



Alameda County Employees' Retirement Association  
**BOARD OF RETIREMENT**

**GOVERNANCE COMMITTEE MEETING**  
**NOTICE and AGENDA**

**ACERA MISSION:**

*To provide ACERA members and employers with flexible, cost-effective, participant-oriented benefits through prudent investment management and superior member services.*

**September 20, 2018**  
**1:00 p.m.**

<b>LOCATION</b>	<b>COMMITTEE MEMBERS</b>	
<b>ACERA</b> <b>C.G. "BUD" QUIST BOARD ROOM</b> <b>475 14<sup>TH</sup> STREET, 10<sup>TH</sup> FLOOR</b> <b>OAKLAND, CALIFORNIA 94612-1900</b> <b>MAIN LINE: (510) 628-3000</b> <b>FAX: (510) 268-9574</b>	<b>GEORGE WOOD, CHAIR</b>	<b>ELECTED GENERAL</b>
	<b>OPHELIA BASGAL, VICE CHAIR</b>	<b>APPOINTED</b>
	<b>JAIME GODFREY</b>	<b>APPOINTED</b>
	<b>LIZ KOPPENHAVER</b>	<b>ELECTED RETIRED</b>
	<b>ELIZABETH ROGERS</b>	<b>ELECTED GENERAL</b>

Should a quorum of the Board attend this meeting, this meeting shall be deemed a joint meeting of the Board and Committee.

The order of agenda items is subject to change without notice. Board and Committee agendas and minutes are available online at [www.acera.org](http://www.acera.org).

*Note regarding public comments:* Public comments are limited to four (4) minutes per person in total.

*Note regarding accommodations:* The Board of Retirement will provide reasonable accommodations for persons with special needs of accessibility who plan to attend Board meetings. Please contact ACERA at (510) 628-3000 to arrange for accommodation.

*Note regarding Public Records:* All writings that are distributed to a majority of members of the ACERA Board of Retirement in connection with a matter subject to discussion at an open meeting of the Board or one of its Committees are public records within the meaning of the California Public Records Act and are available for inspection upon request, unless the writings are privileged or otherwise exempt from disclosure under the provisions of the California Public Records Act. Please contact ACERA at (510) 628-3000 to request to inspect documents. Documents will be made available at ACERA, 475 14th Street, Oakland, California 94612.

# **GOVERNANCE COMMITTEE MEETING**

NOTICE and AGENDA, Page 2 of 3 – September 20, 2018

**Call to Order:** 1:00 p.m.

## **Action Items: Matters for Discussion and Possible Motion by the Committee**

- 1. Review, discussion and possible motion to update the Securities Litigation Policy with or without revisions.**

### Recommendation

Staff recommends that the Governance Committee recommend to the Board of Retirement to update the Securities Litigation Policy with or without revisions.

– Kathy Mount

- 2. Review, discussion and possible motion to update the Retiree Payroll Deduction and Assignment Policy with or without revisions.**

### Recommendation

Staff recommends that the Governance Committee recommend to the Board of Retirement to update the Retiree Payroll Deduction and Assignment Policy with or without revisions.

– Kathy Mount

- 3. Review, discussion and possible motion to update the Records Retention Policy with or without revisions.**

### Recommendation

Staff recommends that the Governance Committee recommend to the Board of Retirement to update the Records Retention Policy with or without revisions.

– Kathy Mount

- 4. Review, discussion and possible motion to update the Retention of Outside Counsel Policy with or without revisions.**

### Recommendation

Staff recommends that the Governance Committee recommend to the Board of Retirement to update the Retention of Outside Counsel Policy with or without revisions.

– Kathy Mount

# ***GOVERNANCE COMMITTEE MEETING***

**NOTICE and AGENDA, Page 3 of 3 – September 20, 2018**

**Information Items: These items are not presented for Committee action but consist of status updates and cyclical reports**

- None

**Trustee/Public Input**

- None

**Future Discussion Items**

- ACERA Membership Policy
- Board Regulations
- Conflict of Interest Policy

**Establishment of Next Meeting Date**

December 20, 2018



*Office of the Chief Counsel*

Date: September 20, 2018  
To: Members of the Governance Committee  
From: Kathy E. Mount, Chief Counsel   
Subject: **Review of Securities Litigation Policy**

**Introduction**

The *Securities Litigation Policy* ("Policy") is set for review by the Governance Committee to ensure that it remains relevant and appropriate. (See Exhibit A.) The policy was last reviewed in July 6, 2016. Staff<sup>1</sup> reviews a policy for two primary purposes (1) to evaluate whether a policy is still relevant and necessary; and (2) to recommend any proposed revisions.

**Findings**

Staff's review of the *Securities Litigation Policy* ("Policy") finds that the Policy is still necessary and relevant. The Policy continues to address the need to protect ACERA's financial interests and recover monetary damages as a result of securities fraud. ACERA monitors cases and/or participates in securities litigation cases to ensure proof of claims are filed in a timely manner and that ACERA receives its fair share of recovery.

The Board adopted this Policy to establish guidelines for monitoring and participating in securities class actions, as appropriate, to conserve the retirement fund and protect ACERA's interests. The United States Securities Exchange Commission and leaders in the legal community have commented that the governing board of a public pension system has a fiduciary duty to monitor securities class actions in which the system has an interest and to participate as lead plaintiffs where such participating is likely to enhance the recovery by members of the class. The participation of institutional investors as lead plaintiff has resulted in lower attorney's fees and significantly larger recoveries on behalf of shareholders.

**Recommendations**

Staff recommends adding to the Policy similar class actions litigation impacting ACERA's investment portfolio. Other types of class actions cases that involve investment losses are a growing area and include antitrust litigation and litigation involving the Commodity Exchange Act. In these types of cases, businesses have been the victim of price-fixing, unlawful monopolization, market allocation, manipulated financial benchmarks, "pay-for-delay" efforts to block entry for cheaper generic drugs, and other anti-competitive conduct. Therefore, Staff recommends modifying this Policy so that the Legal Department can monitor, assess and evaluate these cases, and take an active role if necessary.

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<sup>1</sup> For the purposes of this memorandum, the term "Staff" refers to the collective contributions of Chief Executive Officer David H. Nelsen, Chief Counsel Kathy E. Mount, and Associate Counsel Lori K. Schnell.

