



Agenda Item 5

August 18, 2015

ITEM NAME: Final Proposed Regulation for Payment of Interest and Public Hearing
(9:00 a.m. TIME CERTAIN)

PROGRAM: Customer Services and Support

ITEM TYPE: Action

RECOMMENDATION

Staff recommends the Finance & Administration Committee (FAC) approve for submission to the Office of Administrative Law (OAL) the proposed regulation establishing rules and procedures by which interest payments would be made to a defined benefit plan participant when a defined benefit plan has delayed payment in the correct amount owed to a participant beyond a reasonable administrative processing time.

EXECUTIVE SUMMARY

The proposed regulation would (1) clarify the circumstances under which interest should be included in retroactive payments to participants of a defined benefit plan, (2) establish what interest rate should apply; (3) establish a fair administrative appeal process for participants to pursue timely claims that a defined benefit plan has failed to pay interest when required under the regulation; and (4) establish delegated authority in the Executive Officer to grant a participant's claim to interest up to a stated amount. The regulation will be added to Chapter 2 of Division 1 of Title 2 of the California Code of Regulations as Section 555.5. The proposed regulation clarifies and does not change existing law.

STRATEGIC PLAN

This agenda item supports Strategic Goal A by making explicit certain processes and procedures for the efficient administration of pension benefits.

BACKGROUND

At the April 2015 CalPERS Board of Administration meeting, the Board approved the proposed regulatory action to initiate the rulemaking process to establish rules and procedures by which interest payments would be made to a defined benefit plan participant when a defined benefit plan has delayed payment in the correct amount owed to a participant beyond a reasonable administrative processing time. Subsequently, a Notice of Proposed Regulatory Action was filed with OAL to initiate a

45-day written comment period during which interested parties may submit public comments relevant to the proposed regulatory action. Specifically, the proposed regulation for which final approval is requested is intended to clarify the circumstances under which interest should be included in retroactive payments to participants of a defined benefit plan by drawing a distinction between reasonable administrative processing time and “wrongfully withheld” payments, as those concepts apply to the defined benefit plans administered by the Board.

The proposed regulation establishes 90 days as a reasonable administrative processing time. That 90 day period would commence when (1) the right to the payment has accrued, and (2) the defined benefit plan has all of the information it needs to begin to determine the proper amount of the payment. This regulation will not impact the goal to make all payments owing to participants as quickly as practicable. In practice, staff ordinarily has been able to process such payments in less than 90 days. Most payments to participants from defined benefit plans are made well before any interest would accrue under this regulation. That would continue to be the case if this regulation is adopted by the Board.

The proposed regulation establishes a seven percent per annum simple (non-compounding) interest rate as the appropriate interest rate for wrongfully delayed payments. This is the default interest rate established by Article XV, Section 1 of the California Constitution.

The proposed regulation specifies a process for participants to pursue claims that a defined benefit plan has failed to pay interest when required by the regulation. This aspect of the proposed regulation is important, because a decision as to whether interest is owed will turn on individualized factual scenarios that can vary substantially from case to case. The regulation makes use of the Board’s existing administrative appeal procedures under Board Regulation 555, *et seq.*, to ensure that there is a fair process available to participants who believe they have been denied interest owing to them.

The proposed regulation delegates authority to the Executive Officer or his or her designee to grant a participant’s claim for interest under this regulation for \$2,000 or less, if the Executive Officer or his or her designee determines that the claim has merit. This delegation of authority is proposed so that staff need not expend unwarranted resources on administrative appeals under this regulation.

The proposed regulation specifies that a participant must make a claim for interest under this regulation within three years of receiving the payment that the participant claims should have included interest. This provision will help staff avoid expending resources on stale claims.

As a clarification of existing law, the proposed regulation will be applicable to all payments in process now and in the future, and to all claims for interest that have not been finally resolved by the effective date of the regulation.

ANALYSIS

The Notice of Proposed Regulatory Action (Attachment 1) was published in the California Regulatory Notice Register 2015, No. 19-Z, File No. Z2015-0427-01, on May 8, 2015 (Attachment 2). The 45-day comment period commenced on May 8, 2015, and closed June 22, 2015. A total of four submissions were received within the comment period: (1) a letter requesting a public hearing; (2) a request to present oral comments at the hearing; (3) a 61 page document containing multiple comments, as well as numerous attachments; and (4) a request from an employer for a copy of the letter requesting the public hearing. The public hearing was appropriately noticed for today, August 18, 2015 at 9 a.m. Interested parties may present testimony and comments regarding the proposed regulatory action. The FAC and CalPERS staff are not required to respond to public comments during the hearing; however, all submissions will ultimately receive a written response from CalPERS as part of the final rulemaking file.

SUMMARY OF WRITTEN COMMENTS

CalPERS received a 61-page comment letter submitted by John Michael Jensen, dated June 19, 2015, as well as 22 attachments. In general, Mr. Jensen contends the proposed regulation raises an impairment of members' vested rights, is not within CalPERS' authority to promulgate, and is inconsistent with existing law. CalPERS' staff has considered Mr. Jensen's comments and disagrees with his assertions. Accordingly, CalPERS' staff is not recommending any changes to the proposed regulation at this time.

BUDGET AND FISCAL IMPACTS

The fiscal impact of the proposed regulation is difficult to quantify, but likely minimal. The proposed regulation would result in interest payments on some payments to participants that may not otherwise be made. The instances in which payments would be subject to the accrual of interest should be rare, however, as the vast majority of all participant payments that would be subject to this regulation are made within the time frames contemplated by the proposed regulation. Further, the additional costs associated with the regulation may be offset by the savings resulting from the efficiency and predictability that the regulation would bring to the defined benefit plans administered by the Board.

BENEFITS/RISKS

The primary benefit of approving the proposed regulation is that it will provide clear and transparent guidelines for staff and participants of defined benefit plans administered by the Board. It will clarify existing legal standards for determining when a payment is deemed to have been “wrongfully withheld.” It does not alter existing law. Further, it should help resolve legal disputes with members and beneficiaries claiming entitlement to interest.

The primary risk of the proposed regulation is that administration of the regulation will consume staff time and resources, but staff believes that this risk can be mitigated through an efficient and reasonable administration of the proposed regulation.

ATTACHMENTS

- Attachment 1 – Notice of Proposed Regulatory Action
- Attachment 2 – California Regulatory Notice Register 2015
- Attachment 3 – Proposed Regulation
- Attachment 4 – Public Comment

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