

One commenter suggested the effective date of the proposed regulation for existing post-retirement appointments should not initiate time counted towards the 24 consecutive month period, especially for post-retirement appointments that have been in place longer than the proposed definition of “limited duration.”

Proposed Response:

CalPERS is accepting the suggestion to clarify whether “appointment start date” is the date of the appointment or the date that actual work starts under the appointment. CalPERS amended the proposed regulation to clarify that “appointment start date” is the first day the retired person serves any hours in the appointment or the effective date of the proposed regulation for existing post-retirement appointments as of the effective date of the proposed regulation.

For existing post-retirement appointments, the effective date of the proposed regulation will be the appointment start date and initiates time counted toward the 24 consecutive month period. The proposed regulation is defining the term “limited duration” and will not impact current statutes related to the 960-hour limit for post-retirement appointments; the hours worked prior to the effective date of the proposed regulation continue to accumulate toward the 960-hour limit from the beginning of that fiscal year.

The appointment start date for each separate post-retirement appointment initiates the time counted towards the 24 consecutive month period for each post-retirement appointment. A retired person can accept four separate but consecutive or non-consecutive seven-month appointments; the post-retirement appointments with the same employer will be considered separate as long as the duties for each post-retirement appointment do not overlap per the proposed definition of appointment. Each appointment’s start date would initiate the start of the 24 consecutive month period. Per existing statute, the retired person may only work a combined total of 960 hours for all post-retirement appointments per fiscal year.

CalPERS is rejecting the suggestion to remove the effective date of the proposed regulation as the start date for existing post-retirement appointments which initiates time counted towards the 24 consecutive month limit. For consistent and equitable application of the proposed regulation to all existing post-retirement appointments, CalPERS needs to define when time counted towards the 24 consecutive month limit initiates. Therefore, CalPERS is establishing a uniform appointment start date for all existing post-retirement appointments which ensures employers, retired persons, other stakeholders, and CalPERS are clear on when the post-retirement appointment duration starts and mitigates potential violations of a retired person working beyond the 24 consecutive month period.

Extension and Exemption Process and Criteria

Too Restrictive

Comments 4.4, 4.5, 6.4, 8.2, 8.3, 8.4, 9.5, 9.10, 9.14a, 10.2, 10.6, 11.2, 12.3, 12.4, 13.3, 13.4, 14.3, 14.4, 15.3, 15.4, 16.3, 16.4, 17.3, 17.4, 18.2, 18.6, 22.2, 22.4, 22.5, 22.6, 22.7, 22.9, 23.2, 23.3, 24.3, 25.3

Seventeen commenters stated that either the extension or exemption process or criteria or all were too restrictive, and two commenters also stated that after the extensions are exhausted, the employers have no other options. Fourteen commenters provided one or more of the following suggested amendments:

- Allow employers to extend or request an exemption for a post-retirement appointment at any time following the 24 consecutive month period or

- subsequent extension period
- Change the extension period from “up to twelve consecutive months per extension” to “for a maximum period of twelve-months per extension”
- Allow post-retirement extensions and exemptions to be placed on the governing body’s consent agenda
- Allow the employer’s Executive Officer to approve a documented justification for post-retirement appointment extensions and exemptions
- Allow the employers to document the need for the post-retirement appointment extension instead of having the employer’s governing body certify the post-retirement appointment extension at a public meeting
- Allow the employers to submit the exemption request directly to CalPERS without receiving the employer’s governing body’s approval
- Remove the requirement to conduct a recruitment
- Amend the recruitment requirement to include an option for justifying why a recruitment would not be justified or reasonable
- Remove the requirement to provide a formal duty statement

Proposed Response:

In response to the comments stating that the extension and exemption processes and criteria were too restrictive, CalPERS considered all comments received and revised the processes and criteria for the extension and exemption requests. The proposed amendments to the criteria increase transparency and clarify what the employer’s governing body will be certifying via resolution, and the Department of Human Resources for state post-retirement appointments via memorandum.

In response to the comments stating that the employers have no other options once the extensions are exhausted, the proposed regulation provides employers the flexibility to request an exemption to the 24 consecutive month period and the two 12 consecutive month extensions as long as certain conditions are met. The exemption request process provides employers the flexibility to rehire retired persons when necessary within the specified timeframes as long as certain conditions are met.

In response to the suggested amendments:

- CalPERS is accepting the suggestion to allow employers to extend a post-retirement appointment at any time during the respective extension period. There are situations when the employer may not anticipate the need for the retired person’s service prior to the conclusion of the 24 consecutive month period or subsequent extension period. Allowing employers to request an extension at any time following the conclusion of the 24 consecutive month period but prior to the end of the second extension period (48th consecutive month) reduces the employer’s administrative burden and provides the flexibility they need to provide public service to their communities and constituents.
- CalPERS is accepting in part the suggestion to allow employers to request an exemption for a post-retirement appointment at any time following the 48 consecutive month period. CalPERS is amending the proposed regulation to provide a more flexible timeframe for submitting exemption requests to CalPERS. Instead of having to submit requests for exemption prior to the end of the second extension period, written requests for exemptions must be received by CalPERS for review within 12 consecutive months following the end of the second extension period. Any written exemption requests for a subsequent extension of

12 consecutive months must be received by CalPERS for review within 12 consecutive months following the end of the most recent extension limit of 12 consecutive months. This amendment provides employers the flexibility to retain skilled retired persons when exigent circumstances exist, while providing a timeframe for when the employer can no longer extend the post-retirement appointment.