Additionally, Staff proposes stylistic non-substantive changes to the Policy

A copy of the revised Policy containing the proposed revisions is attached as Exhibit A. If the Committee has no additional comment, Staff recommends that the Governance Committee recommend to the Board to update the Policy with the suggested changes.

Enclosure: Exhibit A –*Securities Litigation Policy* clean copy and redline copy



## SECURITIES LITIGATION POLICY

### I. PURPOSE

- A. The purpose of the ACERA Securities Litigation Policy is to establish procedures and guidelines for monitoring and participating in domestic and international securities class action lawsuits or similar litigation impacting the investment portfolio, when appropriate, to protect ACERA's interests.

### II. ASSUMPTIONS

- A. The authority to pursue securities litigation claims is delegated to the Legal Department. Legal Staff may retain outside consultants to assist in monitoring securities litigation cases, identifying those cases that potentially involve ACERA's assets and evaluate ACERA's potential losses, and chances of recovery. Legal Staff may also retain outside consultants to assist in identifying and evaluating other types of claims resulting in investment losses and assessing potential financial interest particularly claims pursuant to antitrust laws or the Commodity Exchange Act.
- B. Legal staff will attempt to ensure that ACERA obtains its fair share of any recovery in cases where ACERA has a valid claim. Where the size of ACERA's potential loss in a particular case justifies involvement or if the loss is difficult to assess, but the case appears to be of significant interest and has merit, Legal Staff will monitor and/or participate in the case as appropriate. Legal Staff will monitor foreign securities litigation fraud cases, and determines whether ACERA will participate in such cases. Additionally, Legal Staff may also monitor and/or object to attorneys' fee requests made in cases where ACERA has standing to file a claim.
- C. Legal Staff will not generally determine whether and to what extent ACERA will participate in an action and will communicate the information to the Board. When determining whether to pursue lead plaintiff status in securities class actions or class actions alleging alternative theories of liability for investment losses. When concluding that ACERA should pursue lead plaintiff status or become a named plaintiff, Legal Staff generally consults with the Chief Executive Officer and the Chief Investment Officer.

- D. The implementation of this policy should not place an inordinate burden on ACERA Legal staff. Existing resources should be used to keep the Board apprised of the status of the filing and settlement of securities class action cases or other class action litigation impacting ACERA's investment portfolio.
- E. The authority to pursue claims is delegated to the Legal Department.

### III. **POLICY GUIDELINES**

- A. **Review of Class Action Filings.** Legal staff shall monitor the filing and settlement of securities class actions.
- B. **Active Case Monitoring.** Where the potential amount ACERA could recover in a case is sufficiently large and the case has merit, Legal staff shall determine whether ACERA should actively monitor and/or actively participate in the litigation.
- C. **Participation in Settlement.** Legal staff shall develop and implement procedures for ensuring that timely claims are submitted on behalf of ACERA in all appropriate securities class action settlements as well as other class action litigation impacting its investment portfolio. Legal staff will develop and implement procedures for filing objections to attorneys' fees requests made by plaintiffs' counsel(s) where appropriate in securities class action settlements.
- D. **Reports to the Board.** Legal staff shall report annually to the Operations Committee Board regarding those cases which are being monitored and cases in which ACERA has taken an active role. Legal staff shall keep the Operations Committee apprised of any unusual or extraordinary events as they occur.

### IV. **POLICY REVIEW**

- A. This policy shall be reviewed by the Governance Committee at least every three (3) years to ensure that it remains relevant and appropriate.

**V. POLICY HISTORY**

- A. This Board adopted this policy on April 18, 2002.
- B. The Board reviewed and updated this policy, with revisions, on September 20, 2018.<sup>1</sup>

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<sup>1</sup> Previous amendment dates (all with revisions, except 2010 and 2012): October 19, 2006; July 17, 2008; September 16, 2010; April 19, 2012; September 10, 2014; September 15, 2016; September 20, 2018.

### **Historical Board Review**

The Board adopted the *Securities Litigation Policy* on April 18, 2002.

- October 19, 2006, reviewed and affirmed with revisions.
- July 17, 2008, reviewed and affirmed with revisions.
- September 16, 2010, reviewed and affirmed without revisions.
- April 19, 2012, reviewed and affirmed without revisions.
- September 10, 2014, reviewed and affirmed with revisions.
- September 15, 2016, reviewed and affirmed with revisions.



## SECURITIES LITIGATION POLICY

### I. PURPOSE

- A. The purpose of the ACERA Securities Litigation Policy is to establish procedures and guidelines for monitoring and participating in domestic and international securities class action lawsuits or similar litigation impacting the investment portfolio, when appropriate to protect ACERA's interests.

### II. ASSUMPTIONS

- A. The authority to pursue claims is delegated to the Legal Department. [~~Moved from letter E.~~] Legal staff may retain outside consultants to assist in monitoring securities litigation cases, identifying those cases that potentially involve ACERA's assets and evaluate ACERA's potential losses and chances or recovery. Legal staff may also retain outside consultants to assist in identifying and evaluating other types of claims resulting in investment losses and assessing potential financial interest particularly claims pursuant to antitrust laws or the Commodity Exchange Act. Such retention would include assessing ACERA's potential financial interest in pursuing litigation for such claims to the extent possible.
- B. Legal staff ~~should ensure~~ will attempt to ensure that ACERA obtains its fair share of any recovery in such cases where ACERA has a valid claim. ~~Further, w~~Where the size of ACERA's potential loss in a particular case justifies involvement ~~is sufficient~~, Legal staff will monitor and/or participate in the case as appropriate. Alternatively, in cases where it may be difficult to assess ACERA's potential recovery, and if the case appears to have a potentially significant interest and has merit, Legal staff shall determine whether ACERA will participate in such cases. Additionally, Legal staff may also monitor and/or object to attorneys' fee requests made in cases where ACERA has standing to file a claim. Legal staff ~~also monitors and/or participates in~~ foreign securities litigation fraud cases, and determines whether ACERA will participate in such cases.

