

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
2223 E. WELLINGTON AVENUE, SUITE 100
SANTA ANA, CALIFORNIA 92701**

**GOVERNANCE COMMITTEE MEETING
August 15, 2024
9:30 A.M.**

Members of the Committee

Chris Prevatt, Chair
Arthur Hidalgo, Vice-Chair
Roger Hilton
Richard Oates

Members of the public who wish to observe and/or participate in the meeting may do so (1) from the OCERS Boardroom or (2) via the Zoom app or telephone (information below) from any location.

OCERS Zoom Video/Teleconference Information	
Join Using Zoom App (Video & Audio) https://ocers.zoom.us/j/84324949183 Meeting ID: 843 2494 9183 Passcode: 488397 Go to https://www.zoom.us/download to download Zoom app before meeting Go to https://zoom.us to connect online using any browser.	Join by Telephone (Audio Only) Dial by your location +1 669 900 6833 US (San Jose) +1 346 248 7799 US (Houston) +1 253 215 8782 US +1 301 715 8592 US +1 312 626 6799 US (Chicago) +1 929 436 2866 US (New York) Meeting ID: 843 2494 9183 Passcode: 488397
A Zoom Meeting Participant Guide is available on OCERS website Board & Committee meetings page	

AGENDA

This agenda contains a brief general description of each item to be considered. The Committee may take action on any item included in the agenda; however, except as otherwise provided by law, no action shall be taken on any item not appearing on the agenda. The Committee may consider matters included on the agenda in any order, and not necessarily in the order listed.

OPEN SESSION

- 1. CALL MEETING TO ORDER AND ROLL CALL**
- 2. BOARD MEMBER STATEMENT REGARDING PARTICIPATION VIA ZOOM (IF NECESSARY)
(Government Code section 54953(f))**
- 3. PUBLIC COMMENTS**

Members of the public who wish to provide comment during the meeting may do so by “raising your hand” in the Zoom app, or if joining by telephone, by pressing * 9 on your telephone keypad. Members of the public who participate in the meeting from the OCERS Boardroom and who wish to provide comment during the meeting may do so from the podium located in the OCERS Boardroom. When addressing the Committee, please state your name for the record prior to providing your comments. Speakers will be limited to three (3) minutes.

At this time, members of the public may comment on (1) matters not included on the agenda, provided that the matter is within the subject matter jurisdiction of the Committee; and (2) any matter appearing on the Consent Agenda.

In addition, public comment on matters listed on this agenda will be taken at the time the item is addressed.

CONSENT AGENDA

C-1 GOVERNANCE COMMITTEE MEETING MINUTES

Governance Committee Meeting Minutes

May 23, 2024

Recommendation: Approve minutes.

ACTION ITEMS

NOTE: Public comment on matters listed in this agenda will be taken at the time the item is addressed, prior to the Committee’s discussion of the item. **Persons attending the meeting in person and wishing to provide comment on a matter listed on the agenda should fill out a speaker card located at the back of the Boardroom and deposit it in the Recording Secretary’s box located near the back counter.**

A-1 INDIVIDUAL ACTION ON ANY ITEM TRAILED FROM THE CONSENT AGENDA

A-2 OFF-CYCLE REVIEW OF THE MEMBERSHIP ELIGIBILITY REQUIREMENTS POLICY

Presentation by Manuel Serpa, General Counsel

Recommendation: Consider and provide guidance on the draft revisions to the Membership Eligibility Requirements Policy.

A-3 REVIEW OF OCERS ADMINISTRATIVE PROCEDURE REGARDING FELONY FORFEITURE

Presentation by Joon Kim, Staff Attorney

Recommendation: Review, approve, and recommend the Board adopt the revised OCERS Administrative Procedure (OAP) regarding Felony Forfeiture, as presented.

A-4 OFF-CYCLE REVIEW OF THE SECURITIES LITIGATION POLICY

Presentation by Manuel Serpa, General Counsel

Recommendation: Approve and recommend that the Board adopt revisions to the Securities Litigation Policy.

A-5 TRIENNIAL REVIEW OF THE SUCCESSION POLICY
Presentation by Steve Delaney, Chief Executive Officer

Recommendation: Approve and recommend that the Board adopt revisions to the Succession Policy.

