



Alameda County Employees' Retirement Association
BOARD OF RETIREMENT

GOVERNANCE COMMITTEE/BOARD MEETING
NOTICE and AGENDA

THIS MEETING WILL BE CONDUCTED VIA TELECONFERENCE [SEE EXECUTIVE ORDER N-29-20 ATTACHED AT THE END OF THIS AGENDA]

ACERA MISSION:

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

**December 17, 2020
1:00 P.M.**

ZOOM INSTRUCTIONS	COMMITTEE MEMBERS	
The public can view the Teleconference and comment via audio during the meeting. To join this Teleconference, please click on the link below. PLEASE CLICK THE LINK BELOW TO JOIN THE WEBINAR: https://us02web.zoom.us/j/87072590726?pwd=TGFWMFBYd2FzVLA5SWVEVNHxV0xKZz09 PASSCODE: 770289 OR TELEPHONE: DIAL(FOR HIGHER QUALITY, DIAL A NUMBER BASED ON YOUR CURRENT LOCATION): US: +1 669 900 6833 OR +1 253 215 8782 OR +1 346 248 7799 OR +1 312 626 6799 OR +1 929 205 6099 OR +1 301 715 8592 WEBINAR ID: 870 7259 0726 PASSCODE: 770289	OPHELIA BASGAL, CHAIR	APPOINTED
	HENRY LEVY, VICE CHAIR	TREASURER
	DALE AMARAL	ELECTED SAFETY
	JAIME GODFREY	APPOINTED
	ELIZABETH ROGERS	ELECTED GENERAL

This is a meeting of the Governance Committee if a quorum of the Governance Committee attends and it is a meeting of the Board if a quorum of the Board attends. This is a joint meeting of the Governance Committee and the Board if a quorum of each attends.

The order of agenda items is subject to change without notice.

Board and Committee agendas and minutes, and all documents distributed to the Board or a Committee in connection with a public meeting (unless exempt from disclosure), are available online at www.acera.org.

Public comments are limited to four minutes per person in total.

ACERA will make reasonable accommodations for persons with special needs for accessibility who plan to attend Board or Committee meetings. Please contact ACERA at (510) 628-3000 to arrange for accommodation.

GOVERNANCE COMMITTEE / BOARD MEETING

NOTICE and AGENDA, Page 2 of 2 – December 17, 2020

Call to Order: 1:00 p.m.

Roll Call

Public Input (Time Limit: 4 minutes per speaker)

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

1. Review of the Board Communications Policy.

Staff Recommendation

That the Governance Committee recommend to the Board that the Board Communications Policy continues to be necessary and appropriate and that the Board make the revisions to the Board Communications Policy shown in the redline included with this agenda packet.

– Jeff Rieger, Chief Counsel

2. Review of the Service Provider Policy.

Staff Recommendation

That the Governance Committee recommend to the Board that the Service Provider Policy continues to be necessary and appropriate and that the Board make the revisions to the Service Provider Policy shown in the attached redline included with this agenda packet

– Jeff Rieger, Chief Counsel

3. Review of the Membership Policy.

Staff Recommendation

That the Governance Committee recommend to the Board that the Membership Policy continues to be necessary and appropriate and that the Board make the revisions to the Membership Policy shown in the attached redline included with this agenda packet.

– Jeff Rieger, Chief Counsel

Trustee Input

Establishment of Next Meeting

Adjournment

**EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA**

EXECUTIVE ORDER N-29-20

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS despite sustained efforts, the virus continues to spread and is impacting nearly all sectors of California; and

WHEREAS the threat of COVID-19 has resulted in serious and ongoing economic harms, in particular to some of the most vulnerable Californians; and

WHEREAS time bound eligibility redeterminations are required for Medi-Cal, CalFresh, CalWORKs, Cash Assistance Program for Immigrants, California Food Assistance Program, and In Home Supportive Services beneficiaries to continue their benefits, in accordance with processes established by the Department of Social Services, the Department of Health Care Services, and the Federal Government; and

WHEREAS social distancing recommendations or Orders as well as a statewide imperative for critical employees to focus on health needs may prevent Medi-Cal, CalFresh, CalWORKs, Cash Assistance Program for Immigrants, California Food Assistance Program, and In Home Supportive Services beneficiaries from obtaining in-person eligibility redeterminations; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567 and 8571, do hereby issue the following order to become effective immediately:

IT IS HEREBY ORDERED THAT:

1. As to individuals currently eligible for benefits under Medi-Cal, CalFresh, CalWORKs, the Cash Assistance Program for Immigrants, the California Food Assistance Program, or In Home Supportive Services benefits, and to the extent necessary to allow such individuals to maintain eligibility for such benefits, any state law, including but not limited to California Code of Regulations, Title 22, section 50189(a) and Welfare and Institutions Code sections 18940 and 11265, that would require redetermination of such benefits is suspended for a period of 90 days from the date of this Order. This Order shall be construed to be consistent with applicable federal laws, including but not limited to Code of Federal Regulations, Title 42, section 435.912, subdivision (e), as interpreted by the Centers for Medicare and Medicaid Services (in guidance issued on January 30, 2018) to permit the extension of

otherwise-applicable Medicaid time limits in emergency situations.

2. Through June 17, 2020, any month or partial month in which California Work Opportunity and Responsibility to Kids (CalWORKs) aid or services are received pursuant to Welfare and Institutions Code Section 11200 et seq. shall not be counted for purposes of the 48-month time limit set forth in Welfare and Institutions Code Section 11454. Any waiver of this time limit shall not be applied if it will exceed the federal time limits set forth in Code of Federal Regulations, Title 45, section 264.1.
3. Paragraph 11 of Executive Order N-25-20 (March 12, 2020) is withdrawn and superseded by the following text:

Notwithstanding any other provision of state or local law (including, but not limited to, the Bagley-Keene Act or the Brown Act), and subject to the notice and accessibility requirements set forth below, a local legislative body or state body is authorized to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body or state body. All requirements in both the Bagley-Keene Act and the Brown Act expressly or impliedly requiring the physical presence of members, the clerk or other personnel of the body, or of the public as a condition of participation in or quorum for a public meeting are hereby waived.

In particular, any otherwise-applicable requirements that

- (i) state and local bodies notice each teleconference location from which a member will be participating in a public meeting;
- (ii) each teleconference location be accessible to the public;
- (iii) members of the public may address the body at each teleconference conference location;
- (iv) state and local bodies post agendas at all teleconference locations;
- (v) at least one member of the state body be physically present at the location specified in the notice of the meeting; and
- (vi) during teleconference meetings, at least a quorum of the members of the local body participate from locations within the boundaries of the territory over which the local body exercises jurisdiction

are hereby suspended.

A local legislative body or state body that holds a meeting via teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with the notice and accessibility requirements set forth below, shall have satisfied any requirement that the body allow

members of the public to attend the meeting and offer public comment. Such a body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

Accessibility Requirements: If a local legislative body or state body holds a meeting via teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the body shall also:

- (i) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the Americans with Disabilities Act and resolving any doubt whatsoever in favor of accessibility; and
- (ii) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to subparagraph (ii) of the Notice Requirements below.

Notice Requirements: Except to the extent this Order expressly provides otherwise, each local legislative body and state body shall:

- (i) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by the Bagley-Keene Act or the Brown Act, and using the means otherwise prescribed by the Bagley-Keene Act or the Brown Act, as applicable; and
- (ii) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in such means of public observation and comment, or any instance prior to the issuance of this Order in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of such means, a body may satisfy this requirement by advertising such means using "the most rapid means of communication available at the time" within the meaning of Government Code, section 54954, subdivision (e); this shall include, but need not be limited to, posting such means on the body's Internet website.

All of the foregoing provisions concerning the conduct of public meetings shall apply only during the period in which state or local public health officials have imposed or recommended social distancing measures.

All state and local bodies are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the provisions of the Bagley-Keene Act and the Brown Act, and other applicable local laws regulating the conduct of public meetings, in order to maximize transparency and provide the public access to their meetings.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have
hereunto set my hand and caused
the Great Seal of the State of
California to be affixed this 17th day
of March 2020.



GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State



Office of the Chief Counsel

To: Governance Committee
From: Jeff Rieger, Chief Counsel
Meeting: December 17, 2020
Subject: **Board Communication Policy Review and Revisions**



Attached to this memorandum is a proposed revised Board Communications Policy and a redline showing the proposed changes.

This policy is coming to the Board for review and proposed revisions early, because the Board Chair wanted to establish procedures for the Board to delegate authority to individual trustees to speak and vote on behalf of the Board with respect to particular organizations. That issue is addressed in the proposed new Section IV(D)(5) of the policy.

There are also proposed revisions to Section IV(C) regarding trustees' communications with ACERA management. The existing provisions in Section IV(C) describe an amount of information exchange that, in my judgment, is not realistic for an organization of the size, scope and management structure of ACERA. Trustees and the CEO regularly exercise judgment about when, how much and with whom to share information. The current provisions of Section IV(C) leave little room for that judgment. Further, the existing provisions, if followed to the letter, could lead to inadvertent violations of the Brown Act. There is a similar proposed revision to Section IV(A)(2).

The remaining proposed revisions are for clarification, consistency or precision.

I will answer any questions about the proposed revisions, or the policy in general, at the December 17, 2020 meeting.



Board Communications Policy

I. Purpose

The purpose of the Board Communications Policy (Policy) is to encourage and facilitate open and effective communications among Board Trustees and between the Board and management, staff, and external parties.

II. Objectives

- A. Trustees receive pertinent information in a consistent and uniform manner.
- B. Trustees have equal access to appropriate information.
- C. Communications are efficient and timely.
- D. Communications with management and other parties are accurate, consistent, and reflect the views or positions of the Board as a whole.

III. Assumptions & Principles

- A. As a public agency, ACERA generates public interest and therefore periodically receives inquiries from the media and other interested parties.
- B. When communicating, Trustees recognize their sole and exclusive fiduciary duty to represent the interests of all plan members.
- C. Trustees must protect the integrity of the system, which includes the dissemination of accurate, appropriate, non-confidential and non-proprietary information to the public and media.
- D. Inappropriate or erroneous communications from Board members may represent a significant risk to the Plan, the Board, and individual Board members.
- E. This Policy must balance the need to mitigate communications risk with the need for open and efficient communication.

IV. Policy Guidelines

A. Communications Among Trustees

1. The Board shall carry out its activities in the spirit of open governance, including the provisions of the Brown Act which include, but are not limited to:
 - a. Ensuring that communications by and between Board members comply with the Brown Act;
 - b. Properly noticing and posting an agenda for Board and Committee meetings;
 - c. Properly describing all items to be considered in closed session in the notice or agenda for the meeting;
 - d. Not conducting or participating in a series of communications one at a time or in a group that in total constitutes a quorum of the Board or Committee either directly or through intermediaries or electronic devices, for the purpose of developing a concurrence as to action to be taken;
 - e. Not taking any action, whether preliminary or final, by secret ballot;
 - f. Allowing proper public comment on agenda items before or during consideration by the Board; and
 - g. Ensuring Board and Committee meeting agenda materials are properly made available to members of the public, upon request, without delay.
2. Trustees should promptly communicate all information that is relevant to the business of the Board to the Board Chair, the appropriate Committee Chair and/or the CEO, if it appears that such communication would be of value to ACERA.
3. During meetings of the Board and Committees, Trustees shall communicate in an open, frank, and constructive manner.

B. Trustee Communications with Plan Members

Trustees shall mitigate the risk of miscommunication with plan members and third parties by not giving explicit advice, counsel, or education with respect to the technicalities of

ACERA laws, policies, or processes. When receiving questions from a plan member, Trustees shall:

1. Refer the member to the main telephone number of ACERA or the ACERA website; or
2. Refer the member question directly to the appropriate ACERA senior manager for handling and a response.

C. Trustee Communications with ACERA Management

1. Trustees will direct concerns or questions concerning any aspect of ACERA operations to the attention of the CEO or other appropriate member of senior management.
2. Any request for information that requires significant expenditure of staff time or external resources shall be directed to the CEO who will determine whether to take the request to the full Board for consideration at a meeting.
3. Board members should share information in their possession pertinent to the affairs of ACERA with the CEO in a timely manner if it appears that such information would be of value to the CEO.

D. Trustee Communications with External Parties

1. The purpose of any communications by Trustees shall be consistent with their sole and exclusive fiduciary duty to represent the interests of all plan members.
2. Trustees and senior management are expected to support the decisions and policies of ACERA in external communications even if they may have opposed them or disagreed with them during Board deliberations.
3. In external communications, Trustees are expected to disclose when they are not representing an approved ACERA position.
4. Board members shall not disclose confidential communications received orally or in writing during closed session meeting of the Board or Committees or from internal or external legal counsel and identified as confidential.

5. When an organization seeks the Board's input on an issue (by formal vote or otherwise), a Trustee may provide input to that organization on behalf of the Board only if the Board has authorized that Trustee to provide such input. The Board may delegate to a Trustee authority to provide input to an organization on specified issues or on an ongoing basis with respect to a particular organization (subject to the Board's right to revoke that authorization). The Board may grant or revoke such delegated authority only at an open meeting of the Board.

E. Trustee Communications with the Media

In addition to the guidelines for communications with external parties, when Trustees communicate with the media the following guidelines shall apply:

1. When interviewed or otherwise approached by the media for information concerning the affairs of ACERA, Trustees shall not make any unilateral commitments on behalf of the Board.
2. In situations that call for a spokesperson from the Board and it is not practical for the Board to develop a formal position at a Board meeting, the Chair or his or her designate shall act as spokesperson for the Board, in consultation with the CEO. The spokesperson generally should request that the reporter put questions in writing, and attempt to review for accuracy any resulting materials before their publication.
3. Written press releases concerning the business of the Board shall be prepared by staff and shall be approved by the CEO in consultation with the Board Chair.
4. Trustees are free to write articles for publication that pertain to official ACERA business. To help ensure the accuracy of such articles and that ACERA is not inadvertently placed at risk by such articles, all such articles shall be reviewed by the CEO and legal counsel before being submitted for publication. The Trustee must state at the beginning of the article that the article does not represent the Board's official position (unless the Board has authorized the article as its official position).
5. Requests from the news media will be given high priority and responded to quickly and efficiently.
6. Trustees will not provide false, confidential or privileged information to the media.

7. Personnel and member records or similar records contain private confidential information that is protected by Article 1, Section 1 of the California Constitution or other laws. Such records are exempt from disclosure under the Public Records Act (Gov. Code §6254(c)) and Gov't Code § 31532. Personnel records generally include performance evaluations, disciplinary actions, contact information, medical information, member correspondence with ACERA and other private information. Member records are confidential to the extent permitted by the law. No such information shall be disclosed to the media.

V. Policy Review

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

VI. Policy History

- A. The Board adopted this policy on March 16, 2000.
- B. The Board reviewed and affirmed this policy, with revisions, on December 17, 2020¹.

