



Alameda County Employees' Retirement Association
BOARD OF RETIREMENT

GOVERNANCE COMMITTEE/BOARD MEETING
NOTICE and AGENDA

ACERA MISSION:

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

July 20, 2023
12:30 p.m.

LOCATION AND TELECONFERENCE	COMMITTEE MEMBERS	
ACERA C.G. "BUD" QUIST BOARD ROOM 475 14TH STREET, 10TH FLOOR OAKLAND, CALIFORNIA 94612-1900 MAIN LINE: 510.628.3000 FAX: 510.268.9574	GEORGE WOOD, CHAIR	ELECTED GENERAL
The public can observe the meeting and offer public comment by using the below Webinar ID and Passcode after clicking on the below link or calling the below call-in number.	KELLIE SIMON, VICE CHAIR	ELECTED GENERAL
https://zoom.us/join Call-In Number: 1 699 900 6833 Meeting ID: 879 6337 8479 Password: 699406 For help joining a Zoom meeting, see: https://support.zoom.us/hc/enus/articles/201362193	ROSS CLIPPINGER	ELECTED SAFETY
	TARRELL GAMBLE	APPOINTED
	HENRY LEVY	TREASURER

The Alternate Retired Member votes in the absence of the Elected Retired Member, or, if the Elected Retired Member is present, then votes if both Elected General Members, or the Safety Member and an Elected General Member, are absent.

The Alternate Safety Member votes in the absence of the Elected Safety Member, either of the two Elected General Members, or both the Retired and Alternate Retired Members.

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.

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 and also may be inspected at 475 14th Street, 10th Floor, Oakland, CA 94612-1900.

Public comments are limited to four minutes per person in total. The order of agenda items is subject to change without notice.

Note regarding accommodations: If you require a reasonable accommodations or modification for a disability, please contact ACERA between the hours of 9:00 a.m. to 5:00 p.m. at least 72 hours prior to the meeting at accommodation@acera.org or at 510-628-3000.

GOVERNANCE COMMITTEE / BOARD MEETING

NOTICE and AGENDA, Page 2 of 2 –July 20, 2023

Call to Order: 12:30 p.m.

Roll Call

Public Comment (Time Limit: 4 minutes per speaker)

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

1. Review of the *Service Provider Policy*

Staff Recommendation

The Committee recommend to the Board of Retirement that the *Service Provider Policy* continues to be necessary and appropriate and that the Board affirm the *Service Provider Policy* without revisions.

– Jeff Rieger, Chief Counsel

2. Review of the *Board Communications Policy*

Staff Recommendation

The Committee recommend to the Board of Retirement that the *Board Communications Policy* continues to be necessary and appropriate and that the Board affirm the *Board Communications Policy* without revisions

– Jeff Rieger, Chief Counsel

3. Review of the *Conflict of Interest Policy*

Staff Recommendation

The Committee consider whether to recommend that the Board of Retirement revise the *Conflict of Interest Policy* regarding “behested payments.”

– Jeff Rieger, Chief Counsel

4. Review of the *Membership Policy*

Staff Recommendation

The Committee recommend that the Board of Retirement make the revisions to the *Membership Policy* shown in the redline included with this agenda packet.

– Jeff Rieger, Chief Counsel

Trustee Remarks

Future Discussion Items: Governance Committee Charter Review, Membership Policy Review

Establishment of Next Meeting: Fall 2023

Adjournment



To: Governance Committee
From: Jeff Rieger, Chief Counsel
Meeting: July 20, 2023
Subject: **Policy Review**

A handwritten signature in black ink, appearing to be 'J. Rieger'.

At this meeting, the Committee will review four policies, which are discussed below.

Service Provider Policy and Board Communications Policy

Staff recommends that the Board affirm these Policies without revisions but welcomes the Committee's input for possible revisions.

Conflict of Interest Policy

At its April 2023 meeting, this Committee considered revisions to the Conflict of Interest Policy regarding "behested" payments. The revisions arose from questions Trustee Basgal raised during the review of the Conflict of Interest Policy in November 2022. At the April 2023 meeting, concerns were raised about the revisions and staff was directed to bring the matter back at a future meeting. The potential revisions are as follows:

1. Delete the bolded qualifying language from the following prohibition: "Request behested payments on behalf of any non-profit or charitable organization from any person or entity that is doing business with ACERA, **if the individual is either a board member of the non-profit or charity or participates in collecting charitable contributions for the non-profit or charity.**" The bolded language is arguably confusing because the fact that payment was requested by a Trustee or staff member means that such Trustee or staff member "participates in collecting charitable contributions for the non-profit or charity."
2. Requiring disclosure at a public meeting when there was a behested payment by a potential vendor that occurred before it was reasonably foreseeable that the vendor might do business with ACERA.