A-6 REVIEW OF OCERS ADMINISTRATIVE PROCEDURE REGARDING REQUIRED MINIMUM DISTRIBUTIONS
Presentation by Ivan Cao, Staff Attorney

Recommendation: Review, approve, and recommend the Board adopt the revised OCERS Administrative Procedure (OAP) regarding Required Minimum Distributions, as presented.

A-7 OFF-CYCLE REVIEW OF THE MEMBER SERVICES CUSTOMER SERVICE POLICY
Presentation by Silviu Ardeleanu, Director of Member & Employer Relations Section - Member Services

Recommendation: Approve and recommend the Board adopt the proposed revisions to the Member Services Customer Service Policy.

A-8 TRIENNIAL REVIEW OF THE LEGISLATIVE POLICY
Presentation by Manuel Serpa, General Counsel

Recommendation: Approve and recommend that the Board adopt revisions to the Legislative Policy.

A-9 ADOPTION OF THE EMPLOYER DATA POLICY
Presentation by Steve Delaney, Chief Executive Officer, and Manuel Serpa, General Counsel

Recommendation: Approve and recommend that the Board adopt the Employer Data Policy.

INFORMATION ITEMS

None.

COMMITTEE MEMBER COMMENTS

CHIEF EXECUTIVE OFFICER/STAFF COMMENTS

COUNSEL COMMENTS

ADJOURNMENT

NOTICE OF NEXT MEETINGS

DISABILITY COMMITTEE MEETING

**August 19, 2024
8:30 A.M.**

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
2223 E. WELLINGTON AVENUE, SUITE 100
SANTA ANA, CA 92701**

REGULAR BOARD MEETING

**August 19, 2024
9:30 A.M.**

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
2223 E. WELLINGTON AVENUE, SUITE 100
SANTA ANA, CA 92701**

PERSONNEL COMMITTEE MEETING

**August 27, 2024
9:30 A.M.**

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
2223 E. WELLINGTON AVENUE, SUITE 100
SANTA ANA, CA 92701**

INVESTMENT COMMITTEE MEETING

**August 28, 2024
9:00 A.M.**

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
2223 E. WELLINGTON AVENUE, SUITE 100
SANTA ANA, CA 92701**

AVAILABILITY OF AGENDA MATERIALS - Documents and other materials that are non-exempt public records distributed to all or a majority of the members of the OCERS Board or Committee of the Board in connection with a matter subject to discussion or consideration at an open meeting of the Board or Committee of the Board are available at the OCERS' website: <https://www.ocers.org/board-committee-meetings>. If such materials are distributed to members of the Board or Committee of the Board less than 72 hours prior to the meeting, they will be made available on the OCERS' website at the same time as they are distributed to the Board or Committee members. Non-exempt materials distributed during an open meeting of the Board or Committee of the Board will be made available on the OCERS' website as soon as practicable and will be available promptly upon request.

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Governance Committee Meeting - Agenda

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It is OCERS' intention to comply with the Americans with Disabilities Act ("ADA") in all respects. If, as an attendee or participant at this meeting, you will need any special assistance beyond that normally provided, OCERS will attempt to accommodate your needs in a reasonable manner. Please contact OCERS via email at adminsupport@ocers.org or call 714-558-6200 as soon as possible prior to the meeting to tell us about your needs and to determine if accommodation is feasible. We would appreciate at least 48 hours' notice, if possible. Please also advise us if you plan to attend meetings on a regular basis.

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
2223 E. WELLINGTON AVENUE, SUITE 100
SANTA ANA, CALIFORNIA 92701**

**GOVERNANCE COMMITTEE MEETING
Thursday, May 23, 2024
9:30 a.m.**

MINUTES

The Chair called the meeting to order at 9:36 a.m.

Recording Secretary administered the roll call.

Attendance was as follows:

Present: Chris Prevatt, Chair; Roger Hilton, Board Member; Richard Oates, Board Member.