- CalPERS is rejecting the suggestion to change the extension period from “up to twelve consecutive months per extension” to “for a maximum period of twelve-months per extension.” Since CalPERS is clarifying the definition of 24 consecutive months regardless of how many months or hours in those months the retired person served in the appointment, it is necessary to define the extension period as “up to twelve consecutive months per extension.” In addition, the first extension period starts the day after the 24 consecutive month period ends and continues for 12 consecutive months regardless of how many months or hours in those months the retired person serves during the extension period.
- CalPERS is accepting the suggestion to allow post-retirement appointment extensions to be placed on the governing body’s consent agenda, but CalPERS is rejecting the suggestion to allow post-retirement appointment exemption requests to be placed on the governing body’s consent agenda. Allowing extension requests to be placed on the consent agenda reduces the employer’s administrative burden in requesting extensions. Keeping the exemption requests off of the consent agenda increases transparency and provides the administrative rigor necessary for exemption requests.
- CalPERS is rejecting the suggestion to allow:
 - The employer’s Executive Officer to approve a documented justification for a post-retirement appointment extension and exemption
 - The employers to document the need for the post-retirement appointment extension instead of having the employer’s governing body certify the post-retirement appointment extension at a public meeting
 - The employers submit the exemption request directly to CalPERS without receiving the employer’s governing body’s approval

The employer’s governing body or the Department of Human Resources’ certifications via resolution or memorandum increase transparency by certifying that they reviewed the justifications and determined whether those extensions and exemptions are necessary.

- CalPERS is accepting in part the suggestion to remove the requirement to conduct a recruitment and including an option for justifying why a recruitment would not be justified or reasonable. CalPERS amended the criteria for a post-retirement exemption to certify by resolution or memorandum (for state post-retirement appointments) that the employer either completed a recruitment for the duties to be performed within 12 consecutive months prior to the exemption request and was unable to fill the position with that recruitment or the reason such a recruitment cannot be completed. Providing additional options besides conducting a recruitment provides the employer flexibility and reduces the administrative burden while maintaining the rigor that the employer needs to find other options for transitioning the duties to be performed.
- CalPERS is accepting in part the suggestion to remove the requirement to provide a formal duty statement. CalPERS amended the criteria for a post-retirement exemption to certify by resolution or memorandum (for state post-retirement appointment) the description of the duties to be performed. According

to comments received, not all post-retirement positions have a formal duty statement and requiring the employers to develop formal duty statements for each of the post-retirement positions is administratively burdensome. Therefore, requiring the certification of the description of the duties to be performed documents those duties for that particular post-retirement position and increases transparency as to the duties required during the extension and exemption periods.

Not Restrictive Enough

Comments 3.3, 3.4, 3.5, 3.6, 3.7, 3.11, 3.12, 3.13, 3.14, 3.15, 7.4, 7.5:

One commenter stated that the extension and exemption processes and criteria were not restrictive enough and did not provide the governing bodies enough standards or guidance for evaluating post-retirement appointment extensions or exemptions. The commenter further stated that the two exemptions exceed and contradict the statutory language of “limited duration.” The commenter also provided the following suggested amendments:

- Reduce the number of extensions from two to one for up to 12 months total
- Require certifications under penalty of perjury for:
 - Resolutions certifying the governing body approves the appointment extension and has conducted a diligent investigation and reviewed the facts supporting the appointment extension
 - Attesting the employer conducted a recruitment and was unable to fill the position with that recruitment
- Require employers to include copies of all recruitment documentation, including but not limited to applications. Further noting that applications can be redacted to remove personal information
- Require employers to provide a copy of the exemption request, all supporting documentation, and the date and time of the CalPERS Board Meeting at which the exemption is anticipated to be heard to the applicable bargaining unit
- Require employers to submit proof of service that the exemption request and all supporting documentation were provided to the applicable bargaining unit with the exemption request submitted to CalPERS
- For the exemption options, change “unlimited” to be time bound at 24 months if the appointment does not exceed 120 hours per fiscal year
- For the exemption options, remove “consecutive” from the 12-month extension and limit the CalPERS Board to only granting one exemption per retired person

Another commenter stated that the two 12 consecutive month extensions are unnecessary, inappropriate, and conflict with Government Code section 21221(g). The commenter further stated that the exemption options are not allowed under the statutory authority as both exemption options could continue in perpetuity. The commenter is suggesting removing the extension and exemption options from the proposed regulation.

Proposed Response:

In response to the comments stating that the extension and exemption processes and criteria were not restrictive enough and did not provide the governing bodies enough standards or guidance for evaluating post-retirement appointment extensions or exemptions, CalPERS considered all comments received and revised the processes and criteria for the extension and exemption requests. The proposed amendments to the criteria increase transparency and clarify what the employer’s governing body will be certifying via resolution, and the Department of Human Resources for state post-retirement appointments via memorandum.

