



Alameda County Employees' Retirement Association
BOARD OF RETIREMENT

GOVERNANCE COMMITTEE/BOARD MEETING
NOTICE and AGENDA

THIS MEETING WILL BE CONDUCTED VIA TELECONFERENCE [SEE SECTION 42 OF EXECUTIVE ORDER N-08-21 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.

**August 19, 2021
11:00 a.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. https://zoom.us/join Meeting ID: 819 6881 8969 Passcode: 794084 For help joining a Zoom meeting, see: https://support.zoom.us/hc/en-us/articles/201362193 | OPHELIA BASGAL, CHAIR | APPOINTED |
| | LIZ KOPPENHAVER, VICE CHAIR | ELECTED RETIRED |
| | JAIME GODFREY | APPOINTED |
| | HENRY C. LEVY | TREASURER |
| | GEORGE WOOD | 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.

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

Note regarding accommodations: 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 3 – August 19, 2021

Call to Order: 11:00 a.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 *Securities Litigation Policy*.

Staff Recommendation

That the Governance Committee recommend to the Board that the *Securities Litigation Policy* continues to be necessary and appropriate and that the Board affirm the *Securities Litigation Policy* without revisions.

– Jeff Rieger, Chief Counsel

2. Review of the *Record Retention Policy*.

Staff Recommendation

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

– Jeff Rieger, Chief Counsel

3. Review of the *Outside Counsel Policy*.

Staff Recommendation

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

– Jeff Rieger, Chief Counsel

GOVERNANCE COMMITTEE / BOARD MEETING

NOTICE and AGENDA, Page 3 of 3 – August 19, 2021

4. Review of the *Retiree Payroll Deduction Policy*.

Staff Recommendation

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

– Jeff Rieger, Chief Counsel

Trustee Input

Establishment of Next Meeting

Adjournment

42) Executive Order N-29-20, Paragraph 3, is withdrawn and replaced 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 through September 30, 2021.



Office of the Chief Counsel

To: Governance Committee

From: Jeff Rieger, Chief Counsel 

Meeting: August 19, 2021

Subject: **Policy Review: Securities Litigation Policy; Record Retention Policy; Outside Counsel Policy; Retiree Payroll Deduction Policy**

At this meeting, the Committee will review the following policies: (1) Securities Litigation Policy; (2) Record Retention Policy; (3) Outside Counsel Policy; and (4) Retiree Payroll Deduction Policy.

There are no proposed revisions to the Securities Litigation Policy, which staff recommends that the Board affirm in its current form. The proposed revisions to the Record Retention Policy (shown in the attached redline) consist entirely of minor line-edit clarifications and corrections of typographical errors. The proposed revisions to the other two policies (shown in the attached redlines) are explained below:

Outside Counsel Policy

1. Some proposed revisions eliminate redundancy or unnecessary language.
2. Throughout the current policy there is language that seems to unnecessarily limit the type of advice the Board might seek from outside counsel. The proposed revisions state that the Board can seek advice from outside counsel on any matter that relates to the business of ACERA.
3. The current policy does not state how the Board may obtain advice from outside counsel. The proposed revisions state that: (a) the Board can decide collectively, at a noticed meeting, to seek advice from outside counsel, (b) the CEO and the Chief Counsel may seek advice from outside counsel (and will inform the Board when any new outside counsel is engaged), and (c) the Board Chair may seek advice from outside counsel when the Board Chair determines the CEO and the Chief Counsel have a conflict of interest.
4. The proposed revisions anticipate that there could be times when the CEO, rather than the Chief Counsel, should be responsible for monitoring the work of outside counsel.
5. The proposed revisions state that legal advice must always be disseminated to and discussed by Trustees in compliance with the Brown Act.