Also present: Steve Delaney, CEO; Manuel Serpa, General Counsel; Suzanne Jenike, Assistant CEO, External Operations; Joon Kim, Staff Attorney; Brenda Shott, Assistant CEO, Internal Operations; Will Tsao, Director of Enterprise Project Management Office; Kwame Addo, Chief Compliance Officer; Silviu Ardeleanu, Director of Member & Employer Relations Section - Member Services; Bill Singleton, Paralegal; Amanda Evenson, Executive Secretary; Jeff Lamberson, Director of Retirement Operations - Member Services; Carolyn Nih, Executive Secretary; David Kim, Director of Internal Audit; Rosie Baek, Staff Attorney; Tracy Bowman, Director of Finance; Marielle Horst, Executive Secretary; Anthony Beltran, Audio Visual Technician; Rebeca Gonzalez-Verdugo, Recording Secretary.

Absent: Arthur Hidalgo, Vice-Chair

CONSENT AGENDA

C-1 APPROVE GOVERNANCE COMMITTEE MEETING MINUTES

Governance Committee Meeting Minutes

March 21, 2023

MOTION by Mr. Oates, **seconded** by Mr. Hilton, to approve the Minutes.

The motion passed **unanimously**.

ACTION ITEMS

A-1 INDIVIDUAL ACTION ON ANY ITEM TRAILED FROM THE CONSENT AGENDA

No items were trailed from the Consent Agenda.

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A-2 TRIENNIAL REVIEW OF THE COST IMPACTING POLICY

Presentation by Manuel Serpa, General Counsel

Recommendation: Approve and recommend that the Board adopt the Cost Impacting Policy with no revisions.

After discussion, **MOTION** by Mr. Hilton, **seconded** by Mr. Oates to adopt staff's recommendations.

The motion passed **unanimously**.

A-3 TRIENNIAL REVIEW OF THE EXTRAORDINARY EXPENSE RECOVERY POLICY

Presentation by Manuel Serpa, General Counsel

Recommendation: Approve and recommend that the Board adopt the Extraordinary Expense Recovery Policy without revision. Alternatively, recommend the Board repeal the Extraordinary Expense Recovery Policy.

After discussion, **MOTION** by Mr. Oates, **seconded** by Mr. Hilton to adopt staff's recommendation to approve and recommend that the Board adopt the Extraordinary Expense Recovery Policy without revision.

The motion passed **unanimously**.

A-4 OFF-CYCLE REVIEW OF THE MEMBERSHIP ELIGIBILITY REQUIREMENTS POLICY

Presentation by Manuel Serpa, General Counsel

Recommendation: Review and recommend the Board of Retirement adopt, the revisions to the Membership Eligibility Requirements Policy as presented.

After discussion, Committee consensus was to return Policy back to staff for further development.

The Committee provided direction to staff to meet with Employers for potential revisions to section 4.c.i-iv of the Policy.

The Committee recommended the following revision to the Policy: to remove the sentence from Paragraph 5, which reads:

“5. ... The Board also hereby delegates the authority to grant such exceptions to the Chief Executive Officer, who will report any exceptions to the Chair of the Board of Retirement (Board).”

The Committee recessed for break at 11:09 a.m.

The Committee reconvened from break at 11:24 a.m.

The Chair administered the Roll Call attendance.

A-5 REVIEW OF OCERS ADMINISTRATIVE PROCEDURE REGARDING FELONY FORFEITURE

Presentation by Joon Kim, Staff Attorney

Recommendation: Review, approve, and recommend the Board of Retirement adopt the revised OCERS Administrative Procedure (OAP) regarding Felony Forfeiture, as presented.

After discussion, Committee consensus was to return the OCERS Administrative Procedure back to staff for further development.

The Committee provided direction to staff to include Board notification of the initial determination at the Regular Board meeting.

A-6 OFF-CYCLE REVIEW OF THE SECURITIES LITIGATION POLICY

Presentation by Manuel Serpa, General Counsel

Recommendation: Approve and recommend that the Board adopt revisions to the Securities Litigation Policy.

After discussion, Committee consensus was to return Policy back to staff for further development.

The Committee provided direction to staff to clarify the Monitoring Firms search and selection process, which may include an RFQ or as otherwise specified by the Board and consider emerging firms. The Committee provided additional direction to include that one Board member will be involved in the selection of the monitoring firm, which may be appointed by the Board Chair.

INFORMATION ITEMS

I-1 EMPLOYER DATA POLICY AND GUIDELINES - UPDATE

Presentation by Steve Delaney, Chief Executive Officer

COMMITTEE MEMBER COMMENTS

None.

