

FINDING OF EMERGENCY ADDENDUM

Additional Justification for Pursuing Emergency Regulations

This addendum clarifies why sufficient time did not exist to pursue these proposed regulatory changes through nonemergency regulations.

The purpose of this emergency regulatory action is to mitigate the risks of transmission and exposure of the COVID-19 virus during the CalPERS Board election process. The CalPERS Board election process is governed by the Public Employees Retirement Law, related administrative regulations, and CalPERS administrative processes. Government Code section 20095 provides that elected Board member terms expire on January 15. In this case, the expiring Board member terms expire on January 15, 2022. To fill those expiring seats on the Board an election must take place during the year 2021. To effectuate the election, CalPERS Board election regulations require the CalPERS Board to adopt a Notice of Election (NOE) that includes an election schedule with “adequate time and flexibility to accommodate the nomination and candidate statement arbitration process, various administrative procedures and voting periods, including the opportunity for a runoff election, if necessary, and to seat the newly elected Board members by statutory deadlines.” (California Code of Regulations, title 2, section 554.3.)

In accordance with those laws, the CalPERS Board election process begins with the Board’s adoption of the NOE, which takes place in February of the election year in order to provide adequate time and flexibility to conduct the election and seat the elected Board member by the statutory deadlines. In this case, the NOE will be adopted in February 2021.

At its September 2020 meeting, the CalPERS Board expressed concern that the COVID-19 virus could be an emergency impacting the 2021 election processes and thus requiring regulatory changes. At that time, it directed CalPERS staff to conduct research and provide options for addressing the concerns. At its November 2020 meeting, when CalPERS staff presented its research and options, the Board directed staff to pursue emergency regulatory changes to mitigate the risk that CalPERS Board election nomination petition process would increase the surge of the COVID-19 virus. At that time, the nonemergency regulatory process would not have concluded in time to ensure that the 2021 Board election could be initiated in February 2021 and conducted with adequate time and flexibility to seat the newly elected Board members by the statutory deadline (i.e. January 15, 2022).

CalPERS staff swiftly prepared proposed regulatory changes and a finding of emergency for adoption by the CalPERS Board at a specially scheduled public meeting in December 2020. On December 31, 2020, CalPERS submitted this emergency rulemaking package to the OAL for review so that the proposed regulations would be in effect prior to the initiation of the 2021 Member-at-Large election process in February 2021, when the NOE will be presented to the Board for approval in accordance with the statutory and regulatory timelines discussed above.

Due to the volatility and uncertain nature of this novel pandemic and need to research potential solutions, including regulatory changes, CalPERS could not have determined that this emergency would carry significant risk into the 2021 CalPERS Board election with any greater expediency. As soon as it became apparent, in November 2020, that without regulatory changes COVID-19 would continue to be a significant emergency impacting CalPERS’ ability to safely conduct the 2021 election, CalPERS acted with all due haste to make necessary regulatory changes to mitigate the

emergency. At that time, sufficient time did not exist to complete the nonemergency regulatory process, so this emergency rulemaking action was pursued.

CalPERS respectfully submits this addendum to its emergency rulemaking action.