In response to the suggested amendments:

- CalPERS is rejecting the suggestion that the number of extensions be reduced from two to one for up to 12 months total. CalPERS considered all comments received and drafted the proposed regulation to reflect the feedback received, balancing comments from all parties. Two extensions provide employers flexibility in addressing their own business needs while requiring the employers to be transparent in the necessity for extending the appointment by requiring extension approvals to be authorized by their respective governing bodies at a public meeting.
- CalPERS is rejecting the suggestion requiring certifications to be signed under penalty of perjury. While requiring certifications to be signed under penalty of perjury increases the administrative rigor for extension and exemption requests, it also adds administrative burden to the employer. The employer's governing body is certifying via resolution at a public meeting its evaluation of the criteria and approval of the extension and/or exemption requests, providing a balance between administrative burden and rigor.
- CalPERS is rejecting the suggestion requiring employers to include copies of all recruitment documentation. This requirement would increase the administrative burden to the employer. CalPERS amended the proposed regulation to require the employer's governing body to certify by resolution at a public meeting or the Department of Human Resources for state post-retirement appointments by memorandum that either the employer completed a recruitment for the duties to be performed and was unable to fill the position with that recruitment or the reason that a recruitment cannot be completed. This certification happens at a public meeting, balancing the rigor and transparency with administrative burden.
- CalPERS is rejecting the suggestion requiring employers to provide a copy of the exemption request to the applicable bargaining unit and to include proof of providing the exemption request to the applicable bargaining unit with its exemption request. The employer's governing body is required to certify by resolution at a public meeting not placed on the consent agenda its approval of the post-retirement appointment exemption and that all criteria required are met. The applicable bargaining unit would have the opportunity to provide public comment at that governing body's public meeting in support or opposition of the exemption request. The public meeting is a balance of transparency and rigor with administrative burden. For state post-retirement appointments, the Department of Human Resources is responsible for establishing a process for certifying its review and approval of the exemption request. In addition, a report of exemptions granted will be provided to the CalPERS Board and publicly available annually to increase transparency.
- CalPERS is rejecting the suggestion to change "unlimited" to be time bound at 24 months if the appointment does not exceed 120 hours per fiscal year for one of the exemption options. Based on comments received, there are rare circumstances where an employer needs to retain a retired person to perform specific duties for limited hours, but for a longer duration. The proposed regulation needs to be flexible to account for these rare circumstances to ensure employers meet the public service needs of their communities. The limited number of hours per fiscal year provides constraints on how much a retired person can work and earn in that post-retirement position.
- CalPERS is rejecting the suggestion to remove "consecutive" from the 12-month

extension exemption option and limiting the CalPERS Board to only granting one exemption per retired person. It is necessary to retain “consecutive” in reference to the exemption extension period as it aligns with the other duration periods and is administratively feasible for CalPERS, the employer, and retired person to track. In addition, further clarifying the exemption extension period as “consecutive” and regardless of how many months or hours in those months the retired person served in the appointment reduces risk of violating the proposed regulation by working beyond the time period.

In response to the comment stating the extensions and exemptions are in conflict with the provision that limits retired persons to a one-year post-retirement appointment when appointed to a position available due to a leave of absence, they are not. Government Code section 21221(g) governs post-retirement appointments due to leaves of absences. The proposed regulation specifically defines “limited duration” as specified in Government Code section 21224, 21229, and 7522.56 and the extension and exemption periods are for post-retirement appointments of limited duration as specified in Government Code section 21224, 21229, and 7522.56. In addition, in response to the comment that the extensions and exemptions exceed and contradict the statutory language of “limited duration,” the minimal hours under the continuous exemption option are limiting in nature and the timeframe for requesting an exemption limits the employer from extending the post-retirement appointment indefinitely.

Clarification of Process

Comments 3.14, 4.3, 9.7, 9.8, 9.13, 9.16, 10.7, 12.2, 13.2, 14.2, 15.2, 16.2, 17.2, 18.7, 23.1:

Eleven commenters requested clarification regarding CalPERS’ process and timing for reviewing and granting exemptions. Three commenters provided the following suggested amendments to clarify CalPERS’ process:

- Require employers to submit exemption requests to CalPERS at least 30 days prior to the end of the extension period
- Require CalPERS to respond within 30 days, and if no response is received by the employer within 30 days, the requested exemption is deemed approved
- Require CalPERS to place the exemption request on its next board meeting agenda
- Amend the proposed language from “the board will grant” to “the board may grant” an exemption
- Allow post-retirement appointments to continue beyond the 24 consecutive month period or the subsequent 12 consecutive month extension period, as applicable, while the extension approval is pending. If the extension is denied, allow any work performed during the pending period to be approved and not result in a violation.
- Allow post-retirement appointments to continue beyond the extension period while the exemption is pending approval by the employer’s governing body or CalPERS and require the requesting employer to submit evidence of its pending request with its governing body to CalPERS. If the exemption is denied by either the employer’s governing body or CalPERS, allow any work performed during the pending period to be approved and not result in a violation.
- Amend the extension start date to include the latter of the first day after the end of any prior extension or the date on which an extension request is approved

Proposed Response:

In response to the comments requesting clarification of CalPERS' process and timing for reviewing and granting exemptions, CalPERS amended the proposed regulation to specify that the CalPERS Board will grant or deny the exemption requests within 60 days of receiving the request, which must include all required supporting documentation. This proposed amendment clarifies when the employer can anticipate receiving a response from CalPERS to plan their business needs accordingly.

