

**California Code of Regulations  
Title 2. Administration  
Division 1. Administrative Personnel  
Chapter 2. Board of Administration of the Public Employees' Retirement  
System**

**NOTICE OF PROPOSED REGULATORY ACTION**

NOTICE IS HEREBY GIVEN that the Board of Administration (Board) of the California Public Employees' Retirement System (CalPERS) proposes to take the regulatory action described below in the Informative Digest after considering public comments, objections, or recommendations regarding the proposed regulatory action.

**I. PROPOSED REGULATORY ACTION**

In this filing, the Board proposes Section 571.1 defining Pensionable Compensation under Article 6, "2013 Public Employees' Pension Reform Implementation," Chapter 2 of Division 1 of Title 2 of the California Code of Regulations (CCR), Section 571.1. By proposing this regulation in this Article, CalPERS seeks to implement, administer, interpret, and make certain the provisions contained within Assembly Bill (AB) 340 (Stats. 2012, Ch. 296) known as the California Public Employees' Pension Reform Act (PEPRA) of 2013, Senate Bill (SB) 13 (Stats. 2013, Ch. 528) and the related pension reform changes to the Public Employees' Retirement Law (PERL).

**II. WRITTEN COMMENT PERIOD**

Any interested person may submit written comments relevant to the proposed regulatory action. The written comment period has been established commencing on May 30, 2014 and closing on July 14, 2014 at 5:00 pm. The Regulation Coordinator must receive all written comments by the close of the comment period. Comments may be submitted via fax at (916) 795-4607; E-mail at [PEPRA\\_Regulations@CalPERS.CA.GOV](mailto:PEPRA_Regulations@CalPERS.CA.GOV) or mailed to the following address:

Anthony Martin, Regulation Coordinator  
California Public Employees' Retirement System  
P.O. Box 942702  
Sacramento, CA 94229-2702  
Phone: (916) 795-3038

**III. PUBLIC HEARING**

A public hearing will not be scheduled unless an interested person, or his or her duly authorized representative, submits a written request for a public hearing to CalPERS no later than 15 days prior to the close of the written comment period.

#### **IV. ACCESS TO HEARING ROOM**

The hearing room will be accessible to persons with mobility impairments, and it can be made accessible to persons with hearing or visual impairments upon advance request to the CalPERS Regulation Coordinator.

#### **V. AUTHORITY AND REFERENCE**

California Government Code section 7522.02 provides that the PEPPRA provisions (Government Code sections 7522 through 7522.74.) shall apply to all specified public retirement systems, including CalPERS. Specifically, Government Code section 7522.02(a)(1) provides in part that, “Notwithstanding any other law, except as provided in this article, on and after January 1, 2013, this article shall apply to all state and local public retirement systems and to their participating employers, including the Public Employees’ Retirement System . . . .” Section 7522.02(h) authorizes the Board to adopt regulations to comply with the requirements of PEPPRA.

Additional pension reform changes undertaken by AB 340 to the PERL (Government Code sections 20281.5, 20516, 20516.5, 20677.96, 20683.2, 20791, 21076, 21076.5, and 21400) must be administered by the Board pursuant to existing provisions in the PERL (Government Code sections 20000 et seq.). The Board’s authority to add the proposed regulation Section 571.1 to the CCR derives from the Board’s plenary authority and fiduciary responsibility over the assets of the public retirement system and exclusive responsibility to administer the System in a manner that will assure prompt delivery of benefits and related services to the members and their beneficiaries, pursuant to the California Constitution (Section 17 of Article XVI) and in accordance with the PERL (California Government Code Title 2, Division 5, Part 3, sections 20120-20124). The proposed regulation implements, interprets, and makes specific several provisions of the PEPPRA.

#### **VI. INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW**

As a result of the pension reform legislation that became effective January 1, 2013, CalPERS proposes the addition of this regulation to aid in the interpretation and administration of the Public Employees’ Pension Reform Act (PEPPRA) of 2013.