- C. ~~While~~ Legal staff will not generally pursue lead plaintiff status in securities class actions or class actions alleging alternative theories of liability for investment losses. ~~The Legal Department will determine whether and to what extent ACERA will participate in an action and will communicate the information to the Board.~~ When ~~determining~~ concluding whether to pursue lead plaintiff status in securities class actions or class actions alleging alternative theories of liability for investment losses, Legal staff generally consults with the Chief Executive Officer and the Chief Investment Officer.
- D. The implementation of this policy should not place an inordinate burden on ACERA Legal staff. Existing resources should be used to keep the Board apprised of the status of the filing and settlement of securities class action cases or other class action litigation impacting ACERA's investment portfolio.
- E. ~~The authority to pursue claims is delegated to the Legal Department.~~

### III. POLICY GUIDELINES

- A. **Review of Class Action Filings.** Legal staff shall monitor the filing and settlement of securities class actions.
- B. **Active Case Monitoring.** Where the potential amount ACERA could recover in a case is sufficiently large and the case has merit, Legal staff shall determine whether ACERA should actively monitor and/or actively participate in the litigation.
- C. **Participation in Settlement.** Legal staff shall develop and implement procedures for ensuring that timely claims are submitted on behalf of ACERA in all appropriate securities class action settlements as well as other class action litigation impacting the portfolio. Legal staff will develop and implement procedures for filing objections to attorneys' fees requests made by plaintiffs' counsel(s) where appropriate in securities class action settlements.
- D. **Reports to the Board.** Legal staff shall report ~~semi-~~annually to the Board Operations Committee regarding those cases which are being monitored and cases in which ACERA has taken an active role. Legal staff shall keep the Operations Committee Board apprised of any unusual or extraordinary events as they occur.

**IV. POLICY REVIEW**

- A. This policy shall be reviewed by the Governance Committee at least every ~~two (2)~~ three (3) years to ensure that it remains relevant and appropriate.

**V. POLICY HISTORY**

- A. This Board adopted this policy on April 18, 2002.
- B. The Board reviewed and adopted this policy, with revisions, on September 20, 2018.<sup>1</sup>

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<sup>1</sup> Previous amendment dates all with revisions: October 19, 2006; July 17, 2008; September 10, 2014; September 15, 2016.



*Office of the Chief Counsel*

Date: September 20, 2018  
To: Members of the Governance Committee  
From: Kathy E. Mount, Chief Counsel *K. Mount*  
Subject: ***Retiree Payroll Deduction and Assignment Policy***

**Introduction**

The *Retiree Payroll Deduction and Assignment of Benefit Policy* ("Policy") is reviewed by the Governance Committee every two (2) years to ensure that it remains relevant and appropriate. The Policy was last reviewed by the Board on September 15, 2016.

Staff<sup>1</sup> reviews a policy for two primary purposes (1) to evaluate whether a policy is still relevant and necessary and (2) to recommend any proposed revisions.

**Findings**

Staff's review of the *Retiree Payroll Deduction and Assignment of Benefit Policy* finds that the Policy is relevant and necessary. The law prohibits assignment of pension benefits except in discrete circumstances. (Government Code sections 31452 and 31452.5.) Section 31452 requires deductions for family law orders and federal law requires deductions for IRS levies. Section 31452.5 provides that the Board has the authority to allow retirees to voluntarily request other deductions. That section requires the Board to adopt the permitted deductions. Therefore, this Policy is still necessary and appropriate and does not overlap with any other Board policy as it outlines permitted deductions.

**Recommendations**

Staff reviewed the statutory rules and consulted with Benefits Staff. The following are proposed revisions to the Policy:

- Clarify that family law orders and IRS levies are automatic involuntary deductions.
- Delete the reference to attorney fees. Likely when the Policy was adopted attorney fees were a significant issue, but singling them out is no longer relevant.
- Clarify that retirees must authorize in writing the voluntary deductions pursuant to Gov. Code §31452.5 and that ACERA must pay the named entity and amount that the retiree authorizes.
- Add stylistic non-substantive changes to the Policy.

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<sup>1</sup> For the purposes of this memorandum, the term "Staff" refers to the collective contributions of Chief Executive Officer David H. Nelsen, Assistant Executive Officer Kathy M. Foster, Chief Counsel Kathy E. Mount, relevant Senior Managers, and Associate Counsel Lori K. Schnall.

Memo from the Office of the Chief Counsel re: *Retiree Payroll Deduction and Assignment of Benefit Policy*

September 20, 2018

Page 2

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A copy of the revised Policy containing the proposed revisions is attached as Exhibit A. If the Committee has no additional comment, Staff recommend that the Governance Committee recommend to the Board to update the Policy with the suggested revisions.

Enclosure: 1) Exhibit A – *Redline and Clean Version of the Policy*



## **RETIREE PAYROLL DEDUCTION AND ASSIGNMENT OF BENEFIT POLICY**

### **I. PURPOSE**

The purpose of the ACERA Retiree Payroll Deduction and Assignment of Benefit Policy (Policy) provides guidance in the administration of pension benefits by listing approved benefit deductions and prohibiting the assignment of benefits for any purpose other than those authorized by statute.

### **II. ASSUMPTIONS**

- A.** The role of the Board is to administer the pension plan in accordance with the provisions of the County Employees Retirement Law of 1937, to protect the assets of the Plan and the interests of the plan beneficiaries, and to prudently manage the critical risks facing the Association.
- B.** Assignment of an ACERA member's retirement benefits is only appropriate permitted for purposes enumerated under Government Code sections 31452 and 31452.5.

### **III. POLICY GUIDELINES**

- A.** Retirement benefits are not assignable, except as permitted in 1) Government Code section 31452 for family law related orders, permitted by section 704.110 of the Code of Civil Procedure; 2) as permitted in Government Code section 31452.5 for specific deductions approved by the Board of Retirement and 3) as permitted by federal law for Internal Revenue Service (IRS) levies.
- B.** Pursuant to Government Code section 31452.5 the Board of Retirement has approved the following list of retiree benefit deductions, with retiree revocable written authorization, and will not honor any other requests for benefit assignments:
  - 1.** IRS Levy
  - 2.** Premiums on any policy or certificate of group life insurance or group disability insurance.
  - 3.** Premiums for Board approved medical, dental, and vision insurance premiums.
  - 4.** Payment of personal Income Taxes to the United States or the State of California.