¹ The Board adopted the Policy on March 16, 2000. The Board reviewed and adopted this policy, with revisions, on October 19, 2006; September 16, 2010; June 21, 2018; and April 18, 2019. The Board reviewed and adopted this policy, without revisions, on July 17, 2008; December 20, 2012; and December 18, 2014.



Board Communications Policy

I. Purpose

The purpose of the Board Communications Policy (Policy) is to encourage and facilitate open and effective communications among Board Trustees and between the Board and management, staff, and external parties.

II. Objectives

~~A. The objectives of the Board Communications Policy are to ensure that:~~

~~B.A. Trustees receive pertinent information in a consistent and uniform manner;~~

~~C.B. Trustees have equal access to appropriate information;~~

~~D.C. Communications are efficient and timely; and~~

~~E.D. Communications with management and other parties are accurate, consistent, and reflect the views or positions of the Board as a whole.~~

III. Assumptions & Principles

A. As a public agency, ACERA generates public interest and therefore periodically receives inquiries from the media and other interested parties.

B. When communicating, Trustees recognize their sole and exclusive fiduciary duty to represent the interests of all plan members.

C. Trustees ~~must~~ further must protect the integrity of the system, which includes the dissemination of accurate, appropriate, non-confidential and non-proprietary information to the public and media.

D. Inappropriate or erroneous communications from Board members may represent a significant risk to the Plan, the Board, and individual Board members.

- E. ~~Board Communications~~ This Policy must balance the need to mitigate communications risk with the need for open and efficient communication.

IV. Policy Guidelines

A. Communications Among Trustees

1. The Board shall carry out its activities in the spirit of open governance, including the provisions of the Brown Act which include, but are not limited to:
 - a. Ensuring that communications by and between Board members comply with the Brown Act;
 - b. Properly noticing and posting an agenda for Board and Committee meetings;
 - c. Properly describing all items to be considered in closed session in the notice or agenda for the meeting;
 - d. Not conducting or participating in a series of communications one at a time or in a group that in total constitutes a quorum of the Board or Committee either directly or through intermediaries or electronic devices, for the purpose of developing a concurrence as to action to be taken;
 - e. Not taking any action, whether preliminary or final, by secret ballot;
 - f. Allowing proper public comment on agenda items before or during consideration by the Board; and
 - g. Ensuring Board and Committee meeting agenda materials are properly made available to members of the public, upon request, without delay.
2. Trustees ~~shall ensure that~~ should promptly communicate all information that is relevant to the business of the Board ~~shall be disclosed in a timely manner to the Board Chair or, the appropriate Committee Chair and/or the CEO, if it appears that such communication would be of value to ACERA.~~
3. During meetings of the Board and Committees, Trustees shall communicate in an open, frank, and constructive manner.

B. Trustee Communications with Plan Members

Trustees shall mitigate the risk of miscommunication with plan members and third parties by ~~avoiding~~not giving explicit advice, counsel, or education with respect to the technicalities of ACERA laws, policies, or processes. When receiving questions from a plan member, Trustees shall:

1. Refer the member to the main telephone number of ACERA or the ACERA website; or
2. Refer the member question directly to the appropriate ACERA senior manager for handling and a response.

C. Trustee Communications with ACERA Management

1. Trustees will direct concerns or questions concerning any aspect of ACERA operations to the attention of the ~~Chief Executive Officer~~CEO or other appropriate member of senior management. ~~Trustees will notify the CEO of any concerns or questions sent directly to senior management.~~
2. Any request for information that ~~require~~requires significant expenditure of staff time or external resources shall be directed to the CEO who will determine whether to take the request to the full Board for consideration at a meeting.
- ~~3. The CEO and senior management shall ensure that all information requested by one or more Board members is made available to the entire Board.~~
- ~~4. Board members shall~~should share any information in their possession pertinent to the affairs of ACERA with the CEO in a timely manner. ~~Similarly, the CEO shall ensure if it appears that all relevant and pertinent such information is disclosed to all would be of the Board members in a timely manner.~~ value to the CEO.

D. Trustee Communications with External Parties

~~In general, in communicating with external parties, the following guidelines shall apply:~~

1. The purpose of any communications by Trustees shall be consistent with their sole and exclusive fiduciary duty to represent the interests of all plan members.

2. Trustees and senior management are expected to support the decisions and policies of ACERA in external communications even if they may have opposed them or disagreed with them during Board deliberations.
3. In external communications, Trustees are expected to disclose when they are not representing an approved ACERA position.
4. Board members shall not disclose confidential communications received orally or in writing during closed session meeting of the Board or Committees or from internal or external legal counsel and identified as confidential.
5. When an organization seeks the Board's input on an issue (by formal vote or otherwise), a Trustee may provide input to that organization on behalf of the Board only if the Board has authorized that Trustee to provide such input. The Board may delegate to a Trustee authority to provide input to an organization on specified issues or on an ongoing basis with respect to a particular organization (subject to the Board's right to revoke that authorization). The Board may grant or revoke such delegated authority only at an open meeting of the Board.

E. Trustee Communications with the Media

In addition to the guidelines for communications with external parties, when Trustees communicate with the media the following guidelines shall apply:

1. When interviewed; or otherwise approached by the media for information concerning the affairs of ACERA, Trustees shall ~~refrain from making~~ not make any unilateral commitments on behalf of the ~~ACERA~~ Board.
2. In situations that call for a spokesperson from the Board and it is not practical for the Board to develop a formal position at a Board meeting, the Chair or his or her designate; shall act as spokesperson for the Board, in consultation with the CEO. The spokesperson generally should request that the reporter put questions in writing, and attempt to review for accuracy any resulting materials before their publication.

3. Written press releases concerning the business of the ~~ACERA~~ Board shall be prepared by staff and shall be approved by the ~~Chief Executive Officer~~ CEO in consultation with the Board Chair.
4. Trustees are free to write articles for publication that pertain to official ACERA business. To help ensure the accuracy of such articles and ~~ensure that ACERA is not inadvertently placed at risk by such articles~~, all such articles shall be reviewed by the ~~Chief Executive Officer~~ CEO and legal counsel before being submitted for publication ~~or presentation~~. The Trustee must state at the beginning of the article that the article does not represent the Board's official position (unless the Board has authorized the article as its official position).
5. Requests from the news media will be given high priority and responded to quickly and efficiently.
6. Trustees will not provide false, confidential, ~~or privileged, inappropriate or other non-disclosable information to the media.~~
7. Personnel and member records or similar records contain private confidential information that is protected by Article 1, Section 1 of the California Constitution or other laws. Such records are exempt from disclosure under the Public Records Act (Gov. Code §6254(c)) ~~and Gov't Code § 31532~~. Personnel records generally include ~~time records,~~ performance evaluations, disciplinary actions, ~~marital status, phone numbers,~~ contact information, medical information, member correspondence with ACERA and other private information. Member records are confidential to the extent permitted by the law. No such information shall be disclosed to the media.

V. Policy Review

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

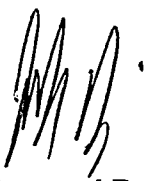
VI. Policy History

- A. The Board adopted this policy on March 16, 2000.
- B. The Board reviewed and affirmed this policy, with revisions, on ~~April 18, 2019~~ December 17, 2020¹.

¹ The Board adopted the Policy on March 16, 2000. The Board reviewed and adopted this policy, with revisions, on October 19, 2006; September 16, 2010; June 21, 2018; and April 18, 2019. The Board reviewed and adopted this policy, without revisions, on July 17, 2008; December 20, 2012; and December 18, 2014.



To: Governance Committee

From: Jeff Rieger, Chief Counsel 

Meeting: December 17, 2020

Subject: **Service Provider Policy Review and Revisions**

Attached to this memorandum is a proposed revised Service Provider Policy and a redline showing the proposed changes. The three most significant changes are:

- **Increased authority for the CEO from \$50,000 to \$75,000 in annual costs under a contract, and from \$100,000 to \$150,000 with the Chair's approval.** This is to account for increasing costs of goods and services. The proposed increase is not based on any particular inflation index, but rather on staff's anticipated contracting needs and historical understanding of which kinds of contracts the Board wants brought to it for approval.
- **Elimination of the carve-out for "Software Providers."** The current policy carves out "Software Providers," but only contracts with "Software Providers" for less than the CEO's authority under the policy. This carve-out has no practical meaning, because it is taking contracts under the CEO's authority and putting them under the CEO's authority. For the sake of clarity, the proposed revisions eliminate the carve-out altogether such that "Software Providers" will be "General Service Providers," which are subject to the policy.
- **Elimination of the \$25,000 limit for some providers in the definition of "Product Providers."** Under the policy, the CEO currently has authority to enter into contracts that are under \$50,000 annually, so carving out from the policy some contracts that are under \$25,000 annually has no practical meaning.

The rest of the proposed revisions are for clarification, consistency and precision or are necessary due to changed circumstances (e.g., the Fiduciary Counsel Policy has been superseded by the Outside Counsel Policy).

I will answer any questions about the proposed revisions, or the policy in general, at the December 17, 2020 meeting.



Service Provider Policy

I. Purpose

The purpose of the Service Provider Policy (Policy) is to establish the Board of Retirement's (Board) practices for selection and retention of Board Approved Service Providers and General Service Providers, as those terms are defined herein.

II. Definitions

- A. "Board Approved Service Providers" refers to those service providers that only the Board has the authority to appoint regardless of the Estimated Annual Cost as defined below. These include: Actuary, External Auditor, Custodian Bank, and Actuarial Auditor.
- B. "General Service Providers" refers to any business or individual retained by the Board to provide services to ACERA (including software providers), other than Investment Service Providers, Legal Service Providers, Product Providers, Temporary Employment Service Providers, and Government Providers, as those terms are defined herein.
- C. "Investment Service Providers" refers to Investment Consultants, Investment Managers, or any individuals or businesses that provide investment-related services or products. The process for appointment of Investment Service Providers is set forth in ACERA's investment policies and guidelines.
- D. "Legal Service Providers" refers to service providers that provide legal counsel, litigation support, investigative services and mediation services to ACERA. The process for engagement of Legal Service Providers is set forth in the Board's Outside Counsel Policy.
- E. "Product Providers" refers to providers that supply products for ACERA's normal business needs (e.g., office supplies, furniture, computer hardware, etc.).
- F. "Government Providers" refers to those county and state agencies that ACERA contracts with to obtain services. Such county and state agencies include, but are not limited to: Alameda County Registrar of Voters, Alameda County Human Resources Center, Alameda County Counsel's Office, and Alameda County Lakeside Group. "Government Provider" contracts include inter-agency agreements designed to clarify roles and

responsibilities between the various county agencies (i.e., 401(h) Inter-Agency Agreements with Participating Employers.)

- G. “Temporary Employment Services Providers” refers to service providers that ACERA contracts with to supply temporary staffing.
- H. “Contract” includes contracts, amended and restated contracts, amendments to contracts, and addenda.
- I. “Estimated Annual Cost” of a Contract is the value of the Contract divided by the term (in years) of the Contract, based on a calendar year. Where there are multiple Contracts between ACERA and the same entity or a closely related subsidiary during a given calendar year, the “Estimated Annual Cost” is the combined value of the multiple Contracts.
- J. “Project” is a Board-approved project for a specified amount of money that will be delegated to Staff to monitor and implement.

III. Scope

- A. This Policy applies to Board Approved Service Providers and General Service Providers, as defined above.
- B. This Policy does not apply to Investment Service Providers, Legal Service Providers, Product Providers, Government Providers and Temporary Employment Service Providers, as defined above.
- C. The CEO is delegated authority over the selection and retention of Product Providers, Government Providers and Temporary Employment Service Providers.

IV. Policy Guidelines

- A. General Guidelines
 - i. The selection and retention of Board Approved Service Providers and General Service Providers will be made in the best interests of the members and beneficiaries of ACERA, in keeping with the fiduciary responsibilities of the Board and Staff.

2. The selection of Board Approved Service Providers and General Service Providers will reflect a level of rigor that is commensurate with the importance and materiality of the service in question. The selection shall be efficient, diligent, transparent, economical and fair.
 3. ACERA will consider as broad a universe of qualified service providers that is practical and reasonable given budgetary, staffing, time, and other relevant constraints.
 4. Oral contracts are prohibited.
 5. No Board member or Staff member may participate in any way in the selection of a Board Approved Service Provider or General Service Provider Contract (or any other Contract) if a conflict of interest exists pursuant to applicable conflict of interest laws, regulations, and Board policies. A Board or Staff member with any such conflict of interest must disclose that conflict of interest to the Chief Counsel, so that the Chief Counsel can ensure compliance with all conflict of interest laws.
- B. Selection of Board Approved Service Providers
1. The Board selects and contracts with Board Approved Service Providers. The Board may determine whether to issue a Request for Information (RFI), a Request for Proposal (RFP), or select based upon Staff recommendation or sole source options.
 2. If the Board decides to issue an RFP, the following steps provide guidance. Prior to conducting a search for a Board Approved Service Provider, Staff will present a written summary to the Board, which shall include:
 - a. The type of service provider being sought and the supporting rationale;
 - b. The objectives and selection criteria and their relative importance;
 - c. An estimated timeline for completion of the search process; and
 - d. A description of the search methodology that Staff deems most appropriate and cost effective under the particular circumstances, including:
 - 1) Whether a consultant is to be used in the search process;
 - 2) The due diligence efforts to be undertaken, including such efforts as site visits or reference checks. A copy of any criteria and weights to be used will be attached for information purposes.

- 3) A copy of the proposed RFP; and
 - 4) Such other information that the Staff believes may assist the Board in better understanding the search process.
3. Staff will provide the Board or a designated committee of the Board with periodic reports on the status of all search processes involving Board Approved Service Providers.
4. Upon completion of the analysis and due diligence involved in a search process for a Board Approved Service Provider, Staff will provide the Board or a designated committee of the Board with a report containing, at a minimum:
 - a. A description of the search activities undertaken;
 - b. A list of finalist candidates and analysis concerning the candidates;
 - c. Confirmation of compliance with the objectives, selection criteria and search methodology that were presented to the Board prior to the commencement of the search, or an explanation of any deviations that occurred; and
 - d. A description of performance expectations.
5. The Board, or a committee of the Board, will interview candidates recommended for appointment as Board Approved Service Providers.

C. Selection of General Service Providers

- i. General Service Providers will be selected and contracted with as follows:
 - a. If the Estimated Annual Cost of the proposed Contract is less than \$75,000, the CEO or Designee may select and contract with the Provider;
 - b. If the Estimated Annual Cost of the proposed Contract is between \$75,000 and \$150,000, the CEO may select and contract with the Provider, with the Board Chair's written approval;
 - c. If the Estimated Annual Cost of the proposed Contract is more than \$150,000, the Board must approve ACERA's involvement in the Contract. In doing so the Board may issue an RFP, but is not required to do so.

