Pension & Health Benefits Committee

Agenda Item 5b

November 17, 2026

Item Name: Proposed Regulation Normal Retirement Age and Bona Fide Separation

Program: Employer Account Management Division

Item Type: Action

Recommendation

Approve staff's recommendation to amend the below sections of Title 2 of the California Code of Regulations, followed by submission of the final rulemaking package to the Office of Administrative Law upon conclusion of the 45-day public comment period if no public comments are received:

- Amend section 586.1 to clarify how to determine normal retirement age for post-retirement appointments when a CalPERS member has service credit under multiple benefit formulas.
- Amend section 586.2 to align bona fide separation in service requirements with federal law.

Executive Summary

In alignment with the Internal Revenue Code (IRC), Government Code (Gov. Code) section 21220.5 requires a retired person who has not attained normal retirement age to have a bona fide separation in service before entering post-retirement employment for a CalPERS-covered employer. Section 586.1 establishes the criteria for determining when a member has attained normal retirement age for post-retirement appointments. Section 586.2 establishes the criteria for determining when there has been a bona fide separation in service.

Section 586.1 does not sufficiently address how to determine a member's normal retirement age when their service is credited under multiple benefit formulas and the formula with the highest specified normal retirement age accounts for only a minimal portion of their total service. By proposing the regulatory amendment, CalPERS seeks to clarify that the higher specified age does not apply if 1) the member's service under that formula represents less than 20% of the member's total service and 2) the formula(s) with a common lower specified age represents at least 80% of the member's total service. The proposed amendments also make a technical correction to a Gov. Code cross-reference in section 586.1(a)(2)(A).

Section 586.2 requires members who have not attained the normal retirement age to have a bona fide separation in service before returning to work for a CalPERS-covered employer after retirement. Currently, the regulation does not incorporate a federal law that allows certain distributions to members who have not reached their normal retirement age if they are age 59½ (or such earlier age as permitted under IRC section 401(a)(36)(A), as amended). By proposing the regulatory amendment, CalPERS seeks to align the regulation with current federal law.

Strategic Plan

This agenda item supports the Organizational Excellence goal of the 2022-27 CalPERS Strategic Plan through the objective of cultivating compliance and risk functions throughout the enterprise.

Background

The CalPERS defined benefit plan is a tax-qualified plan under IRC section 401(a) and must comply with IRC section 401(a) requirements to maintain its tax-qualified status. Under Internal Revenue Service (IRS) rules, a pension plan may not permit distributions of employer-provided benefits to a participant who has not attained either normal retirement age (as defined in the plan) or age 59½ unless the participant has a "bona fide" separation in service. Such a distribution is known as an in-service distribution. The IRS considers a good faith and complete termination of the employment relationship, without a predetermined agreement to return to work at a later date, to constitute a bona fide separation.

In 2003, the Legislature enacted Gov. Code section 21220.5 to comply with these federal in-service distribution rules. It requires retired persons who have not attained normal retirement age to have a bona fide separation in service before entering post-retirement employment for a CalPERS-covered employer. The statute also directs the CalPERS Board of Administration to establish the criteria under which a bona fide separation in service is satisfied.

In 2004, CalPERS adopted Article 7.5, sections 586 through 586.2, to establish those criteria. Section 586.1 defines normal retirement age for post-retirement employment as the later of the age when a member first becomes eligible to retire or the highest specified age in the member's benefit formula. Section 586.2 establishes criteria for a bona fide separation in service.

In 2018, section 586.1 was amended to ensure continued compliance and alignment with state and federal law. The amendment set a maximum normal retirement age of 62, added definitions for benefit formulas enacted after 2004 (including those added by the California Public Employees' Pension Reform Act of 2013), and made technical and clarifying changes.

In 2019, changes in federal law lowered the age (from 62 to 59½) at which in-service distributions are permitted, independent of whether a member has attained normal retirement age. Section 586.2 has not been amended to reflect this change.

Analysis

Normal Retirement Age

It is not uncommon for a member's service to be credited under multiple benefit formulas with different specified normal retirement ages. In some cases, a formula with a higher specified normal retirement age accounts for only a minimal portion of the member's total years of service, while the substantial majority of the member's service is attributable to one or more formulas with a common lower specified normal retirement age. The current regulation does not sufficiently address how normal retirement age should be determined in these cases. This can lead to unintended consequences for CalPERS public safety retirees who have minimal miscellaneous service under formulas with higher normal retirement ages than their public safety formulas.

The proposed amendment clarifies that if the member's service under the formula with the higher specified age represents less than 20% of the member's total service, the lower specified age will apply, provided the formula(s) with a common lower specified age represents at least 80% of the member's total service. This change is consistent with the intent of the existing regulations to comply with federal law.

The proposed amendments also make a technical correction to a Gov. Code cross-reference in section 586.1(a)(2)(A).

Bona Fide Separation in Service

Federal law permits in-service distributions at age 59½, independent of whether a member has attained normal retirement age. Section 586.2 has not been amended to reflect this change and continues to require a bona fide separation in service for any member who has not attained normal retirement age. The proposed amendment would align section 586.2 with current federal law.

Budget and Fiscal Impacts

The proposed regulatory action is technical and clarifying in nature. CalPERS does not anticipate any direct budget or fiscal impacts to the State. Any administrative costs associated with implementing the proposed amendments will be absorbed within the existing budget and resources.

Benefits and Risks

The proposed amendments are intended to provide clearer standards for administration, improve consistency in employer and member understanding, and align existing regulations with applicable federal law.

If the proposed amendments are not approved, there will continue to be ambiguity in the administration of the normal retirement age rules for members with service under multiple formulas with different normal retirement ages. In addition, the bona fide separation rules under state law would continue to be more restrictive than current federal law.

Attachment

Attachment 1 – Text of Proposed Regulation

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Customer Services & Support