Neither revision is legally required so both are matters of Board discretion. The page with redlines showing the possible revisions is attached to this memorandum.

Membership Policy

Staff recommends revisions to the Membership Policy to eliminate any ambiguity with respect to which employees LARPD should and should not enroll in ACERA membership. A memorandum and redline with the proposed revisions follow this memorandum.

Item No. 1
Service Provider Policy



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
 - 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 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.

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- 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
1. 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.

Item No. 2
Board Communications
Policy



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 respect 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.

Item No. 3
Conflict of Interest Policy

- E. In situations where law or policy is unclear, the best interests of members and beneficiaries must be served. Trustees and Staff shall act in good faith and exercise sound judgment.
- F. When interacting with existing or potential service providers, Trustees and Staff must establish and maintain an independent relationship to ensure they remain objective when conducting ACERA's affairs.


IV. Policy Guidelines

- A. Trustees and Staff shall **not**:
 1. Accept or solicit any gift, favor, behested payment or service that may reasonably tend to influence or be perceived to influence the individual in the discharge of his or her official duties or that the individual knows, or should know, is being offered with the intent to influence the individual's official conduct.
 2. Fail to adhere to applicable law and FPPC regulations regarding gift disclosure requirements and gift value limits.
 3. Request behested payments on behalf of any non-profit or charitable organization from any person or entity that is doing business with ACERA, ~~if the individual is either a board member of the non-profit or charity or participates in collecting charitable contributions for the non-profit or charity.~~ If a behested payment was made by a person or entity at the request of a Trustee or staff member before it became reasonably foreseeable that ACERA would do business with that person or entity, such behested payment shall be disclosed at a public meeting before a Committee or the Board considers whether to do business with such person or entity.
 4. Accept other employment or engage in a business or professional activity that the individual might reasonably expect would require or induce him or her to disclose confidential information acquired by reason of his or her official position.
 5. Engage in or accept other employment or compensation that could reasonably be expected to adversely impact the individual's independence of judgment and duty of loyalty in the performance of his or her official duties.
 6. Make personal investments that could reasonably be expected to create a conflict between the individual's private interests and the interests of the members and beneficiaries.
 7. Solicit, accept, or agree to accept any benefit for having exercised the individual's official powers or for having performed his or her official duties in favor of another.

Item No. 4
Membership Policy



To: Governance Committee
From: Jeff Rieger, Chief Counsel
Meeting: July 20, 2023
Subject: **LARPD Member Enrollment Practices**



INTRODUCTION

Before the Committee are proposed revisions to the Board's Membership Policy, which are designed to eliminate any ambiguity regarding which employees of the Livermore Area Recreation and Park District (LARPD) must be enrolled in ACERA.

MANDATORY MEMBERSHIP FOR FULL-TIME PERMANENT EMPLOYEES

Government Code Section 31557 provides, in pertinent part: "(b) All officers and employees of any district become members of the association ..." Government Code Section 31527, however, provides: "In its regulations, the board may include the following provisions: ... (e) For the exemption or exclusion from ... membership altogether, in the discretion of the board, of persons whose tenure is temporary, seasonal, intermittent, or for part time only, or persons whose compensation is fixed at a rate by the day or hour."

Section II(A)(1) of the Board's Membership Policy states: "Membership in ACERA is mandatory for employees appointed to full-time permanent positions with a Participating Employer. 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." Section II(D) expressly excludes employees who are less than full-time or not permanent (part-time, seasonal, intermittent, temporary). The Membership Policy does not exclude "persons whose compensation is fixed at a rate by the day or hour," but the Board has discretion to add that exclusion, per Section 31527(e).

LARPD'S PRACTICES

Since late 2018, LARPD has had two categories of full-time employees: (1) "Full-Time Pension Employees" who are enrolled in ACERA, and (2) "Full-Time Regular Employees" who are not enrolled in ACERA. Our understanding is that "Full-Time Pension Employees" are those who are paid a salary and are exempt from overtime requirements of the Fair Labor Standards Act (FLSA) and "Full-Time Regular Employees" are those who are paid by the hour and are not exempt from FLSA overtime requirements. The LARPD governing board discussed and approved these changes at public meetings in 2018.

LARPD has explained that the change in late 2018 addressed opportunities to provide a more robust compensation package for 45 employees who had been working up to 38 hours per week while being classified as part-time benefited, with no retirement plan and

benefit levels that were not on par with fellow pensioned employees. LARPD further explained that its board properly decided to exclude from ACERA membership employees who “have compensation that is fixed by the hour” and who are reasonably considered “non-permanent” due to historical high job turnover in the employees’ positions. Attached to this memorandum is an April 10, 2023 letter from LARPD’s counsel regarding the bases for its ACERA enrollment practices.

