CalPERS

Finance and Administration Committee

Agenda Item 6a

December 18, 2018

Item Name: Revised Proposed Regulation for Employer Actuarial Liability Significant Increase

Program: Actuarial Office

Item Type: Action

Recommendation

Approve the revised proposed regulation establishing criteria to define a significant increase in actuarial liability due to increased compensation paid to a nonrepresented employee, as specified in Government Code (GC) Section 20791, for a 15-day comment period and approve submission of the final rulemaking package to the Office of Administrative Law (OAL) upon conclusion of the comment period, if no public comments are received.

Executive Summary

Team members have amended the proposed regulation (Attachment 1) to address issues raised by OAL with regard to the proposed regulation.

Strategic Plan

This proposed regulation supports the 2017-22 CalPERS Strategic Plan goal to strengthen the long-term sustainability of the pension fund.

Background

At the November 2017 Board of Administration (Board) meeting, the Board approved the proposed regulation establishing criteria to define a significant increase in actuarial liability due to increased compensation paid to a nonrepresented employee, as specified in GC Section 20791. The Notice of Proposed Regulatory Action was published in the California Regulatory Notice Register (File Number Z-2018-0205-01) on February 16, 2018. The 45-day comment period commenced on February 16, 2018 and closed on April 2, 2018. CalPERS team members did not receive any public comments or requests for a public hearing during this period.

At the September 2018 Board meeting, the Board approved the proposed regulation. Team members then submitted the final rulemaking package to OAL. On November 21, 2018, OAL contacted CalPERS and identified certain issues regarding the proposed regulation, which have been addressed in the revised proposed regulation. With the Board's approval of the revised proposed regulation, CalPERS will commence a 15-day comment period. If no public comments are received, CalPERS will resubmit the final rulemaking package to OAL.

Analysis

OAL identified the following issues regarding the proposed regulation:

- Hanging Paragraph after Section 579.9(a)(2)(ii) – Under this subsection, the actuarial liability threshold of $25,000 per year of service and compensation threshold of $65,000 may be adjusted at the discretion of the Chief Actuary based upon changes in the Consumer Price Index. OAL noted this subsection does not identify the formula for how these thresholds would be adjusted. In addition, OAL requested this hanging paragraph be revised to be its own subsection, 579.9(a)(3).

- OAL requested that the proposed regulation cite the statutory authority and reference citations for adoption of the proposed regulation.

To address the issues OAL identified, the following changes were made to the proposed regulation text:

- Section 579.9(a)(3) – The hanging paragraph after section 579.9(a)(2)(ii) was numbered as its own subsection 579.9(a)(3), and the original language regarding threshold adjustments in that new subsection was revised to clarify when and on what basis adjustments to the thresholds will be made. The revised language is as follows:

  The actuarial liability threshold in subsection (a)(1) and the compensation threshold in subsection (a)(2) shall be reviewed annually for purposes of determining whether the actuarial liability threshold and the compensation threshold are subject to adjustment as described below.

  For purposes of such review, the actuarial liability threshold and compensation threshold shall be recalculated based on an adjustment factor, calculated by dividing the *Consumer Price Index for All Urban Consumers: U.S. City Average*, for the month of September in the calendar year immediately preceding the recalculation by the *Consumer Price Index for All Urban Consumers: U.S. City Average*, for the month of September two calendar years preceding the recalculation. The recalculated actuarial liability threshold and compensation threshold shall be used as a basis to recalculate the actuarial liability threshold and compensation threshold, respectively, for the following year. The recalculations of the actuarial liability and compensation thresholds shall occur annually, beginning January 1, 2020.

  Once the recalculated actuarial liability threshold exceeds the actuarial liability threshold in subsection (a)(1) by $1,000 or more, the actuarial liability threshold in subsection (a)(1) shall be increased by the amount of such excess, rounded down to the next lower multiple of $1,000. Once the recalculated compensation threshold exceeds the compensation threshold in subsection (a)(2) by $5,000 or more, the compensation threshold in subsection (a)(2) shall be increased by the amount of such excess, rounded down to the next lower multiple of $5,000.

- Authority and reference citations were added at the end of the proposed regulation text for GC Sections 20120, 20121, 20122, and 20791.

Budget and Fiscal Impacts

CalPERS will incur some administrative costs to comply with GC Section 20791. It is expected that there will be an immediate increased workload to establish internal processes and procedures and review retirements since 2013. The pensionable compensation limit under the Public Employees' Pension Reform Act of 2013 is expected to limit increased workload over time.

Benefits and Risks

The proposed regulation would implement CalPERS' interpretation of GC Section 20791 and help ensure consistent application of GC Section 20791.

Attachment

Attachment 1 – Proposed Regulation with Revisions

Nina Ramsey
Senior Actuarial Assistant

Randall Dziubek
Deputy Chief Actuary

Scott Terando
Chief Actuary