

I. Purpose:

This Policy establishes administrative procedures to allow ACERA members to pre-file a disability retirement application and Optional Settlement election so that their beneficiaries may be eligible to receive the maximum benefits allowable under the County Employees' Retirement Law of 1937 ("CERL") if the members become entitled to a disability retirement before dying.

II. Board Findings

- A. Before the first payment of a retirement allowance, members may elect Optional Settlement 2 (Gov't Code § 31762) or Optional Settlement 4 (Gov't Code § 31764). Each provides lifetime monthly allowances to a member's designated beneficiary (Optional Settlement 2) or multiple designated beneficiaries (Optional Settlement 4) upon the member's death, with a reduced lifetime allowance paid to the member. The total benefits paid under Optional Settlements are actuarially equivalent to the member's unmodified retirement allowance alone.
- B. Members with terminal injuries or illnesses that render them permanently incapacitated for duty before they die may apply for a disability retirement and elect Optional Settlement 2 or Optional Settlement 4.
- C. Some members with terminal injuries or illnesses die before they apply for a disability retirement and elect Optional Settlement 2 or Optional Settlement 4. This can result in lower benefits for their beneficiaries compared to beneficiaries of members who apply for a disability retirement and elect Optional Settlement 2 or Optional Settlement 4. The Board finds that different outcomes for beneficiaries, based on whether a member was able to apply for a disability retirement, are arbitrary, inequitable and should be avoided whenever possible.
- D. In *Gorman v. Cranston* (1966) 64 Cal.2d 441, an active member of a retirement system had surgery planned and wanted to ensure that his beneficiaries would receive the maximum available benefits under law if he became permanently incapacitated and was unable to apply for a disability retirement before dying. The member filled out a disability application and requested that "if he were to become disabled and unable to post the letter, his son should mail copies to" the appropriate parties. After the member's death, his son mailed the application to the appropriate parties. The California Supreme Court held that the retirement system was required to process the disability retirement application. The Board finds that the principles in *Gorman v.*

Cranston should apply equally to all ACERA members without regard to their individual circumstances (e.g., whether they have surgery planned).

- E. Based on input from its Medical Advisor, the Board finds it is reasonable to conclude that every member with a terminal injury or illness while eligible to apply for a disability retirement would be able to establish permanent incapacity for some amount of time between the time of injury or illness and death. Further, all members should be able to maximize the benefits available to their beneficiaries irrespective of how quickly they die after suffering a fatal injury or illness.
- F. This Policy does not expand members' eligibility to retire for disability retirement and it does not expand the benefits available to members who retire for disability.

III. Death Benefit Equity Procedures

- A. **Advance Death Benefit Election.** ACERA will make available to members an Advance Death Benefit Election ("ADBE") as part of ACERA's Active or Deferred Member Beneficiary Designation Form. If a fully executed ADBE is on file with ACERA, it shall serve as the member's application for a non-service-connected disability retirement and selection of Optional Settlement 2 (one beneficiary) or Optional Settlement 4 (more than one beneficiary), if the member later becomes eligible for a disability retirement but dies before applying for a disability retirement, unless the member has revoked the ADBE, per Section III(B), or Invalidation Event has occurred before the member's death, per Section III(C).
- B. **Revocation.** A member may revoke their ADBE in a writing filed with ACERA.
- C. **Invalidation Events.** If any of the following events occur after the member files an ADBE and before the member's death, the ADBE shall be wholly or partially invalidated as described below:

- 1. **Dissolution Of Marriage/Termination Of Domestic Partnership After ADBE:**
 - a. If a member names a spouse or domestic partner as an Optional Settlement 2 beneficiary in an ADBE and the marriage or domestic partnership later dissolves or terminates, the ADBE shall be wholly invalidated.
 - b. If a member names a spouse or domestic partner as one of multiple Optional Settlement 4 beneficiaries in an ADBE and the marriage or domestic partnership later dissolves or terminates, the designation of the spouse or domestic partner shall be invalidated. The remaining beneficiaries in the ADBE shall receive the percentage designated to the spouse or domestic partner based on their proportional designations. For example, if the spouse was a 50%

beneficiary and there was a 30% beneficiary and a 20% beneficiary, the 30% beneficiary will become a 60% beneficiary and the 20% beneficiary will become a 40% beneficiary.

