

**December 22, 2020**

**Notice of Proposed Regulatory Action**

NOTICE IS HEREBY GIVEN that the Board of Administration (the 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**

Government Code section 11346.1(a)(2) requires that, at least five (5) working days prior to submission of a proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the OAL, the OAL shall allow interested persons five (5) calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

As required by subdivisions (a)(2) and (b)(2) of Government Code Section 11346.1, this notice appends the following: (1) the specific language of the proposed regulations to amend §554.5 of the California Code of Regulations (CCR), Title 2, titled "Nomination of Candidates" by modifying the original signature requirement for nomination petitions to also accept non-original signatures; and 2) the Finding of Emergency, including specific facts demonstrating the need for immediate action, the authority and reference citations, the informative digest and policy statement overview, and required determinations.

CalPERS intends to submit this proposed emergency action for review at least five (5) working days from the date of this notice. If you would like to make comments on the Finding of Emergency or the proposed regulations (also enclosed), they must be received by both CalPERS and the OAL within (5) calendar days of CalPERS' filing at the OAL. Responding to these comments is strictly at CalPERS' discretion.

Comments must be submitted in writing via mail or email to:

CalPERS  
Anthony Martin, Regulation Coordinator  
P.O. Box 942702  
Sacramento, CA 94229-2702  
[regulation\\_coordinator@calpers.ca.gov](mailto:regulation_coordinator@calpers.ca.gov)

The backup contact person is:

CalPERS  
Raji Prasad, Board Election Program Administrator  
P.O. Box 942702  
Sacramento, CA 94229-2702  
[rprasad@calpers.ca.gov](mailto:rprasad@calpers.ca.gov)

A copy of the comments must also be submitted in writing to the OAL at:

Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814  
[staff@oal.ca.gov](mailto:staff@oal.ca.gov)

The submitted action will also appear on the list of “Emergency Regulations Under Review” on the OAL’s website at [https://oal.ca.gov/emergency\\_regulations/emergency\\_regulations\\_under\\_review](https://oal.ca.gov/emergency_regulations/emergency_regulations_under_review).

## **II. AVAILABILITY OF FINDING OF EMERGENCY, INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE**

The entire rulemaking file is available for public inspection by contacting the CalPERS Regulation Coordinator at the address shown in Section I. To date, the file consists of this notice, the Finding of Emergency, Informative Digest/Policy Statement Overview, and the proposed text of the regulations. A copy of the proposed text and the Finding of Emergency is available at no charge by written request to the CalPERS Regulation Coordinator, at the address and phone number listed in Section I.

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

## **III. FINDING OF EMERGENCY**

Government Code (GC) section 11346.1 requires a finding of emergency to include a written statement with the information required by paragraphs (2), (3), (4), (5) and (6) of subdivision (a) of section 11346.5 and a description of the specific facts demonstrating the existence of an emergency as defined by GC section 11342.545 and showing the need for immediate action.

On March 4, 2020, Governor Gavin Newsom declared an emergency in the state of California in response to the outbreak of respiratory illness due to the novel coronavirus known as COVID-19. On March 19, 2020, Governor Newsom issued Executive Order N-33-20, a stay-at-home order to protect Californians and slow the spread of COVID-19. The order mandates that all residents heed current public health directives, fundamentally ordering all but the most essential workers to stay home.

With Executive Order N-33-20, which remains in effect, much of CalPERS’ impacted processes have been modified so that its operational functions continue with as minimal interruption as possible while also reducing the spread of COVID-19.

Part of CalPERS’ operational functions include overseeing its board election processes. The CalPERS Board consists of 13 members; of these, six (6) are elected by their represented membership. Elections are held in a four-year cycle with the fourth year being an off-year when regulatory and program-related changes are implemented to improve the next election cycle. CalPERS is nearing the end of the 2020 off-year.

In 2021, CalPERS will conduct the first election of the next election cycle for the Member-at-Large

election to select two (2) board members. Current board election regulations require, among other things, that candidates obtain and submit no less than 250 valid original signatures on the nomination petition(s) to establish their candidacies. Once the minimum number of original signatures has been obtained, the candidate is required to either deliver the nomination petition in-person or mail it to CalPERS Headquarters in Sacramento. Candidates have in the past engaged in in-person signature gathering activities, meaning the hard copy nomination petitions are routed to and handled by many Californians, potentially increasing COVID-19 exposure and transmission. By contrast, COVID-19 exposure and transmission would be lessened if candidates were also able to utilize non-original signatures to satisfy candidacy requirements by electronically receiving non-original signatures from signatories and electronically submitting nomination petitions with non-original signatures to CalPERS Headquarters as required.

