



Consent

Agenda Item 6

February 18, 2015

ITEM NAME: CalPERS Conflict of Interest Code – Proposed Amendments

PROGRAM: Administration

ITEM TYPE: Action Consent

RECOMMENDATION

To approve the proposed amendments to the CalPERS Conflict of Interest Code and initiate the Notice of Intention to amend process.

EXECUTIVE SUMMARY

The Political Reform Act requires CalPERS to adopt, and periodically update, a Conflict of Interest Code (Code) in order to designate positions required to file a Statement of Economic Interests - Form 700 (Form 700). CalPERS Code was last updated in 2012. Since that time, CalPERS has undergone organizational changes that require the Code to be amended. In addition to updating the list of designated positions, the Code has been reformatted to an agency-level view rather than a division-level view. This revised approach will simplify and streamline the administration and oversight process for the Code.

STRATEGIC PLAN

This item supports CalPERS Strategic Plan Goal B: Cultivate a high-performing, risk-intelligent and innovative organization. Amending CalPERS Conflict of Interest Code will reduce risk by updating and clarifying which positions are required to file a Form 700.

BACKGROUND

The Political Reform Act requires each state agency to adopt a Conflict of Interest Code (Gov. Code sec. 87300). The Code designates the agency officials, employees, and consultants who are required to file a Form 700 along with the extent of their reporting requirements. Each agency must amend its Code when there are changes in circumstances, such as the creation of new positions or other organizational changes.

CalPERS Code is embodied in an administrative regulation (Cal. Code Regs., title 2, § 560). All employees who are required to file a Form 700 are listed in the Code and are referred to as “designated employees.” CalPERS has created new positions,

amended the duties of existing positions, and undergone a number of organizational changes since the current Code was codified in April of 2012.

ANALYSIS

In order to assess the current list of designated employees and develop proposed amendments to the Code, the Enterprise Compliance Division utilized criteria set forth in the Political Reform Act and FPPC regulations. These criteria essentially define designated employees as individuals who make or participate in the making of governmental decisions which may foreseeably have a material effect on a financial interest. Staff conducted a thorough review of all CalPERS duty statements and division descriptions, and modified the list of designated employees. The changes to the proposed Code are as follows:

- Organized by disclosure category at the agency level rather than by Branch / Division
- Consistently applied disclosure categories for each classification
- Expanded Staff Services Managers to include all levels
- Removed working titles, only reflecting State Classifications for consistency
- Removed Division Chief titles and added Career Executive Assignment (All Levels)
- Removed the following classifications:
 - Administrative Assistants (All Levels)
 - Associate Governmental Program Analysts
 - Retirement Program Specialist (All Levels)
 - Research Analyst II
 - System Software Specialists III

Staff has provided the proposed amended Code to CalPERS senior managers, the Legal Office, the Human Resources Division, and the Fair Political Practices Commission (FPPC) for their input and concurrence. The proposed amended Code can be found as Attachment A and the current Code is included as Attachment B. Due to the significant changes in format layout, a strikeout version is not included.

Following Board approval of the proposed amendments, staff will proceed with the required regulatory process for adoption of the Code. This requires formal amendment of CalPERS regulation through the FPPC and the Office of Administrative Law (“OAL”). As required by state law, CalPERS will finalize the Notice of Intention to Amend, included as Attachment C, and distribute it to the OAL, the FPPC, and all employees potentially affected by the amendments. A 45-day comment period will be conducted by CalPERS in which interested persons may submit written comments or request a public hearing within fifteen days before the end of the comment period. Once the comment period is complete, CalPERS will submit the Code with any changes to the FPPC for approval. The FPPC will also conduct a 45-day comment period after receiving the endorsed copy of the Notice of

Intent to Amend and work out any areas of concern with CalPERS. Finally, the FPPC will approve the Code and return it to CalPERS to be submitted to OAL for filing with the Secretary of State within 30 days of approving the Code, which will be effective 30 days after submission to the Secretary of State.

To the extent allowed by law, staff will continue to make changes to the Code during this regulatory process and will notify the Board of Administration of any material changes made during the required comment periods.

BUDGET AND FISCAL IMPACTS

Not Applicable.

BENEFITS/RISKS

The proposed amendments to the Code provide the following benefits:

- Elevate CalPERS organizational structure to the agency level.
- Designate positions that should be filing the Form 700.
- Help to ensure that potential conflict of interest situations will be disclosed or prevented.
- Promote transparency.

The approval of the proposed amendments to the Code reduces the following risks:

- Legal and financial risks due to consequences of failure to comply with laws or regulations.
- Operational risks resulting from significant noncompliance leading to error or process failure.

ATTACHMENTS

Attachment A – Proposed Conflict of Interest Code: Clean Version

Attachment B – Conflict of Interest Code: Current Version

Attachment C – Notice of Intention to Amend

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