PROPOSED REGULATORY ACTION BY CALPERS

Adoption of Section 555.5 in Article 2 of Subchapter 1, Chapter 2 of Division 1 of Title 2 of the California Code of Regulations

**§ 555.5. Accrual of Interest on Certain Delayed Payments**

(a) Board Finding and Declaration. The board finds and declares that members, beneficiaries and those persons defined by Government Code section 21291 (together, "participants") should receive appropriate interest when any payment owed to a participant from a defined benefit plan has been delayed beyond a reasonable administrative processing time. The purpose of this regulation is to distinguish between correct payments that are made to participants within a reasonable administrative processing time (*see Weber v. Board* (1998) 62 Cal.App.4th 1440) and payments that are owed to participants, but which have been "wrongfully withheld" beyond a reasonable administrative processing time (*see Olson v. Cory* (1983) 35 Cal.3d 390).

(b) Applicability. This regulation applies to all payments owed to participants from a defined benefit plan established under the Public Employees' Retirement Law, the Judges' Retirement Law, the Judges' Retirement Law II or the Legislators' Retirement Law, except for those payments that are expressly excluded hereafter. This regulation does not apply to:

(1) Any payment owed to any person or entity who is not a participant.

(2) Any payment owed to any person or entity from any defined contribution plan, money purchase pension plan or any tax-preferred retirement savings program (*e.g.*, Government Code sections 21670, 22960 and 22970).

(3) Any payment owed to any person or entity from any fund created under the Public Employees' Medical and Hospital Care Act, or any similar fund established for the purposes of administering health benefits.

(4) Any payment owed a participant for which the terms and conditions of interest accrual are governed by applicable provisions of the Public Employees' Retirement Law, the Judges' Retirement Law, the Judges' Retirement Law II, or the Legislators' Retirement Law (*e.g.*, Government Code sections 9353.3, 21499, 20178, 20734 and 75520).

(c) Reasonable Administrative Processing Time. Subject to the limitations set forth in subdivision (b), all payments owed to a participant from a defined benefit plan shall be authorized by the board to the Controller within 90 calendar days after receipt of all information necessary to make the payment. Provided, however, that if the 90th day falls on a weekend or holiday, the board may authorize the payment to the Controller on the next business day.

"All information necessary to make the payment" for purposes of subdivision (c) includes, but is not limited to, any accurate and complete information that the board must receive from a participant, an employer or any other party, when such information may impact the amount owed to the participant. Such information includes, but is not limited to, the following:

(1) The participant's accrual of the right to receive the benefit (*e.g.*, the member's retirement date).

(2) All final eligibility determinations that impact a participant's right to receive payments from a defined benefit plan. No interest shall accrue during the time it takes to make such final eligibility determinations. For example, no interest shall accrue during the time that it takes the Executive Officer, the board or the governing body of a member's employer to make a final determination that a member is or is not eligible to retire for disability or industrial disability. As a further example, no interest shall accrue during the time it takes the Executive Officer or the board to make a final determination that a participant satisfies the provisions of California Code of Regulations, title 2, section 570.5(b). In these contexts, a "final determination" is a determination that may be challenged in court after exhaustion of all administrative remedies.

(3) Direction received from a court in a dissolution of marriage proceeding.

(4) Information or payments that must be received from an employer before amounts can be paid to a participant from the Replacement Benefit Plan, established under Government Code section 21757. A payment from the Replacement Benefit Plan is not "owed to a participant" until that payment is required to be made under California Code of Regulations, title 2, sections 589.3(f)(1) and 589.4(f)(4).

(5) Information that must be received from a reciprocal retirement system in order to determine the amount owed to a participant.

(6) Information that must be received from an employer in order to determine the amount owed to a participant, such as information regarding a member's pay, service credit, conversion of sick leave, membership status, membership classification or any other information that impacts a member's "final compensation."

(7) Information that must be received from a participant in order to determine the amount owed to a participant or in order to facilitate payments to a participant, such as executed optional election forms, electronic funds deposit information, tax withholding information, address information, the withdrawal of a participant's prior demand that payments not be made to that participant or a participant's correction of inaccurate or incomplete information that the participate previously provided to the board.

(d) Appropriate Interest. If a payment owed a participant from a defined benefit plan is not authorized to the Controller within the time period established under subdivision (c), the payment shall include seven percent per annum simple (non-compounding) interest. Such interest shall run from the expiration of the time period established under subdivision (c) through the day that the board expects the Controller to issue the warrant for the amount owed.

(e) Administrative Remedies. Any participant who claims that interest has not been paid as required under this regulation must exhaust his or her administrative remedies with the board, subject to Government Code section 20134 and California Code of Regulations, title 2, sections 555-555.4, before seeking relief in any court. The Executive Officer or his or her designee is authorized 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 claim has merit. When a participant has asserted a claim for interest under this regulation for $2,000 or less and the Executive Officer or his or her designee has rejected that claim in writing, that participant shall be deemed to have exhausted his or her administrative remedies with the board.

(f) Time Limitation To Initiate Administrative Remedies. Any participant who claims that interest has not been paid as required under this regulation must assert his or her claim for such interest in a writing received by the board within three years after the participant received the payment that the participant claims should have included interest, or else that claim is forever barred. The board finds and declares that (1) a participant's delay in asserting a claim beyond this three-year time period will compromise the ability of the board to analyze the facts in order to make a sound determination on that claim, and (2) the claim will be time barred as a matter of law under all potentially applicable statutes of limitations.

Note: Authority cited: Section 20121, Government Code. Reference: California Constitution, Article XV, Section 1 and Article XVI, Section 17; Sections 9353, 20120, 20121, 20134, 20160, 75005 and 75505, Government Code.