**Any interested person, or his or her duly authorized representative, may submit written comments relevant to the proposed regulatory action.**

**The written comment period closes at 11:59 p.m. on August 1, 2022.**

**The Regulation Coordinator must receive all written comments by the close of the comment period. Comments may be submitted by e-mail to** **Regulation\_Coordinator@calpers.ca.gov****.**

**Please also email a copy of the comment letter to** **cityletters@calcities.org** **as well as your Regional Public Affairs Manager.**

\*\*\*CITY LETTERHEAD\*\*\*

DATE

Mr. Andrew White, Regulation Coordinator

California Public Employees’ Retirement System (CalPERS)

P.O. Box 942720

Sacramento, CA 94229-2720

Sent Via Email: Regulation\_Coordinator@calpers.ca.gov

**RE: Comments on Proposed Rulemaking - Office of Administrative Law File Number Z-2022-0607-10; Section 574.1, “Definition of Limited Duration Employment,” of Article 4 of Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations**

Dear Mr. White:

The City/Town of \_\_\_\_\_\_\_\_\_\_ respectfully requests consideration of the following comments regarding the above referenced rulemaking, which seeks to define “limited duration” employment as used in Government Code sections 7522.56, 21224, and 21229.

Proposed regulation 574.1(a) substantially alters cities’ longstanding practice of hiring CalPERS retirees in “extra help positions” by defining “limited duration” as a limit of twenty-four consecutive months per appointment of a retired person in the employ of a CalPERS-covered employer, with certain exceptions. Unless modified, the definition will hinder cities’ ability to fill critical positions that are relied upon intermittently for the provision of public services, including, for example, first responders or seasonal employees who possess specialized skills. Such a change is particularly alarming at a time when cities are facing significant labor disruptions and hiring challenges at all levels.

**STATE HOW YOUR CITY USES EXTRA HELP RETIRED ANNUITANTS.**

To avoid disruptions in public services provided to Californians statewide, City/Town of \_\_\_\_\_\_\_\_\_\_ urges CalPERS to amend proposed Regulation 574.1 as follows:

1. Amend proposed section 574.1(a)(1) to clarify that retirees may be appointed to extra help positions by their former employers to perform work that is substantially similar to work they performed for that employer before retirement;
2. Clarify the process by which the CalPERS board will grant an exemption under proposed section 547.1(a)(7);
3. Amend proposed subdivisions(a)(3), (a)(4), (a)(5) and (a)(7) to allow the appointment extensions and exemptions contemplated by proposed section 574.1(a) to be made or requested after the initial twenty-four consecutive month limited duration period has expired; and
4. Allow local agencies to place appointment extensions on their consent calendar.

**A.** City/Town of \_\_\_\_\_\_\_\_\_\_ **urges CalPERS to make the following amendments for clarity and consistency.**

1. **Proposed section 574.1(a)(1) should be amended to clarify that retirees may be appointed to extra help positions by their former employers to perform work that is substantially similar to work they performed for that employer before retirement.**

Proposed section 574.1(a)(1) is difficult to parse and may be interpreted to mean a retiree is prohibited from being appointed by the city from which they retired to an extra help position if they would be performing work that is substantially similar to work they performed before retirement. This interpretation would run contrary to the purpose of hiring retired annuitants by not allowing for the retiree to use their expertise and years of experience at the local agency.

City/Town of \_\_\_\_\_\_\_\_\_\_ urges CalPERS to clarify the regulations by substituting the following for proposed section 574.1(a)(1):

(1) For purposes of this subdivision, an appointment occurs when a retired person performs work for a CalPERS-covered employer. A retired person may not be appointed to perform work under Government Code sections 7522.56, 21224, and 21229 that is substantially similar to work performed for the same CalPERS-covered employer in a previous appointment, unless it is within twenty-four consecutive months of that appointment, or any applicable extension described in this subdivision, or is otherwise allowed by this subdivision.

1. **Proposed section 547.1(a)(7) should be amended to clarify the process by which the CalPERS Board will grant an exemption.**

While City/Town of \_\_\_\_\_\_\_\_\_\_ applauds CalPERS’ foresight in allowing cities to request an exemption under proposed section 547.1(a)(7), the proposed regulation lacks critical details: Will the CalPERS Board itself or will CalPERS staff be charged with granting such exemptions? Will CalPERS respond to extension requests within a set amount of time? Will a city need to wait until the next CalPERS board meeting for an extension to be granted? If staff is charged with granting extension will there be a mechanism for the CalPERS board to rescind staff’s decision? Without understanding these critical details, it is impossible to comment on the impacts or effectiveness of this regulation. Given the critical role local agencies play in the delivery of public services, the answers to these questions could significantly impact the regulated community and Californians at large.

**B.** City/Town of \_\_\_\_\_\_\_\_\_\_ **urges CalPERS to make the following amendment to proposed regulation 574.1(a) because the proposed regulation is not reasonably necessary to effectuate the purposes of Government Code section 21224.**

1. **Proposed subdivisions (a)(3), (a)(4), (a)(5), and (a)(7) should be amended to allow appointment extensions and exemptions to be requested after the initial twenty-four consecutive month limited duration period, or any applicable extension, has expired.**

By requiring that extensions or exemptions be requested by the end date of an appointment or extension, as applicable, proposed regulation 574.1 excludes appointments of limited duration that happen to begin after the expiration of the initial twenty-four month period or any applicable extension. This requirement does not find support in the plain text of Government Code section 21224.

To conform to the intent of the law, City/Town of \_\_\_\_\_\_\_\_\_\_ respectfully requests that proposed subdivisions (a)(3), (a)(4), (a)(5), and (a)(7) be amended to allow appointment extensions and exemptions to be requested after the initial twenty-four consecutive month limited duration period, or any applicable extension, has expired. These clarifications would retain the existing extension structure but allow for reasonable flexibility in extensions consistent with the real-world staffing demands of cities. These changes are critical because they would allow for the needed flexibility local agencies require to adequately serve their community.

**IF APPLICABLE, SITE EXAMPLES OF WHEN YOUR CITY HAS RE-HIRED A RETIRED ANNUITANT MULTIPLE TIMES FOR THE SAME JOB WITH GAPS IN BETWEEN APPOINTMENTS.**

**C.** City/Town of \_\_\_\_\_\_\_\_\_\_ **urges CalPERS to make the following amendments to proposed regulation 574.1(a) because they would be as effective in carrying out the purpose of the proposed action, but less burdensome.[[1]](#footnote-2)**

1. **Proposed section 574.1(a)(3) should be amended to allow local agencies to place appointment extensions on their consent calendar.**

The mandate under proposed section 574.1(a)(4)(A), which prohibits an appointment extension from being placed on a public agency’s consent calendar would be administratively burdensome. The use of retired annuitants is a widespread practice and as a general matter, routine appointments for positions, just like nearly all other personnel matters, do not go through the process of being placed on a non-consent portion of the city council meeting agenda. Determining which agenda items get assigned to the consent calendar should be left to the governing body, not CalPERS.

City/Town of \_\_\_\_\_\_\_ therefore requests that the prohibition be removed from the regulations.

**Conclusion**

City/Town of \_\_\_\_\_\_\_ appreciates the opportunity to provide comments on this proposed rulemaking action.

Sincerely,

NAME

TITLE

CITY/TOWN of \_\_\_\_\_\_\_\_\_\_\_\_\_\_

cc: Your Cal Cities Regional Public Affairs Manager (via email)

League of California Cities, (via email: cityletters@calcities.org)

1. Gov. Code § 11346.5(a)(13). [↑](#footnote-ref-2)