LARPD’s practices appear to have been developed in good faith for the benefit of LARPD and its employees. Further, we understand that, at the time of hire, the employees are fully informed about what benefits they will and will not be earning through their service to LARPD. Nevertheless, LARPD’s practices create ambiguity in the application of the Membership Policy. Government Code Section 31527(e) gives the Board authority to exclude from membership “persons whose compensation is fixed at a rate by the day or hour,” but the Board has not exercised its discretion to exclude such employees from ACERA membership to date. And, in the context of Membership Policy, the word “permanent” refers to an employee who is not considered temporary at the time of hire (hired into a permanent position with no expected termination date); not to a position that the employer believes is likely to have low turnover.

RECOMMENDATION

Staff recommends revisions to the Membership Policy to eliminate ambiguity with respect to which employees LARPD should and should not enroll in ACERA. The proposed revisions would amend the Membership Policy to exclude LARPD’s employees with compensation fixed at a rate by the day or hour, as expressly authorized by Government Code Section 31527(e). This change is recommended only for LARPD and not ACERA’s other employers, because (a) the revisions are intended to harmonize the Membership Policy and LARPD’s practices, and (b) since LARPD is not pooled with other employers for the purposes of employer contributions, any impact to long-term contribution rates are born entirely by LARPD. The membership enrollment rules that apply to ACERA’s other participating employers would be unchanged.

The proposed revisions to the Membership Policy are shown in the attached redline.



Neumiller & Beardslee

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April 10, 2023

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Re: LARPD Employee ACERA Membership Determinations

Dear Mr. Rieger,

This letter is in response to your request for a justification of the Livermore Area Recreation and Park District's policy of excluding its "Regular Employees" from enrollment in ACERA.

Before I begin, I would like to clear up one potential misconception that factors heavily into the issue at hand. In your March 16, 2023 e-mail to me, you asked LARPD to justify why it has authority to exclude a group of "permanent full-time employees" from ACERA membership. Put simply, LARPD has determined that the employees it is excluding from ACERA membership are *not* "permanent" full-time employees. After careful study and analysis, LARPD has found that the employees that now retain the "Regular" designation have high enough turnover rates to warrant an alternative retirement contribution program that better fits their individual needs. Thus, LARPD deemed it necessary to create a new classification of employees, the "Regular" class, to more accurately address the collective goals of its entire workforce.

LARPD's determination was made after careful consideration of the applicable law and ACERA's policies. This also included a consultation with and confirmation from ACERA's legal counsel. After reviewing the applicable legal authority, LARPD remains convinced that it indeed does have the authority to exclude certain employees from ACERA membership, including those in its "Regular" class.

Beginning with state law, the County Employees Retirement Law of 1937 ("CERL") (Gov. Code §31450, et seq.), ACERA's enabling legislation, delegates to retirement boards the authority to exclude certain employees from membership in a retirement association. Gov. Code §31527(e). Although CERL states that "[a]ll officers and

employees of any district become members of the association on the first day of the calendar month” after the district is included in the association, this section does not preclude a retirement board from adopting regulations that allow for employees to be excluded from membership in a retirement association. Gov. Code §31557(b). In fact, Gov. Code §31527(e) permits a retirement board to adopt regulations that may exclude or exempt “from membership altogether... persons whose tenure is temporary, seasonal, intermittent, or for part time only, or *persons whose compensation is fixed at a rate by the day or hour.*” The clear effect of this final clause is that hourly employees may be excluded from membership because they are, by definition, compensated based on an hourly rate of pay. Furthermore, because some hourly employees work full-time schedules, it stands to reason that this section allows for the exclusion of *hourly* full-time employees as well. For reference, all of LARPD’s “Regular Employees” are paid at an hourly rate. Accordingly, CERL does permit county retirement boards to adopt regulations that exclude hourly employees from membership in retirement associations.

ACERA’s Retirement Board delegated its authority to exclude hourly employees from ACERA membership to its participating employers. Pursuant to its authority under Gov. Code §31527(e), the ACERA Retirement Board adopted Regulation 4.3.2, which provides that “the Board shall adopt, adhere to, and may amend from time to time, policies and procedures governing membership which are not inconsistent with [CERL] or these regulations and which shall, at a minimum, establish eligibility for membership...” Accordingly, the Retirement Board adopted the ACERA Membership Policy, which states in Section II(A)(1): “[m]embership in ACERA is mandatory for employees appointed to full-time *permanent* positions with a Participating Employer. *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.*” Because the Membership Policy grants LARPD the broad power to “identify its positions that are eligible for membership” and only reserves the power to mandate that “full-time permanent positions” be members in ACERA, the logical conclusion is that ACERA’s Retirement Board delegated to LARPD the power to include or exclude hourly, non-permanent employees from membership in ACERA.