CHIEF EXECUTIVE OFFICER/STAFF COMMENTS

None.

COUNSEL COMMENTS

None.

ADJOURNMENT

Chair adjourned meeting at 12:34 p.m.

Submitted by:

Approved by:

Orange County Employees Retirement System
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Manuel Serpa
General Counsel/Staff Liaison

Steve Delaney
Chief Executive Officer/Secretary

Chris Prevatt
Chair



Memorandum

DATE: August 15, 2024
TO: Members of the Governance Committee
FROM: Manuel D. Serpa – General Counsel
SUBJECT: OFF-CYCLE REVIEW OF THE MEMBERSHIP ELIGIBILITY REQUIREMENTS POLICY

Recommendation

- (1) Consider and provide guidance on the draft revisions to the Membership Eligibility Requirements Policy.

Background/Discussion

The Board of Retirement has formally adopted over 60 charters and policies and established a review schedule that requires the review of every charter and policy every three years. At its February and June 2015 meetings, on the recommendation of the Governance Committee, the Board approved a streamlined procedure to manage the scheduled review of the charters and policies more efficiently. According to this process, the Governance Committee must review certain charters and policies before presentation to the Board for approval.

The Board adopted the Membership Eligibility Requirements Policy on March 20, 2017, and last revised it on October 16, 2023. Though not due for its regular review, the Committee has requested a review to clarify the responsibility of participating employers to monitor and report to OCERS the status of ineligible employees.

In addition to consideration of the revisions contained in the attached draft of the policy, Staff seeks the Governance Committee's input on the following three issues:

- 1) **Should the issues related to working retirees (under Gov. Code, § 7522.56) be removed from the Membership Eligibility Requirements Policy and addressed in a new Board policy on that topic alone?**
- 2) **Should the duration limits for Extra Help positions (contained in paragraph 7 of the attached draft) be calculated on the basis of a 365-day period following the hire date?**
- 3) **Should the provision on the Board's authority to grant exceptions (contained in paragraph 8 of the attached draft) include a delegation of this authority to the CEO?**

The working draft of the policy revisions made based upon the feedback at the last Governance Committee meeting, which has been provided to the Participating Employers for their review, includes the following:

- The following sentences were added to paragraph 2:
 - **Additionally, each Participating Employer is responsible for monitoring the status of those employees ineligible to participate in the Plan (per Paragraph 6) and for timely notifying OCERS of any change necessitating membership. Each Participating Employer must submit an annual report to OCERS, listing all "Extra Help Position" employees and their total hours worked.**
- New paragraphs 3 and 4 were added, which use definitions contained in the County's policy on extra help positions, as follows:

3. Definition of Extra Help Position: An Extra Help Position is a position intended to be occupied on less than a year-round basis for circumstances that include the following:

- a. to cover seasonal peak workloads;
- b. for extra emergency workloads of limited duration; or
- c. for necessary vacation relief, paid sick leave, and other fluctuating staff situations.

4. Duration of full-time Extra Help Positions: Ordinarily, a full-time Extra Help Position will not exceed six (6) months. In unusual circumstances, a full-time Extra Help Position may last longer than six (6) months, provided such period shall not exceed one (1) year.

- A qualifying statement was added to paragraph 6.a. regarding ineligible employees:
 - Is a retired member who satisfies the requirements of Government Code section 7522.56 to serve a Participating Employer without reinstatement from retirement **and that does not exceed a total of 960 work hours per year;**
- Paragraph 5.a. states that an employee hired with the expectation of employment for more than one year and at least 1,040 hours per year shall be enrolled in the plan. A corresponding entry at 6.c. adds that the following employees are ineligible:
 - **Is classified as part-time and scheduled to work less than twenty (20) hours per weekly period or classified as an Extra Help Position regardless of the number of hours worked (OCERS Regulations, Article I.1.c).**
 - The citation above is to the attached OCERS Regulations. It is important to note that this sentence is a direct quote from the regulations and will need clarification. A reasonable interpretation of this Extra Help statement is that an employee is ineligible if classified in an Extra Help Position as long as the number of hours worked does not exceed those expressed within or implied by the definition of “Extra Help Position.”
- Footnotes were added to 6.d. to define “Professional or Highly Technical Skills” and “Seasonal Work.”
- The following changes were made to paragraph 7.:

7. All employees hired with the expectation that they will work less than one year are properly excluded from OCERS membership for that year, regardless of how their position may be designated. Each Participating Employer is responsible for monitoring the number of hours worked by such employees and notifying OCERS should the following numbers be exceeded:

 - a. After that initial year, any employee who is not in an Extra Help Position and works more than 1,040 hours per year must be enrolled in OCERS membership.**
 - b. After that initial year, an employee in an Extra Help Position employee who works more than 1,600 hours per year must be enrolled in OCERS membership.**
- The following factor was added to those the Board will consider in granting an exception under paragraph 8:
 - **The urgency of the employer’s need to fill the position on a temporary basis.**
- Paragraph 10 was rephrased for clarity as follows:

- For purposes of Paragraphs 4, 5, 6, and 7 (including the limit of 960 hours or other equivalent limit under Gov. Code § 7522.56(d)), the term "year" refers to a fiscal year or a calendar year, whichever the Participating Employer designates for uniform application to all its employees.

Other non-substantive changes were also made to the document to improve readability. The proposed revisions are set forth in underlined/strikeout text in the attached copy of the Membership Eligibility Requirements Policy. An unmarked version of the Policy is also attached for the Committee's ease of review. Also attached are the OCERS Regulations and the County's Extra Help Position Policy.

Attachments

Submitted by:



MDS-Approved

Manuel D. Serpa
General Counsel



OCERS Board Policy Membership Eligibility Requirements

Purpose and Background

1. The Orange County Employees Retirement System (OCERS, System or Plan) is charged with administering a defined benefit pension plan for eligible employees of the County and Districts who participate in the Plan (each a Participating Employer). ~~The purpose of this Policy regarding Membership Eligibility Requirements (Policy) is to clarify the rules that the System will use as a basis for determining~~ to determine the eligibility of persons to be members of the System. The Policy intends to ensure that those eligible to be members of the System who have not executed a lawful waiver of membership are enrolled in the System unless a lawful exception applies. Conversely, persons ineligible for membership in the System must be excluded from membership.

Policy Objectives

~~All persons eligible to be members of the System who have not executed a lawful waiver of membership (e.g., elected officials and members entering employment after age 60) must be enrolled in the System.~~ Employer Responsibility

- ~~2. Conversely, persons ineligible for membership in the System must be excluded from membership. The objective of this Policy is to clarify existing law (Government Code sections 31550, et. seq.) and OCERS' regulations with respect to the persons who are eligible for membership in OCERS.~~

Roles and Responsibilities

- ~~3.2.~~ Each Participating Employer is responsible for determining, in accordance with this Policy, which of ~~the Participating Employer's~~ its employees are eligible for membership in OCERS and ~~is responsible~~ for enrolling those eligible employees into OCERS membership. ~~Additionally, each Participating Employer is responsible for monitoring the status of those employees ineligible to participate in the Plan (per Paragraph 6) and for timely notifying OCERS of any change necessitating membership. Each Participating Employer must submit an annual report to OCERS, listing all "Extra Help Position" employees and their total hours worked.~~

Policy Guidelines

3. Definition of Extra Help Position: An Extra Help Position is a position intended to be occupied on less than a year-round basis for circumstances that include the following:
 - a. to cover seasonal peak workloads;
 - b. for extra emergency workloads of limited duration; or
 - c. for necessary vacation relief, paid sick leave, and other fluctuating staff situations.



OCERS Board Policy Membership Eligibility Requirements

4. Duration of full-time Extra Help Positions: Ordinarily, a full-time Extra Help Position will not exceed six (6) months. In unusual circumstances, a full-time Extra Help Position may last longer than six (6) months, provided such period shall not exceed one (1) year.

4.5. The following employees of a Participating Employer are eligible to participate and shall be enrolled in the Plan:

Any employee of the Participating Employer who is:

- a. Hired with the expectation of employment for more than one year and at least 1,040 hours per year, or who is actually employed for more than one year and at least 1,040 hours per year for at least one of those years; and
- b. Not expressly excluded from membership under Paragraph ~~5~~below~~6~~4.

