STATE OF CALIFORNIA
BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

RESOLUTION

Subject: **Procedure and Guidelines for Determining Future Public Agency Contract Exclusions** No. MSD-97-01

WHEREAS, 1. The purpose of the Public Employees' Retirement Law, Government Code section 20000 et seq., as stated in section 20001, is to provide a retirement system for public service employees.

2. For purposes of the Public Employees' Retirement Law, the term "employee" is defined in Government Code section 20028(b) to include any person in the employ of any contracting agency.

3. The California Constitution, article XVI, section 17 provides that the CalPERS Board has plenary authority and fiduciary responsibility for administration of the CalPERS system.

4. The California Constitution, article XVI, section 17, and Government Code section 20151 provide that the CalPERS Board must exercise its authority and duties subject to its fiduciary obligations to its participants and beneficiaries, and that the Board's duty to its participants and beneficiaries takes precedence over any other duty.

5. Government Code section 20120 provides that management and control of the CalPERS system is vested in the CalPERS Board.

6. Government Code section 20121 provides that the CalPERS Board may make such rules as it deems proper.

7. Government Code section 20460 provides that public agencies may contract with the CalPERS Board to participate in CalPERS and make all or part of their employees members of the system.

8. Under the statutory scheme set forth in the Public Employees' Retirement Law, specifically Government Code sections 20300 et seq. and 20502, all employees of a contracting agency are mandated into CalPERS membership unless they are excluded either by statute or by a contractual provision.

9. Government Code section 20502 provides that contractual exclusions of public agency employees shall be based on groups of employees such as departments or duties, and not on individual employees, and further that the CalPERS Board may disapprove the exclusion of any group, if in its opinion the exclusion adversely affects the interest of the system.

10. Government Code section 20305 sets forth the specific situations in which employees serving on less than a full-time basis are excluded from CalPERS, and further provides that except as provided in section 20502, no contract or contract amendment entered into after January 1, 1981, shall contain any provision excluding persons on an irregular employment basis.

11. Government Code section 20460 et seq. provides for a specific process for the execution of and amendments to contracts between CalPERS and public agencies.

12. Government Code section 20460 et seq. anticipates generally the involvement of employees and recognized employee representatives in situations relating to the adoption and amendment of public agency contracts with CalPERS.

THEREFORE, BE IT RESOLVED THAT,

A. In determining whether to approve future public agency contract exclusions pursuant to Government Code section 20502, either in a new contract or through amendment to an existing contract, the CalPERS Board shall follow the Procedures and Guidelines set forth in Attachment A to this Resolution.

B. The CalPERS Board delegates to the Chief Executive Officer the authority to implement this Resolution.

C. This Resolution shall be effective immediately.

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I hereby certify that on the 16th day of April, 1997, the Board of Administration of the Public Employees' Retirement System made and adopted the foregoing Resolution.

/S/

WILLIAM DALE CRIST, PRESIDENT
BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

I understand and accept this delegation.

/S/

4/22/97 .
Date

JAMES E. BURTON
CHIEF EXECUTIVE OFFICER
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

ATTACHMENT A

PROCEDURE AND GUIDELINES FOR DETERMINING FUTURE CONTRACT EXCLUSIONS

APPLICABILITY

These procedures and guidelines apply to requests by public agencies (as defined in Government Code section 20025) that are either: seeking to contract with CalPERS for coverage for their employees and wish to exclude part of their employees from membership; or, are seeking to amend their existing contract for CalPERS coverage to exclude certain future employees.

PROCEDURE

The public agency shall submit to the CalPERS Member Services Division a written request specifying the group of employees it wishes to exclude. The request must include:

- A detailed explanation of the group of employees the agency wishes to exclude, including a description of the type of employees who normally would fall within the group and an explanation, with supporting documentation (including job descriptions and class specifications), of why the employees are considered non-career employees. (See Guidelines.)

- A statement that the public agency has, in compliance with California law, notified the pertinent recognized employee organizations of its request to exclude certain groups of employees, or in the case where there is no pertinent recognized employee organization, has posted (in a conspicuous location frequented by its employees) a notice of its intent to exclude certain groups of employees.

CalPERS will review the public agency's request based on the guidelines set forth below. When appropriate, CalPERS will request additional information from the public agency. The employee organizations may also submit information. After receiving all necessary information and reviewing the request in light of the guidelines, CalPERS will, as quickly as is administratively possible, issue a written determination letter to the public agency and the responding employee organizations that approves or disapproves the contract exclusion.