5. Premiums for a prepaid group medical or hospital service plan.
6. Child, Spousal, and Family Support Withholding Orders
7. Payment of purchase of shares in or the payment of money to regularly chartered credit unions.
8. Payment to a recognized retiree organization. (Government Code, section 31471.5.)
9. Payment for any retiree benefit program available through the recognized retiree organization.
10. PERS Long Term Care

**ACERA shall pay the entity named and the amount stated in the retiree's authorization.**

- C. The Board of Retirement will not permit assignment of retiree benefits for any other reason. This policy against assignment of benefits includes monthly benefit warrants and lump-sum payments of benefits, including retroactive benefits awarded during the disability application process.
- D. The Board may charge the member a reasonable fee for the making of deductions and payments.

#### **IV. POLICY REVIEW**

The Governance Committee shall review this policy at least every three (3) years to ensure it remains relevant and appropriate.

#### **V. POLICY HISTORY**

- A. The Board adopted this policy on August 16, 2007.<sup>1</sup>
- B. The Board reviewed and updated this policy, with revisions, on September 20, 2018.

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<sup>1</sup> This Policy was updated on August 20, 2009 (with revisions); December 15, 2011 (without revisions); December 20, 2012 (with revisions); December 18, 2014 (with revisions); September 15, 2006 (with revisions.)



## RETIREE PAYROLL DEDUCTION AND ASSIGNMENT OF BENEFIT POLICY

### I. PURPOSE

The purpose of the ACERA Retiree Payroll Deduction and Assignment of Benefit Policy (Policy) ~~is to~~ provides guidance ~~assist~~ in the administration of pension benefits by listing approved benefit deductions and prohibiting the assignment of benefits for any purpose other than those authorized by statute.

### II. ASSUMPTIONS

- A. The role of the Board is to administer the pension plan in accordance with the provisions of the County Employees Retirement Law of 1937, to protect the assets of the Plan and the interests of the plan beneficiaries, and to prudently manage the critical risks facing the Association.
- B. ~~ACERA has received several requests from members and their legal counsel to assign a portion of their retirement benefits for payment of attorney fees, and expects to receive more requests in the future, especially from applicants for disability retirement.~~
- C. — Assignment of an ACERA member's retirement benefits is only appropriate permitted for purposes enumerated under Government Code sections 31452 and 31452.5.
- D. — ~~Assignment of an ACERA member's retirement benefits for payment of attorney's fees is not permitted by Government Code sections 31452 and 31452.5.~~

### III. POLICY GUIDELINES

- A. ~~As a general rule, r~~Retirement benefits are not assignable, except as permitted in 1) Government Code section 31452 for family law related orders, permitted by section 704.110 of the Code of Civil Procedure; ~~and~~ 2) as permitted in Government Code section 31452.5 for specific ~~charitable and insurance~~ deductions approved by the Board of Retirement and 3) as permitted by federal law for Internal Revenue Service (IRS) levies.

**B.** Pursuant to Government Code sections ~~31452, and~~ 31452.5 the Board of Retirement has approved the following list of retiree benefit deductions, with retiree revocable written authorization, and will not honor any other requests for benefit assignments:

1. IRS Levy
  - ~~2.~~ Premiums on any policy or certificate of group life insurance or group disability insurance.
  - ~~3.~~ Premiums for Board approved medical, dental, and vision insurance premiums.
  - ~~42.~~ Payment of personal Income Taxes to the United States or the State of California.
  - ~~5.~~ Premiums for a prepaid group medical or hospital service plan.
  - ~~63.~~ Child, Spousal, and Family Support Withholding Orders
  - ~~4.~~ Board Approved Medical, Dental, and Vision Insurance Premiums
  - ~~5.~~ PERS Long Term Care
  - ~~7.~~ Payment of purchase of shares in or the payment of money to regularly chartered credit unions.
  - ~~86.~~ Payment to a recognized retiree organization. (Government Code, section 31471.5.)
  - ~~97.~~ Payment Group life insurance or group disability insurance.
  - ~~8.~~ Premiums for a prepaid group medical or hospital service plan.
  - ~~9.~~ Purchase of shares in or the payment of money to Regularly Chartered Credit Unions
  - ~~10.~~ Any retiree benefit program available through the recognized retiree organization.
  - ~~101.~~ PERS Long Term Care
- ACERA shall pay the entity named and the amount stated in the retiree's authorization.

**C.** ~~Except as permitted in Government Code sections 31452 and 31452.5, t~~The Board of Retirement will not permit assignment of retiree benefits for any other reason, ~~including assignment to attorneys~~. This policy against assignment of benefits includes monthly benefit warrants and lump-sum payments of benefits, including retroactive benefits awarded during the disability application process.

- D.** The Board may charge the member a reasonable fee for the making of deductions and payments.

**IV. POLICY REVIEW**

The Governance Committee shall review this policy at least every ~~two~~ three (23) years to ensure it remains relevant and appropriate.

**V. POLICY HISTORY**

- A.** The Board adopted this policy on August 16, 2007.<sup>1</sup>
- B.** The Board reviewed and ~~adopted~~ updated this policy, with revisions, on September 20, 2018 ~~August 20, 2009~~.
- ~~**C.** The Board reviewed and adopted this policy, without revisions, on December 15, 2011.~~
- ~~**D.** The Board reviewed and adopted this policy, with revisions, on December 20, 2012.~~
- ~~**E.** The Board reviewed and affirmed this policy, with revisions, on December 18, 2014.~~
- ~~**F.** The Board reviewed and affirmed this policy, with revisions, on September 15, 2016.~~

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<sup>1</sup> This Policy was updated on August 20, 2009 (with revisions); December 15, 2011 (without revisions); December 20, 2012 (with revisions); December 18, 2014 (with revisions); September 15, 2006 (with revisions.)



*Office of the Chief Counsel*

Date: September 20, 2018  
To: Members of the Governance Committee  
From: Kathy Mount, Chief Counsel *Kathy Mount*  
Subject: **Review of Records Retention Policy**

The Records Retention Policy ("Policy") is set for review by the Governance Committee every two (2) years to ensure that it remains relevant and appropriate. The Policy was last reviewed on November 17, 2016. Staff<sup>1</sup> reviews a policy for two primary purposes (1) to evaluate whether a policy is still relevant and necessary; and (2) to recommend any proposed revisions.

**Findings**

Staff finds that the policy is still relevant and necessary. This Policy continues to address the recurring need for a records retention and disposal policy to manage a large volume of documents, to control the creation and growth of records, to reduce operation costs, to safeguard vital information, to preserve corporate memory, to foster professionalism in running ACERA, and to ensure business continuity.