- d. In lieu of applying (a)–(c) above, if the Board approves the total cost allocation for a Project, the CEO or the CEO’s designee can approve all contracts required to implement the Project, so long as the value of all the contracts for the Project do not exceed the Board’s original cost allocation for the Project.

D. Monitoring

The CEO and/or appropriate Staff will monitor the performance and services provided by all Board Approved Service Providers and General Service Providers.

E. Contract Terms

1. ACERA will not contract with the same Board Approved Service Provider or General Service Provider for more than five consecutive years without Board approval of a longer term.
2. Except where business practices prohibit, all Contracts covered by this policy will provide that the CEO or the Board may terminate the Contract upon 30-day notice, with or without cause.
3. Contracts must require the filing of statements of economic interests (Fair Political Practices Commission Form 700) when such filings are required by ACERA’s Conflict of Interest Code.

V. Policy Review

The Governance Committees shall review the Service Provider Policy at least every three years to ensure that it remains relevant and appropriate.

VI. Policy History

- A. This policy was adopted by the Board at its September 29, 2004, Board Offsite Retreat.
- B. The Board reviewed and amended on December 17, 2020.¹

¹ The Board adopted this policy at its September 29, 2004, Board Offsite Retreat. The Board reviewed and amended the policy on August 16, 2007; June 17, 2010; August 18, 2011; December 15, 2011; March 21, 2013; December 19, 2013; December 17, 2015; and November 9, 2017.



Service Provider Policy

I. Purpose

The purpose of the Service Provider Policy (Policy) is to establish the Board of Retirement's (Board) ~~practice~~practices for selection and retention of Board Approved Service Providers and General Service Providers, as those terms are defined herein.

II. Definitions

- A. "Board Approved Service Providers" refers to those service providers that only the Board has the authority to appoint regardless of the Estimated Annual Cost as defined below. These include: Actuary, External Auditor, Custodian Bank, and Actuarial Auditor.
- B. "General Service Providers" refers to any business or individual ~~contracted~~retained by the Board to provide services to ACERA; (including software providers), other than Investment Service Providers, Legal Service Providers, Product Providers, Temporary Employment Service Providers, and Government Providers, as those terms are defined herein.
- C. "Investment Service Providers" refers to Investment Consultants, Investment Managers, or any individuals or businesses that provide investment-related services or products. The process for appointment of Investment Service Providers is set forth in ~~ACERA~~ACERA's investment policies and guidelines.
- D. "Legal Service Providers" refers to service providers that provide legal counsel, litigation support, investigative services and mediation services to ACERA. The process for issues other than fiduciary questions. Fiduciary counsel engagement of Legal Service Providers is retained under set forth in the direction of the Board pursuant to the Fiduciary Board's Outside Counsel Retention Policy.
- E. "Product Providers" refers to providers that supply ~~fungible or disposable~~ products ~~and for ACERA's normal business needs (e.g., office supplies. Suppliers who provide, furniture, computer hardware and/or equipment to ACERA through contracts which~~

~~include a maintenance and support services component are Product Providers for those contracts that have an annual cost equal to or less than \$25,000.00., etc.).~~

F. “Government Providers” refers to those county and state agencies that ACERA contracts with to obtain services. Such county and state agencies include, but are not limited to: Alameda County Registrar of Voters, Alameda County Human Resources Center, Alameda County Counsel’s Office, and Alameda County Lakeside Group. “Government Provider” contracts include inter-agency agreements designed to clarify roles and responsibilities between the various county agencies (i.e., 401(h) Inter-Agency Agreements with Participating Employers.)

~~G. “Software Providers” refers to service providers that supply computer software, software licenses and software maintenance and support services which are not available from satisfactory alternative sources as determined by the Chief Executive Officer and have estimated annual costs under the delegated contracting authority provided to the Chief Executive Officer in section IV.C.1.a. of this Policy.~~

H.G. “Temporary Employment Services Providers” refers to service providers that ACERA contracts with to supply temporary staffing.

H.H. “Contract” ~~is defined to include~~includes contracts, amended and restated contracts, amendments to contracts, and addenda.

H.I. “Estimated Annual Cost” of a Contract is the value of the Contract divided by the term (in years) of the Contract, based on a calendar year. Where there are multiple Contracts between ACERA and the same entity or a closely related subsidiary during a given calendar year, the “Estimated Annual Cost” is the combined value of the multiple Contracts.

K.J. “Project” ~~is defined as a Board-approved project for a certain~~is a specified amount of money that will be delegated to Staff to monitor and implement ~~and which will often require contracting with General Service Providers.~~

III. Scope

- A. This Policy applies to Board Approved Service Providers and General Service Providers, as defined above.
- B. This Policy does not apply to Investment Service Providers, Legal Service Providers, Product Providers, Government Providers, ~~Software Providers~~, and Temporary Employment Service Providers, as defined above.
- C. ~~Staff shall establish guidelines and procedures for~~ The CEO is delegated authority over the selection and retention of ~~Legal Service Providers, Product Providers, Software Providers,~~ Government Providers; and Temporary Employment Service Providers.

IV. Policy Guidelines

A. General Guidelines

- 1. The selection and retention of Board Approved Service Providers and General Service Providers will be made in the best interests of the members and; beneficiaries of ACERA, in keeping with the fiduciary responsibilities of the Board and Staff.
- 2. The selection of Board Approved Service Providers and General Service Providers will reflect a level of rigor that is commensurate with the importance and materiality of the service in question. The selection shall be efficient, diligent, transparent, economical and fair.
- 3. ACERA will consider as broad a universe of qualified service providers that is practical and reasonable given budgetary, staffing, time, and other relevant constraints.
- 4. Oral contracts are prohibited.
- 5. No Board member or Staff member may ~~discuss, participate in or vote on~~ any way in the selection of a Board Approved Service Provider or General Service Provider Contract (or any other Contract) if a conflict of interest exists pursuant to the applicable conflict of interest laws, regulations, and Board policies. A Board or Staff member with any such conflict of interest must disclose that conflict of interest to the Chief Counsel, so that the Chief Counsel can ensure compliance with all conflict of interest laws.

B. Selection of Board Approved Service Providers

1. The Board selects and contracts with Board Approved Service Providers. The Board may determine whether to issue a Request for Information (RFI), a Request for Proposal (RFP), or select based upon Staff recommendation or sole source options.
2. ~~Should~~If the Board ~~decided~~decides to issue an RFP, the following steps provide guidance. Prior to conducting a search for a Board Approved Service Provider, the Staff will present a written summary to the Board, which shall include:
 - a. The type of service provider being sought and the supporting rationale;
 - b. The objectives and selection criteria and their relative importance;
 - c. An estimated timeline for completion of the search process; and
 - d. A description of the search methodology that ~~is deemed~~Staff deems most appropriate and cost effective ~~in under~~ the particular circumstances ~~and that addresses such issues as, including:~~
 - 1) Whether a consultant is to be used in the search process;
 - 2) The due diligence efforts to be undertaken, including such efforts as site visits or reference checks. A copy of any criteria and weights to be used will be attached for information purposes.
 - 3) ~~Whether a Request for Proposal (RFP), or a variation thereof, is to be used with supporting rationale, and if so, a~~ A copy of the proposed RFP ~~will be attached for information purposes; and~~
 - 4) Such other information that the Staff believes may assist the Board ~~of Retirement~~ in better understanding the search process.
3. Staff will provide the Board or a designated committee of the Board with periodic reports on the status of all search processes involving Board Approved Service Providers.
4. Upon completion of the analysis and due diligence involved in a search process for a Board Approved Service Provider, Staff will provide the Board ~~of Retirement~~ or a

designated committee of the Board of Retirement with a report containing, at a minimum:

- a. A description of the search activities undertaken;
 - b. A list of finalist candidates and analysis concerning the candidates;
 - c. Confirmation of compliance with the objectives, selection criteria and search methodology that were presented to the Board prior to the commencement of the search, or an explanation of any deviations that occurred; and
 - d. A description of performance expectations.
5. The Board, or a committee of the Board, will interview candidates recommended for appointment as Board Approved Service Providers.

C. Selection of General Service Providers

- i. General Service Providers will be selected and contracted with as follows:
 - a. If the Estimated Annual Cost of the proposed Contract is less than ~~\$50~~75,000, the ~~Chief Executive Officer~~CEO or Designee may select and contract with the Provider;
 - b. If the Estimated Annual Cost of the proposed Contract is ~~\$50~~between \$75,000 through and including \$100\$150,000, the ~~Chief Executive Officer~~CEO may select and contract with the Provider, with the Board Chair's written approval;
 - c. If the Estimated Annual Cost of the proposed Contract is ~~over \$100,000~~, Staff will inform the Board of Retirement of this proposed Contract. The Board of Retirement ~~more than \$150,000~~, the Board must approve ACERA's involvement in the Contract. In doing so the Board may issue an RFP, but is not required to do so.
 - d. In lieu of applying (a-)(c) above, ~~should~~if the Board ~~approve~~approves the total cost allocation for a Project and the Project requires contracts with the same or different service providers to support its implementation, the CEO or the CEO's ~~delegated~~designee can approve all the contracts required to

implement the Project, regardless of the contract's Estimated Annual Cost, so long as the value of all the contracts for the Project do not exceed the Board's original cost allocation for the Project. ~~The CEO or CEO's delegate cannot approve any contracts that exceed the Board's original cost allocation.~~

D. Monitoring

The CEO and/or appropriate Staff will monitor the performance and services provided by all Board Approved Service Providers and General Service Providers.

E. ~~Preferred Contract Terms~~

1. ACERA will not contract with the same Board Approved Service Provider or General Service Provider for more than five ~~(5)~~ consecutive years without Board ~~Approval~~approval of a longer term.
2. Except where business practices prohibit, all Contracts covered by this policy will provide that the CEO or the Board may terminate the Contract upon ~~thirty (30)~~ days ~~day~~ notice, with or without cause.
3. ~~All Contracts with a Service Provider that is a "consultant" as that term is defined under 2 CCR §§18701(a)(2) or 18702.2 shall~~must require that the Service Provider ~~file a statement~~filing of statements of economic interests (Fair Political Practices Commission Form 700) ~~as when such filings are required under~~by ACERA's Conflict of Interest Code.

V. Policy Review

The Governance Committees shall review the Service Provider Policy at least every three ~~(3)~~ years to ensure that it remains relevant and appropriate.

VI. Policy History

- A. This policy was adopted by the Board of Retirement at its September 29, 2004, Board Offsite Retreat.

- B. The Board reviewed and amended on ~~November 9, 2017~~¹December 17, 2020.²

¹ ~~The Board of Retirement adopted this policy at its September 29, 2004, Board Offsite Retreat. The Board reviewed and amended the policy on August 16, 2007; June 17, 2010; August 18, 2011; December 15, 2011; March 21, 2013; December 19, 2013; December 17, 2015; and November 9, 2017.~~

² The Board adopted this policy at its September 29, 2004, Board Offsite Retreat. The Board reviewed and amended the policy on August 16, 2007; June 17, 2010; August 18, 2011; December 15, 2011; March 21, 2013; December 19, 2013; December 17, 2015; and November 9, 2017.



To: Governance Committee
From: Jeff Rieger, Chief Counsel
Meeting: December 17, 2020
Subject: **Membership Policy Review and Revisions**



Attached to this memorandum are: (1) the current Membership Policy, (2) the proposed revised Membership Policy, (3) a redline showing the proposed revisions, and (4) a memorandum explaining the recommended flexibility for membership and termination dates in the proposed revised policy. I recommend reviewing the current policy and the proposed revised policy and then using the redline for review of specific provisions only, as the redline is hard to follow.

The most significant proposed revisions are:

- **Increased flexibility for membership and termination dates to help members take advantage of reciprocity.** There is a separate memorandum in the agenda packet to explain this proposed revision.
- **Elimination of the requirement that members elect to purchase prior ineligible service and “public service” within one year after entering membership.** This is not a legal requirement, but rather a Board policy. The one-year requirement creates additional work for staff and potentially disadvantages members who fail to timely make the election.
- **Substantial reduction in content related to purchases of service credit for military service.** The law is changing on January 1, 2021 to eliminate ambiguities and potential conflicts between California law and federal law. This change allows the Board to substantially simplify the Membership Policy on this subject.
- **Substantial reduction in content related to reinstatement from retirement.** Reinstatement is rare and the level of detail in the current policy goes far beyond the level of detail for most other subjects in the policy.
- **Additional content about disability retirement benefits, death benefits and how to calculate service retirement benefits.**
- **Consolidation of information by subject.** Some information related to the same subject currently is spread throughout different parts of the policy. For example, the current policy has a standalone section regarding the cessation of member

contributions and the proposed revised policy moves that subject into the member contribution section. Similarly, the information regarding benefits available to each tier is not consolidated in one place in the current policy, but is in the proposed revised policy.

Other than the above, the proposed revised policy includes substantial editorial suggestions. If something can be stated with fewer words without losing content, the proposed revised policy includes that revision. There are also proposed changes to some of the formatting to cut down on the number of outline levels.

I will answer any questions about the proposed revisions, or the policy in general, at the December 17, 2020 meeting.

Current ***Membership Policy***



Membership Policy

I. Purpose

The Membership Policy (Policy) provides the requirements for membership with the Alameda County Employees' Retirement Association (ACERA), including establishing eligibility for membership and defining service as required by the Regulations of the Board of Retirement.

II. Membership Eligibility and Contributions

A. Mandatory Membership

1. Membership in ACERA is mandatory for employees appointed to full time positions with a Participating Employer¹. Each Participating Employer has the exclusive authority and responsibility to define what constitutes full time employment and to identify its positions that are eligible for membership².
2. At an employee's initial time of entry into ACERA, the Participating Employer certifies in writing to ACERA the following:
 - a. The individual is an employee of the Participating Employer;
 - b. The position is eligible for membership with ACERA; and
 - c. The individual works in a full-time permanent position.
 - d. The individual shall be enrolled in ACERA.

¹ For Alameda Health Systems, mandatory membership is pursuant to AB 1008 [Chapter 311, 2013] (Gov. Code §31552.4 and Health and Safety Code §101851). Unless stated otherwise, all references to statutes are California State statutes.

² ACERA has seven Participating Employers: (1) Alameda County; (2) Alameda Health Systems; (3) Alameda Superior Court of Alameda County; (4) Housing Authority of Alameda County; (5) Livermore Area Recreation and Park District; (6) First 5 Alameda County; and (7) Alameda Office of Education.

3. At the time of initial entry into ACERA all ACERA eligible employees must submit a completed membership enrollment questionnaire to ACERA.
4. Membership is continuous until termination of employment with a Participating Employer.