Retiree Payroll Deduction Policy

1. Some proposed revisions eliminate redundancy or unnecessary language.
2. The proposed revisions to Sections III(B)(2) and III(B)(3) will make it so the policy tracks the language in the applicable statute (Gov't Code § 31452.5) more precisely.
3. In Section III(B)(8), the two "recognized retiree organizations" for which ACERA will permit deductions for dues are listed by name. If the Board later recognizes other retiree organizations, those organizations could then be added to the policy. Listing these organizations in the policy will eliminate any uncertainty or ambiguity about which organizations qualify under Gov't Code § 31471.5 ("majority of the members of the organization are retired members of the system and which the board, upon request, has approved recognition").
4. A new Section III(D) makes clear that any payments ACERA makes after receiving written direction to stop making payments (due to administrative processing time) must be recovered from the recipient of the payments, not ACERA.

I will answer any questions at the August 19, 2021 Governance Committee meeting.



Securities Litigation Policy

I. Purpose

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

II. Assumptions

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

- C. When deciding whether to pursue lead plaintiff status in securities litigation class actions or class actions alleging alternative theories of liability for investment losses, Legal staff will consult with the Chief Executive Officer and the Chief Investment Officer.
- D. The implementation of this policy should not place an inordinate burden on ACERA Legal staff. Existing resources should be used to keep the Board apprised of the status of the filing and settlement of securities class action cases or other class action litigation impacting ACERA's investment portfolio.

III. Policy Guidelines

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

IV. Policy Review

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

V. Policy History

- A. This Board adopted this policy on April 18, 2002.
- B. The Board reviewed and ~~adopted this policy, with~~ affirmed this policy without revisions, on ~~September 20, 2018~~ August 19, 2021.¹

¹ The Board adopted the Policy on April 18, 2002. The Board reviewed and affirmed it, with revisions, on October 19, 2006; July 17, 2008; September 10, 2014; September 15, 2016; and September 20, 2018. The Board reviewed and affirmed, without revisions, on September 16, 2010, and April 19, 2012.



Record Retention Policy

I. PURPOSE

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

II. OBJECTIVES

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

III. AUTHORITY

- A. California Government Code §31537 allows the ACERA Board of Retirement to establish efficient record management and disposal procedures.
- B. Government Code §12236 provides that the Secretary of State shall establish local government records programs to establish guidelines for local government record retention. ACERA has relied upon these guidelines where applicable.
- C. Civil Code §§1633.1, et seq., provides the requirements for an electronic record to be retained in lieu of the paper record. The law allows electronic documents and electronic signatures to be enforceable in the same manner as paper documents.
- D. This policy applies to official records. “Official Records” are records that reflect the final, official position or activities of ACERA related to the specific content of the record.

ACERA is not required to retain unofficial records. Unofficial records consists of works in progress, ~~preliminary~~ drafts, and copies of notes and records that have either not been finalized or approved.

IV. GUIDELINES

- A. Records Manager. The Chief Executive Officer or Designee will assume the duties of Records Manager and will maintain a Records Retention Schedule listing the specific time frames to regularly purge documents consistent with this Policy and the law. The Chief Executive Officer or Designee/will also develop staff procedures for the purging of records.
- B. Records Listed in Records Retention Schedule. Records shall be retained for at least the minimum period indicated in the Records Retention Schedule. Unless otherwise noted, the retention period on the schedule applies to both electronic and paper documents.
- C. Retention Period. The minimum retention period must be consistent with applicable laws, orders, rules, and regulations. When no such mandate exists, a reasonable retention period will be established based upon ACERA's needs and the usefulness of the information. Once records have reached the end of their record retention period, they will be disposed of as soon as practical in accordance with the Records Retention Schedule. Staff shall provide guidelines for department heads on how to determine the length of time to retain a record that has no legal or statutory requirement.
- D. Records Not Listed in Records Retention Schedule. Disposal of records not specified within the Records Retention Schedule shall be conducted at the discretion of the Department Head.
- E. Electronic Records. The goal is to convert records that are created or received in paper format into an electronic format to the extent possible. The records will be converted in such a manner that allows for the record to be efficiently stored, accessible, and retrievable. The electronic record must accurately reflect the information set forth in the paper record at the time it was first generated in its final form as an electronic record. The record must be legible, accurate, and cannot be altered. The electronic record becomes the official record and will remain accessible for later reference.