In response to the suggested amendments:

- CalPERS is rejecting the suggestions:
 - Requiring employers to submit their exemption requests to CalPERS at least 30 days prior to the end of the extension period
 - Requiring CalPERS to respond within 30 days, and if no response is received by the employer within 30 days, the requested exemption is deemed approved
 - Requiring CalPERS to place the exemption request on its next board meeting agenda

CalPERS amended the proposed regulation to allow the employer to submit a request for an exemption period after the extension period ends; however, CalPERS must receive the written request for an exemption for review no later than 12 consecutive months following the end of the second extension period. As a result, the suggested amendment to require exemption requests be submitted at least 30 days in advance is unnecessary.

CalPERS amended the proposed regulation to specify that it will grant or deny an exemption request within 60 days of receipt of the request and all supporting documents. CalPERS specified 60 days to allow sufficient processing time and account for fluctuations in the volume of exemption requests received and intends to delegate approval authority to CalPERS team members to further ensure an expeditious process. CalPERS did not include an automatic approval after a specified amount of time has lapsed to ensure it reviews all exemption requests and mitigates the risk of an exemption request being approved that did not meet all of the specified requirements. In addition, placing the exemption request on the next board meeting agenda is unnecessary as CalPERS specifies when a response will be provided to the employer.

Retired persons are not permitted to perform work in the post-retirement appointment until the employer receives CalPERS approval, therefore, employers need to account for CalPERS' review period and deadline for submitting exemption requests in planning their business need for the post-retirement appointment exemption.

- CalPERS is accepting in part the suggestion to amend the proposed language from "the board will grant." CalPERS amended the proposed regulation to state "the board will grant or deny" to specify that it may deny a request. The exemption will be granted or denied based on the criteria set forth in the revised proposed regulation.
- CalPERS is rejecting the suggestion to allow post-retirement appointments to continue beyond the 24 consecutive month period, any subsequent 12 consecutive month period, or while an exemption request is pending. Retired persons are not permitted to perform work in the post-retirement appointment until the employer receives approval from its governing body for extensions and CalPERS for exemptions. This requirement is in place to allow the governing bodies and CalPERS to evaluate the post-retirement appointment and determine

whether the extension and/or exemption is necessary. Since CalPERS amended the proposed language to specify how long it may take for it to render its decision, employers need to plan accordingly to meet their business needs.

- CalPERS is rejecting the suggestion to amend the extension start date. CalPERS amended the proposed regulation to clarify that the extension start date is the day after the end of the 24 consecutive month period or the day after the first extension period ends. The extension start date ensures that the timeframe for the 24 consecutive month period and the two extension periods are continuous. Even though the extension periods begin, retired persons are not permitted to perform work in the post-retirement appointment until the employer receives their governing body's approval for the extension.

Comments 9.11, 19.1:

One commenter provided a suggested amendment requesting CalPERS to provide an exception process for post-retirement appointments that are needed beyond the proposed definition of 24 consecutive months for rare circumstances. Another commenter suggested an amendment to streamline and clarify the language in paragraph (7) of subdivision (a) of the proposed regulation.

Proposed Response:

CalPERS is rejecting both suggested amendments as CalPERS deems both amendments unnecessary.

The proposed regulation already provides the employer an extension process for post-retirement appointments needed beyond the 24 consecutive month period. Through the proposed regulation, CalPERS provides employers the option to extend the post-retirement appointment no more than twice for up to 12 consecutive months per extension if the specified requirements are met. In addition, CalPERS provides employers the option to request an exemption to the 24-consecutive month period and the two 12 consecutive month extensions if the employer determines the post-retirement appointment is needed beyond the 48 consecutive month period, specified requirements are met, and CalPERS receives the written exemption request within the specified timeframe.

The suggested amendments to clarify paragraph (7) of subdivision (a) of the proposed regulation are not necessary. Subparagraph (A) of paragraph (7) of subdivision (a) states that one of the exemptions described in subparagraph (B) will be granted if specified conditions are met. The proposed language as is, is necessary to specify that the board will only grant one of the exemptions, not both.

Clarification of Criteria

Comments 1.6, 1.9, 9.6, 22.3:

Three commenters requested clarification on what criteria the Board will use in evaluating post-retirement appointment exemption requests. More specifically, two commenters requested clarification on what is meant by "cannot be performed satisfactorily by non-retired employees" and how that criterion will be evaluated. In addition, one commenter asked for clarification on whether CalPERS would be reviewing and evaluating the extension approval documents and determining whether the "cannot be performed satisfactorily by non-retired employees" criterion was or was not met after the post-retirement appointment ends, potentially resulting in a compliance violation.

One commenter provided suggested amendments for state post-retirement appointments to amend the criterion “cannot be performed satisfactorily by non-retired employees” to explaining how the skills of the retired person are specifically needed for the work that the retired person is performing and providing an estimate for how long that skillset is needed or when that knowledge would be transferred to another individual.

Proposed Response:

In response to the request for clarification on what criteria the Board will use in evaluating post-retirement appointment exemption requests, CalPERS amended the proposed language to revise the process and criteria for the exemption requests. The proposed amendments to the criteria increase transparency and clarify what the employer’s governing body will be certifying via resolution, and the Department of Human Resources for state post-retirement appointments via memorandum. The employer is in the best position to determine whether the appointment extensions are necessary and/or exigent circumstances exist necessitating the retired person’s appointment to continue beyond the 48 consecutive month period. The employer’s governing body or the Department of Human Resources’ certifications via resolution or memorandum increase transparency by certifying that they reviewed the justifications and determined whether the extensions and exemption requests are necessary. In addition, the proposed amendments reduce the administrative burden and provide the employers flexibility for their governing bodies to approve extension requests, while providing the administrative rigor necessary for exemption requests. Table 1 provides a summary comparison of the proposed amended criteria and process.