In the case of either a new public agency contract or an amendment to an existing contract, the public agency must complete the statutory process set forth in Government Code section 20460 et seq. to implement the contract or amendment. An employer or employee organization representing the affected employees who is dissatisfied with the Member Services Division determination, may seek further review by, within 30 days of the date of the determination letter, submitting a written request to the CalPERS Chief Executive Officer. Upon receipt of such a request, the Chief Executive Officer will convene a three-person panel, consisting of the

Chief Actuary, the Assistant Executive Officer - Member and Benefit Services, and the General Counsel. This panel will consider the original request, the Member Services Division's determination, any additional written arguments submitted, and oral presentations if requested by the parties or desired by the panel. An employer who is dissatisfied with the review panel's determination may seek further review by, within 30 days of the review panel's determination letter, submitting a written request to the Chief Executive Officer. The Chief Executive Officer will place the matter on the agenda for the next administratively-feasible meeting of the Benefits and Program Administration Committee. The Benefits and Program Administration Committee will review the issue based upon written materials submitted and will make a recommendation to the Board. The Board's decision will be final.

GUIDELINES FOR REVIEWING PROPOSED CONTRACT EXCLUSIONS

In reviewing public agency requests for contract exclusions, CalPERS will apply the guidelines set forth below on a case-by-case basis. Based on its review of the request in light of these guidelines, CalPERS will determine whether to approve the contract exclusion.

No single factor is necessarily dispositive. **In making its determination, CalPERS shall consider all the factors and circumstances as a whole.**

1. **The exclusion must be based on a "group" of employees.**
   (Note, the definition of "group or class of employment" located in Government Code section 20023(e) is not controlling for this purpose.)

   - The group of employees to be excluded must be clearly defined. Specifically, CalPERS must be able to ascertain which employees are in the group. Further, the group must be clearly defined so that it is not possible for the employer arbitrarily to move employees in and out of the group.

   - The employees in the group must share some common characteristic. These characteristics may include, for example, department, duties, or job classification.

   - Consistent with Government Code section 20305, the defining characteristic of a group may not be irregular employment status. For example, the exclusion may not be for "temporary" or "seasonal" employees.

   - As provided in Government Code section 20502, exclusions must be based on groups of employees such as departments or duties, and not on individual employees.

2. The exclusion must not adversely affect the interests of the system.

CalPERS will review the proposed exclusion to determine whether it adversely affects the interests of the system. This review will include an exploration of the possible impacts of the exclusion on the system's various administrative and operational interests, as well as an analysis of whether the exclusion is consistent with CalPERS' purpose to provide a retirement system for employees who become superannuated or otherwise incapacitated.

In considering the impact of the proposed exclusion on CalPERS' administrative and operational interests, CalPERS will consider factors including the following:

- Whether any unreasonable administrative burden or cost would be required for CalPERS to implement the exclusion.
- Whether the exclusion is sufficiently defined so as to enable CalPERS, through its normal audit process, to monitor the agency for contract compliance.
- Whether the exclusion might lead to disqualification of the plan for failure to satisfy Internal Revenue Code qualification requirements.
- Whether the exclusion would violate any applicable federal or state provisions.
- Whether, from an administrative or operational perspective, the proposed exclusion has other adverse effects on the system.

CalPERS will also consider the proposed exclusion in light of the purpose of the Public Employees' Retirement Law, as set forth in Government Code section 20001, specifically to provide a retirement system for employees who become superannuated or otherwise incapacitated. As a general guideline, the exclusion of groups of employees who are career employees, or could reasonably be anticipated to become career employees, is not consistent with the purpose of the Public Employees' Retirement Law. To determine whether the group under consideration for exclusion consists of non-career employees, CalPERS will consider factors including the following.

- The types of employees who generally fall within the group. For example, does the group consist of employees in a position generally held by retirees or students? (For example, Crossing Guard positions are often held by retirees; bookstore positions are often held by students.)
- Whether the group consists of employees in a training position, at the end of which it is anticipated that they will seek employment elsewhere. (These types of positions are often established in connection with a program affiliated with a facility of higher education.)

- Whether the group consists of employees in an intern position which is part of an approved study plan or a graduation requirement (e.g., a medical internship).

- Whether the group consists of employees in a department or classification for which there is no established career path or promotional ladder leading to classifications where employees are CalPERS members.

- The manner in which funding is provided for the positions that fall within the group. For example, is funding established on a short-term basis or are the affected positions permanently budgeted?

- For employers that operate under a civil service system, whether the group consists of employees who are in non-civil service positions.