Considering COVID-19's high person-to-person transmission rate and ability of the virus to live on a non-organic surface for five (5) days, hard copy transactions place candidates, signatories, and CalPERS team members at undue risk. Modifying existing regulations to allow nomination petitions with non-original signatures will ensure CalPERS is able to conduct the next election without unnecessarily exposing Californians to COVID-19.

Since the implementation of Executive Order N-33-20, other retirement systems have also modified their election processes specific to signature gathering requirements. Modifications have included extending the nomination petition period and completely suspending the signature requirement to reduce the spread of COVID-19.

During the September and November board meetings, CalPERS board members expressed concern regarding the risks imposed upon those involved during the upcoming election's nomination petition process by original signature gathering activities. Concerns were also expressed regarding candidates being unable to obtain the required number of original signatures while sheltering in place and working remotely, which limits potential candidates' abilities to host large gatherings without risking COVID-19 exposure.

With the number of COVID-19 cases continuing to increase in California, the stay-at-home order still in place, and the risks posed by person-to-person transactions that will occur during the nomination petition process, CalPERS finds the original signature requirement to be an emergency, as defined in GC section 11342.545, and proposes to immediately adopt emergency regulations to avoid serious harm to the health, safety, and general welfare of Californians.

Accordingly, the CalPERS Board finds that the adoption of this proposed emergency regulation is necessary to address an emergency pursuant to GC section 11346.1(b)(1). The Board finds that immediate action must be taken to avoid serious harm to the public peace, health, safety, or general welfare, for the reasons stated above.

#### **IV. AUTHORITY**

The Board has authority to take regulatory action under GC section 20121.

#### **V. REFERENCE**

GC section 20096.

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

GC section 20090 subsection (g) establishes certain qualifications for nomination as a candidate in CalPERS board elections. GC section 20096 further requires the board to develop procedures for CalPERS board election. Consistent with that authority, the board has promulgated regulations to establish procedures for its elections including, but not limited to, California Code of Regulations (CCR), title 2, sections 554.3 and 554.5. Under those existing regulations, an individual must, among other things, submit a nomination petition with no less than 250 original signatures to CalPERS before the deadline listed in the Notice of Election (see 2 CCR section 554.5, subsection (d)). An original signature is a wet signature personally affixed by the individual on the nomination petition provided by CalPERS and returned to CalPERS by the candidate seeking nomination.

The proposed emergency regulations will modify the original signature requirement to also permit the submission of non-original signatures for the purposes of nomination petitions during the nomination period for the 2021 Member-at-Large election.

### **ANTICIPATED BENEFITS OF THE PROPOSED REGULATION**

The objective of these regulations is to decrease the exposure and spread of COVID-19 by limiting person-to-person contact and exchange of hard copy documents during the CalPERS board election nomination petition process.

### **EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS**

After careful evaluation, CalPERS has determined that the proposed emergency changes are not inconsistent or incompatible with existing state regulations.

### **PRENOTICE CONSULTATION WITH THE PUBLIC**

No pre-notice consultation was done with the public.

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

The proposed emergency regulatory action does not affect small business because it applies only to CalPERS board candidates and eligible voters.

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

The CalPERS Board has made the following initial determinations:

- A. **MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS:** The proposed regulatory action does not impose any mandates on local agencies or school districts.
- B. **COSTS OR SAVINGS TO ANY STATE AGENCY:** The proposed regulatory action will not result in any additional costs or savings to any State agency.
- C. **COSTS TO ANY LOCAL AGENCY OR SCHOOL DISTRICT:** The proposed regulatory action does not impose any costs on any local agency or school district.
- D. **NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES:** The proposed

regulatory action does not impose any 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 additional costs or savings in federal funding to the State.
- F. SIGNIFICANT, STATEWIDE ADVERSE ECONOMIC IMPACT: The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.
- 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 action.
- H. RESULTS OF THE ECONOMIC IMPACT ANALYSIS: 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; and (4) benefit the health and welfare of California residents, worker safety, or the State's environment.

The proposed regulatory action will make technical amendments to modify the original signature requirement during the nomination petition process.

- I. EFFECT ON HOUSING COSTS: The proposed regulatory action has no effect on housing costs.
- J. COSTS TO ANY LOCAL AGENCY OR SCHOOL DISTRICT WHICH MUST BE REIMBURSED IN ACCORDANCE WITH GOVERNMENT CODE SECTIONS 17500 THROUGH 17630: There are no costs to any local agency or school district, which must be reimbursed in accordance with GC sections 17500 through 17630.