Table 1: Summary Comparison of Original and Amended Extension and Exemption Process and Criteria.

	Extension, original	Extension, amended	Exemption, original	Exemption, amended
Approver	Employer	Employer	CalPERS	CalPERS
Timing of the extension or exemption	By prior end date	Any time ¹	By prior end date	Within one year ²
Anticipated end date ³		Included		Included
Position titles and duties	Duty statement	List of duties	Duty statement	List of duties
Necessity of extension		Included		Included
Reason for not using non-retiree	Included	Included	Included	Included
Reason for not using another retiree				Included
Recruitment			Unsuccessful	Inability to recruit
Knowledge Transfer Plan		Plan in place		Unsuccessful
Public meeting	Included	Included	Included	Included
Not on consent calendar	Included		Included	Included

In response to the request for clarification as what is meant by “cannot be performed satisfactorily by non-retired employees,” CalPERS accepted the suggestion to amend the criterion. CalPERS amended the proposed language to include the reason the duties required under the appointment cannot be performed by non-retired persons and added another retired person for exemptions. Having the governing body certify the reason the duties cannot be performed by another retired person increases the rigor for why the post-retirement appointment exemption is needed. In addition, CalPERS amended the proposed language to include the anticipated end date for the extended post-retirement appointment for the employer to demonstrate a commitment to either transfer the skillset to another individual or that the duties are no longer needed.

In response to the request for clarification on whether CalPERS will review the extension certification documents, CalPERS will review the extension certification documents during its review of exemption requests or in relation to an audit to determine whether the specified criteria were certified by the employer’s governing body. CalPERS will work with employers to address any resulting compliance violations. CalPERS amended the proposed regulation to

¹ Employers can approve the extension any time during the respective extension period. Regardless of whether or when the employer approves the extension, the first extension period starts the day after the end of the 24 consecutive month period and the second extension period starts the day after the end of the first extension period (36 consecutive months from the appointment start date). Retired persons may not continue to serve in the post-retirement appointment until the extension request is approved.

² Employers can submit a written request for an exemption after the 48 consecutive month period, but the written request must be received by CalPERS for review no later than 12 consecutive months following the end of the second extension period. Any written exemption request for a subsequent extension of 12 consecutive months must be received by CalPERS for review no later than 12 consecutive months following the end of the most recent extension limit of 12 consecutive months. CalPERS will grant or deny exemption requests within 60 days of receiving the request and all required information from the employer. Retired persons may not continue to serve in the post-retirement appointment until the extension request is approved.

³ For first and second extensions, the end date cannot exceed the respective extension period. For annual exemptions, the end date cannot exceed the exemption period. For perpetual exemptions, the end date must be specified.

clarify what is required for the extension and exemption, to ensure the employer's governing body can evaluate whether all criteria are satisfied.

Clarification of Proposed Language

Comments 9.7, 9.9, 9.12, 9.15:

One commenter provided suggested amendments to clarify the criterion for the employer to retain the extension approval records.

The commenter also identified potential inconsistency in the proposed language between paragraphs (4) and (5), and (4) and (7) of subdivision (a) of the proposed regulation. The commenter states that the language assumes the extension is 12 months, but it may not be since paragraph (4) states the extension may be "up to" 12 consecutive months. The commenter is proposing the following amendments:

- Clarify the first extension limit was "up to" 12 consecutive months instead of "twelve consecutive months" in paragraph (5)
- Amend the second exemption option, §574.1 (a)(7)(B)(ii), to be "up to" 12 consecutive months instead of "twelve consecutive months" and rephrase as an "extension" and not an "exemption"

Proposed Response:

CalPERS is rejecting the suggestion to clarify the criterion for the employer to retain the extension approval records. The commenter interpreted "certifications as required..." as certification of the approvals. However, the governing body is certifying by resolution, and the Department of Human Resources by memorandum, therefore the resolution and memorandum are the certifications the employers are required to retain, as applicable.

CalPERS is rejecting the suggestion to clarify the first extension limit was "up to" 12 consecutive months in paragraph (5) of subdivision (a) of the proposed regulation. The intent of stating "the first extension limit of twelve consecutive months" is that the time period is continuous starting from the appointment start date. CalPERS amended the proposed regulation to clarify the intent of the first and second extension periods are for the time periods to be continuous starting from the appointment start date regardless of how many months or hours in those months the retired person served.

CalPERS is rejecting the suggestion to amend the second exemption option to be "up to" 12 consecutive months and rephrase as an extension and not an exemption. For administrative purposes, defining the second exemption option as 12 consecutive months instead of up to 12 consecutive months is less burdensome to track and administer. The employer will provide CalPERS with an end date that is 12 months from the start date of that exemption. It is also necessary to phrase as an exemption so there is no confusion between the extension periods and the exemption extension periods.

Temporary Upgrade Pay Appointments

Circumstances for Serving in an Upgraded Position/Classification

Comments 22.8a, 26.2:

Two commenters identified situations that would result in an individual's temporary upgrade pay to not be reportable compensation. One example is when a position is vacant for a period of time before an employee is appointed to an upgraded position/classification due to various circumstances, including but not limited to recruitment challenges. In this example, under the proposed regulation, the employee's temporary upgrade pay would not be reportable

compensation because the employee's appointment to the upgraded position/classification was not "immediately subsequent to" a permanent appointment held by another individual.