This regulation, when finalized, is intended to clarify CalPERS interpretation of what is considered Pensionable Compensation and what should be reported to CalPERS for a “new member,” gaining common understanding amongst all participating employers. CalPERS has received many questions related to the pension reform legislation which highlighted the need to pursue regulations for certain terms and phrases and to establish formal procedures for certain

processes related to pension reform. CalPERS has demonstrated a long-term commitment to provide protection against the unsound treatment of compensation for the purpose of enhancing retirement allowances. CalPERS sponsored legislation, (SB 53, Russell) in 1993, which enacted many of the same principles found in AB 340 & SB 13. Among other things, SB 53:

- Provided a definition of compensation
- Provided for full funding of member benefits
- Reduced the ability to manipulate reportable compensation
- Prohibited the use of cash conversions, final settlement pay and termination pay for purposes of calculating members' retirement benefits
- Provided the CalPERS Board of Administration (Board) with clear oversight of benefits

SB 53 also provided the Board with the ability to promulgate regulations to delineate more specifically exclusively what constitutes special compensation. As a result, CCR 571 was developed to clearly and succinctly define reportable compensation for public agencies and schools. Special compensation for state members was governed by section 20636.

Until January 1, 2013, employers continued to submit reportable compensation on behalf of all their "classic" employees that are CalPERS members. Classic members remain unchanged under the original statutes and regulations. On September 12, 2012, when Governor Brown signed into law AB 340, reporting to CalPERS for "new members" changed. PEPPA now defines "Pensionable Compensation" for new members (generally those brought into membership after January 1, 2013) and limits payments and compensation that may be used to calculate a defined benefit for "new members." PEPPA also excludes specified payments from being Pensionable Compensation.

In addition, on October 4, 2013, Governor Brown signed into law Senate Bill 13, PEPPA clean-up legislation. While it included several items of technical corrections, it did not make specific changes to the definition of Pensionable Compensation. However, it did include a provision that would allow a pay item to be excluded from Pensionable Compensation if agreed upon through collective bargaining with represented state employees or imposed on non-represented state employees.

### Consistency Evaluation

CalPERS conducted a review for any related state regulation and we find that there are no related regulations dealing with "Pensionable Compensation." Therefore, this proposed regulation is not inconsistent or incompatible with existing law or existing state regulations. This proposed regulation would align with the current regulation that lists allowable compensation items for classic members of Public Agencies and Schools.

### Anticipated Benefits

CalPERS believes that the adoption of this regulation will provide clarity and uniformity for CalPERS, its members, covered employers, and other stakeholders to ensure consistent application of the pension reform provisions. This regulation will ensure that members have the proper amount of compensation reported on their behalf for use in their retirement calculation. Additionally, this regulation clarifies certain processes that CalPERS will follow to implement the pension reform laws, which should make administration of these new statutes more efficient and consistent with existing laws.

CalPERS may achieve cost savings as a result of decreased litigation and administrative appeals related to the definition of Pensionable Compensation as employers and members become more aware of what compensation is or isn't reportable to CalPERS. Any savings will vary by employer and depend on how many pay items are eventually excluded in the final regulation package and whether the excluded pay items are items the employer currently pays.

Finally, the regulatory proposal furthers the goal of CalPERS by ensuring that members achieve financial security upon retirement by excluding unlawful compensation.

## **VII. EFFECT ON SMALL BUSINESS**

The proposed regulatory action does not affect small business because it applies only to CalPERS-covered employers and CalPERS members.

## **VIII. DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION**

- A. MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS: The proposed regulatory action does not impose mandates on local agencies and school districts.
- B. COSTS OR SAVINGS TO ANY STATE AGENCY: State agencies may incur minimal costs to implement internal processes in support of this proposed regulations. However, at this point, CalPERS is unable to determine 1) the extent of the impacts, if any, that may specifically arise as a result of the proposed regulatory action; 2) whether the workload impacts might result in costs or savings to any State agency; or 3) whether the State agencies may be able to absorb these impacts, if any, with existing resources.