The issues addressed by this Policy continue to be within the Board's responsibilities as stated in the CERL at §31537, which provides that the Board may establish efficient records management procedures.

**Recommendations**

Staff proposes the following revisions:

- Authority Section: Staff recommend adding a section for the legal authority that dictates record retention.
- Assumptions Section: Staff recommends deleting the assumption section and moving the content into the authority section or guidelines for a more organized policy.
- Retention Period: Staff recommends adding language to provide guidance in establishing retention periods where there is no legal authority, which applies to a number of documents in the retention schedule.
- Legal Department: Staff recommends adding language identifying the role of the Legal Department with respect to record retention.
- Review Period for the Retention Schedule: The Schedule is not part of the policy and therefore does not have its own review schedule. State law suggests that an agency review a retention schedule at least every five years. Staff suggested three years to conform to the review of this Policy.

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<sup>1</sup> For the purposes of this memorandum, the term "Staff" refers to the collective contributions of Chief Executive Officer David H. Nelsen, Chief Counsel Kathy E. Mount, and Associate Counsel Lori K. Schnall.

The other proposed changes to the Policy either reorganize sections, but do not alter content or provide minor revisions. If the Committee has no additional comments, Staff recommends that the Committee recommend to the Board to update the Policy with the suggested changes.

Enclosure: 1) Exhibit A – *Records Retention Policy*, clean copy and redline copy



## RECORDS RETENTION POLICY

### I. PURPOSE

To provide guidance for efficient record management including the, retention and disposal of records in accordance with their administrative, legal, fiscal, and historic value.

### II. OBJECTIVES

- A. Compliance with all applicable statutes, regulations, and ordinances for the retention of records.
- B. Reduction and efficient management of the space and costs associated with maintaining a large number of records.
- C. Facilitate business continuity and disaster recovery efforts by setting forth clear retention periods for electronic official records.

### III. AUTHORITY

- A. California Government Code §31537 allows the ACERA Board of Retirement to establish efficient record management and disposal procedures.
- B. Government Code §12236 provides that the Secretary of State shall establish local government records programs to establish guidelines for local government retention. ACERA has relied upon these guidelines where applicable.
- C. Civil Code §§1633.1, et seq., provides the requirements for an electronic record to be retained in lieu of the paper record. The law allows electronic documents and electronic signatures to be enforceable in the same manner as paper documents.
- D. This policy applies to official records. “Official Records” are records that reflect the final,-official position or activities of ACERA related to the specific content of the record. ACERA is not required to retain unofficial records. Unofficial records consists of works in progress, preliminary drafts, and copies of notes and records that have either not been finalized or approved.

### III. GUIDELINES

- A. **Records Manager.** The Chief Executive Officer or Designee will assume the duties of Records Manager and will maintain a Records Retention Schedule listing the specific time frames to regularly purge documents consistent with this Policy and the

law. The Chief Executive Officer or Designee/will also develop staff procedures for the purging of records.

- B. Records Listed in Records Retention Schedule.** Records shall be retained for at least the minimum period indicated in the Records Retention Schedule. Unless otherwise noted, the retention period on the schedule applies to both electronic and paper documents.
- C. Retention Period.** The minimum retention period must be consistent with applicable laws, orders, rules, and regulations. When no such mandate exists, a reasonable retention period will be established based upon ACERA's needs and the usefulness of the information. Once records have reached the end of their record retention period, they will be disposed of as soon as practical in accordance with the Records Retention Schedule. Staff shall provide guidelines for department heads on how to determine the length of time to retain a record that has no legal or statutory requirement.
- D. Records Not Listed in Records Retention Schedule.** Disposal of records not specified within the Records Retention Schedule shall be conducted at the discretion of the Department Head.
- E. Electronic Records.** The goal is to convert records that are created or received in paper format into an electronic format to the extent possible. The records will be converted in such a manner that allows for the record to be efficiently stored, accessible, and retrievable. The electronic record must accurately reflect the information set forth in the paper record at the time it was first generated in its final form as an electronic record. The record must be legible, accurate, and cannot be altered. The electronic record becomes the official record and will remain accessible for later reference.
- F. Litigation Hold.** Records pertinent to anticipated or pending litigation or administrative investigation shall be retained until the final resolution of the litigation or investigation, or until completion of the regular specified retention period, whichever is later. The Legal Department is responsible for communicating to all relevant parties the need for and duration of any litigation hold.
- G. Departure from Records Retention Schedule.** The Chief Executive Officer or Designee may retain records for periods longer than provided by the Records

Retention Schedule so long as there is a procedure in place justifying the extended retention and providing for a revised disposal date. Requests to depart from the Records Retention Schedule must be approved in writing by the Chief Executive Officer or Designee.

**H. Record Destruction.**

1. Paper **documents** will be destroyed within 120 days after they have been converted to electronic format consistent with the requirements stated above for “Electronic Retention.” The Chief Executive Officer or Designee shall review and sign a Records Destruction Report, identifying the records to be destroyed within the 120 day window. For documents excluded from ACERA’s electronic document management system, the Department Heads will prepare a Records Destruction Form identifying the records to be destroyed.
2. Electronic documents and those paper records which have not been converted to an electronic form will be purged at the beginning of each fiscal year consistent with the requirements in the Record Retention Schedule. For those documents included in the electronic document management system, the document system audit log will contain a record of this purge procedure.
3. For those documents excluded from the electronic document management system, the Department Head shall prepare a Records Destruction Form identifying those documents for destruction and the Chief Executive Officer or Designee will review and sign the form.

**I. Maintaining Policy.** The Legal Department is responsible for reviewing and updating the Records Retention Policy to ensure it accurately reflects the appropriate retention periods pursuant to state, federal, and/or regulatory requirements.

**J. Review Period for Retention Schedule.** The Records Retention Schedule will be reviewed every three years and updated as necessary. Changes to the Schedule require CEO Approval.

**IV. POLICY REVIEW**

The Records Retention Policy shall be reviewed by the Governance Committee at least every three (3) years, or upon amendments to applicable statutes and/or regulations, whichever is more frequent.

**V. POLICY HISTORY**

- A.** The Board adopted this policy on December 18, 2008.
- B.** The Board affirmed this policy, with revisions on September 20, 2018.<sup>1</sup>

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<sup>1</sup> Previous amendment dates all with revisions: September 16, 2010; December 15, 2011; December 20, 2012; December 18, 2014; \ and November 17, 2016.