Another example is when an employer needs to rotate out of class appointments between two or more employees for various reasons, including but not limited to recruitment challenges. In this example, the first employee (Employee A) appointed to an upgraded position/classification immediately subsequent to a permanent appointment held by another individual would qualify to have his or her temporary upgrade pay reported to CalPERS as reportable compensation. If a second employee (Employee B) is appointed to the same upgraded position/classification immediately subsequent to Employee A's appointment, Employee B's temporary upgrade pay would not be reportable compensation because Employee B's appointment was not immediately subsequent to a permanent appointment held by another individual.

One commenter provided a suggested amendment to remove the definition of appointment for appointments to an upgraded position/classification. The other commenter requested an explanation to the intent of paragraph (1) of subdivision (b) of the proposed regulation.

Proposed Response:

CalPERS is rejecting the suggested amendment to remove the definition of appointment for appointments to an upgraded position/classification. The initial proposed regulation did not account for these situations and CalPERS did not intend to exclude these situations. As a result, CalPERS amended the proposed regulation to state that the first day the individual serves any hours in the upgraded position/classification initiates time counted towards the 24 consecutive month period, removing the requirement that the appointment must be subsequent to a permanent appointment. In addition, CalPERS amended the proposed language to remove the term "immediately" prior to subsequent to account for potential periods of vacancy before an individual is temporarily appointed to an upgraded position/classification. These amendments are necessary to meet the employer's business needs as there are circumstances where employers need to rotate individuals serving temporarily in upgraded positions/classifications. With these amendments, removing the definition of appointment is unnecessary.

[Definition of Start Date](#)

Comment 9.20:

One commenter requested clarification of "appointment start date" and how appointment start date would apply to existing temporary upgrade appointments when the proposed regulation becomes effective. The commenter provided the following suggested amendments:

- Specifying that appointment start date applies to retired persons appointed to an upgraded position/classification
- Clarify that current appointments to an upgraded position/classification are subject to a 24 consecutive month limit starting on the effective date of the proposed regulation, and prior appointment time will not count towards this limit
- Clarify that new appointments to an upgraded position/classification after the effective date of the proposed regulation will have a 24 consecutive month limit from the date the individual starts work in the upgraded position/classification

Proposed Response:

CalPERS amended the proposed regulation to clarify that “the first day the individual serves any hours in an upgraded position/classification or the effective date of this subdivision, whichever is later, initiates time counted toward the twenty-four consecutive month limit.” Adding this clarifying language was necessary to clarify when the duration of the upgraded position/classification appointment started for purposes of reporting temporary upgrade pay to CalPERS. For existing temporary upgrade appointments, the appointment start date is the effective date of the proposed regulation and any time already served in the upgraded position/classification will not count towards the limit of 24 consecutive months.

CalPERS is rejecting the suggested amendment to specify that appointment start date applies to retired persons appointed to an upgraded position/classification. Subdivision (b) of the proposed regulation does not apply to retired persons. Retired persons are not eligible to have temporary upgrade pay reported to CalPERS, therefore this amendment is unnecessary.

CalPERS is rejecting the suggested amendment to clarify that current appointments to an upgraded position/classification are subject to a 24 consecutive month limit starting on the effective date of the proposed regulation, and prior appointment time will not count towards this limit. The proposed regulation already specifies those requirements.

CalPERS is rejecting the suggested amendment to clarify that new appointments to an upgraded position/classification after the effective date of the proposed regulation will have a 24 consecutive month limit from the date the individual starts work in the upgraded position/classification. The proposed regulation already specifies those requirements.

[Interaction with Government Code section 20480](#)

Comment 26.1:

One commenter requested an explanation of the intent of subdivision (b) of the proposed regulation and how it interacts with the limits under Government Code section 20480. The commenter expressed concern that the proposed regulation may be confusing and lead to unintended violations of the 960-hour limit under Government Code section 20480.

Proposed Response:

In response to the comment, subdivision (b) of the proposed regulation defines “limited duration” for individuals serving in upgraded positions/classifications. Government Code section 20480 is not relevant to this definition and CalPERS will continue its current application of Government Code 20480.

[Impact on Final Compensation](#)

Comment 22.8b:

One commenter expressed concern with the proposed regulation and the impact it would have on a member’s final compensation if the final compensation period is 36 months. Temporary upgrade pay is an item of special compensation and as such, any special compensation earned only in the member’s final compensation period would not be reportable and excluded from retirement benefit calculations. The commenter further expressed concern if the proposed regulation applied retroactively, that the temporary upgrade pay reported prior to the effective date of the proposed regulation would result in adverse benefit adjustments to impacted members. The commenter proposed a suggested amendment to not apply the proposed regulation retroactively to the effective date.

Proposed Response:

In response to the comment, if an individual earns temporary upgrade pay during his or her final compensation period, there is potential that the compensation may not be reportable depending on the individual's circumstances. The proposed regulation will not apply retroactively, therefore temporary upgrade pay reported prior to the effective date of the proposed regulation will not be impacted.

Remove Definition from Proposed Regulation

Comment 6.1:

One commenter provided suggested amendments to remove the definition of limited duration for appointments to an upgraded position/classification from the proposed regulation. The commenter stated that defining limited duration for post-retirement appointments and appointments to upgraded positions/classifications should not be included in the same proposed regulation.