B. Mandatory Contributions

1. Membership contributions are mandatory for all members.
2. Participating Employers must withhold member contributions from compensation earnable/pensionable compensation and forward such contributions to ACERA on a biweekly basis. (Gov. Code §§31552 and 31625.)
3. Failure of the Participating Employer to withhold contributions in a timely manner will result in missed contributions.
 - a. Upon discovery of missed contributions, ACERA shall assess the amount owed plus earned interest for both the member and Participating Employer and shall notify each respectively of the amounts owed.
 - b. ACERA determines the earned interest rate applied to the missed contribution³.
 - c. The Participating Employer shall withhold the missed contributions plus earned interest from the employee's wages.
 - d. The Participating Employer shall pay its employer contributions and earned interest in connection with all missed contributions.
 - e. In instances where the member is no longer in active employment with the employer, the member and employer remain responsible for each of their respective portion of the legally required contributions plus earned interest. (Gov. Code §§31581, 31582, 31585, 31620, 31621.)

C. First Date of Membership

³ *Earned interest refers to the interest rate for the previous six month cycle. This is interest that would have been earned on the account had the contributions been paid timely. If the member is in on an installment plan, the assumed interest rate shall be included in the calculation.*

1. Membership is effective on the first day of the second pay period following the employee's hire date into an ACERA eligible position (except the Housing Authority as noted below) This is the date of entry into ACERA membership. As of the date of entry, payroll deductions for retirement contributions begin and service credit for each hour worked is earned.
 2. During the short period between the beginning of employment and the ACERA plan date of entry, the employee does not pay contributions or earn service credit. A member can purchase this service credit (referred to as "days prior to entry") any time before retirement without changing the membership, and date of entry does not change.
 3. For the Housing Authority, membership is effective on the first day of an employee's hire in an ACERA eligible position. This is the first date of entry into ACERA membership. As of this date of entry, payroll deductions for retirement contributions begin and service credit for each hour work is earned.
- D. Excluded from Membership
1. Temporary, Part-time, Seasonal, Intermittent and "as needed", or Per Diem employees, as defined in the Alameda County Civil Service Rules, Alameda County Salary Ordinance, the Alameda County Administrative Code or such similar ineligible positions as defined by each Participating Employer. Individuals who work for a participating employer through the Alameda County Temporary Agency Pool (TAP) are excluded from membership in the Alameda County Employees' Retirement Association.
 2. If a full-time employee who is a member of ACERA is transferred to employment in a temporary, part-time, seasonal, intermittent and "as needed", per diem status, or TAP position, the employee is required to continue his or her membership from the date of such transfer and shall receive credit for such subsequent service as the total time served in such position bears to the total time served in a full-time position.
- E. Independent Contractors
1. Each participating employer identifies its positions which are ACERA eligible and hires employees into those positions. If a Participating Employer hires individuals

as independent contractors under an employment contract or through a third-party, those individuals are ineligible for ACERA membership. Such working time is not deemed service, county service, or public service. Additionally, such working time cannot be purchased at any time. The term contract as used here does not refer to a collective bargaining agreement between organized labor and a Participating Employer.

2. Examples of employment ineligible for ACERA membership and ineligible service include, but are not limited to, the following:
 - a. Temporary workers who work through temp agencies or third parties. (This does not include TAP employees which are discussed above.)
 - b. Individuals working under contract for temporary services requiring professional, highly technical skills or special skills as defined in Government Code §§31561 and 31000.
 - c. Independent Contractors including, but not limited to, individuals whose compensation and/or rate of compensation is fixed at a rate by the day or hour. (Gov. Code §§31000 and 31527(e).)

F. Terminated Employees

Members who terminate membership/employment before retirement and meet the service criteria may elect a deferred retirement allowance. (Gov. Code §§31700 31706.)

Members who terminate membership/employment before retirement and do not meet the service criteria may elect to leave accumulated contributions on deposit in the retirement fund. (Gov. Code §31629.5.) (See Termination Election of Membership Form on www.ACERA.org.)

III. Membership Types

- A. The type of membership depends on the employer, job classification, and date of entry/re-entry into the ACERA.
- B. ACERA has two Membership types, which are based upon job classifications:

1. Safety members are employees working in active law enforcement, fire fighting, or in positions that have been designated as safety positions (i.e., Juvenile Hall Group Counselor, Probation Officer, etc.).
2. General Members are all other members.

IV. Tier Levels

ACERA has different Tiers (benefit levels) based upon a member's date of entry/re-entry.

A. Tier I:

General or Safety Members who joined ACERA on or before June 30, 1983, and have been continuous members⁴.

General Members who joined ACERA as employees of the Livermore Area Recreation and Park District (LARPD) before October 1, 2008, and have been continuous members.

General Members who joined ACERA as employees of the Housing Authority before September 30, 2011, and have been continuous members.

The final average salary calculation is based on the highest 12 months of pay.

B. Tier II:

1. General or Safety members who joined or rejoined ACERA on or after July 1, 1983
2. General members who joined ACERA on or after September 30, 2011, as employees of the Housing Authority. On September 30, 2011, the Housing Authority implemented a new benefit formula for those employees who elected to change to Tier II, and for any new Housing Authority employees.
3. The Final Average Salary calculation for Tier II is based upon the highest 36 months of pay.

C. Tier III:

⁴ Under Gov. Code §31484.8 effective January 1, 1985, a Tier I employee who leaves County service between June 30, 1983, to June 6, 1988, and subsequently returns to covered employment within three years shall return as a Tier I employee. Effective June 30, 1988, a Tier I employee who is laid off and rehired within one (1) year from the date of separation shall return as a Tier I employee. Any Tier I employee who takes a deferred retirement and subsequently returns to covered employment shall return as a Tier I employee.

General Members who joined ACERA on or after October 1, 2008, as employees of the LARPD. On October 1, 2008, LARPD implemented a new benefit formula for those employees who elected to change to Tier III and for any new LARPD employees. The Final Average Salary calculation is based upon the highest 12 months of pay.

D. Tier IV:

1. For all Participating Employers, General and Safety Members who joined ACERA for the first time on or after January 1, 2013, and
 - a. Were not members of any other public retirement system before January 1, 2013;
 - b. Were not subject to reciprocity; or
 - c. Were active members of ACERA and had a break in service of more than 6 months and returned to a different ACERA Participating Employer.
2. The final average salary is based on the 36 highest consecutive months. (Gov. Code §7522.04(f).)

E. Dual Membership Service (Split Tier Membership)

1. A member having service as both a General and a Safety member and/or service as a Tier I, Tier II, Tier III, or Tier IV member will receive benefits calculated under the type of membership and Tier for the service credit earned in each category.
2. Eligible members with Tier I and Tier II Split Tier membership may be able to convert Tier II service time to Tier I pursuant to *Aquilino vs. Marin County Employees' Retirement Association (MCERA)* (1998) 60 Cal.App.4th 1509 provided they redeposit withdrawn Tier I contributions and apply for *Aquilino* Tier I restoration.

V. Service Credit Eligible for Purchase

The following types of service credit are eligible for purchase to increase membership service credit totals. All ACERA member service purchases must be completed within five years of initiation of purchase. This entire section does not apply to time worked in positions detailed in Section II.E. above:

- A. **Time Prior to Entry Date:** Entry dates are the first day of the pay period following the appointment to a retirement eligible position. Days worked before the entry date may be purchased and added to membership service credit.
- B. **Prior Ineligible Service:** Members who were excluded from retirement membership because Part-time, Seasonal, Intermittent, or Services-as-needed, or worked in a position through TAP may purchase this service once they become eligible for membership. Written elections to make such purchases shall be made within one year of date of entry into membership.
- C. **Medical Leave of Absence without Pay:** A member who returns to active service following an uncompensated leave of absence on account of the member's illness may receive service credit for the period of such absence upon the payment of the contributions that the member would have paid during the period, together with the interest that such contributions would have earned had they been on deposit, if the member was not absent. Upon return to employment, the member may purchase the service lost during such leave not to exceed one (1) year for each leave period. The number of payment deductions cannot exceed the number of months the member is purchasing. (Gov. Code §31646.)
- D. **Military Service Leave of Absence without Pay:**
 - i. **Federal Law Provides the Following:**
 - a. The Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") allows members to take leave for up to five years of military service.
 - b. Upon returning to work, members have the right to pay for missed contributions for up to five years of service beginning from the date of re-entry into employment.
 - c. The repayment period is three times the member's period of service, not to exceed five years.
 - d. The contributions are pre-tax and not subject to interest.

-
- e. Participating Employers are required to pay the employer contributions for the same period of time.
 - f. Members cannot purchase service credit for any period for which the member will receive military retirement.
2. State Law Provides the Following:
- a. If USERRA does not apply, under the California Employees' Retirement Law ("CERL"), non-PEPRA members may purchase service credit for the military leave of absence.
 - b. A member who resigns or obtains a leave of absence and enters the military, and later returns to service with an employer, may purchase service for any part or all of the military service if the following conditions apply:
 - 1) The member received an honorable discharge;
 - 2) The member return to a Participating Employer within one year from the date of discharge from the military.
 - c. The member must contribute what he or she would have paid to ACERA based on his or her compensation earnable as defined in Government Code §31461, at the time of resignation or leave of absence, along with earned interest. The member is not entitled to purchase service credit if the member will receive military retirement for the same service. (Gov. Code §§31649.5, 31649.6.)
3. Notice
- a. Participating Employers must notify members of the right to purchase military service within 30 days after the date of reemployment.
 - b. The Participating Employer is required to notify ACERA within 30 days that the member has been reemployed. (Gov. Code §31649.1.)
- E. Redeposit of Prior Membership Contributions: A current member who previously terminated membership with ACERA and who withdrew contributions and interest for that membership, may redeposit the withdrawn funds plus interest that would have accrued up to the date of payment at any time before retirement. All such redeposits shall

be completed within 5 years from the date the redeposit is initiated. Service credit for this prior membership would then be restored.

- F. Other Prior Public Service: A member who worked for non-ACERA public agency before becoming a member of ACERA may be eligible to purchase service credit for such service if certain requirements are met.
1. Service must be earned with an approved public agency within the State of California.
 2. Prior federal civilian and prior military service may be purchased only by members hired on or before August 8, 1972.
 3. The member must be ineligible for pension benefits from the other public service.
 4. This type of purchased service shall not count towards vesting requirements or eligibility to retire.
 5. Written elections to make such purchases shall be made within one year of date of entry into membership.

VI. Reciprocal Membership

A. General Rules

1. Members who enter ACERA membership within six (6) months of termination from a membership with another '37 Act County, CalPERS, or a public agency reciprocal with CalPERS and who left their membership in deferred status with the prior retirement system, may have a reciprocal agreement established between ACERA and the prior retirement system. The same is true for members who terminate employment under ACERA membership, leave funds in deferred status, and begin employment within six months with an employer under another '37 Act County, CalPERS or a retirement system reciprocal with CalPERS. Reciprocity is irrevocable. (Gov. Code §31831.)
2. If overlapping or concurrent employment or service credit occurs within the six month window, reciprocity cannot be established. ACERA may adjust the entry date to the date after the termination date in the prior agency to prevent duplicate

service crediting. However, ACERA cannot adjust the termination date if the member begins employment in the next reciprocal agency. In these instances, reciprocity will not be established unless the next agency adjusts its entry date to avoid overlapping service crediting.

3. The entry age used by ACERA will be the age when the member entered his or her first reciprocal membership. This is not applicable to Tier IV.
4. Service credit earned in a reciprocal agency will be considered in establishing a member's vesting rights and eligibility to retire.
5. The highest average salary earned will be used to compute the retirement benefits in all reciprocal memberships.

B. Rules Specific to Certain Safety Members

Safety members (law enforcement and fire fighters only) who withdrew retirement contributions after termination of employment, and currently work for a reciprocal agency, may redeposit funds to establish reciprocal benefits. Eligibility for specific reciprocal benefits will depend on whether the time lapse between system memberships is more or less than 6 months (AB 2766 [Chapter 883, 2002]).

C. Disability

If disability retirement is granted from the current reciprocal agency, the benefit must be pro-rated according to service earned in each system. Members may not receive a benefit amount for more than what they would have received had all service been earned in one retirement system. In some cases, reciprocal retirement systems pay a level of retirement benefit which is the greatest amount the member would be entitled to in any single retirement system. In those cases, ACERA will not pay any benefit to the member and will not return the member's accumulated contributions as required by Government Code §§31838.5, 31830, 31831.

VII. Thirty Year (30) Membership

A. Safety Members:

Safety members who attain 30 years of retirement service credit make no further employee contributions. Date of entry into ACERA is not considered when determining thirty (30)-year membership for safety members. (Board Resolution Number 00-134.)

B. General Members:

1. Thirty (30) year membership applies only to those members who entered or re-entered ACERA membership on or before March 7, 1973. Members who have been continuously making contributions to ACERA and/or a reciprocal Agency since March 7, 1973, make no further contributions upon attaining thirty (30) years of retirement service credit, provided the reciprocity requirements of Government Code §31836.1 are met. (Gov. Code §31625.2)
2. Thirty (30) year membership status is not applicable to those members who re-entered ACERA membership after March 7, 1973, except as noted in the footnote⁵. Those members will make contributions for as long as they remain active members.

C. Tier IV Members:

Effective January 1, 2013, for General and Safety members who are Tier IV, Sections II.K.1. and II.K.2. do not apply. Thirty (30) year membership is not applicable to Tier IV members. Those members will make contributions for as long as they remain active members.

VIII. Contribution Rates for ACERA Members

A. Tier I, Tier II, and Tier III:

Contribution rates are based upon age of entry, membership type, and plan tier. The rates are adjusted annually.

B. Tier IV:

⁵ Board Resolution 00-134, revised the thirty (30) year membership policy. Effective December 21, 2000, thirty (30) year membership status is applicable to members whose date of entry into ACERA is after March 7, 1973, if they were previously a member of ACERA on or before March 7, 1973, terminated, and withdrew their contributions and interest and redeposited all eligible contributions and interest upon re-entry. This is consistent with the understanding of continuous membership contained in Gov. Code §31652. If a general member's date of entry is on or after December 21, 2000, and the member has established reciprocity with another retirement system, thirty (30) year membership does not apply.

Contribution rates are based upon a flat/single contribution rate. The rates are adjusted annually. (Gov. Code §§31621.11, 31639.26.)

IX. Benefit Formulas

A. Benefit Formulas at Retirement and Minimum Eligibility Requirements

1. Tier I:

a. General:

- 1) 2% at age 57.
- 2) Members may retire a) at age 50 or older with 10 or more years of service credit or b) at any age with 30 or more years of service credit.

b. Safety:

- 1) 3% at age 50.
- 2) Member may retire a) at age 50 or older with 10 or more years of credit service or b) at any age with 20 or more years of service credit.

2. Tier II:

a. General:

- 1) 2.09% at age 62.
- 2) Members may retire a) at age 50 or older with 10 or more years of service credit or b) at any age with 30 or more years of service credit.

b. Safety:

Members may retire a) at age 50 or older with 10 or more years of service credit or b) at any age with 20 or more years of service credit. The following formulas apply.

- 1) 3% at age 50 years old.

2) Members may retire a) at age 50 or older with 10 or more years of service credit or b) at any age with 20 or more years of service credit.