~~5.6.~~ The following employees of a Participating Employer are ineligible to participate and shall not be enrolled in the Plan:

Any employee of the Participating Employer who:

- a. Is a retired member who satisfies the requirements of Government Code section 7522.56 to serve a Participating Employer without reinstatement from retirement; ~~or~~ and that does not exceed a total of 960 work hours per year; or
- b. Has executed a lawful waiver of membership (e.g., elected officials and members entering employment after age 60); or
- c. Is classified as part-time and scheduled to work less than twenty (20) hours per weekly period or classified as an Extra Help Position regardless of the number of hours worked (OCERS Regulations, Article I.1.c).
- ~~e.~~d. Is hired with the expectation of employment for less than 1,600 hours per year, is then actually employed for less than 1,600 hours ~~in~~ every year, and is classified as "extra help" ~~an Extra Help Position~~ by the Participating Employer because ~~he or she works~~ they work in a position that:
 - i. Requires professional or highly technical skills for more than one year;¹
 - ii. Is designated "intern" for more than one year (i.e., entry-level ~~and consistent with~~ as per the Participating Employer's salary resolution or comparable classification scheme);

¹ "Professional or Highly Technical Skills" are those utilized by employees engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including attorneys, physicians, registered nurses, engineers, architects, teachers, and various types of physical, chemical, and biological scientists.



OCERS Board Policy

Membership Eligibility Requirements

- iii. Is designated "seasonal" for more than one year ~~{and that~~ works in less than seven calendar months per year²; ~~or~~
- iv. Is designated "intermittent" for more than one year (i.e., works ~~on an~~ irregular ~~irregularly~~, as ~~needed~~ basis).

7. ~~Note: Per section 4(a), all~~ All employees hired with the expectation that they will work less than one year are properly excluded from OCERS membership for that year, regardless of how their position may be designated. ~~If such employees ultimately work more than one year, they should be enrolled in OCERS membership if they work more than 1,040 hours per year (if not "extra help") or more than 1,600 hours per year (if "extra help").~~ Each Participating Employer is responsible for monitoring the number of hours worked by such employees and notifying OCERS. should the following numbers be exceeded:

- a. After that initial year, any employee who is not in an Extra Help Position and works more than 1,040 hours per year must be enrolled in OCERS membership.
- b. After that initial year, an employee in an Extra Help Position employee who works more than 1,600 hours per year must be enrolled in OCERS membership.

~~6.8.~~ The Board may grant exceptions to the requirements of Paragraphs ~~3, 4, 5, 6,~~ and 7 if the Board determines that doing so is consistent with the intent of this Policy and is fair to all parties. ~~For example:~~ Factors to consider in granting an exception will include:

- a. ~~The Board may consider an~~ An employee's preference not to be enrolled as a member of OCERS, even though that preference alone does not justify exclusion from OCERS membership; ~~and~~
- b. ~~The Board may consider whether~~ The urgency of the employer's need to fill the position on a temporary basis; and
- ~~b.c.~~ Whether an employee's work hours exceeded the relevant maximum due to administrative oversight.

~~7.9.~~ When a Participating Employer fails to comply with the requirements of Paragraphs ~~3, 4, 5, 6,~~ and 7, and ~~the Board does not grant~~ an exception under Paragraph ~~8~~ 6 ~~is not granted~~, the Board will exercise its discretion to determine an appropriate correction procedure based on the facts of each case.

~~8.10.~~ For purposes of Paragraphs ~~3, 4, 5, 6,~~ and 7, ~~(including the limit of 960 hours or other equivalent limit under Gov. Code § 7522.56(d)),~~ the term "year" refers to a fiscal year or a calendar year, whichever ~~is used by~~ the Participating Employer designates for ~~employment purposes~~ uniform application to all its employees.

² "Seasonal work" is that performed on a seasonal basis where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and that, from its nature, may not be continuous or carried on throughout the year.



OCERS Board Policy Membership Eligibility Requirements

9-11. A Participating Employer that temporarily employs an individual who (i) previously was the employee of a labor supplier with which the Participating Employer contracted, and (ii) would otherwise be excluded from OCERS membership under this Policy, will be permitted to exclude the individual from OCERS membership for a period of up to one year. - The Board will consider requests for exceptions from the requirements of this paragraph based on the facts of each case, but will not extend the one-year period for excluding the employee from OCERS membership by more than one additional year.