Proposed Response:

CalPERS is rejecting the suggested amendment to remove the definition of limited duration for appointments to an upgraded position/classification from the proposed regulation. The proposed regulation is defining the term "limited duration" for purposes of working after retirement appointments and temporary upgrade pay appointments. The definitions and application of each is separate and distinct from one another in the proposed regulation, therefore CalPERS determines it is necessary to include both definitions for each instance in the same proposed regulation.

Alternatives

Comment 22.8c:

One commenter provided an alternative to the definition of limited duration for appointments to upgraded positions/classifications. The alternative provided would change the definition of limited duration from 24 consecutive months to 48 months.

Proposed Response:

CalPERS is rejecting the suggested amendment to change the definition of limited duration from 24 consecutive months to 48 months for appointments to upgraded positions/classifications. There is no business need, nor justification to increase the duration from 24 consecutive months to 48 months.

Other Comments

960 Hour Limit

Comments 1.7, 9.1, 24.2, 25.2:

Four commenters provided comments or requested clarification pertaining to the statutory limit of 960 hours per fiscal year for post-retirement appointments and the impact of the proposed regulation. Two commenters requested to retain the current definition of 960 hours per fiscal year. One commenter wanted clarification on how the proposed regulation impacts the 960-hour limit. And one commenter wanted clarification on the impact on the 960-hour limit when the "appointment start date" is not the first day of the fiscal year.

Proposed Response:

In response to the comments regarding clarification pertaining to the statutory limit of 960 hours per fiscal year for post-retirement appointments, the proposed regulations do not impact the

960-hour limit and do not provide exemptions to the 960-hour limit. The 960-hour limit for post-retirement appointments is separate and apart from the definition of limited duration.

If the post-retirement appointment start date does not coincide with the start of the fiscal year, the tracking of hours per fiscal year is still required and the limit of 960-hours per fiscal year remains.

Department of Human Resources Approval Process

Comments 7.4, 9.6:

One comment expressed concern with the Department of Human Resources' authority to approve post-retirement appointment extensions. The commenter further expressed concern that any semblance of oversight to ensure compliance with the proposed regulation would be eliminated if the Department of Human Resources delegated its approval authority to individual departments. One commenter identified that there is no guidance for when extension and exemption requests must be submitted to the Department of Human Resources for timely approval.

Proposed Response:

In response to the comments pertaining to the Department of Human Resources, the proposed regulation does not authorize the Department of Human Resources to delegate its authority to approve extension and exemption requests to individual departments. As a result, it is the Department of Human Resources responsibility to approve or deny extension requests and exemption requests prior to the individual department submitting the exemption request to CalPERS. It is also the Department of Human Resources responsibility to establish a process and timeframes for extension and exemption request submissions.

Reporting Appointment End Dates to CalPERS

Comment 10.4:

One commenter expressed concern with the requirement to report post-retirement appointment end dates to CalPERS as that would be administratively burdensome. The commenter identified a scenario in which the appointment was expected to conclude in six months, but due to the project being extended, the appointment concluded in nine months. In this scenario, the commenter is requesting clarification on what would be required to extend the appointment end date from six months to nine months from the appointment start date. As a result, the commenter provided a suggested amendment to change the requirement from notifying CalPERS of an appointment end date to notifying CalPERS of an appointment start date, which would then be used to establish the 24 consecutive month period.

Proposed Response:

CalPERS is rejecting the suggested amendment to change the requirement from notifying CalPERS of an appointment end date to appointment start date. Having employers report the appointment end date to CalPERS is necessary to ensure the employer and retired person are aware of the post-retirement appointment end date, reduces the risk of an appointment exceeding the 24 consecutive month period without an extension or the limit of any other duration extensions or exemptions, and increases transparency on when the appointment is expected to conclude. If the appointment end date is six consecutive months from the appointment start date and the employer needs to extend the appointment to nine months, the employer would need to report the new end date to CalPERS. Since the appointment is within the 24 consecutive month period, the retired person can continue working in the post-retirement appointment while the employer updates the end date from six months to nine months.

Classification Exemptions from the Definition of Limited Duration

Comments 10.3, 18.3, 18.4, 27, 28, 29:

Five commenters requested exemptions from the definition of “limited duration” for public safety agencies/departments or post-retirement appointments that perform work related to elections, including but not limited to planning and preparation, candidate services, signature verification, ballot distribution, polling places, ballot counting, and all other activities related to the conduct of elections.

Proposed Response:

CalPERS is rejecting the suggested amendment to exempt public safety agencies/departments or appointments for work related to elections from the proposed regulation. The proposed regulation interprets statute and is defining the term “limited duration,” and cannot exempt classifications as the statute applies to all groups or classifications.

Waiver of the Proposed Regulation During Emergencies

Comments 10.5, 18.5:

Two commenters requested CalPERS include a process for employers to request a waiver to some or all of the requirements in the proposed regulation pertaining to post-retirement appointments during a declared local or state disaster emergency, public health crisis, or other emergency.

Proposed Response:

CalPERS is rejecting the suggested amendment to include a process for employers to request a waiver to some or all of the requirements in the proposed regulation pertaining to post-retirement appointments during a declared local or state disaster emergency, public health crisis, or other emergency. The term “limited duration” is not used in the context of emergency post-retirement appointments. In addition, CalPERS does not have the authority to suspend statutory provisions. If the governor suspends the working after retirement statute during a declared local or state emergency, then the proposed regulation will also be suspended.