2. **Marriage/Domestic Partnership After ADBE:** If a member marries or enters into a domestic partnership after filing an ADBE and the member's ADBE would result in lower payments to that spouse or domestic partner than would otherwise be available under governing law, the ADBE shall be wholly invalidated.
3. **Children Born Or Adopted After ADBE:** If a member's child is born or adopted by the member after the member files an ADBE and the ADBE would result in lower payments to that child than would otherwise be available under governing law, the ADBE shall be wholly invalidated.
4. **Newly Filed Active or Deferred Member Beneficiary Designation Form:** When a member files a new Active or Deferred Member Beneficiary Designation Form with ACERA, that filing wholly invalidates any ADBE the member previously filed, whether or not the ADBE is elected on the new Active or Deferred Member Beneficiary Designation Form.
5. **Death Of Beneficiaries After ADBE:**
 - a. If all primary and contingent beneficiaries on an ADBE predecease the member, the ADBE shall be wholly invalidated.
 - b. If some, but not all, primary beneficiaries on an ADBE predecease the member, the remaining primary beneficiaries on the ADBE shall receive the percentage designated to the deceased primary beneficiary based on their proportional designations. For example, if the deceased beneficiary was a 50% beneficiary and there was a 30% beneficiary and a 20% beneficiary, the 30% beneficiary will become a 60% beneficiary and the 20% beneficiary will become a 40% beneficiary. If all primary beneficiaries are deceased, then benefits will be paid to any living contingent beneficiaries as if they were the primary beneficiaries.

D. **Service Connected Disability Claims.** If a service-connected disability would result in greater benefits or tax advantages for the beneficiaries designated in the ADBE, one or more of the designated beneficiaries may pursue a claim for a service-connected disability for the deceased member. Such claims will proceed through ACERA's Disability Retirement Procedures. If the member was eligible for a non-service-connected disability (i.e., five years of ACERA or combined reciprocal service), benefits shall be paid to the beneficiaries in the ADBE based on

a non-service-connected disability while the claim for a service-connected disability is pending. If the Board grants a claim for a service-connected disability, the additional benefits and/or tax advantages shall be paid to all designated beneficiaries, regardless of whether they all participated in the pursuit of the claim for service-connection. If a surviving spouse or domestic partner is the sole designated beneficiary on the ADBE and would receive greater benefits for a service-connected death than for a service-connected disability with Optional Settlement 2 election, the surviving spouse or domestic partner shall receive those greater benefits.

E. Processing An ADBE Upon Member's Death

1. After the member's death, the ACERA Chief Executive Officer (or designee) will place the member's disability application on the Board's Consent Calendar (or regular calendar at the discretion of the Chief Executive Officer) with at least 60-day notice to the member's employer. The Board will receive supporting documentation to show the member's cause of death and the fact that the member satisfied all requirements for a non-service-connected disability before death in its confidential agenda backup. The Chief Executive Officer may, but not need, include input from the Board's Medical Advisor. The notice to the employer must include copies of the documents provided to the Board and the employer will be advised of its right to object to the granting of the disability application.
 - a. If the employer does not object and the Board grants the application on its Consent Calendar, the member's Optional Settlement 2 or Optional Settlement 4 election will be implemented.
 - b. If the employer objects, the disability application will be removed from the Consent Calendar and will proceed through ACERA's Disability Retirement Procedures to determine whether the member was entitled to a disability retirement before death.
 - 1) If the Board finds the member was entitled to a disability retirement before death, the member's disability retirement will be granted and the member's Optional Settlement 2 or Optional Settlement 4 election will be implemented.
 - 2) If the Board does not find that the member was entitled to a disability retirement before death, the member's ADBE shall be null and void and the member's death benefits shall be determined as if the ADBE never existed.

IV. Policy Modifications

This Policy will be reviewed by the Retirees Committee at least every three years. The Committee will make recommendations to the Board concerning any improvements or modifications it deems necessary.

V. Policy History

- A. The Board adopted this Policy on December 21, 2023.
- B. The Board revised this Policy on April 18, 2024.