10-12. The Board shall periodically audit, pursuant to Government Code section 31543, each Participating Employer’s payroll practices to assure compliance with this Policy.

Policy Review

13-1. The Board will review this Policy at least every three (3) years to ensure that it remains relevant and appropriate.

Policy History

14-2. This Policy was adopted by the Board of Retirement on March 20, 2017, with an effective date of January 1, 2018, July 20, 2020, ~~and~~ October 16, 2023, and.

Secretary’s Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.

Steve Delaney
Secretary of the Board

10/16/2023

Date



OCERS Board Policy Membership Eligibility Requirements

Purpose and Background

1. The Orange County Employees Retirement System (OCERS, System or Plan) is charged with administering a defined benefit pension plan for eligible employees of the County and Districts who participate in the Plan (each a Participating Employer). The purpose of this Policy regarding Membership Eligibility Requirements (Policy) is to clarify the rules that the System will use to determine the eligibility of persons to be members of the System. The Policy intends to ensure that those eligible to be members of the System who have not executed a lawful waiver of membership are enrolled in the System unless a lawful exception applies. Conversely, persons ineligible for membership in the System must be excluded from membership.

Employer Responsibility

2. Each Participating Employer is responsible for determining, in accordance with this Policy, which of its employees are eligible for membership in OCERS and for enrolling those eligible employees into OCERS membership. Additionally, each Participating Employer is responsible for monitoring the status of those employees ineligible to participate in the Plan (per Paragraph 6) and for timely notifying OCERS of any change necessitating membership. Each Participating Employer must submit an annual report to OCERS, listing all "Extra Help Position" employees and their total hours worked.

Policy Guidelines

3. **Definition of Extra Help Position:** An Extra Help Position is a position intended to be occupied on less than a year-round basis for circumstances that include the following:
 - a. to cover seasonal peak workloads;
 - b. for extra emergency workloads of limited duration; or
 - c. for necessary vacation relief, paid sick leave, and other fluctuating staff situations.
4. **Duration of full-time Extra Help Positions:** Ordinarily, a full-time Extra Help Position will not exceed six (6) months. In unusual circumstances, a full-time Extra Help Position may last longer than six (6) months, provided such period shall not exceed one (1) year.
5. **The following employees of a Participating Employer are eligible to participate and shall be enrolled in the Plan:**

Any employee of the Participating Employer who is:

 - a. Hired with the expectation of employment for more than one year and at least 1,040 hours per year, or who is actually employed for more than one year and at least 1,040 hours per year for at least one of those years; and
 - b. Not expressly excluded from membership under Paragraph 6.
6. **The following employees of a Participating Employer are ineligible to participate and shall not be enrolled in the Plan:**



OCERS Board Policy Membership Eligibility Requirements

Any employee of the Participating Employer who:

- a. Is a retired member who satisfies the requirements of Government Code section 7522.56 to serve a Participating Employer without reinstatement from retirement and that does not exceed a total of 960 work hours per year; or
 - b. Has executed a lawful waiver of membership (e.g., elected officials and members entering employment after age 60); or
 - c. Is classified as part-time and scheduled to work less than twenty (20) hours per weekly period or classified as an Extra Help Position regardless of the number of hours worked (OCERS Regulations, Article I.1.c).
 - d. Is hired with the expectation of employment for less than 1,600 hours per year, is then actually employed for less than 1,600 hours every year, and is classified as an Extra Help Position by the Participating Employer because they work in a position that:
 - i. Requires professional or highly technical skills for more than one year;¹
 - ii. Is designated "intern" for more than one year (i.e., entry-level as per the Participating Employer's salary resolution or comparable classification scheme);
 - iii. Is designated "seasonal" for more than one year and that works in less than seven calendar months per year;² **or**
 - iv. Is designated "intermittent" for more than one year (i.e., works irregularly, as needed).
7. All employees hired with the expectation that they will work less than one year are properly excluded from OCERS membership for that year, regardless of how their position may be designated. Each Participating Employer is responsible for monitoring the number of hours worked by such employees and notifying OCERS should the following numbers be exceeded:
- a. After that initial year, any employee who is not in an Extra Help Position and works more than 1,040 hours per year must be enrolled in OCERS membership.
 - b. After that initial year, an employee in an Extra Help Position employee who works more than 1,600 hours per year must be enrolled in OCERS membership.