## RECORDS RETENTION POLICY

### I. PURPOSE

~~To~~The purpose of the Record Retention Policy (Policy) is to provide guidance for efficient records management ~~including the, retention procedures that include the storage, maintenance,~~ and disposal of records ~~in accordance with their administrative, legal, fiscal, and historic value.~~

### II. OBJECTIVES

- A. Compliance with all applicable statutes, regulations, and ordinances for the retention of records.
- B. Reduction ~~and efficient management of~~ of the space and costs associated with maintaining a large number of records ~~to provide for efficient and effective management of resources.~~
- C. Facilitate business continuity and disaster recovery efforts by setting forth clear retention periods for electronic official records.

### III. AUTHORITY ASSUMPTIONS

- A. California Government Code ~~§, section~~ 31537 allows the ACERA Board of Retirement to establish efficient records management and disposal procedures.
- B. Government Code §12236 provides that, which may include, but need not be limited to, maintenance and, when determined by the Secretary of State shall establish local government records programs to establish guidelines for local government retention. ACERA has relied upon these guidelines where applicable.
- C. Civil Code §§1633.1, et seq., provides the requirements for an electronic record to be retained in lieu of the paper record. The law allows electronic documents and electronic signatures Board to be enforceable in the same manner as paper documents.
- ~~necessary, disposal of~~ D. This policy applies to official records. "Official Records" are records that reflect the final, -official position or activities of ACERA related to the specific content of the record. ACERA is not required to retain unofficial records. Unofficial records consists of works in progress, preliminary drafts, and copies of notes and records that have either not been finalized or approved in its jurisdiction.

### III.B. — GUIDELINES

- A. **Records Manager.** The Chief Executive Officer or Designee ~~also,~~ will assume the duties of ~~a~~ Records Manager and will maintain a Records Retention Schedule listing the specific time frames to regularly purge documents consistent with this Policy and the law. ~~The Chief Executive Officer or Designee/~~will also develop staff procedures for the purging of records. ~~—.~~
- ~~C. — The Chief Executive Officer or Designee may retain records and documents beyond the guidelines in this policy when specific system procedures are in place to purge documents at regular intervals.~~
- ~~D. — This policy has been drafted with the intent of a migration from paper to electronic images. Unless otherwise specified in the retention schedule, once the information in the new electronic format has been verified and held for ninety (90) to one hundred and twenty (120) days, the records from which the new electronic images were created can be destroyed. The information in the new electronic format then becomes the copy of record (also known as the record or master copy) and must be retained as specified on the retention schedule.~~

### IV. — GUIDELINES

- BA. **Records Listed in Records Retention Schedule.** Records shall be retained for at least the minimum period indicated in the Records ~~attached Record~~ Retention Schedule. ~~The Record Retention Schedule is divided into sections by each department of the Association. For each department, the files are divided by record category and include the retention period and a reference to any statutes or regulations applicable to each record category.~~ Unless otherwise noted, the retention period on the schedule applies to both electronic and paper documents.
- C. **Retention Period.** The minimum retention period must be consistent with applicable laws, orders, rules, and regulations. When no such mandate exists, a reasonable retention period will be established based upon ACERA's needs and the usefulness of the information. Once records have reached the end of their record retention period, they will be disposed of as soon as practical in accordance with the Records Retention Schedule. Staff shall provide guidelines for department heads on how to

determine the length of time to retain a record that has no legal or statutory requirement.

**DB. Records Not Listed in Records Retention Schedule.** Disposal of records not specified within the Records Retention Schedule shall be conducted at the discretion of the Department Head.

**EC. Electronic Records. The goalRetention.** ~~Unless otherwise specified, the record retention period is to convert records that are created or received in paper format into~~satisfied by retaining an electronic format to the extent possible. The records will be converted in such a manner that allows for the record to be efficiently stored, accessible, and retrievable. ~~The record of the information in the record, if the electronic record must~~reflects accurately reflect the information set forth in the paper record at the time it was first generated in its final form as an electronic record. The record must be legible, accurate ~~or otherwise~~, and cannot be altered. ~~The the~~ electronic record becomes the official record and will remain~~remains~~ accessible for later reference. ~~Electronic retention will be facilitated by an Electronic Document Management System (EDMS). The EDMS provides the facility to capture, store, retrieve, display, process, annotate, distribute, and eventually purge a digital representation of a document.~~

**F. ~~Litigation Hold.~~D. — Records Involved in Litigation.** Records pertinent to anticipated or pending litigation or administrative investigation shall be retained until the final resolution of the litigation or investigation, or until completion of the regular specified retention period, whichever is later. The Legal Department is responsible for communicating to all relevant parties the need for and duration of any litigation hold.

**GE. Departure from Records Retention Schedule.** The Chief Executive Officer or Designee may retain records for periods longer than provided by the Records Retention Schedule so long as there is a procedure in place justifying the extended retention and providing for a revised disposal date. Requests to depart from the Records Retention Schedule must be approved in writing by the Chief Executive Officer or Designee.

**H. ~~F.~~ — Paper Record Destruction.**

1. ~~For those documents included in the EMDS, unless otherwise specified in the Record Retention Schedule, paper records will be destroyed within 120-90 180 days after they have it has been converted scanned and committed to electronic format consistent with the requirements stated above for "Electronic Retention." The EDMS archive. At which time Chief Executive Officer or Designee shall review and sign a Records Destruction Report, identifying the records to be destroyed within the 90120 day window. For documents excluded from ACERA's electronic document management system, the Department Heads will prepare a Records Destruction Form identifying the records to be destroyed.~~
  2. ~~Electronic documents and those paper For records with a specified paper retention period longer than 90 180 days, each Department Head shall prepare a Records Destruction Report identifying those documents in which have not been converted to an electronic form the retention period has expired. The Chief Executive Officer or Designee will be purged review and sign the Records Destruction Report, identifying the records to be destroyed.~~
2. ~~For those documents that are not included in the EDMS, each Department Head will be responsible to monitor and destroy expired documents. The Department Head shall prepare a Records Destruction Form identifying those documents ready for destruction and the Chief Executive Officer or Designee will review and sign the form.~~

**~~G. Electronic Record Destruction.~~**

1. ~~For those documents included in EDMS, at the beginning of each fiscal year consistent with the requirements a purge process will be executed in the EDMS to purge documents based on year or expiration dates as defined in the Record Retention Schedule. For those documents included in the electronic document management system, the document system The EDMS audit log will contain a record of this purge procedure.~~
32. For those documents excluded from the electronic document management system, thenot included in EDMS, each Department Head will be responsible ~~to monitor and destroy expired documents.~~ The Department Head shall prepare a Records Destruction Form identifying those documents for

destruction and the Chief Executive Officer or Designee will review and sign the form.