3) 3% at age 55 years old.

Members may retire a) at age 50 or older with 10 or more years of service credit or b) at any age with 20 or more years of service credit.

4) 2% at age 50 years old.

Members may retire a) at age 50 or older with 10 or more years of service credit or b) at any age with 20 or more years of service credit.

3. Tier III:

a. 2.5% at age 55.

b. Members may retire a) at age 50 or older with 10 or more years of service credit or b) at any age with 30 or more years of service credit.

4. Tier IV:

a. General:

1) 1% at age 52.

2) 2.5% at age 67.

3) Members may retire at age 52 or older with 5 or more years of service.

b. Safety:

1) 2% at age 50.

2) 2.7% at age 57.

3) Members may retire at age 50 or older with 5 or more years of service.

(Gov. Code §§7522.20, 7522.25, 7522.30, 7522.52)

X. Benefits Available to ACERA Members

A. Retirement Benefits

Eligible members receive a guaranteed, life time benefit at retirement calculated by a set formula.

B. Disability Benefits

If a member becomes permanently incapacitated from the performance of his or her job duties, he or she may be eligible for disability retirement through ACERA.

C. Death Benefits

Death benefits payable to beneficiaries vary in form and are based on the status of the member at death. An overpayment that is outstanding upon death, can deducted from the benefit to the surviving spouse before paying out the benefit.

XI. Pensionable Compensation/Compensation Earnable Defined

A. Tier I, Tier II, and Tier III Members

Compensation Earnable means the average compensation as determined by the Board, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in that same grade or class or positions during the period, and at the same rate of pay and excludes specific types of compensation as determined by the Board, including compensation deemed paid to enhance a member's retirement benefit. (Gov. Code §31461.)

B. Tier IV Members

1. Pensionable compensation means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to a publicly available pay schedule; and excludes specific types of compensation as determined by the Board. (Gov. Code §7522.34.)
2. Pensionable Compensation used to calculate the defined benefit paid to a Tier IV member shall not exceed 100% (for those members whose service is included in

the federal system) and 120% (for those members whose service is not included in the federal system) of the contribution and benefit base specified in Section 430(b) of Title 42 of the United States Code (Gov. Code §§7522.10(c), 7522.34) to be adjusted each actuarial evaluation based on changes to the Consumer Price Index. (Gov. Code §7522.10(d).)

3. A public employer shall not offer a defined benefit or any combination of defined benefits, including a defined benefit offered by a private provider, on compensation in excess of the limitation stated in this Sections 1. and 2. above.

C. Tier I, Tier II, Tier III and Tier IV

Compensation that has been deferred shall be deemed pensionable compensation when earned rather than paid.

XII. Reinstatement

A. Reinstatement

In the event of reinstatement, of a returning retiree to employment with a Participating Employer, the law and ACERA's policy require suspension of the payment of the retiree's monthly retirement allowance. In such cases the retiree may be employed without limitation on the total number of hours per fiscal year⁶. The reinstated retiree must be enrolled as an active ACERA membership; and payment of member contributions resumes. Participating Employers and returning retirees shall comply with the law and all ACERA policies in this regard.

B. Process for Reinstatement

A member retired from service and reemployed shall become an active member of ACERA upon the following; and the following is required:

- i. A Participating Employer shall promptly inform ACERA, in writing, when either of the following events occurs:

⁶ Effective November 6, 2012 through Board of Supervisor Resolution, §§31680.4 and 31680.5 are operative.

- a. A retiree of the Participating Employer works 961 hours or more in a fiscal year;
 - b. The Participating Employer elects to offer full time employment to an ACERA retiree;
 - c. the retiree returns to work without the appropriate break in service; and/or
 - d. the retiree has a verbal or written agreement to return to work.
2. The Participating Employer will supply the employee with the enrollment questionnaire to complete and submit to ACERA.
3. The retiree will be required to complete an application for reinstatement and submit it to the Board.
4. The Board determines, based upon medical examination and written certification from ACERA's Medical Advisor, that the retiree is not incapacitated for the duties assigned.
5. The member meets the other membership provisions within this Policy.
6. The effective date of reinstatement to active membership status shall be the first day of the month following the date of reemployment.
7. The retirement allowance shall be canceled on the effective date of the member's reinstatement and shall be resumed only upon the subsequent termination of the member from employment.
8. Government Code §31680.7 provides guidance for ACERA in its determination of membership tier during reemployment, final retirement service credit, membership contribution rate during reemployment, and reinstatement of retirement allowance after discontinuation of reemployment for returning retirees who are not new members as of January 1, 2013.
9. The member shall be considered a new member if the member is reinstated and reemployed with a new ACERA employer.

XIII. Policy Modification

The Governance Committee, or other committee designated by the Board, shall review this policy at least every three (3). The Committee shall make recommendations to the Board concerning any improvements or modifications it deems necessary.

XIV. Policy History

A. The Board adopted this policy on July 17, 2003.

B. The Board reviewed and affirmed this policy, with revisions, on December 20, 2018⁷.

⁷ Previous amendment dates all with revisions: August 16, 2007; August 18, 2011; December 15, 2011; December 20, 2012; March 21, 2013; December 19, 2013; June 18, 2015; July 21, 2016, and December 20, 2018.

Proposed ***Membership Policy***



Membership Policy

I. Purpose

This Membership Policy (Policy) contains the Board of Retirement's (Board) rules of membership in the Alameda County Employees' Retirement Association (ACERA). If there are conflicts between applicable law and this policy, applicable law prevails.

II. Membership Eligibility and Contributions

A. Mandatory Membership

1. Membership in ACERA is mandatory for employees appointed to full-time permanent positions with a Participating Employer.¹ Each Participating Employer has the exclusive authority and responsibility to define what constitutes full-time employment and to identify its positions that are eligible for membership.²
2. When enrolling an employee in ACERA membership, the Participating Employer certifies that (a) the individual is an employee of the Participating Employer; (b) the employee's position is eligible for membership with ACERA; (c) the employee works in a full-time permanent position; and (d) the employee should be enrolled in ACERA.
3. ACERA eligible employees must submit a completed Membership Enrollment Questionnaire to ACERA when they are hired.
4. Membership is continuous until termination of employment with a Participating Employer. If a full-time employee who is a member of ACERA starts working less than full-time, the employee continues to make contributions to ACERA and receive proportional service credit based on the amount of time worked compared to a full-time schedule.

¹ For Alameda Health Systems, membership is pursuant to Gov. Code §31552.4 and Health and Safety Code §101851. Unless stated otherwise, all references to statutes are California State statutes.

² As of December 17, 2020, ACERA has seven Participating Employers: (1) Alameda County; (2) Alameda Health Systems; (3) Alameda County Superior Court; (4) Housing Authority of Alameda County; (5) Livermore Area Recreation and Park District; (6) First 5 Alameda County; and (7) Alameda County Office of Education.

B. Member Contributions

1. Tiers 1, 2 and 3 member contribution rates are based on Tier and age at entry. Tier 4 member contribution rates do not vary based on age at entry. All rates are adjusted annually.
2. Participating Employers must withhold member contributions according to ACERA's pay code list and timely forward such contributions to ACERA.
3. Upon discovery of missed contributions, ACERA will assess the amount owed plus interest for both the member and Participating Employer and notify each of the amounts owed. ACERA will ordinarily apply interest to the underpaid employer contributions at ACERA's semi-annual interest crediting rate, but reserves the right to assess additional interest (e.g., ACERA's assumed rate of investment return) and add penalties to underpaid amounts in cases of intentional late payments or delays in remedying late payments. Interest on member contributions is determined according to ACERA's Error Correction Policy. If a member no longer works for the employer, the member and employer remain responsible for the amounts owed.
4. Tiers 1, 2 and 3 Safety members with 30 years of service credit make no member contributions. General Members with 30 years of service credit and a membership date on or before March 7, 1973 make no member contributions.

C. Date of Membership

1. Membership is effective on the first day of the second pay period after the employee's hire date into an ACERA eligible position (except the Housing Authority as noted below). This is the date of entry into membership, unless adjusted per Section VI(A)(2) of this Policy. As of the date of entry, retirement contributions begin and service credit is earned for each hour worked.
2. During the short period between the beginning of employment and the ACERA date of entry, the employee does not make member contributions or earn service credit. A member can purchase this service credit any time before retirement, and the member's date of entry does not change.
3. For the Housing Authority, membership is effective on the first day of hire in an ACERA eligible position. This is the date of entry into ACERA membership, unless adjusted per Section VI(A)(2) of this Policy. As of the date of entry, retirement contributions begin and service credit is earned for each hour worked.

D. Excluded from Membership

1. Less Than Full-Time. Any employee who is less than full-time, as determined by the employer, is excluded from ACERA membership. This may include, without limitation, Part-Time, Seasonal, Intermittent, As Needed, Per Diem and employees working in Temporary Agency Pool (TAP).
2. Non-Permanent. Any employee who is non-permanent, as determined by the employer, is excluded from ACERA membership. This may include, without limitation, Temporary, Seasonal, Intermittent, As Needed, Per Diem and employees working in Temporary Agency Pool (TAP).
3. Independent Contractors. If a Participating Employer hires individuals as independent contractors under an employment contract or through a third party, those individuals are not eligible for ACERA membership. Such working time does not count as any kind of service in ACERA and cannot be purchased at any time. The term “contract” as used in this paragraph does not refer to a collective bargaining agreement between organized labor and a Participating Employer.

- E. Terminated Employees. Members who terminate employment before retirement may withdraw their accumulated member contributions plus interest or leave their funds on deposit with ACERA and retire when eligible.

III. Membership Types

There are two membership types, which are based upon job classifications:

- A. Safety members are employees working in active law enforcement, fire-fighting, or in positions that have been designated as safety positions (i.e., Juvenile Hall Group Counselor, Probation Officer, etc.).
- B. General Members are all other members who are not safety members.

IV. Membership Tiers

ACERA has different Tiers based upon a member’s date of entry.

A. Tier 1

1. General or Safety Members (other than employees of the Livermore Area Recreation and Park District (LARPD) or the Housing Authority) who joined ACERA on or before June 30, 1983.

2. General Members who joined ACERA as employees of the LARPD on or before September 30, 2008.
 3. General Members who joined ACERA as employees of the Housing Authority on or before September 30, 2011.
- B. Tier 2
1. General or Safety members (other than employees of the LARPD and the Housing Authority) who joined ACERA on or after July 1, 1983, except those who must be enrolled in Tier 4.
 2. General members who joined ACERA on or after October 1, 2011, as employees of the Housing Authority, except for those who must be enrolled in Tier 4. Effective October 1, 2011, the Housing Authority implemented a new benefit formula for those employees who elected to change to Tier 2, and for any new Housing Authority employees.
- C. Tier 3. General Members who joined ACERA on or after October 1, 2008, as employees of the LARPD, except those who must be enrolled as Tier 4. Effective October 1, 2008, LARPD implemented a new benefit formula for those employees who elected to change to Tier 3 and for any new LARPD employees.
- D. Tier 4. For all Participating Employers, General and Safety Members who joined ACERA for the first time on or after January 1, 2013 (exceptions may apply to some members coming from a reciprocal retirement system who may be enrolled the Tier that was applicable on December 31, 2012). Also, members who were active members of ACERA and had a break in service of more than 6 months and returned to a different ACERA Participating Employer after January 1, 2013 are enrolled in Tier 4.
- E. Split Tier Membership. A member with service in different Tiers will receive benefits that are the sum of all benefits earned in all Tiers under which the member provided service. Some members with Split Tier membership may be able to convert credit under one Tier to another Tier by redepositing previously withdrawn contributions.

V. Service Credit Eligible for Purchase

All service credit purchases must be completed before retirement and within five years of initiating the purchase. Time worked in the positions described in Section II(D)(3) is never eligible for purchase. Not all requirements for all types of service credit purchases are described below. ACERA staff will provide all requirements to members who inquire. The following types of service credit are eligible for purchase:

- A. Time Prior to Entry Date. Service credit for the short period of time between the beginning of employment and the date of entry into membership may be purchased.
- B. Prior Ineligible Service. Members who were excluded from retirement membership because they worked less than full-time or in a non-permanent position for a Participating Employer may purchase this service once they become eligible for membership.
- C. Medical Leave of Absence Without Pay. A member who returns to active service following an uncompensated leave of absence on account of the member's illness may purchase up to one year of service credit for that leave time.
- D. Military Service Leave of Absence Without Pay. Members' rights to purchase service credit for time while on leave to provide service to the military are stated in Gov't Code §31649 and the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA").
- E. Redeposit of Withdrawn Contributions. A current member who previously terminated membership with ACERA and withdrew contributions and interest for that membership may redeposit the withdrawn funds plus interest that would have accrued up to the date of payment at any time before retirement.
- F. Other Prior Public Service. A member who worked for non-ACERA public agency before becoming a member of ACERA may be eligible to purchase service credit for such service if certain requirements are met. This type of service credit purchase, which costs the member more than other types, does not count towards retirement eligibility.

VI. Reciprocal Membership

A. General Rules

- i. Members who enter ACERA membership within six months after terminating employment under another California public retirement system with which ACERA has "reciprocity," and who defer retirement from such other system, may have reciprocity between ACERA and the other system. The same is true for

members who terminate employment under ACERA, defer retirement from ACERA and within six months begin employment with an employer under a reciprocal retirement system.

2. If there is overlapping service credit between ACERA and a reciprocal system, reciprocity cannot be established. ACERA may, however, adjust the date a person becomes an ACERA member to up to 12 weeks after entrance into full-time service with an ACERA-participating employer (with appropriate adjustments to service credit and contributions) and/or adjust the date a member terminates service to as much as 12 weeks prior to the member's termination of employment with an ACERA-participating employer (with appropriate adjustments to service credit and contributions).

B. Key Reciprocal Benefits

1. The entry age for determining member contributions (when applicable) will be the age when the member entered his or her first reciprocal membership.
2. Service credit earned in reciprocal agencies will be considered for the purpose of establishing a member's eligibility for benefits.
3. Amounts earned while an active member of reciprocal systems will be considered when determining the member's "final compensation."
4. Safety members who withdrew retirement contributions after termination of employment and currently work for a reciprocal agency may be eligible to redeposit funds and establish reciprocal benefits.
5. A member granted a disability retirement by a reciprocal retirement system may be granted a disability retirement by ACERA, although the calculation of benefits may be different than if the disability had been granted by ACERA. Whether or not a member establishes reciprocity, a member who receives a disability allowance from ACERA or certain reciprocal systems may not receive more in total from all of those retirement systems than the member would have received if all service had been earned in one retirement system.

