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 Section to Article 2 of Subchapter 1, Chapter 2 of Division 1 of Title 2 of the California Code of Regulations (CCR)

- **Section 555.5, Accrual of Interest on Certain Delayed Payments.**

By proposing this regulation, CalPERS seeks to (1) define the circumstances under which interest should be included in retroactive payments to participants of a defined benefit plan administered by the CalPERS Board, (2) establish what interest rate should apply, and (3) establish a fair administrative appeal process for participants to pursue claims that a defined benefit plan has failed to pay interest when required under the regulation. The proposed regulation is consistent with existing law and is reasonably necessary for the efficient and effective administration of the defined benefit plans administered by the CalPERS Board.

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 **May 8, 2015** and closing on **June 22, 2015** 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-mailed to 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

A public hearing will be held before the CalPERS Finance and Administration Committee at the time, date and location listed below.

NOTICE THAT A PUBLIC HEARING
IS SCHEDULED

Tuesday, August 18, 2015
Beginning at 9:00 a.m.
CalPERS Auditorium, Lincoln Plaza North
400 Q Street
Sacramento, CA 95811

IV. ACCESS TO HEARING ROOM

The CalPERS Auditorium 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 regulation 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 California Government Code Sections 20120-20121.

Reference citations: California Government Code Sections 9353, 20120, 20121, 20134, 20160, 75005, and 75505.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Government Code section 20160(b) requires the board to "correct all actions taken as a result of errors or omissions of ... this system." Section 20160(e), generally requires such corrections to made so that "the status, rights, and obligations of all parties ... are adjusted to be the same that they would have been if the act that would have been taken, but for the error or omission, was taken at the proper time ....." Additionally, case law (*see Olson v. Cory* (1983) 35 Cal.3d 390) holds that prejudgment interest applies to pension payments that are owed to participants, but which have been "wrongfully withheld." The proposed regulation is consistent with current law, and it is intended to define the circumstances under which interest should be included in retroactive payments to participants of a defined benefit plan administered by the CalPERS Board by drawing a distinction between ordinary administrative processing time and "wrongfully withheld" payments, as those concepts reasonably apply to the defined benefit plans administered by the Board.

Specifically, the proposed regulation establishes 90 days as a reasonable administrative processing time for retroactive payments to participants of a defined benefit plan. That 90 days would not start running until (1) the right to the payment has accrued, and (2) the defined benefit plan has all of the information it needs to determine the proper amount of the payment.

The proposed regulation establishes a seven percent per annum simple (non-compounding) interest rate as the appropriate interest rate for 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.

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 CalPERS 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.

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.

Consistency/Compatibility with Existing Regulations

CalPERS evaluated whether there were any other laws or state regulations concerning the accrual of interest to participants on delayed payments and has concluded that this is the only applicable regulation on the matter. Therefore, the proposed regulation is not inconsistent or incompatible with existing law or existing state regulations.

Anticipated Benefit

The primary benefit of approving the proposed regulatory action is that it will provide clear and transparent guidelines for CalPERS staff and participants of defined benefit plans administered by the CalPERS Board. Further, it should help resolve legal disputes with participants claiming entitlement to interest.

Pre-notice Consultation with the Public

No pre-notice consultation was done with the public, as the proposed regulation does not involve complex proposals or a large number of proposals that cannot easily be reviewed during the comment period.

VI. EFFECT ON SMALL BUSINESS

The proposed regulatory action does not affect small business because it applies only to participants of the defined benefit plans administered by the CalPERS Board.

VII. 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 fiscal impact of the proposed regulation is difficult to quantify, but likely minimal. The proposed regulation would result in interest payments on some payments that are made to participants that would 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 the 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.

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 compete 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 CalPERS defined benefit plans are administered under clear and transparent guidelines for the processing of claims for the payment of interest.

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.

VIII. 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.

In some situations, statutory law provides clear direction as to when interest should be paid to defined benefit plan participants, and which interest rate should be used. For example, Government Code section 20178 provides that the Board shall credit all contributions of members in the retirement fund (which are sometimes refunded to the member) with interest at an interest rate of 6 percent compounded at each June 30. As another example, Government Code section 21499 provides for interest accrual on death benefits under certain circumstances. In many situations, however, statutory law does not provide clear direction as to when interest should be paid and at what rate. CalPERS has determined that the proposed regulation is the most efficient and effective means of establishing guidelines governing the payment of interest to participants in defined benefit plans. No other reasonable alternative has been brought to the attention of the Board. Nevertheless, the Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the written comment period.

IX. 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 regulation, the Initial Statement of Reasons, the modified text of the regulation, if any, or other information about processing of this regulatory action to Anthony Martin, Regulation Coordinator, at Regulation_coordinator@calpers.ca.gov.

X. AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION, 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 regulation, the Initial Statement of Reasons, the Economic Impact Assessment, the Economic and Fiscal Impact Statement, and a letter dated April 21, 2015 from John Michael Jensen. A copy of the proposed text, the Initial Statement of Reasons, the Economic Impact Assessment, the Economic and Fiscal Impact Statement, and the letter dated April 21, 2015 from John Michael Jensen 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.

XI. 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 regulation 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 or oral comments or asked to be kept informed as to the outcome of this regulatory action.

XII. 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.