

## **FINAL STATEMENT OF REASONS**

### **Proposed Amendment to California Code of Regulations (CCR) Title 2, sections 554.5, 554.6, 554.7, and 554.8 Board Election Regulations**

#### UPDATE OF INITIAL STATEMENT OF REASONS

Additional information regarding the purpose and necessity is added to provide clarity.

#### Purpose and Necessity

554.6(f)(3) – Current language implies that a candidate seeking arbitration must first submit a request for arbitration, and then later, submit a notice of participation as well. This amendment clarifies that the original request for arbitration will also be considered the candidate's notice of participation; this amendment reduces complexity in the arbitration process, where the requestor will no longer be required to complete an additional redundant step to participate in the arbitration that they requested.

554.6(d) – CalPERS is proposing additional optional questions for candidates to respond to in an attempt to increase the likelihood that voters will have access to relevant background information to determine whether a candidate possesses the character, qualifications, and abilities necessary to carry out the duties and responsibilities of a board member. These optional questions may be addressed by each candidate and may provide useful and relevant information to voters prior to each election.

554.6(d)(6) – CalPERS' Board Governance Policy, which was last revised in September 2020, requires each board member to certify that they have not had a negative financial condition over the past five (5) years. Specifically, Section X.H, Financial Hardships, provides, in part, as follows:

Board members must disclose to the Board, within ninety (90) days of first taking the office, all past personal financial hardships that occurred within five (5) years of taking office. If a Board member experiences a personal financial hardship while in the office, the member shall report the event to the Board within forty-five (45) days. Individuals who are Board members at the time of the adoption of this provision must disclose, within ninety (90) days of adoption, all personal financial hardships that have occurred within five (5) years of adoption of this provision.

The proposed regulation is intended to provide useful and relevant information to voters prior to the election. The intent of this section is to increase the likelihood that voters will have access to relevant background information to determine whether a candidate possesses the character, qualifications, and abilities to carry out the duties and

responsibilities of a board member, which includes the disclosure of certain past financial hardships.

554.6(d)(7) – The CalPERS Board Governance Policy, Section X.O, Prevention of Harassment, Discrimination, and Retaliation, provides that “CalPERS has zero tolerance for harassment and discrimination of any kind based on any protected characteristic. Board members are expected to vigorously and visibly promote a harassment-free and discrimination-free culture and work environment throughout CalPERS.” The proposed regulation provides candidates with the option to disclose whether the candidate has been subject to any legal or employment action on the grounds of discrimination or sexual harassment as well as to explain its nature and resolution if any. The candidates may or may not choose to respond to this optional question. The intent of this section is to increase the likelihood that voters will have access to relevant background information to determine whether a candidate possesses the character, qualifications, and abilities to carry out the duties and responsibilities of a board member which includes providing a harassment-free and discrimination-free culture and work environment.

554.6(d)(8) – Candidates and elected board members are required to complete and submit campaign filing statements per the Fair Political Practices Commission guidelines. Elected board members are also required to adhere to conflicts of interest laws as well as the CalPERS Board Governance Policy; Section IV, Avoidance of Conflicts of Interest, which requires, among other things, that board members are able to identify conflicts of interest and act accordingly to ensure that at all times they act in the best interest of CalPERS and its members and beneficiaries. Similar requirements regarding avoiding conflicts of interest are stated in the CalPERS Statement of Activities that are Inconsistent, Incompatible, or in Conflict with the Duties of a Board Member of the Public Employees' Retirement System. This section provides candidates the option to disclose this information in their candidate statements. The intent of this section is to increase the likelihood that voters will have access to relevant background information to determine whether the candidate possesses the character, qualifications, and abilities to carry out the duties and responsibilities of a board member, which includes the identification and appropriate handling of conflicts of interest.

554.6(d)(9) – Board members may receive confidential information and attend closed session board meetings to discuss information that is not available to the public. The CalPERS Board Governance Policy, Section X.P, Confidentiality, states the following: “Board members will not reveal confidential matters and will not use confidential information for personal gain or for the benefit of outside interests.” Similarly, the CalPERS Statement of Activities that are Inconsistent, Incompatible, or in Conflict with the Duties of a Board Member of the Public Employees' Retirement System, Section I, General Standards of Conduct, also emphasizes the importance of maintaining confidentiality. This section is necessary to confirm that, if elected, a candidate will keep information confidential. The intent of this section is to increase the likelihood that voters will have access to relevant background information to determine whether a candidate possesses the character, qualifications, and abilities to carry out the duties and

responsibilities of a board member, which includes the maintenance of appropriate safeguarding of confidential information.

554.8(b) – In 2016, CalPERS adopted regulatory amendments to move the barcode and voter signature from the return envelope to the ballot. This change resulted in the need to open the return envelopes upon receipt to ensure that voters cast only one (1) vote. In 2018, CalPERS adopted regulatory amendments to move the barcode and voter signature to the return envelope. With the barcode and voter signature now on the envelope, it is no longer necessary to open the envelope to ensure only one vote is cast per voter. This amendment is intended to clarify that 1) the return envelope does not need to be opened prior to the close of the voting period; and 2) the sealed return envelope is scanned to ensure that only one vote is cast per voter. Return envelopes will be opened only after the close of the voting period.

## SUMMARY OF PROPOSED REGULATION

The proposed regulatory amendments are intended to clarify existing board election procedures. In addition, regulatory provisions are added to request that candidates voluntarily provide voters with additional relevant information in their candidate statements including information regarding financial solvency, sexual harassment, conflicts of interest, and protection of confidentiality. The proposed regulatory changes are further described in the Initial Statement of Reasons

## SUMMARY OF REGULATORY EVENTS

A Notice of Proposed Regulatory Action was published in the California Regulatory Notice Register 2020, No. 24-Z, File No. Z2020-0527-01, on June 12, 2020. The 45-day comment period commenced on June 12, 2020, and closed July 27, 2020. The California Public Employees Retirement System (CalPERS) did not receive any public comments during the public notice period.

On September 15, 2020, the Finance and Administration Committee recommended approving the final regulation package to the CalPERS Board. On September 16, 2020, the CalPERS Board adopted this recommendation and approved the final regulation package to be submitted to the Office of Administrative Law (OAL).

## SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL PUBLIC NOTICE PERIOD OF JUNE 12, 2020 THROUGH JULY 27, 2020

CalPERS did not receive any public comments during the public notice period.

## SUMMARY AND RESPONSE TO COMMENTS RECEIVED AT PUBLIC HEARING

While CalPERS allowed interested parties to request a public hearing from June 12, 2020 to July 12, 2020, 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 affect small businesses because the regulations would apply only to active and retired CalPERS members in local agencies, school districts, and State departments pursuant to the California Public Employees' Retirement Law (PERL). The proposed regulations would not have a significant 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

No public comments were received during the public notice period. Therefore, no other alternatives were considered, identified, or brought to the CalPERS Board's attention that would be more effective in carrying out the purpose for which the action is proposed. There are no other alternatives that would be as effective and less burdensome to affected private persons than the adopted regulation or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The CalPERS Board approved the initiation of this regulatory change at its April 2020 meeting and then approved the submittal of the final rulemaking package to the OAL at its September 2020 meeting.

## LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.