VII. Service Retirement Benefits

A member's service retirement allowance is based on a formula that accounts for the member's age at retirement, years of service and "final compensation." For example, if a member under the 2% a 57 formula retires at age 57, the member's retirement allowance will be 2% of the member's

“final compensation” per year of service credit. An earlier retirement lowers the factor below 2% and a later retirement increases the factor above 2% according to a chart in the statute with the benefit formula. The following are descriptions of the key components of each retirement Tier:

A. Tier 1 General

1. 2% at age 57 (Gov’t Code §31676.12. shows factor at each retirement age).
2. Members may retire at age 70 regardless of service and tenure, at age 50 with 10 or more years of qualifying membership and 5 or more years of service credit, or at any age with 30 years of service credit.
3. “Final compensation” is based on the highest 12 consecutive months of “compensation earnable” as defined by Gov’t Code §31461.

B. Tier 1 Safety

1. 3% at age 50 (Gov’t Code §31664.1 shows factor at each retirement age).
2. Members may retire at age 70 regardless of service and tenure, at age 50 with 10 or more years of qualifying membership and 5 or more years of service credit, or at any age with 20 years of service credit.
3. “Final compensation” is based on the highest 12 consecutive months of “compensation earnable” as defined by Gov’t Code §31461.

C. Tier 2 General

1. 2.09% at age 62 (Gov’t Code §31676.1 shows factor at each retirement age).
2. Members may retire at age 70 regardless of service and tenure, at age 50 with 10 or more years of qualifying membership and 5 or more years of service credit, or at any age with 30 years of service credit.
3. “Final compensation” is based upon the highest 36 consecutive months of “compensation earnable” as defined by Gov’t Code §31461.

D. Tier 2 Safety

1. 3% at age 50 (Gov’t Code §31664.1 shows factor at each retirement age).
 - a. Safety members in the Sheriff’s Department (excluding Probation Officers) hired between October 17, 2010 and December 31, 2012 were able to elect Tier 2C (2% at age 50, found in Gov’t Code §31664) or Tier 2D (3% at age 55, found in Gov’t Code §31664.2).

2. Members may retire at age 70 regardless of service and tenure, at age 50 with 10 or more years of qualifying membership and 5 or more years of service credit, or at any age with 20 years of service credit.
3. “Final compensation” is based upon the highest 36 consecutive months of “compensation earnable” as defined by Gov’t Code §31461.

E. Tier 3 General

1. 2.5% at age 55 (Gov’t Code §31676.18 shows factor at each retirement age).
2. Members may retire at age 70 regardless of service and tenure, at age 50 with 10 or more years of qualifying membership and 5 or more years of service credit, or at any age with 30 years of service credit.
3. “Final compensation” is based on the highest 12 consecutive months of “compensation earnable” as defined by Gov’t Code §31461.

F. Tier 4 General

1. 2% at age 62 (Gov’t Code §7522.20(a) shows factor at each retirement age).
2. Members may retire at age 70 regardless of service and at age 52 with 5 or more years of service credit.
3. “Final compensation” is based on the 36 highest consecutive months of “pensionable compensation” as defined and capped by Gov’t Code §§ 7522.34 and 7522.10.

G. Tier 4 Safety

1. 2.7% at age 57 (Gov’t Code §7522.25(d) shows the factor at each retirement age).
2. Members may retire at age 70 regardless of service and at age 50 with 5 or more years of service credit.
3. “Final compensation” is based on the 36 highest consecutive months of “pensionable compensation” as defined and capped by Gov’t Code §§ 7522.34 and 7522.10.

VIII. Disability Benefits

- A. The Board makes all determinations regarding member’s entitlement to a disability retirement. See ACERA’s Disability Retirement Procedures for more information about the process of applying for a disability retirement.

- B. Service-Connected-Disability. There is no minimum service credit requirement for a service-connected disability. A service-connected disability retirement allowance is the higher of the one-half of the member's "final compensation" or the member's service retirement allowance if the member is eligible to retire for service. There are tax benefits associated with a service-connected disability.
- C. Non-Service-Connected Disability. Only members with 5 years of service credit are eligible for a non-service-connected disability retirement. Gov't Code §31726 and the several code sections that follow it describes how to calculate a non-service-connected disability retirement depending on a variety of circumstances.

IX. Death Benefits

ACERA pays different death benefits, including continuing allowances in some instances, depending a variety of circumstances, including, but not limited to: whether the member is general or safety, retired or active, retired for service or disability, the member's years of service and age at death, the cause of death and whether the member has a surviving spouse or surviving minor children (up to age 22 if enrolled as a full-time student in an accredited school). An ACERA overpayment to the member that was unrecovered at the time of death will be deducted from any benefits owed to the member's beneficiaries to the maximum extent permitted by law.

X. Work for a Participating Employer After Retirement

- A. Retired members may be reinstated into active status when certain requirements are met. When a member is reinstated, the member's ACERA benefits are suspended and the member resumes making member contributions and earning service credit in ACERA. Gov't Code §§ 31680.4 and 31680.5 govern the terms and conditions of reinstatement for eligible members. A Participating Employer must promptly inform ACERA, in writing, when it plans on reinstating a member into active status, so that ACERA can confirm that the reinstatement is proper and obtain all necessary completed forms and information from the Participating Employer and the member.
- B. Retired members may work on a limited basis for a Participating Employer without reinstating, if they comply with certain requirements, which are found in Gov't Code §§ 7522.56, 31680.2 and 31680.6, and the Board's Regulations for IRC Section 401(a) Return to Work and Separation from Service.

XI. Policy Modification

The Governance Committee, or other committee designated by the Board, shall review this policy at least every three years. The Committee shall make recommendations to the Board concerning any improvements or modifications it deems necessary.

XII. Policy History

- A. The Board adopted this policy on July 17, 2003.
- B. The Board reviewed and affirmed this policy, with revisions, on December 17, 2020.³

³ Previous amendment dates all with revisions: August 16, 2007; August 18, 2011; December 15, 2011; December 20, 2012; March 21, 2013; December 19, 2013; June 18, 2015; July 21, 2016, and December 20, 2018.

Redline



Membership Policy

I. Purpose

~~The~~This Membership Policy (Policy) ~~provides the requirements for~~contains the Board of Retirement's (Board) rules of membership within the Alameda County Employees' Retirement Association (ACERA), ~~including establishing eligibility for membership).~~ If there are conflicts between applicable law and defining service as required by the Regulations of the Board of Retirement, this policy, applicable law prevails.

II. Membership Eligibility and Contributions

A. Mandatory Membership

1. Membership in ACERA is mandatory for employees appointed to full-time permanent positions with a Participating Employer.¹ Each Participating Employer has the exclusive authority and responsibility to define what constitutes full-time employment and to identify its positions that are eligible for membership.²

~~2. At an employee's initial time of entry into~~When enrolling an employee in ACERA membership, the Participating Employer certifies ~~in writing to ACERA the following:~~

~~a. That~~that (a) the individual is an employee of the Participating Employer;

~~b. The~~(b) the employee's position is eligible for membership with ACERA; ~~and~~

~~c. The individual~~(c) the employee works in a full-time permanent position.

~~3. The individual shall;~~ and (d) the employee should be enrolled in ACERA.

¹ For Alameda Health Systems, mandatory membership is pursuant to AB 1008 (Chapter 311, 2013) (Gov. Code §3152.4 and Health and Safety Code §101851). Unless stated otherwise, all references to statutes are California State statutes.

² As of December 17, 2020, ACERA has seven Participating Employers: (1) Alameda County; (2) Alameda Health Systems; (3) Alameda County Superior Court of Alameda County; (4) Housing Authority of Alameda County; (5) Livermore Area Recreation and Park District; (6) First 5 Alameda County; and (7) Alameda County Office of Education.

~~4.3.~~ At the time of initial entry into ACERA all ACERA eligible employees must submit a completed ~~membership enrollment questionnaire~~ Membership Enrollment Questionnaire to ACERA when they are hired.

~~5.4.~~ Membership is continuous until termination of employment with a Participating Employer. If a full-time employee who is a member of ACERA starts working less than full-time, the employee continues to make contributions to ACERA and receive proportional service credit based on the amount of time worked compared to a full-time schedule.

B. Mandatory Member Contributions

~~4.~~ Membership contributions are mandatory for all members.

1. Tiers 1, 2 and 3 member contribution rates are based on Tier and age at entry. Tier 4 member contribution rates do not vary based on age at entry. All rates are adjusted annually.

2. Participating Employers must withhold member contributions ~~from compensation~~ earnable/pensionable compensation and according to ACERA's pay code list and timely forward such contributions to ACERA ~~on a biweekly basis. (Gov. Code §§31552 and 31625.)~~.

~~3.~~ Failure of the Participating Employer to withhold contributions in a timely manner will result in missed contributions.

~~4.~~ Upon discovery of missed contributions, ACERA ~~shall~~ will assess the amount owed plus ~~earned~~ interest for both the member and Participating Employer and ~~shall~~ notify each ~~respectively~~ of the amounts owed. ACERA ~~determines the earned~~ will ordinarily apply interest ~~rate applied to the missed contribution~~³.

~~b.~~ The Participating Employer shall withhold the missed contributions plus earned interest ~~from to~~ the employee's wages.

³ Earned interest refers to the interest rate for the previous six month cycle. This is interest that would have been earned on the account had the contributions been paid timely. If the member is in on an installment plan, the assumed interest rate shall be included in the calculation.

~~e. The Participating Employer shall pay its underpaid~~ employer contributions ~~and earned at ACERA's semi-annual interest crediting rate, but reserves the right to assess additional interest in connection with all missed contributions.~~

~~+3. In instances where the member is (e.g., ACERA's assumed rate of investment return) and add penalties to underpaid amounts in cases of intentional late payments or delays in remedying late payments. Interest on member contributions is determined according to ACERA's Error Correction Policy. If a member no longer in active employment with works for the employer, the member and employer remain responsible for each of their respective portion of the legally required contributions plus earned interest. (Gov. Code §§31581, 31582, 31585, 31620, 31621.) the amounts owed.~~

~~4. First Tiers 1, 2 and 3 Safety members with 30 years of service credit make no member contributions. General Members with 30 years of service credit and a membership date on or before March 7, 1973 make no member contributions.~~

C. Date of Membership

1. Membership is effective on the first day of the second pay period ~~following~~after the employee's hire date into an ACERA eligible position (except the Housing Authority as noted below). This is the date of entry into ~~ACERA~~ membership, ~~unless adjusted per Section VI(A)(2) of this Policy.~~ As of the date of entry, ~~payroll deductions for~~retirement contributions begin and service credit ~~is earned~~for each hour worked ~~is earned~~.
2. During the short period between the beginning of employment and the ACERA ~~plan~~ date of entry, the employee does not ~~pay~~make member contributions or earn service credit. A member can purchase this service credit (~~referred to as "days prior to entry"~~) any time before retirement ~~without changing the membership, and the member's~~ date of entry does not change.
3. For the Housing Authority, membership is effective on the first day of ~~an~~ employee's hire in an ACERA eligible position. This is the ~~first~~ date of entry into ACERA membership, ~~unless adjusted per Section VI(A)(2) of this Policy.~~ As of ~~this~~the date of entry, ~~payroll deductions for~~retirement contributions begin and service credit ~~is earned~~for each hour ~~work is earned~~worked.

D. Excluded from Membership

~~1. Temporary, Part time, Seasonal, Intermittent and "as needed", or Per Diem employees, as defined in the Alameda County Civil Service Rules, Alameda County Salary Ordinance, the Alameda County Administrative Code or such similar ineligible positions as defined by each Participating Employer. Individuals who work for a participating employer through the Alameda County Temporary Agency Pool (TAP) are excluded from membership in the Alameda County Employees' Retirement Association.~~

~~2. If a full-time employee who is a member of ACERA is transferred to employment in a temporary, part time, seasonal, intermittent and "as needed", per diem status, or TAP position, the employee is required to continue his or her membership from the date of such transfer and shall receive credit for such subsequent service as the total time served in such position bears to the total time served in a full-time position.~~

~~D. Independent Contractors~~

~~1. Each participating employer identifies its positions which are ACERA eligible and hires employees into those positions. Less Than Full-Time. Any employee who is less than full-time, as determined by the employer, is excluded from ACERA membership. This may include, without limitation, Part-Time, Seasonal, Intermittent, As Needed, Per Diem and employees working in Temporary Agency Pool (TAP).~~

~~2. Non-Permanent. Any employee who is non-permanent, as determined by the employer, is excluded from ACERA membership. This may include, without limitation, Temporary, Seasonal, Intermittent, As Needed, Per Diem and employees working in Temporary Agency Pool (TAP).~~

~~3. Independent Contractors. If a Participating Employer hires individuals as independent contractors under an employment contract or through a third party, those individuals are ~~ineligible~~ not eligible for ACERA membership. Such working time ~~is~~ does not ~~deemed~~ count as any kind of service, ~~county service, or public service. Additionally, such working time in ACERA and~~ cannot be purchased at any time. The term "contract" as used ~~herein this paragraph~~ does not refer to a collective bargaining agreement between organized labor and a Participating Employer.~~

~~e. Examples of employment ineligible for ACERA membership and ineligible service include, but are not limited to, the following:~~

~~b. Temporary workers who work through temp agencies or third parties. (This does not include TAP employees which are discussed above.)~~

~~b. Individuals working under contract for temporary services requiring professional, highly technical skills or special skills as defined in Government Code §§31561 and 31000.~~

~~b. Independent Contractors including, but not limited to, individuals whose compensation and/or rate of compensation is fixed at a rate by the day or hour. (Gov. Code §§31000 and 31527(c).)~~

~~f. Terminated Employees. Members who terminate membership/employment before retirement and meet the service criteria may elect a deferred retirement allowance. (Gov. Code §§31700-31706.) Members who terminate membership/employment before retirement and do not meet the service criteria may elect to leave/withdraw their accumulated member contributions plus interest or leave their funds on deposit in the retirement fund. (Gov. Code §31629.5.) (See Termination Election of Membership Form on www.ACERA.org) with ACERA and retire when eligible.~~

III. Membership Types

~~A. The type of membership depends on the employer, job classification, and date of entry/re-entry into the ACERA.~~

~~ACERA has two Membership. There are two membership~~ types, which are based upon job classifications:

~~B.A.~~ Safety members are employees working in active law enforcement, fire-fighting, or in positions that have been designated as safety positions (i.e., Juvenile Hall Group Counselor, Probation Officer, etc.).

~~C.B.~~ General Members are all other members: who are not safety members.

~~IV. Tier Levels~~

IV. Membership Tiers

ACERA has different Tiers (~~benefit levels~~) based upon a member's date of entry/~~re-entry~~.

A. Tier ~~H:1~~

General or Safety Members ~~who joined ACERA on or before June 30, 1983, and have been continuous members⁴:~~

~~2.1. General Members who joined ACERA as~~(other than employees of the Livermore Area Recreation and Park District (LARPD) ~~before October 1, 2008, and have been continuous members~~or the Housing Authority) who joined ACERA on or before June 30, 1983.