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- F. Litigation Hold. Records pertinent to anticipated or pending litigation or administrative investigation shall be retained until the final resolution of the litigation or investigation, or until completion of the regular specified retention period, whichever is later. The Legal Department is responsible for communicating to all relevant parties the need for and duration of any litigation hold.
- G. Departure from Records Retention Schedule. The Chief Executive Officer or Designee may retain records for periods longer than provided by the Records Retention Schedule so long as there is a procedure in place justifying the extended retention and providing for a revised disposal date. Requests to depart from the Records Retention Schedule must be approved in writing by the Chief Executive Officer or Designee.
- H. Record Destruction.
1. Paper documents will be destroyed within 120 days after they have been converted to electronic format consistent with the requirements stated above for “Electronic Retention.” The Chief Executive Officer or Designee shall review and sign a Records Destruction Report, identifying the records to be destroyed within the 120 day window. For documents excluded from ACERA’s electronic document management system, the Department Heads will prepare a Records Destruction Form identifying the records to be destroyed.
 2. Electronic documents and those paper records which have not been converted to an electronic form will be purged at the beginning of each fiscal year consistent with the requirements in the Record Retention Schedule. For those documents included in the electronic document management system, the document system audit log will contain a record of this purge procedure.
 3. For those documents excluded from the electronic document management system, the Department Head shall prepare a Records Destruction Form identifying those documents for destruction and the Chief Executive Officer or Designee will review and sign the form.
- I. Maintaining Policy. The Legal Department is responsible for reviewing and updating the Records Retention Policy to ensure it accurately reflects the appropriate retention periods pursuant to state, federal, and/or regulatory requirements.

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

V. **POLICY REVIEW**

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

VI. **POLICY HISTORY**

- A. The Board adopted this policy on December 18, 2008.
- B. The Board affirmed this policy, with revisions on ~~September 20~~August 19, 2021~~18~~¹.

¹ Previous amendment dates all with revisions: September 16, 2010; December 15, 2011; December 20, 2012; December 18, 2014; ~~and~~ November 17, 2016 and September 20, 2018.



Outside Counsel Policy

I. PURPOSE

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

II. ASSUMPTIONS

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

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

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

~~D.C. Use of outside legal counsel for specialized matters is an industry norm and best practice. The expense of R~~ etaining external-outside legal counsel is a n appropriate and prudent cost of administering the retirement plan ACERA ~~and assists the Board in fulfilling its fiduciary obligations.~~

III. POLICY GUIDELINES

~~A. On matters related to the Board's fiduciary duty, t~~ The Board may, by majority vote at a noticed meeting, may ~~engage the services of outside attorneys legal counsel~~ to provide

~~legal advice to Staff or the Board regarding fiduciary matters either independently or on any matter related to ACERA's business.~~

~~B. The Chief Executive Officer and the Chief Counsel may engage the services of outside legal counsel to provide advice to Staff or the Board on any matter related to ACERA's business, and will promptly inform the Board when any new outside counsel is engaged.~~

~~C. When the Board Chair determines that the Chief Executive Officer and the Chief Counsel have a conflict of interest on a matter for which the Board Chair determines the Board needs advice from outside counsel, the Board Chair may engage the services of outside counsel to advise the Board Chair and/or the Board.~~

~~D. Legal advice must always be disseminated to and discussed by Trustees in compliance with the Brown Act.~~

~~in conjunction with staff legal counsel.~~

~~The Chief Executive Officer and the Chief Counsel may engage the services of outside counsel to provide specialized legal advice to protect and advance ACERA's interests.~~

~~The Chief Executive Officer and the Chief Counsel may also retain other providers of legal services including investigators, arbitrators, mediators and fact finders as they deem necessary to protect and advance ACERA's interests.~~