Furthermore, the 2007 Interagency Agreement between LARPD and ACERA (“Agreement”) states: “All *permanent* full-time employees of [LARPD] are members of ACERA. The term ‘Full-Time Employee’ indicates employees who are classified as full-time (40 hours per week) by the Employer and working 40 hours per week.” Here, too, the Agreement delegates the authority to determine which of its employees are eligible for ACERA membership because it requires that the employees be “permanent” (a designation left to LARPD’s discretion), and it requires that the employees be “classified as full-time” by LARPD. Even though some of LARPD’s

Jeff Rieger
Alameda County Employees' Retirement Association
April 10, 2023
Page 3

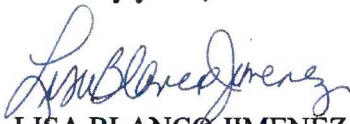
“Regular Employees” may work 40-hour weeks, the remaining requirements for eligibility in ACERA according to the Agreement are not met.

Not only did LARPD base its decision to create the “Regular Employee” classification upon these interpretations, it also did so in reliance upon the approval of ACERA’s legal counsel, which it received prior to creating the new designation. Specifically, Kathy Mount, former Chief Counsel for ACERA, writes in an e-mail dated October 9, 2018: “CERL leaves it up to [sic] retirement board to determine who is full time for purposes of enrollment in the retirement system. ACERA has delegated that authority to participating employers... Thus, a participating employer can expand or limit the number of hours that constitute full time employment for its employees.”

Returning now to the distinction I made at the beginning of this letter, LARPD created the “Regular Employee” classification as a method to exercise the authority delegated to it by the ACERA Retirement Board to exclude *hourly, non-permanent* employees from ACERA membership. LARPD tailored this classification to encompass certain hourly employees that, according to its own internal research, LARPD found to be working in positions that experienced high levels of turnover and were therefore not “permanent” full-time employees. These positions stood in stark contrast with LARPD’s “Full-Time Pension Employees” who hold positions with much higher retention rates. Given the differences in retention rates, LARPD determined a single category for both sets of employees was inappropriate. By redirecting employee retirement contributions for employees in the “Regular” positions into more transferrable types of accounts, LARPD employees benefitted from a retirement contribution system that they could take with them if and when they leave LARPD.

Again, LARPD made this determination based upon ACERA’s Membership Policy, the Agreement, its own legal analysis of those documents and CERL, and that of ACERA’s then-Chief Counsel. I hope you will find the foregoing analysis satisfactory and that we can promptly resolve the misunderstanding between our two agencies. If you have any further questions regarding this matter, I invite you to call or e-mail me directly.

Sincerely yours,


LISA BLANCO JIMENEZ
Attorney at Law

LBJ/TTJ
cc: Mathew Fuzie (e-mail: MFuzie@larpd.org)



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

a. Employees of Livermore Area Recreation and Park District (LARPD) whose compensation is fixed by the day or hour are not subject to mandatory membership.

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 for LARPD the employee does not have compensation fixed by the day or hour); and (d) the employee should be enrolled in ACERA.
3. 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

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 February 18, 2021, 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.

receive proportional service credit based on the amount of time worked compared to a full-time schedule.

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.
4. LARPD Hourly/Daily Compensated. Employees of LARPD whose compensation is fixed by the day or hour are excluded from ACERA membership, unless they are already members due to prior work schedule that qualified for membership (not compensated hourly or daily).

- 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)~~ 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

1. 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 as much as 12 weeks after entrance into service in an ACERA-covered position (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 from an ACERA-covered position (with appropriate adjustments to service credit and contributions).³

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 a reciprocal system will be considered for the purpose of establishing a member’s eligibility for benefits, if the member retires concurrently from ACERA and the reciprocal system.
3. Amounts earned while an active member of a reciprocal system will be considered when determining the member’s “final compensation,” if the member retires concurrently from ACERA and the reciprocal system.

³ Such adjustments of membership and termination dates are permitted for any member who has not yet received a retirement allowance payment from ACERA.

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 February 18, 2021.
- ~~C.~~ The Board deleted former Section II(A)(3) effective January 10, 2023.⁴
- ~~C.D.~~ The Board added Section II(A)(1)(a) and Section II(D)(4) (and made related technical revisions) on July 20, 2023.

⁴ 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; December 20, 2018; and December 17, 2020