- C. COSTS TO ANY LOCAL AGENCY OR SCHOOL DISTRICT: Though the proposed regulatory action may result in minimal costs associated with complying with the proposed regulation to local agencies or school districts that participate in CalPERS, the proposed regulatory action does not result in costs or savings for any local agency program or school district that would qualify for reimbursement under Government Code section 17500, et seq.
- D. NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES: The proposed regulatory action does not impose nondiscretionary costs or savings on local agencies.
- E. COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE: The proposed regulatory action will not result in costs or savings in federal funding to the State of California.
- F. ADVERSE ECONOMIC IMPACT: The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses including the ability of businesses in California to compete with businesses in other states. CalPERS relied upon the plain text of the statutes and the proposed regulation to make this determination.
- G. COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES: CalPERS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action because the pension reform laws and the proposed regulatory action only apply to CalPERS, CalPERS-covered employers and CalPERS members.
- H. RESULTS OF THE ECONOMIC IMPACT ANALYSIS: The primary benefits of the proposed regulatory action are to: (1) provide clarity and uniformity of certain terms and processes for CalPERS, its members, covered employers, and other stakeholders to ensure consistent application of the pension reform provisions; (2) ensure that members have the proper amount of compensation reported on their behalf for use in their retirement calculation. The proposed regulatory action will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; (3) affect the expansion of businesses currently doing business within California; or (4) affect worker safety or the state's environment.
- I. EFFECT ON HOUSING COST: The proposed regulatory action has no effect on housing costs.

## **IX. CONSIDERATION OF ALTERNATIVES**

The Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the regulatory action is proposed, or would be as effective as, and less burdensome to, affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the above-mentioned public hearing or during the written comment period.

## **X. CONTACT PERSON**

Please direct inquiries concerning the substance of the proposed regulatory action to:

Renee Ostrander, Customer Account Services Division  
California Public Employees' Retirement System  
P.O. Box 942715  
Sacramento, CA 94229-2715  
Telephone: (916) 795-7373  
Fax: (916) 795-2330  
E-Mail: [renee\\_ostrander@calpers.ca.gov](mailto:renee_ostrander@calpers.ca.gov)

The backup contact person for these inquiries is:

Tomi Jimenez, Customer Account Services Division  
California Public Employees' Retirement System  
P.O. Box 942715  
Sacramento, CA 94229-2715  
Telephone: (916) 795-0340  
Fax: (916) 795-2330  
E-Mail: [tomi\\_jimenez@calpers.ca.gov](mailto:tomi_jimenez@calpers.ca.gov)

Please direct requests for copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based, to Christina Nutley, Regulation Coordinator, at the address shown above in Section II.

## **XI. AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The entire rulemaking file is available for public inspection through the Regulation Coordinator at the address shown in Section II. To date, the file consists of this Notice, the proposed text of the regulation, the Initial Statement of Reasons (ISOR), and the Economic Impact Assessment. A copy of the proposed text, the

ISOR, and the Economic Impact Assessment is available at no charge upon telephone or written request to the Regulation Coordinator. The Final Statement of Reasons can be obtained, once it has been prepared, by written request to Christina Nutley, Regulation Coordinator, at the address shown above in Section II.

For immediate access, the regulatory material regarding this action can be accessed at CalPERS website at [www.calpers.ca.gov](http://www.calpers.ca.gov).

The Board may, on its own motion or at the recommendation of any interested person, modify the proposed text of the regulations after the public comment period closes.

If the Board modifies its regulatory action, it will prepare a comparison of the original proposed text and the modifications for an additional public comment period of not less than 15 days prior to the date on which the Board adopts, amends, or repeals the resulting regulation. A copy of the comparison text will be mailed to all persons who submitted written comments or asked to be kept informed as to the outcome of this regulatory action.