

FINAL STATEMENT OF REASONS

Proposed Amendment to Add Article 1.5 to Subchapter 2 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations (CCR) and to adopt section 592.1 under Article 1.5.

UPDATE OF INITIAL STATEMENT OF REASONS

Changes were made to the text of the proposed regulation to adjust the methodology to calculate the annual fee to fund the State Social Security Administrator (SSSA) program. The Initial Statement of Reasons has been updated with an Addendum, which explains the purpose of the amendments to the proposed regulation text that were made available after the 45-day comment period conducted from November 1, 2019 through December 17, 2019, and during the 15-day comment period conducted from February 27, 2020 through March 13, 2020. The Addendum to the Initial Statement of Reasons was posted on the California Public Employees' Retirement System (CalPERS) website and attached to the 15-day Notice of Modifications to Text of Proposed Regulation, which was mailed to CalPERS' employers and to interested parties.

The changes made to the proposed regulation text are as follows:

- Added language in Section 592.1(a) to specify that the fees collected will be deposited into the Old Age and Survivors' Insurance (OASI) Fund.
- Removed language in Sections 592.1(d)-592.1(d)(2) regarding the methodology for calculating the fee adjustment by using fluctuations in the *Consumer Price Index for All Urban Consumers: U.S. City Average* (CPI-U).
- Added language in Sections 592.1(d)-592.1(d)(4) to establish a revised method to calculate the fee adjustment that includes annually reviewing the OASI Fund. If the fund balance is less than 50 percent or greater than 100 percent of one year's budgeted SSSA program expenditures, the fees established in Section 592.1(c)(3) will be adjusted to target a fund balance of 50 percent of budgeted SSSA program expenditures.

A Second Addendum to the Initial Statement of Reasons explains the basis for proposing the \$650 fee set forth in CCR sections 592.1(c)(1) and 592.1(c)(2) of the proposed regulation for public agencies to establish initial or modify existing coverage under the state's Section 218 Agreement. The proposed \$650 fee was included in the proposed regulation made available during the 45-day comment period conducted from November 1, 2019 through December 17, 2019, and the 15-day comment period conducted from February 27, 2020 through March 13, 2020. The basis for proposing the \$650 fee was made available during the 15-day comment period conducted from November 10, 2020 through November 25, 2020. The Second Addendum to the Initial Statement of Reasons was posted on the CalPERS website and attached to the 15-day Notice of Addition of

Information to Rulemaking File, which was mailed to CalPERS' employers and interested parties.

SUMMARY OF PROPOSED REGULATION

Per Government Code (GC) Sections 22200 and 22004, the CalPERS Board of Administration (Board) serves as the SSSA. The Social Security Administration does not provide funding for the SSSA program, however GC Sections 22551, 22552, and 22560 authorize CalPERS to collect fees to cover the costs associated with administering the program. The proposed regulation establishes and clearly details the fee structure that CalPERS will charge public agencies with employees covered under the state's Section 218 Agreement to administer the SSSA program. The proposed regulation also provides for a methodology to adjust the fees, as necessary, to meet the requirements of GC section 22600.

SUMMARY OF REGULATORY EVENTS

A notice of Proposed Regulatory Action was published in the California Regulatory Notice Register 2019, No. 44-Z, File No. Z-2019-1022-06, on November 1, 2019. The 45-day comment period commenced on November 1, 2019 and closed on December 17, 2019.

CalPERS received one comment submission within the 45-day comment period addressed separately below: (1) a one-page email from Catherine Hawes from the Marin County Office of Education.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL PUBLIC NOTICE PERIOD OF NOVEMBER 1, 2019 THROUGH DECEMBER 17, 2019.

COMMENT NO. 1: Ms. Hawes expressed concern that the proposed regulatory action would include non-classified (certificated) staff that are not subject to the employing agency's Section 218 Agreement in the count that determines the annual fee. She contends that non-classified staff should not be included in the count that determines the annual fee as they are not covered under the Section 218 Agreement and do not receive any benefits from Social Security.

Response: The State Social Security Administrator serves as a bridge between public employers and the Social Security Administration to administer and maintain the State of California's Section 218 Agreement that governs voluntary Social Security coverage by public employers. This includes assisting all public employers regarding their covered and non-covered employees. Therefore, all employees, including those who are and those who are not covered under the Section 218 Agreement, will be included in the employee count that determines the annual fee.

After additional analysis of statutory requirements and future program costs, CalPERS opted to revise the proposed regulation text by adjusting the methodology to calculate the fee adjustment to fund the SSSA program.

A 15-day comment period commenced on February 27, 2020 and closed on March 13, 2020. CalPERS did not receive any public comments during the 15-day public notice period.

CalPERS determined that additional information explaining the basis for the \$650 fee set forth in CCR section 592.1(c)(1) and 592.1(c)(2) of the proposed regulation needed to be added to the rulemaking file.

A 15-day comment period commenced on November 10, 2020 and closed on November 25, 2020. CalPERS did not receive any public comments during the 15-day public notice period.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED AT PUBLIC HEARING

While CalPERS allowed interested parties to request a public hearing from November 1, 2019 through December 17, 2019, no such requests were made and therefore a hearing was not scheduled.

REASONS FOR REJECTING ANY PROPOSED ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS

The proposed regulation does not impact small businesses because it will only directly impact public agencies that have requested or that will request that their employees be covered under the State's Section 218 Agreement. The proposed regulation would have no statewide adverse economic impact directly affecting these businesses including the ability of these small businesses in California to compete with businesses in other states.

ALTERNATIVES DETERMINATION

CalPERS has determined that no alternative it considered or that was otherwise identified and brought to its attention would generate the funds necessary to administer the SSSA program. CalPERS decided against the alternative to not include non-classified staff in the count that determines the annual fee because administering the program requires CalPERS staff to assist all public employers regarding their covered and non-covered employees.

The Board approved the proposed regulation at its September 18, 2019 Board Meeting, and subsequently approved changes to the proposed regulation at its February 18, 2020 Board Meeting. The adoption of this regulation is necessary to establish a fee per GC Sections 22551, 22552, and 22560 by establishing a fee structure necessary for CalPERS to continue administering the SSSA program

and to adjust the fees, as necessary, to meet the requirements of GC section 22600.

LOCAL MANDATE DETERMINATION

The proposed regulation does not impose any mandate on local agencies or school districts.