2. General Members who joined ACERA as employees of the LARPD on or before September 30, 2008.

3. General Members who joined ACERA as employees of the Housing Authority on or before September 30, 2011,~~and have been continuous members.~~

~~The final average salary calculation is based on the highest 12 months of pay.~~

~~C.B.~~ Tier ~~H:2~~

1. General or Safety members (other than employees of the LARPD and the Housing Authority) who joined ~~or rejoined~~ ACERA on or after July 1, 1983, except those who must be enrolled in Tier 4.

2. General members who joined ACERA on or after ~~September 30~~October 1, 2011, as employees of the Housing Authority. ~~On September 30, except for those who must be enrolled in Tier 4. Effective October 1,~~ 2011, the Housing Authority implemented a new benefit formula for those employees who elected to change to Tier ~~H:2~~, and for any new Housing Authority employees.

~~6. The Final Average Salary calculation for Tier H is based upon the highest 36 months of pay.~~

⁴ Under Gov. Code §31484.8 effective January 1, 1985, a Tier I employee who leaves County service between June 30, 1983, to June 6, 1988, and subsequently returns to covered employment within three years shall return as a Tier I employee. Effective June 30, 1988, a Tier I employee who is laid off and rehired within one (1) year from the date of separation shall return as a Tier I employee. Any Tier I employee who takes a deferred retirement and subsequently returns to covered employment shall return as a Tier I employee.

~~E. — Tier III:~~

~~F.C. 3.~~ General Members who joined ACERA on or after October 1, 2008, as employees of the LARPD. ~~On, except those who must be enrolled as Tier 4. Effective~~ October 1, 2008, LARPD implemented a new benefit formula for those employees who elected to change to Tier ~~III~~ and for any new LARPD employees. ~~The Final Average Salary calculation is based upon the highest 12 months of pay.~~

~~G. — Tier IV:~~

~~e. — 4.~~ For all Participating Employers, General and Safety Members who joined ACERA for the first time on or after January 1, 2013, ~~and~~

~~d. — Were not (exceptions may apply to some members of any other public coming from a reciprocal retirement system before January 1, 2013;~~

~~d. — Were not subject to reciprocity; or~~

~~K.D. — Were who may be enrolled the Tier that was applicable on December 31, 2012). Also, members who were~~ active members of ACERA and had a break in service of more than 6 months and returned to a different ACERA Participating Employer ~~after January 1, 2013 are enrolled in Tier 4.~~

~~e. — The final average salary is based on the 36 highest consecutive months. (Gov. Code §7522.04(f).)~~

~~M. — Dual Membership Service (Split Tier Membership)~~

~~e. — A member having with service as both a General and a Safety member and/or service as a Tier I, Tier II, Tier III, or Tier IV member in different Tiers will receive benefits calculated under that are the typesum of membership and Tier for the service credit all benefits earned in each category.~~

~~O.E. — Eligible all Tiers under which the member provided service. Some members with Tier I and Tier II Split Tier membership may be able to convert credit under one Tier II service time to Tier I pursuant to Aquilino vs. Marin County Employees' Retirement Association (MCERA) (1998) 60 Cal.App.4th 1509 provided they redeposit another Tier by redepositing previously withdrawn Tier I contributions and apply for Aquilino Tier I restoration.~~

V. Service Credit Eligible for Purchase

All service credit purchases must be completed before retirement and within five years of initiating the purchase. Time worked in the positions described in Section II(D)(3) is never eligible for purchase. Not all requirements for all types of service credit purchases are described below. ACERA staff will provide all requirements to members who inquire. The following types of service credit are eligible for purchase ~~to increase membership service credit totals. All ACERA member service purchases must be completed within five years of initiation of purchase. This entire section does not apply to time worked in positions detailed in Section II.E. above:~~

- A. Time Prior to Entry Date: ~~Entry dates are the first day of the pay. Service credit for the short period following the appointment to a retirement eligible position. Days worked before of time between the entry date beginning of employment and the date of entry into membership may be purchased and added to membership service credit.~~
- B. Prior Ineligible Service: ~~Members who were excluded from retirement membership because Part they worked less than full-time, Seasonal, Intermittent, or Services as needed, or worked in a non-permanent position through TAP for a Participating Employer may purchase this service once they become eligible for membership. Written elections to make such purchases shall be made within one year of date of entry into membership.~~
- C. Medical Leave of Absence ~~without~~ Without Pay: ~~A member who returns to active service following an uncompensated leave of absence on account of the member's illness may receive service credit for the period of such absence upon the payment of the contributions that the member would have paid during the period, together with the interest that such contributions would have earned had they been on deposit, if the member was not absent. Upon return to employment, the member may purchase the service lost during such leave not to exceed one (1) year for each leave period. The number of payment deductions cannot exceed the number of months the member is purchasing. (Gov. Code §31646.) purchase up to one year of service credit for that leave time.~~

~~D. Military Service Leave of Absence without~~ Without Pay:

~~e. Federal Law Provides. Members' rights to purchase service credit for time while on leave to provide service to the Following:~~

~~E.D. The military are stated in Gov't Code §31649 and the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") allows members to take leave for up to five years of military service.").~~

~~e. Upon returning to work, members have the right to pay for missed contributions for up to five years of service beginning from the date of re-entry into employment.~~

~~e. The repayment period is three times the member's period of service, not to exceed five years.~~

~~e. The contributions are pre-tax and not subject to interest.~~

~~e. Participating Employers are required to pay the employer contributions for the same period of time.~~

~~e. Members cannot purchase service credit for any period for which the member will receive military retirement.~~

~~e. State Law Provides the Following:~~

~~e. If USERRA does not apply, under the California Employees' Retirement Law ("CERL"), non-PEPRA members may purchase service credit for the military leave of absence.~~

~~e. A member who resigns or obtains a leave of absence and enters the military, and later returns to service with an employer, may purchase service for any part or all of the military service if the following conditions apply:~~

~~0) The member received an honorable discharge;~~

~~0) The member return to a Participating Employer within one year from the date of discharge from the military.~~

~~e. The member must contribute what he or she would have paid to ACERA based on his or her compensation earnable as defined in Government Code §31461, at the time of resignation or leave of absence, along with earned interest. The member is not entitled to purchase service credit if the member will receive military retirement for the same service. (Gov. Code §§31649.5, 31649.6.)~~

~~e. Notice~~

~~e. Participating Employers must notify members of the right to purchase military service within 30 days after the date of reemployment.~~

~~e. The Participating Employer is required to notify ACERA within 30 days that the member has been reemployed. (Gov. Code §31649.1.)~~

U.E. ~~Redeposit of Prior Membership Withdrawn Contributions:~~ A current member who previously terminated membership with ACERA and ~~who~~ withdrew contributions and interest for that membership, may redeposit the withdrawn funds plus interest that would have accrued up to the date of payment at any time before retirement. ~~All such redeposits shall be completed within 5 years from the date the redeposit is initiated. Service credit for this prior membership would then be restored.~~

V.F. ~~Other Prior Public Service:~~ A member who worked for non-ACERA public agency before becoming a member of ACERA may be eligible to purchase service credit for such service if certain requirements are met. This type of service credit purchase, which costs the member more than other types, does not count towards retirement eligibility.

~~e. Service must be earned with an approved public agency within the State of California.~~

~~e. Prior federal civilian and prior military service may be purchased only by members hired on or before August 8, 1972.~~

~~e. The member must be ineligible for pension benefits from the other public service.~~

~~e. This type of purchased service shall not count towards vesting requirements or eligibility to retire.~~

~~e. Written elections to make such purchases shall be made within one year of date of entry into membership.~~

~~XL~~VI. Reciprocal Membership

A. General Rules

1. Members who enter ACERA membership within six ~~(6)~~ months ~~of termination from a membership with~~ after terminating employment under another '37 Act County, CalPERS, or a California public ~~agency reciprocal with CalPERS and who left their membership in deferred status with the prior~~ retirement system, ~~may have a reciprocal agreement established between with which~~ ACERA has "reciprocity," and ~~the prior who defer retirement system from such other system, may have reciprocity between ACERA and the other system.~~ The same is true for members who terminate employment under ACERA ~~membership, leave funds in deferred status, and begin employment, defer retirement from ACERA and~~ within six months begin employment with an employer under ~~another '37 Act County, CalPERS or a reciprocal~~ retirement system ~~reciprocal with CalPERS. Reciprocity is irrevocable. (Gov. Code §31831).~~
2. If there is overlapping ~~or concurrent employment or~~ service credit ~~occurs within the six month window between ACERA and a reciprocal system,~~ reciprocity cannot be established. ACERA may, however, adjust the ~~entry date to the date after the termination date in the prior agency to prevent duplicate~~ a person becomes an ACERA member to up to 12 weeks after entrance into full-time service crediting. However, ACERA cannot adjust the termination date if the member begins employment in the next reciprocal agency. In these instances, reciprocity will not be established unless the next agency adjusts its entry date with an ACERA-participating employer (with appropriate adjustments to avoid overlapping service crediting, credit and contributions) and/or adjust the date a member terminates service to as much as 12 weeks prior to the member's termination of employment with an ACERA-participating employer (with appropriate adjustments to service credit and contributions).

B. Key Reciprocal Benefits

- ~~3.1.~~ The entry age used by ACERA for determining member contributions (when applicable) will be the age when the member entered his or her first reciprocal membership. ~~This is not applicable to Tier IV.~~

~~4.2.~~ Service credit earned in ~~a~~ reciprocal ~~agency~~ agencies will be considered ~~in~~ for the purpose of establishing a member's ~~vesting rights and eligibility to retire for~~ benefits.

~~5.3.~~ ~~The highest average salary~~ Amounts earned while an active member of reciprocal systems will be ~~used to compute~~ considered when determining the ~~retirement benefits in all reciprocal memberships~~ member's "final compensation."

~~A.~~ Rules Specific to Certain Safety Members

~~7.4.~~ Safety members ~~(law enforcement and fire fighters only)~~ who withdrew retirement contributions after termination of employment, and currently work for a reciprocal agency, may be eligible to redeposit funds ~~to~~ and establish reciprocal benefits. ~~Eligibility for specific reciprocal benefits will depend on whether the time lapse between system memberships is more or less than 6 months (AB 2766 [Chapter 883, 2002]).~~

~~A.~~ Disability

~~9.5.~~ ~~If~~ A member granted a disability retirement ~~is granted from the current by a~~ reciprocal ~~agency~~ retirement system may be granted a disability retirement by ACERA, although the calculation of benefits may be different than if the benefit must be pro-rated according to service earned in each system. Members may disability had been granted by ACERA. Whether or not a member establishes reciprocity, a member who receives a disability allowance from ACERA or certain reciprocal systems may not receive a benefit amount for more than what they in total from all of those retirement systems than the member would have received had if all service had been earned in one retirement system. In some cases, reciprocal retirement systems pay a level of retirement benefit which is the greatest amount the member would be entitled to in any single retirement system. In those cases, ACERA will not pay any benefit to the member and will not return the member's accumulated contributions as required by Government Code §§31838.5, 31830, 31831.

~~XII.~~ Thirty Year (30) Membership

~~.~~ Safety Members:

~~Safety members who attain 30 years of retirement service credit make no further employee contributions. Date of entry into ACERA is not considered when determining thirty (30)-year membership for safety members. (Board Resolution Number 00-134.)~~

~~— General Members:~~

- ~~o. — Thirty (30) year membership applies only to those members who entered or re-entered ACERA membership on or before March 7, 1973. Members who have been continuously making contributions to ACERA and/or a reciprocal Agency since March 7, 1973, make no further contributions upon attaining thirty (30) years of retirement service credit, provided the reciprocity requirements of Government Code §31836.1 are met. (Gov. Code §31625.2)~~
- ~~o. — Thirty (30) year membership status is not applicable to those members who re-entered ACERA membership after March 7, 1973, except as noted in the footnote⁵. Those members will make contributions for as long as they remain active members.~~

~~— Tier IV Members:~~

~~Effective January 1, 2013, for General and Safety members who are Tier IV, Sections H.K.1. and H.K.2. do not apply. Thirty (30) year membership is not applicable to Tier IV members. Those members will make contributions for as long as they remain active members.~~

~~XX. — Contribution Rates for ACERA Members~~

~~— Tier I, Tier II, and Tier III:~~

~~Contribution rates are based upon age of entry, membership type, and plan tier. The rates are adjusted annually.~~

~~— Tier IV:~~

⁵— Board Resolution 00-134, revised the thirty (30) year membership policy. Effective December 21, 2000, thirty (30) year membership status is applicable to members whose date of entry into ACERA is after March 7, 1973, if they were previously a member of ACERA on or before March 7, 1973, terminated, and withdrew their contributions and interest and redeposited all eligible contributions and interest upon re-entry. This is consistent with the understanding of continuous membership contained in Gov. Code §31652. If a general member's date of entry is on or after December 21, 2000, and the member has established reciprocity with another retirement system, thirty (30) year membership does not apply.

~~Contribution rates are based upon a flat/single contribution rate. The rates are adjusted annually. (Gov. Code §§31621.11, 31639.26.)~~

~~XXV. Benefit Formulas~~

~~XXVI. VII. Benefit Formulas at Service Retirement and Minimum Eligibility Requirements Benefits~~
~~z. Tier I:~~

~~A member's service retirement allowance is based on a formula that accounts for the member's age at retirement, years of service and "final compensation." For example, if a member under the 2% a 57 formula retires at age 57, the member's retirement allowance will be 2% of the member's "final compensation" per year of service credit. An earlier retirement lowers the factor below 2% and a later retirement increases the factor above 2% according to a chart in the statute with the benefit formula. The following are descriptions of the key components of each retirement Tier:~~

~~B.A. Tier 1 General:~~

- ~~1. 2% at age 57. (Gov't Code §31676.12. shows factor at each retirement age).~~
- ~~2. Members may retire a) at age 70 regardless of service and tenure, at age 50 or older with 10 or more years of service credit or b) at any age with 30 qualifying membership and 5 or more years of service credit, or at any age with 30 years of service credit.~~
- ~~3. "Final compensation" is based on the highest 12 consecutive months of "compensation earnable" as defined by Gov't Code §31461.~~

~~C.B. Tier 1 Safety:~~

- ~~1. 3% at age 50. (Gov't Code §31664.1 shows factor at each retirement age).~~
~~0) MemberMembers may retire a) at age 70 regardless of service and tenure, at age 50 or older with 10 or more years of credit service or b) at any age with 20 or more years of service credit.~~

~~3. Tier II:~~

~~z. General:~~

- ~~0) 2.09% at age 62.~~

- ~~0) Members may retire a) at age 50 or older with 10 or more years of service credit or b) at any age with 30 or more years of service credit.~~

~~z. Safety:~~

- ~~8.2. Members may retire a) at age 50 or older with 10 qualifying membership and 5 or more years of service credit, or b) at any age with 20 or more years of service credit. The following formulas apply.~~

- ~~3. "Final compensation" is based on the highest 12 consecutive months of "compensation earnable" as defined by Gov't Code §31461.~~

C. Tier 2 General

1. 2.09% at age 62 (Gov't Code §31676.1 shows factor at each retirement age).
2. Members may retire at age 70 regardless of service and tenure, at age 50 with 10 or more years of qualifying membership and 5 or more years of service credit, or at any age with 30 years of service credit.
3. "Final compensation" is based upon the highest 36 consecutive months of "compensation earnable" as defined by Gov't Code §31461.

