSED IN ACCORDANCE WITH GOVERNMENT CODE SECTIONS 17500 THROUGH 17630: There are no costs to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630.

IX. CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), 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.

As tax-qualified plans, the CalPERS Plans are already subject to these technical IRS rules and comply with them in operation; the amendments merely document these requirements and are in accordance with the IRS rules. Accordingly, the proposed regulations will not have a practical effect on how CalPERS administers the Plans. Nevertheless, the Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

X. CONTACT PERSON

Please direct inquiries concerning the proposed regulatory action to:

Anthony Martin, Regulation Coordinator
California Public Employees' Retirement System
P.O. Box 942702
Sacramento, CA 94229-2702
Phone: (916) 795-3038

The backup contact for these inquires is:

Christina Nutley, Regulation Coordinator
California Public Employees' Retirement System
P.O. Box 942702
Sacramento, CA 94229-2702
Phone: (916) 795-3038

Please direct requests concerning the copies of the proposed text (the “express terms”) of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other information about processing of this regulatory action to Anthony Martin, Regulation Coordinator, at Regulation_coordinator@calpers.ca.gov.

XI. AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

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, the Economic Impact Assessment, and the Economic and Fiscal Impact Statement. A copy of the proposed text, the Initial Statement of Reasons, the Economic Impact Assessment, and the Economic and Fiscal Impact Statement is available at no charge upon telephone or written request to the Regulation Coordinator.

For immediate access, the regulatory material regarding this action can be accessed at CalPERS’ website at www.calpers.ca.gov.

XII. AVAILABILITY OF CHANGED OR MODIFIED TEXT

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.

XIII. AVAILABILITY OF THE FINAL STATEMENT OF REASONS

The Final Statement of Reasons can be obtained, once it has been prepared, by written request to Anthony Martin, Regulation Coordinator, at the address shown above in Section II.