



Pension and Health Benefits Committee Agenda Item 5

December 19, 2017

Item Name: Final Proposed Amended Regulation for Normal Retirement Age

Program: Retirement Research and Planning Division

Item Type: Action

Recommendation

Team members recommend the Board of Administration (Board) approve the final proposed amendments to California Code of Regulations (CCR) section 586.1 defining Normal Retirement Age. With Board approval, team members will submit the final rulemaking package to the Office of Administrative Law (OAL) for adoption.

Executive Summary

The adoption of the attached amendments to CCR section 586.1 would help ensure continued compliance with current Internal Revenue Service (IRS) guidance regarding Normal Retirement Age for purposes of in-service distributions, and facilitate the administration of the California Public Employees' Retirement System (CalPERS) working after retirement and partial service retirement programs. The proposed amendments include establishing the maximum Normal Retirement Age under the CalPERS defined benefit plan (the Plan) as age 62 and adding Normal Retirement Age definitions for benefit formulas enacted after 2004, including those added under the California Public Employees' Pension Reform Act of 2013 (PEPRA). Although CalPERS already applies these definitions of Normal Retirement Age to the Plan, the proposed amended regulation makes these definitions explicit. In addition, the proposed amendments make other technical and clarifying changes. The proposed amendments do not change a member's benefit formula, and the maximum Normal Retirement Age of 62 is not a mandatory retirement age. The Normal Retirement Age only impacts those members who choose to work for a CalPERS covered employer after retirement or who choose a partial service retirement.

The proposed amended regulation was made available to the public for a 45-day public comment period and no comments were received. Team members do not recommend any changes to the proposed amended regulation.

Strategic Plan

This agenda item supports the CalPERS Strategic Plan 2017-22, Risk Management Goal to cultivate a risk-intelligent organization and the objective to enhance compliance and risk functions throughout the enterprise.

Background

The Plan is a tax-qualified plan under Internal Revenue Code (IRC) section 401(a). As such, the Plan must comply with the requirements of IRC section 401(a) to maintain its tax-qualified status. One such requirement is that the Plan must be established and maintained primarily to

provide systematically for the payment of definitely determinable benefits to participants over a period of years, usually for life, after retirement or attainment of Normal Retirement Age.

In 2004, pursuant to Government Code (G.C.) section 21220.5, CalPERS adopted CCR sections 586, 586.1, and 586.2 to define Normal Retirement Age and Bona Fide Separation in Service to help ensure compliance with federal rules governing in-service distributions. The Normal Retirement Age is defined in CCR section 586.1 as the age specified in a member's benefit formula. For example, the Normal Retirement Age for the 2 percent at 55 benefit formula would be age 55. In 2010 and 2012, the Legislature enacted additional benefit formulas under G.C. sections 21369.2 and 21076.5, respectively. PEPRAs added benefit formulas under G.C. sections 7522.20 and 7522.25. CCR section 586.1 does not currently explicitly define the Normal Retirement Age for these benefit formulas.

In January 2016, the IRS and the United States Department of the Treasury issued a Notice of Proposed Rulemaking [REG-147310-12] regarding the applicability of federal Normal Retirement Age regulations to governmental plans. An analysis of the proposed federal regulations determined that the Plan is in compliance with the proposed rules and that no changes to the Plan's current application of such rules is required. It is unclear when the IRS and the United States Department of the Treasury will finalize these proposed regulations. Upon finalization of these federal regulations, CalPERS will determine any impacts to CCR section 586.1(a), and make any necessary amendments.

At the August 2017, Board meeting, the Board approved the initiation of the rulemaking process for the proposed amendments to CCR section 586.1. CalPERS subsequently filed a Notice of Proposed Regulatory Action with OAL, initiating a 45-day public comment period where interested parties could submit public comments relevant to the proposed regulatory action. CalPERS did not receive any public comments during this period, and thus did not make any changes to the proposed amended regulation approved by the Board in August.

Analysis

The proposed amendments to CCR section 586.1 establish the maximum Normal Retirement Age under the Plan as age 62 and add Normal Retirement Age definitions for benefit formulas enacted after 2004, including PEPRAs benefit formulas. Although CalPERS already applies these definitions of Normal Retirement Age to the Plan, the proposed amended regulation makes these definitions explicit. In addition, the amendments make other technical and clarifying changes.

To help ensure continued compliance with current IRS guidance regarding in-service distributions, and to facilitate the administration of CalPERS' working after retirement and partial service retirement programs in compliance with such guidance, team members propose amending CCR section 586.1(a)(2) as follows:

- Add language stating the Normal Retirement Age under the Plan shall not exceed age 62
- Define Normal Retirement Age for benefit formulas under G.C. sections 7522.20, 7522.25, 21369.2, 21076.5, and 21354.4

The Notice of Proposed Regulatory Action was published in the California Regulatory Notice Register (File Number Z2017-0905-04) on September 15, 2017. The 45-day public comment period commenced on September 15, 2017 and closed on October 30, 2017. CalPERS did not receive any public comments or requests for a public hearing during this period.

With Board approval of the proposed amended regulation, the rulemaking package will be prepared and submitted to OAL, which has 30 days to review the package. If OAL approves the proposed amended regulation, it will file the amendment with the Secretary of State for official publication in the CCR and the regulation is anticipated to be effective by April 1, 2018.

Budget and Fiscal Impacts

The proposed regulatory action is technical and does not impose any budget or fiscal impacts to the state.

Benefits and Risks

The proposed regulatory action is necessary to help ensure continued compliance with federal in-service distribution rules and protect the Plan's tax-qualified status.

Attachments

Attachment 1 – Proposed Regulatory Action by CalPERS

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