D. Tier 2 Safety

- ~~9.1. 3% at age 50 years old. (Gov't Code §31664.1 shows factor at each retirement age).~~
 - a. Safety members in the Sheriff's Department (excluding Probation Officers) hired between October 17, 2010 and December 31, 2012 were able to elect Tier 2C (2% at age 50, found in Gov't Code §31664) or Tier 2D (3% at age 55, found in Gov't Code §31664.2).
2. Members may retire a) at age 70 regardless of service and tenure, at age 50 or older with 10 or more years of qualifying membership and 5 or more years of service credit, or b) at any age with 20 years of service credit.
3. "Final compensation" is based upon the highest 36 consecutive months of "compensation earnable" as defined by Gov't Code §31461.

E. Tier 3 General

1. 2.5% at age 55 (Gov't Code §31676.18 shows factor at each retirement age).

~~10.2.~~ Members may retire at age 70 regardless of service and tenure, at age 50 with 10 or more years of qualifying membership and 5 or more years of service credit, or at any age with 30 years of service credit.

~~0) — 3% at age 55 years old.~~

3. “Final compensation” is based on the highest 12 consecutive months of “compensation earnable” as defined by Gov’t Code §31461.

F. Tier 4 General

1. 2% at age 62 (Gov’t Code §7522.20(a) shows factor at each retirement age).

~~12.2.~~ Members may retire a) at age 50 or older with 10 or more years 70 regardless of service credit or b) and at any age 52 with 205 or more years of service credit.

3. “Final compensation” is based on the 36 highest consecutive months of “pensionable compensation” as defined and capped by Gov’t Code §§ 7522.34 and 7522.10.

G. Tier 4 Safety

~~0) — 2.7% at age 50 years old.~~

~~14.1.~~ Members may retire a) 57 (Gov’t Code §7522.25(d) shows the factor at each retirement age 50 or older with 10 or more years of service credit or b) at any age with 20 or more years of service credit).

~~15.~~ Tier III:

~~z. — 2.5% at age 55.~~

~~z. — Members may retire a) at age 50 or older with 10 or more years of service credit or b) at any age with 30 or more years of service credit.~~

~~18.~~ Tier IV:

~~z. — General:~~

~~0) — 1% at age 52.~~

~~0) — 2.5% at age 67.~~

~~22.2.~~ Members may retire at age ~~52 or older~~ 70 regardless of service and at age 50 with 5 or more years of service credit.

~~z.~~ Safety:

~~0)~~ 2% at age 50.

~~0)~~ 2.7% at age 57.

~~0)~~ Members may retire at age 50 or older with 5 or more years “Final compensation” is based on the 36 highest consecutive months of service.

~~27.3.~~ (Gov. “pensionable compensation” as defined and capped by Gov’t Code §§ 7522.20, 34 and 7522.25, 7522.30, 7522.52) 10.

~~XXVII.~~ Benefits Available to ACERA Members

~~z.~~ Retirement Benefits

~~Eligible members receive a guaranteed, life time benefit at retirement calculated by a set formula.~~

~~XXX.VIII.~~ Disability Benefits

~~If a member becomes permanently incapacitated from the performance of his or her job duties, he or she may be eligible for disability retirement through ACERA.~~

A. The Board makes all determinations regarding member’s entitlement to a disability retirement. See ACERA’s Disability Retirement Procedures for more information about the process of applying for a disability retirement.

B. Service-Connected-Disability. There is no minimum service credit requirement for a service-connected disability. A service-connected disability retirement allowance is the higher of the one-half of the member’s “final compensation” or the member’s service retirement allowance if the member is eligible to retire for service. There are tax benefits associated with a service-connected disability.

C. Non-Service-Connected Disability. Only members with 5 years of service credit are eligible for a non-service-connected disability retirement. Gov’t Code §31726 and the

several code sections that follow it describes how to calculate a non-service-connected disability retirement depending on a variety of circumstances.

~~XXXI~~IX. Death Benefits

Death benefits payable to beneficiaries vary in form and are based on the status of the member at death. An overpayment that is outstanding upon death, can deducted from the benefit to the surviving spouse before paying out the benefit.

~~—~~ Pensionable Compensation/Compensation Earnable Defined

~~—~~ Tier I, Tier II, and Tier III Members

Compensation Earnable means the average compensation as determined by the Board, for the period under consideration upon ACERA pays different death benefits, including continuing allowances in some instances, depending a variety of circumstances, including, but not limited to: whether the member is general or safety, retired or active, retired for service or disability, the member's years of service and age at death, the cause of death and whether the member has a surviving spouse or surviving minor children (up to age 22 if enrolled as a full-time student in an accredited school). An ACERA overpayment to the member that was unrecovered at the time of death will be deducted from any benefits owed to the member's beneficiaries to the maximum extent permitted by law.

X. Work for a Participating Employer After Retirement

Retired members may be reinstated into active status when certain requirements are met. When a member is reinstated, the basis of the average number of days ordinarily worked by persons in that same grade or class or positions during the period, member's ACERA benefits are suspended and at the same rate of pay the member resumes making member contributions and excludes specific types of compensation as determined by the Board, including compensation deemed paid to enhance a member's retirement benefit. (Gov. earning service credit in ACERA. Gov't Code §31461.)

B. Tier IV Members

~~e. —~~ Pensionable compensation means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working

~~hours, pursuant to a publicly available pay schedule; §§ 31680.4 and excludes specific types of compensation as determined by the Board. (Gov. Code §7522.34.)~~

- ~~e. Pensionable Compensation used to calculate the defined benefit paid to a Tier IV member shall not exceed 100% (for those members whose service is included in the federal system) 31680.5 govern the terms and 120% (for those members whose service is not included in the federal system) of the contribution and benefit base specified in Section 430(b) of Title 42 of the United States Code (Gov. Code §§7522.10(c), 7522.34) to be adjusted each actuarial evaluation based on changes to the Consumer Price Index. (Gov. Code §7522.10(d).)~~
- ~~e. A public employer shall not offer a defined benefit or any combination of defined benefits, including a defined benefit offered by a private provider, on compensation in excess of the limitation stated in this Sections 1. and 2. above.~~

~~F. Tier I, Tier II, Tier III and Tier IV~~

~~Compensation that has been deferred shall be deemed pensionable compensation when earned rather than paid.~~

~~XXXII. Reinstatement~~

~~I. Reinstatement~~

~~In the event conditions of reinstatement, of a returning retiree to employment with a Participating Employer, the law and ACERA's policy require suspension of the payment of the retiree's monthly retirement allowance. In such cases the retiree may be employed without limitation on the total number of hours per fiscal year⁶. The reinstated retiree must be enrolled as an active ACERA membership; and payment of member contributions resumes. Participating Employers and returning retirees shall comply with the law and all ACERA policies in this regard.~~

~~K. Process for Reinstatement~~

⁶ Effective November 6, 2012 through Board of Supervisor Resolution, §§31680.4 and 31680.5 are operative.

~~A member retired from service and reemployed shall become an active member of ACERA upon the following; and the following is required:~~

~~M.A. eligible members.~~ A Participating Employer ~~shall~~must promptly inform ACERA, in writing, when ~~either of the following events occurs;~~it plans on reinstating a member into active status, so that ACERA can confirm that the reinstatement is proper and obtain all necessary completed forms and information from the Participating Employer and the member.

- ~~e. A retiree of the Retired members may work on a limited basis for a Participating Employer works 961 hours or more in a fiscal year;~~
- ~~e. The Participating Employer elects to offer full time employment to an ACERA retiree;~~
- ~~e. the retiree returns to work without the appropriate break in service; and/or~~
- ~~e. the retiree has a verbal or written agreement to return to work.~~
- ~~e. The Participating Employer will supply the employee reinstating, if they comply with the enrollment questionnaire to complete and submit to ACERA.~~
- ~~e. The retiree will be required to complete an application for reinstatement and submit it to the Board.~~
- ~~e. The Board determines, based upon medical examination and written certification from ACERA's Medical Advisor, that the retiree is not incapacitated for the duties assigned.~~
- ~~e. The member meets the other membership provisions within this Policy.~~
- ~~e. The effective date of reinstatement to active membership status shall be the first day of the month following the date of reemployment.~~
- ~~e. The retirement allowance shall be canceled on the effective date of the member's reinstatement and shall be resumed only upon the subsequent termination of the member from employment.~~

~~e. Government~~ certain requirements, which are found in Gov't Code §§ 7522.56, 31680.7 provides guidance for ACERA in its determination of membership tier during reemployment, final retirement service credit, membership contribution rate during reemployment, and reinstatement of retirement allowance after discontinuation of reemployment for returning retirees who are not new members as of January 1, 2013.

~~¥.B. The member shall be considered 2 and 31680.6, and the Board's Regulations for IRC Section 401(a new member if the member is reinstated and reemployed with a new ACERA employer.)~~ Return to Work and Separation from Service.

~~XXXIII.~~XI. Policy Modification

The Governance Committee, or other committee designated by the Board, shall review this policy at least every three ~~(3)-years.~~ The Committee shall make recommendations to the Board concerning any improvements or modifications it deems necessary.

~~XXXIV.~~XII. Policy History


- A. The Board adopted this policy on July 17, 2003.
- B. The Board reviewed and affirmed this policy, with revisions, on December 20, 2018¹⁷,
2020.⁷

⁷ Previous amendment dates all with revisions: August 16, 2007; August 18, 2011; December 15, 2011; December 20, 2012; March 21, 2013; December 19, 2013; June 18, 2015; July 21, 2016, and December 20, 2018.

Memorandum



To: Governance Committee
From: Jeff Rieger, Chief Counsel
Meeting: December 17, 2020
Subject: **Adjustment of Membership and Termination Dates for Reciprocity**



INTRODUCTION

Some ACERA members are not able to take advantage of reciprocal benefits because they earn service credit in ACERA and their next retirement system concurrently for a short time. This "overlapping" service credit disqualifies them from taking advantage of reciprocal benefits. The California Legislature has provided the Board with a tool to help those members. By this memorandum, I recommend that the Board add that tool to the Board's Membership Policy.

DISCUSSION

Reciprocity allows public employees to move among California public employers without suffering certain negative impacts to their retirement rights. For example, if a member works for Alameda County and then mid-career starts working for Contra Costa County, ACERA may use the member's "compensation earnable" while she worked for Contra Costa County to determine her "final compensation" (assuming she meets the requirements for reciprocity). See Gov't Code § 31835. Without reciprocity, that member would have to use mid-career "compensation earnable" earned while working for Alameda County. There are several other reciprocal benefits for members who qualify. Most significantly, service for a reciprocal system can count towards qualification for benefits (Gov't Code § 31836) and a member's age at entry into an earlier system can be used to determine the member's contributions to a later system (Gov't Code § 31833). Reciprocity can have a major impact on a member's finances.

One requirement to qualify for all reciprocal benefits is that a member cannot have more than a six-month break in service between the public employers. Over the years, questions arose about whether a member could qualify for reciprocity with overlapping service (i.e. no break in service). For example, if a member uses six weeks of accrued vacation after her last day of work for Alameda County, but starts working for Contra Costa County three weeks after her last day of work for Alameda County, there may be a short time during which she earns service credit in both systems. Most (possibly all) CERL retirement systems, including ACERA, have taken the position that this kind of overlapping service credit disqualifies a member from receiving the benefits of reciprocity. That view arose

from the fact that reciprocal laws refer to a "period intervening between active memberships in the respective system."¹

The Legislature acknowledged that overlapping service disqualifies members from receiving reciprocal benefits when it gave CERL systems a tool help members avoid that outcome. In 2010, the Legislature amended subdivision (h) to Gov't Code § 31527 to state that the Board may include its Regulations:

The day upon which each person becomes a member of the association if it is to be other than the first day of the calendar month after his or her entrance into service. However, that day shall be no later than 12 weeks after his or her entrance into service, or the day upon which the member terminates service credited by the association, and that the day shall be no earlier than 12 weeks prior to the member's termination from employment.²

With that flexibility, staff would be better able to adjust membership and termination dates to avoid overlapping service credit, and thereby help members avoid disqualification from reciprocal benefits.

One of the primary purposes of reciprocity is to "encourage career public service." Gov't Code § 31830. ACERA members currently are encouraged to delay continued public service after they terminate employment with an ACERA employer. Further, it is unclear why overlapping service credit is against the public interest.

This Board's Regulations do not address overlapping service, but Section 4.3.2 of the Board's Regulations provides: "The Board shall adopt, adhere to, and may amend from time to time, policies and procedures governing membership which are not inconsistent with the provisions of the 1937 Act or these regulations and which shall, at a minimum, establish eligibility for membership, and define service, benefits available, and compensation earnable." Consistent with that directive, Section VI(A)(2) of the Board's Membership Policy allows for adjustment of entry dates, but not termination dates:

If overlapping or concurrent employment or service credit occurs within the six month window, reciprocity cannot be established. ACERA may adjust the entry date to the date after the termination date in the prior agency to prevent duplicate service crediting. However, ACERA cannot adjust the termination date if the member begins employment in the next reciprocal agency. In these instances, reciprocity will not be established unless the next agency adjusts its entry date to avoid overlapping service crediting.

¹ The terms in the various reciprocal provisions vary. The quoted language above is from Gov't Code § 31835, which deals with "compensation earnable." Gov't Code § 31836 incorporates the same requirements as Gov't Code § 31835. Gov't Code § 31833 is slightly different: "for a person who enters within ... six months ... of last rendering service as a member of" a reciprocal system.

² Before 2010, CERL boards had six weeks of flexibility on the entry date and no flexibility on the termination date. While the 2010 amendment was pending, the Assembly Committee on Public Employees, Retirement and Social Security explained that an "employee cannot receive reciprocity if service is earned in more than one retirement system during the same time period."

Instances have arisen in which members have been, or are likely to be, disqualified from receiving reciprocal benefits at ACERA and/or at another reciprocal system due to a small amount of overlapping service credit as between ACERA and the member's next retirement system. Staff has no ability to help those members qualify for reciprocity under the current Membership Policy. The below recommended amendment to the Membership Policy would give staff that ability.

RECOMMENDATION

The Board amend Section VI(A)(2) of the ACERA Membership Policy to read:

If there is overlapping service credit between ACERA and a reciprocal system, reciprocity cannot be established. ACERA may, however, adjust the date a person becomes an ACERA member to up to 12 weeks after entrance into full-time service with an ACERA-participating employer (with appropriate adjustments to service credit and contributions) and/or adjust the date a member terminates service to as much as 12 weeks prior to the member's termination of employment with an ACERA-participating employer (with appropriate adjustments to service credit and contributions).