General Language Changes

Comments 3.A, 9.17, 9.18, 9.19:

Two commenters provided the following suggested amendments to the proposed regulation:

- Remove paragraph (9) of subdivision (a) stating that a retired person cannot continue to serve in the post-retirement appointment until the appointment is extended if the proposed amendments allowing a retired person to continue to serve while an extension or exemption request is pending is accepted
- Remove paragraph (10) of subdivision (a) stating violations of the proposed regulation would be subject to Government Code sections 21202, 21220, and 7522.56
- Cite 2 CCR section 571(a)(3) as an internal cross reference for a clearer cross-citation reference
- Remove “[f]or purposes of this subdivision” from paragraph (1) of subdivision (b) as it is unnecessary
- Renumber paragraphs accordingly to align with any suggested amendments accepted

Proposed Response:

In response to the suggested amendments:

- CalPERS rejects removing the restriction that the retired person cannot continue

to serve in the post-retirement appointment until the appointment extension or exemption is approved. CalPERS is rejecting the suggested amendment that a retired person may continue to serve while an extension or exemption request is pending, therefore retaining the restriction stating that the retired person cannot continue to serve until the post-retirement appointment extension or exemption is approved is necessary to reduce the risk of violations.

- CalPERS rejects removing the reference to the consequences for violating this proposed regulation. Including the reference to the working after retirement violation sections ensures the employer and retired person are aware of the consequences of violations to the proposed regulation.
- CalPERS rejects citing 2 CCR section 571(a)(3) as an internal cross reference for a clearer cross-citation reference in subdivision (b). Referencing paragraph (3) of subdivision (a) of section 571 is consistent with other cross reference citations in the proposed regulation.
- CalPERS rejects removing “[f]or purposes of this subdivision” from paragraph (1) of subdivision (b). This language is necessary for clarity.
- CalPERS accepts renumbering paragraphs accordingly to align with any suggested amendments accepted.

General Support

Comments 30, 31, 32:

Three commenters expressed general support for the proposed regulation. Statements of support include the proposed regulation:

- Meets the test of limiting the ability of an employer to use retired persons in a manner that prevents rank and file full-time employees from filling open positions
- Provides the needed clarity and uniformity for CalPERS members, employers, and CalPERS
- Provides the definition and flexibility small rural special districts need to employ retired persons when needed

Proposed Response:

A response is not required for general statements of support.

General Opposition

Comments 20.1, 21.1, 24.1, 24.4, 25.1, 25.4, 33, 34, 35:

Seven commenters expressed general opposition to the proposed regulation. Statements of opposition include the proposed regulation:

- Is too restrictive and will hinder the employer’s ability to attract and retain talent, as well as train the next generation of public service workers to serve its communities
- Is a one-size fits all approach without considering the varying needs and circumstances of the employers
- Does not benefit the employers in any way, will increase costs to taxpayers by forcing employers to hire expensive consultants, will not enhance the employer’s workforce development, and limits an employer’s ability to use a retiree’s expertise beyond four years
- Will hinder and diminish an already struggling workforce

Proposed Response:

A response is not required for general statements of opposition.

General Flexibility Need

Comments 20.3, 21.2, 21.3, 36, 37, 38:

Five commenters expressed general needs for flexibility to be included in the proposed regulation. Flexibility needs include:

- The ability to hire and retain retired persons with specialized licenses to fill positions until all permanent positions requiring those specialized licenses and skills are filled
- Greater flexibility in appointment and timeframe for part-time retiree work
- Ability to retain individuals with specialized skills for longer than a few years in a limited-term capacity or during staff transitions
- Flexibility at the local level to determine when to hire a limited-term position
- Flexibility to reach out to experienced retirees for seasonal or emergency help when needed
- Flexibility for employers to hire retirees while providing revenue into the pension system by requiring employers to pay employer contributions based on the hours worked by retired persons and retired persons to pay contributions for their share

Proposed Response:

In response to the comments requesting flexibility, CalPERS believes this proposed regulation addresses all of the pertinent requests for flexibility identified in these comments through the extension and exemption processes. The comment requesting flexibility for employers to pay contributions for post-retirement appointments would require a statutory amendment and is not pertinent to the proposed definition of limited duration.

General Comment

Comment 39:

One commenter suggested that CalPERS consider the impacts to a retired person when a covered member terminates its CalPERS contract.

Proposed Response:

The proposed regulations would continue to apply to a retired person appointed into a post-retirement appointment working for an employer if he or she is continuing to receive a pension benefit payment from CalPERS for his or her CalPERS-covered employment.

Request for a Subcommittee to Explore Proposed Amendments

Summary of Comments 13.5, 20.4:

Two commenters requested CalPERS engage with stakeholder employers to establish time limits that balance employer needs and preserves the integrity and fiscal sustainability of CalPERS.

Proposed Response:

CalPERS has engaged with various stakeholders, including employers, during the development of the proposed regulation. CalPERS drafted this proposed regulation to define limited duration to allow retired persons enriched with the long-tenured skills and experience they have earned over their active career to provide services and allow employers the flexibility of managing their budgets and workload by utilizing those resources best suited to fit the role. CalPERS believes this revised proposed regulation reflects the feedback it received, balancing the comments received from all parties.