June 27, 2014

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Chief Executive
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Anthony Martin
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CalPERS
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RE:  League Comments on “Pensionable Compensation” Regulations

Dear Ms. Stausboll and Mr. Martin:

The League of California Cities, on behalf of its over 470 member cities, has reviewed the proposed regulatory action regarding Section 571.1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations (CCR), and respectfully urges the Board of Administration to REJECT AND MODIFY the proposals in the aforementioned regulations to rely on the “normal monthly rate of pay” rather than “base pay” and the treatment of “temporary upgrade pay” as pensionable compensation. Furthermore, in accordance with your notice of proposed rulemaking we formally request a public hearing on these matters.

Our starting point in our analysis of this proposal is the recently adopted Pension Beliefs of CalPERS, which begins with this statement: “A retirement system must meet the needs of members and employers to be successful.” We believe the above proposals are not responsive to the needs of the 450 city employers that participate in CalPERS that face major pension rate increases in the next 5 years in order to address investment losses, changing actuarial assumptions about longevity, and changes in risk pooling. We urge the Board to resist these and any other recommendations that could increase these already burdening costs unless supported by strict actuarial analysis and standards.

Moreover, the proposed changes are inconsistent with the clear purpose and intent of the Public Employment Pension Reform Act (PEPRA) to reign in public defined benefit pension costs by providing more sustainable pension plans for new employees and preventing the abuses of pension spiking that had become the focus of intense public and media criticism. In light of the legislative history and purpose of PEPRA, we respectfully urge the Board to narrowly define the definition of pensionable compensation so as to avoid, both in appearance and in actual impact, inappropriately opening the door to enlarging a member’s future pension benefit. In so doing, you also will contribute to the ability of local public agencies to afford their pension commitments without crippling cuts to staffing and public services in the future.

Regarding the “normal monthly rate of pay vs. base pay” question, any reliance on the language in SB 13 that allows the state to exclude certain special pay items to infer legislative intent to include items other than base pay in pensionable compensation is misplaced. Further, if
reliance on this inference is correct, it can only be said to be correct for the pensionable compensation of state, and not local, employees. We strongly urge you to not include items other than base pay. If the two terms actually have the same meaning to CalPERS, we recommend that this be clarified.

Furthermore, we recommend that you not treat “temporary upgrade pay” as pensionable as it could lead to undesirable pay practices in order to expand an employee’s final pension. Merriam Webster Dictionary defines “ad hoc” to mean “formed or used for a special purpose” and “temporary” as “intended to be used for a limited amount of time.” It seems plain in light of these definitions that the proposed inclusion of temporary pay is inconsistent with the intent and plain meaning of PEPRA. In response to those who have suggested this is necessary in order to give local employees incentive to accept out-of-class pay for temporary assignments, we submit that any temporary pay increase and the commitment of city employees more than achieve this purpose.

In closing, we urge the Board to reject or modify these two proposals concerning pensionable compensation. Doing so will be consistent with the Board’s Pension Beliefs as well as the intent and purposes of PEPRA. Moreover, it will enhance the ability of our members to better manage their ever rising pension costs during this time of continued financial uncertainty for cities. Furthermore, in accordance with your notice of proposed rulemaking, we formally request a public hearing on these matters.

Finally, we wish to express our appreciation to the CalPERS staff for engaging the League and cities in a discussion of these issues over the past year.

Thank you for your consideration. If you have any questions regarding the League’s position on this issue, please do not hesitate to contact us.

Sincerely,

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