I. Maintaining Policy. The Legal Department is responsible for reviewing and updating the Records Retention Policy to ensure it accurately reflects the appropriate retention periods pursuant to state, federal, and/or regulatory requirements.

J. Review Period for Retention Schedule. The Records Retention Schedule will be reviewed every three years and updated as necessary. Changes to the Schedule require CEO Approval ~~V.~~

#### IV. POLICY REVIEW

The Records Retention Policy shall be reviewed by the Governance Committee at least every three (3) ~~two (2)~~ years, or upon amendments to applicable statutes and/or regulations, whichever is more frequent by the Governance Committee. ~~The policy was last reviewed on November 17, 2016.~~

#### VII. POLICY HISTORY

A. The Board adopted this policy on December 18, 2008.

B. The Board affirmed this policy, with revisions on November 17, 2016.<sup>+</sup>

#### HISTORICAL BOARD REVIEW

~~The Board adopted the *Record Retention Policy and Schedule* on December 18, 2008.~~

- ~~● September 16, 2010, reviewed and affirmed with revisions.~~
- ~~● December 15, 2011, reviewed affirmed with revisions.~~
- ~~● December 20, 2012,<sup>2</sup> reviewed and affirmed with revisions.~~
- ~~● December 18, 2014, reviewed and affirmed with revisions.~~
- ~~● November 17, 2016, reviewed and affirmed without revisions.~~

<sup>+</sup> Previous amendment dates all with revisions: ~~September 16, 2010; December 15, 2011; December 20, 2012; December 18, 2014, November 17, 2016.~~

<sup>2</sup> Previous amendment dates all with revisions: September 16, 2010; December 15, 2011; December 20, 2012; December 18, 2014; \ and November 17, 2016.



*Office of the Chief Counsel*

Date: September 20, 2018  
To: Members of the Governance Committee  
From: Kathy Mount, Chief Counsel *KMount*  
Subject: **Review of Retention of Outside Counsel Policy**

**Introduction**

The *Retention of Outside Counsel Policy* ("Policy") is set for review by the Governance Committee every two (2) years to ensure that it remains relevant and appropriate. The Policy was last reviewed on April 19, 2012.

The Board requested that Staff<sup>1</sup> not update this Policy until ACERA renewed its insurance policy regarding the retention of fiduciary counsel. Recently, staff negotiated favorable terms for the use of outside counsel when ACERA tenders a claim to the insurance company. The terms provide that ACERA can select its preferred outside counsel to defend a claim against ACERA and the insurance company will reimburse ACERA for outside counsel fees up to a specified hourly rate. This gives ACERA substantial discretion to choose its own outside counsel and offset a significant portion of those legal fees. Additionally, the insurance agreement permits ACERA to offset a portion of ACERA's in-house attorney costs against 50% of the retention amount when defending claims tendered to the insurance company.

Since ACERA's insurance policy has been updated, Staff is now bringing this Policy to the Governance Committee for review and update.

**Findings**

Staff reviews a policy for two primary purposes (1) to evaluate whether a policy is still relevant and necessary; and (2) to recommend any proposed revisions. Staff's review of the *Retention of Outside Counsel Policy* finds that it is relevant and necessary, as it addresses the need for retaining outside counsel to ensure trustees and staff gain the necessary knowledge in fiduciary matters and other specialized areas to protect and advance ACERA's interests.

**Recommendations**

*Background*

When the Policy was created, the primary purpose was for the Board or staff to retain fiduciary counsel on issues specific to the Board meeting its fiduciary duties. Historically,

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<sup>1</sup> For the purposes of this memorandum, the term "Staff" refers to the collective contributions of Chief Executive Officer David Nelsen, Chief Counsel Kathy E. Mount, relevant Senior Managers, and Associate Counsel Lori K. Schnall.

fiduciary counsel has advised the Board and staff on a variety of issues involving fiduciary liability and responsibility involving the application of California Constitution article XVI, section 17 (as amended by voter initiative Proposition 162), and other trust law principles to various situations.

#### *Current Practice*

The Board has reserved for itself the authority to select outside counsel to answer questions where the Board seeks an outside legal opinion. The Board and Staff also retain outside counsel for a variety of legal issues including tax, investment, employment, and litigation. At times, outside counsel can be an important supplement to the efforts of in-house counsel as there are more rules, regulations and procedures that have become intricate specialties of their own.

In selecting outside counsel, the Legal Department evaluates which firms are best suited for the project. Once hired, the Legal Department oversees the work of the external counsel and serves as a liaison to the Board and staff. The Legal Department monitors the law firm's performance, responsiveness and bills. The Legal Department also hires other providers of legal services such as hearing officers, mediators, investigators and arbitrators as necessary. The name and cost of outside counsel for business operations is included in the *Monthly Total Operating Budget Summary* provided to the Operations Committee on a monthly basis. The cost for legal fees for investment matters is included in the financial statements on a quarterly and yearly basis.

#### *Benefits of Outside Counsel*

Attorneys who practice in the field of pension and related law can frequently provide a more comprehensive and nuanced perspective on complex and uncertain pension issues derived from their work with multiple public pension plans. Almost all California public pension systems employ external counsel on at least some specialized or complex matters where internal counsel do not have the expertise or resources to perform the work. Based on this practice we conclude that using outside counsel on occasion for specialized matters appears to be the industry norm and best practice.

Retaining external counsel is an appropriate and prudent cost of administering the retirement plan to assist the Board in fulfilling its fiduciary obligations. The risk of not engaging external counsel, when indicated, is that the Board and staff may not have the benefit of highly specialized expertise in connection with the primary duty of the Board and Staff, the fiduciary duty to ACERA's members.

Based upon the above analysis, Staff recommends updating the Policy to reflect the needs of the agency and to conform to current practice.