#### **IX. CONSIDERATION OF ALTERNATIVES**

In accordance with GC section 11346.5, subsection (a)(13), 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 of the proposed action,
- as effective as, and less burdensome to affected private persons than the proposed action, or
- 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 emergency regulatory amendments during the written comment period.

#### **X. PURPOSE**

The purpose of adding subsection (g) to Section 554.5 is to provide a safer alternative to individuals collecting nomination petition signatures for CalPERS board elections without risking exposure and/or transmission of COVID-19.

**XI. NECESSITY**

Section 554.5 (g). This subsection is being added to specify that, apart from the original signature requirement that is in existing regulations, non-original signatures will also be accepted on nomination petitions for the 2021 Member-at-Large election. This change is needed to mitigate COVID-19 exposure because it removes the requirement to gather original signatures, which necessarily requires person-to-person interactions or the exchange of hard copy documents, both of which increase the risk of exposure to COVID-19. This subsection further defines the meaning of a non-original signature. This is needed to specify the types of non-original signatures that will be accepted by CalPERS for nomination petition purposes.

**XII. DOCUMENTS RELIED UPON**

Executive Order N-33-20

This document may be found on the California Governor's website at:

<https://www.gov.ca.gov/wp-content/uploads/2020/05/05.08.2020-EO-N-64-20-signed.pdf>

**XIII. PROPOSED REGULATION TEXT<sup>1</sup>**

**§ 554.5. Nomination of Candidates**

- (a) A person qualifies for nomination if he or she meets the eligibility criteria set forth in Government Code section 20090, subdivision (g), for the Board member position that is the subject of the election. To qualify for candidacy, a nominee must complete the procedures for nomination set forth in the Notice of Election. An individual nominee may not be a candidate for more than one Board member position during any particular election.
- (b) Nomination shall be by petition, on the Nomination Petition form(s) provided by CalPERS and signed by the nominee. The Nomination Petition form shall include all information required by this section as provided in the Notice of Election or any Amended Notice of Election. The petition shall identify clearly the specific Board member position for which the nominee seeks election. The petition shall also set forth information required to validate the nominee's eligibility, which shall include, the nominee's full name, last four (4) digits of the nominee's Social Security number, and employer or employer at retirement. The nominee shall provide the following required contact information: address, telephone number, and email address.
- (c) Active or retired members shall be eligible to sign a Nomination Petition if he or she meets the eligibility criteria set forth in the Notice of Election, for the Board member position that is the subject of the election. Eligible active or retired members signing a Nomination Petition shall provide identifying information for the purpose of validating membership with CalPERS, which shall include, the member's or retired member's full name, last four (4) digits of his or her Social Security number, and employer or employer at retirement.
- (d) The minimum number of petition signatures required for candidacy shall be determined by the Board at a noticed public meeting and specified in the Notice of Election. In setting the minimum number of petition signatures, the Board shall ensure candidates have a minimum level of support, while not making the number of petition signatures so high that active members and retirees are denied reasonable access to candidacy. In no event shall less than 250 valid original signatures be required. Only those petitions received in the Sacramento office of CalPERS by the date and time specified in the Notice of Election shall be accepted.
- (e) Each nominee shall certify, on the Nomination Acceptance/Ballot Designation form provided by CalPERS, that he or she accepts the nomination, consents to serve if elected and agrees to abide by a drawing of lots by the Secretary of State in case of a tied vote. Those nominees that choose a title or other designation to be added to their name on the ballot shall include the proposed title or designation on the Nomination Acceptance/Ballot Designation form. That form shall be returned to the Election Coordinator by the date and time specified in the Notice of Election.

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<sup>1</sup> Proposed changes are illustrated with additions in underlining.

- (f) The Nomination Acceptance/Ballot Designation Form shall contain:
- (1) Ballot Designation, if the candidate so desires, chosen in accordance with the criteria set forth in section 554.4 of this article;
  - (2) A date for submission pursuant to section 554.3, subdivision (b) of this article;
  - (3) A certification from the nominee that they accept the nomination pursuant to section 554.5, subdivision (f); and
  - (4) Job classification or job classification at retirement.
- (g) Where original signatures are required to establish the minimum number of petition signatures required for candidacy in Sections 554.3, subdivision (b)(6) and 554.5, subdivision (d) of this article, CalPERS shall also accept non-original signatures to establish eligibility for nomination. For the purposes of this subdivision, "non-original signature" means an original signature on a nomination petition form that has been reproduced or scanned into an electronic format for electronic transmission including by email or facsimile. This subdivision shall be effective only for the 2021 Member-at-Large election defined in Government Code section 20090, subdivision (g)(1).