~~A.E. The Chief Counsel shall direct and provide oversight for outside legal counsel and other legal services by assessing work performance, responsiveness and reasonableness of bills, except when the Chief Executive Officer determines that he or she should take over such functions (e.g., the Chief Counsel has a conflict of interest regarding the matter for which legal advice is sought or is unavailable).-~~

~~B.F. The budget reports provided to the Board shall include the costs for outside legal counsel.~~

IV. POLICY REVIEW

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

V. POLICY HISTORY

- A. The Board adopted this policy on October 19, 2006¹.
- B. The Board updated this policy, with revisions, on ~~September 20, 2018~~August 19, 2021.

¹ The Policy was reviewed, without revisions, on July 17, 2008; September 16, 2010; April 19, 2012; and September 20, 2018.



Retiree Payroll Deduction Policy

I. Purpose

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

II. Assumptions

The role of the Board is to administer ~~the pension plan~~ ACERA in accordance with the provisions of the County Employees Retirement Law of 1937, to protect the assets of ~~the Plan~~ ACERA and the interests of ~~the ACERA members and plan~~ beneficiaries, and to prudently manage the critical risks facing ~~the Association~~ ACERA.

~~Assignment of an ACERA member's retirement benefits is only appropriate permitted for purposes enumerated under Government Code sections 31452 and 31452.5.~~

III. Policy Guidelines

- A. Retirement benefits are not assignable, except as permitted ~~in by~~ (1) Government Code section 31452 for family law related orders; ~~permitted by section (C.C.P. § 704.110 of the Code of Civil Procedure);~~ (2) ~~as permitted in~~ Government Code section 31452.5 for specific deductions approved by the Board ~~of Retirement~~ and (3) ~~as permitted by~~ federal law for Internal Revenue Service (IRS) levies.
- B. Pursuant to Government Code section 31452.5 the Board ~~of Retirement~~ has approved the following list of retiree benefit deductions, with retiree revocable written authorization, and will not honor any other requests for benefit assignments:
 1. IRS ~~levies.~~
 2. Premiums on any policy or certificate of group life insurance or group disability insurance by an admitted insurer.

3. Premiums for Board approved medical, dental, and vision insurance premiums for the benefit of the retired member or his or her dependents.
4. Payment of personal Income Taxes to the United States or the State of California.
5. Premiums for a prepaid group medical or hospital service plan.
6. Child, Spousal, and Family Support Withholding Orders
7. Payment of purchase of shares in or the payment of money to regularly chartered credit unions.
8. Payment to any of the following ~~a~~-recognized retiree organizations: Retired Employees of Alameda County (REAC) and Alameda County Retired Employees (ACRE). See ~~(Gov. Code §31471.5.)~~
9. Payment for any retiree benefit program available through the recognized retiree organization.
10. PERS Long Term Care

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

C. ~~The Board of Retirement~~ will not permit assignment of retiree benefits for any other reason. This policy against assignment of benefits includes monthly benefit warrants and lump-sum payments of benefits, including retroactive benefits awarded during the disability application process.

~~C.D.~~ ACERA will stop making previously authorized payments as soon as practicable after receiving a member's written direction to stop making the payments. Any payments ACERA makes after receiving such written direction (due to administrative processing time) must be recovered from the recipient of the payments, not ACERA.

~~D.E.~~ The Board ACERA may charge the member a reasonable fee for the making of deductions and payments.

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

V. Policy History

- A. The Board adopted this policy on August 16, 2007¹.
- B. The Board reviewed and updated this policy, with revisions, on ~~September 20~~ August 19,
2021~~18~~.

¹ This Policy was updated on August 20, 2009 (with revisions); December 15, 2011 (without revisions); December 20, 2012 (with revisions); December 18, 2014 (with revisions); September 15, 2006 (with revisions); ~~December~~ September 20, 2018 (with revisions).