#### **Conclusion**

A copy of the revised Policy containing the modifications suggested by Staff is attached as Exhibit A. If the Committee has no additional comment, Staff recommends that the

Governance Committee recommend to the Board to update the Policy with the suggested changes.

Enclosure: 1) Exhibit A – *Retention of Outside Counsel Policy* clean copy and redline copy





## **RETENTION OF OUTSIDE COUNSEL POLICY**

### **I. PURPOSE**

To provide guidance to the Board of Retirement (Board) and ACERA Staff (Staff) when retaining outside legal counsel to provide advice regarding fiduciary and other legal issues.

### **II. ASSUMPTIONS**

- A.** Article XVI, Section 17 of the California Constitution provides that the Board shall have plenary authority and fiduciary responsibility for investment of monies and administration of the system.
- B.** In exercising its plenary authority, the Board has the right to seek fiduciary advice from staff counsel and/or from outside legal sources.
- C.** In exercising its fiduciary responsibility the Board recognizes that there are times when it may be prudent for the Board or staff counsel to utilize the specialized expertise of outside legal counsel to provide advice with respect to the Board's fiduciary responsibilities and to protect and advance ACERA's interests in specialized areas of the law.
- D.** Use of outside counsel for specialized matters is an industry norm and best practice. Retaining external counsel is an appropriate and prudent cost of administering the retirement plan and assists the Board in fulfilling its fiduciary obligations.

### **III. POLICY GUIDELINES**

- A.** On matters related to the Board's fiduciary duty, the Board may engage the services of outside attorneys to provide legal advice regarding fiduciary matters either independently or in conjunction with staff legal counsel.
- B.** The Chief Executive Officer and the Chief Counsel may engage the services of outside counsel to provide specialized legal advice to protect and advance ACERA's interests.

- C. The Chief Executive Officer and the Chief Counsel may also retain other providers of legal services including investigators, arbitrators, mediators and fact finders as they deem necessary to protect and advance ACERA's interests.
- D. The Chief Counsel shall direct and provide oversight for outside counsel and other legal services assessing work performance, responsiveness and bills.
- E. The budget reports provided to the Board include the costs for outside counsel.

#### **IV. POLICY REVIEW**

The Governance Committee shall review this policy at least every three (3) years to ensure it remains relevant and appropriate.

#### **V. POLICY HISTORY**

- A. The Board adopted this policy on October 19, 2006.<sup>1</sup>
- B. The Board updated this policy, with revisions, on September 20, 2018.

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<sup>1</sup> The Policy was reviewed, without revisions, on July 17, 2008; September 16, 2010; and April 19, 2012.



## FIDUCIARY COUNSEL RETENTION OF OUTSIDE COUNSEL POLICY

### I. PURPOSE

~~To The purpose of the ACERA Fiduciary Counsel Retention Policy is to provide~~ guidance ~~to a documented process that guides~~ the Board of Retirement (Board) and ACERA Staff (Staff) when ~~retaining the need arises to retain~~ outside legal counsel to provide advice regarding fiduciary and other legal issues.

### II. ASSUMPTIONS

A. ~~A.~~—Article XVI, Section 17 of the California Constitution provides that the Board shall have plenary authority and fiduciary responsibility for investment of monies and administration of the system.

~~B.~~—~~In exercising its fiduciary responsibility, there may be times when the Board may wish to seek legal counsel regarding such activities.~~

B. ~~C.~~—In exercising its plenary authority, the Board has the right to seek fiduciary advice from ~~staff~~Staff counsel and/or from outside legal sources.

~~C.~~ In exercising its fiduciary responsibility the~~D.~~—~~The~~ Board recognizes that there are times when it may be prudent for the Board or staff counsel to utilize the specialized expertise of outside legal counsel to ~~assist Staff counsel and/or to provide~~ direct advice with respect to the Board's fiduciary responsibilities and to protect and advance ACERA's interests in specialized areas of the law.

~~D.~~ Use of outside counsel for specialized matters is an industry norm and best practice. Retaining external counsel is an appropriate and prudent cost of administering the retirement plan and assists the Board in fulfilling its fiduciary obligations.

### III. POLICY GUIDELINES

A. On matters related to ~~This policy recognizes~~ the Board's ~~authority to request a legal analysis of an issue affecting its~~ fiduciary duty, ~~to the Plan.~~

- ~~B. — Fiduciary issues may be brought to the Board’s attention by Staff or they may be specifically identified by the Board.~~
- ~~C. — may engage the services of In the event an issue arises that the Board perceives affects its fiduciary duty, the Board has the authority to decide whether the issue will be analyzed by Staff, referred to an outside source, or handled jointly.~~
- ~~D. — attorneys to provide Should Staff identify a fiduciary issue that requires specialized outside legal advice regarding fiduciary matters either independently or in conjunction with staff legal counsel., Staff may retain outside counsel to begin analysis of the issue.~~
- ~~B. — The Chief Executive Officer and At the Chief Counsel may engagenext Board Meeting, Staff will prepare a memorandum outlining the servicesissue and explaining the rationale behind the selection of outside legal counsel.~~
- ~~E. — If the Board objects to provide specialized legal advice to protect and advance ACERA’s intereststhe selection, it may direct Staff to retain different.~~
- ~~C. — The Chief Executive Officer and the Chief Counsel may also retain other providers of legal services including investigators, arbitrators, mediators and fact finders as they deem necessary to protect and advance ACERA’s interests.~~
- ~~D. — The Chief Counsel shall direct and provide oversight for outside counsel and other legal services assessing work performance, responsiveness and bills.~~
- ~~E. — The budget reportsspecified by the Board, provided to the Board include the costs for outsidesuch counsel is qualified to provide the counsel sought.~~

#### IV. POLICY REVIEW

The Governance Committee shall review this policy at least every ~~three (3)~~~~two (2)~~ years to ensure it remains relevant and appropriate.

#### V. POLICY HISTORY

- A. The Board adopted this policy on October 19, 2006.<sup>1</sup>
- B. The Board ~~updated~~~~adopted~~ this policy, ~~with~~~~without~~ revisions, on July 17, 2008.

~~C. The Board adopted this policy, without revisions, on September 20, 2018<sup>16</sup>, 2010.~~

~~D. The Board adopted this policy, without revisions, on April 19, 2012.~~

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<sup>1</sup> The Policy was reviewed, without revisions, on July 17, 2008, September 16, 2010 and April 19, 2012.