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. PEPRA 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 PEPRA 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.

Agenda Item 5
Pension and Health Benefits Committee
Page 2 of 3
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