¹ "Professional or Highly Technical Skills" are those utilized by employees engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including attorneys, physicians, registered nurses, engineers, architects, teachers, and various types of physical, chemical, and biological scientists.

² "Seasonal work" is that performed on a seasonal basis where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and that, from its nature, may not be continuous or carried on throughout the year.



OCERS Board Policy Membership Eligibility Requirements

8. The Board may grant exceptions to the requirements of Paragraphs 4, 5, 6, and 7 if the Board determines that doing so is consistent with the intent of this Policy and is fair to all parties. Factors to consider in granting an exception will include:
 - a. An employee's preference not to be enrolled as a member of OCERS, even though that preference alone does not justify exclusion from OCERS membership;
 - b. The urgency of the employer's need to fill the position on a temporary basis; and
 - c. Whether an employee's work hours exceeded the relevant maximum due to administrative oversight.
9. When a Participating Employer fails to comply with the requirements of Paragraphs 4, 5, 6, and 7, and an exception under Paragraph 8 is not granted, the Board will exercise its discretion to determine an appropriate correction procedure based on the facts of each case.
10. For purposes of Paragraphs 4, 5, 6, and 7 (including the limit of 960 hours or other equivalent limit under Gov. Code § 7522.56(d)), the term "year" refers to a fiscal year or a calendar year, whichever the Participating Employer designates for uniform application to all its employees.
11. A Participating Employer that temporarily employs an individual who (i) previously was the employee of a labor supplier with which the Participating Employer contracted and (ii) would otherwise be excluded from OCERS membership under this Policy will be permitted to exclude the individual from OCERS membership for a period of up to one year. The Board will consider requests for exceptions from the requirements of this paragraph based on the facts of each case but will not extend the one-year period for excluding the employee from OCERS membership by more than one additional year.
12. The Board shall periodically audit, pursuant to Government Code section 31543, each Participating Employer's payroll practices to assure compliance with this Policy.

Policy Review

13. The Board will review this Policy at least every three (3) years to ensure that it remains relevant and appropriate.

Policy History

14. This Policy was adopted by the Board of Retirement on March 20, 2017, with an effective date of January 1, 2018, July 20, 2020, October 16, 2023, and .

Secretary's Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.

A handwritten signature in black ink that reads "Steve Dalay". The signature is written in a cursive style.



OCERS Board Policy Membership Eligibility Requirements

Steve Delaney
Secretary of the Board

Date



County of Orange
County Policy

Subject:	Extra Help Position Requests
Authority:	County Executive Officer: Signature 
Policy Owner:	Chief Human Resources Officer: Signature 
Approval Date:	12/10/2018
Revision Date(s)	N/A
Version No.:	1.0

A. Policy

Extra Help Position Requests shall be reviewed by Human Resource Services (HRS) to ensure that the appropriate classification is being utilized and that the use is consistent with applicable Memoranda of Understanding (MOU), Personnel and Salary Resolution (PSR) and the Orange County Employees Retirement System (OCERS) Membership Eligibility Requirements.

B. Purpose

To ensure that extra help positions are classified and utilized appropriately.

C. Authority

This policy is consistent with applicable Board of Supervisors approved MOUs, PSR and OCERS Membership Eligibility.

D. Scope

This policy applies to all extra help employees and positions and all County departments that utilize them. (Note: Working Retirees are governed by a separate policy).

E. Responsibilities

Department

County departments shall obtain approval from HRS prior to the creation of an extra help position and regularly monitor their usage and hours worked per fiscal year to ensure compliance with this policy.

Human Resource Services

HRS will ensure that the appropriate classification is being utilized for an extra help position and that the use is consistent with this policy.



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F. Definitions

Term	Definition
Extra Help Position	An Extra Help Position is a position intended to be occupied on less than a year-round basis including, but not limited to, the following: to cover seasonal peak workloads; extra emergency workloads of limited duration; or necessary vacation relief, paid sick leave and other situations involving a fluctuating staff. Ordinarily, a full-time extra help position will not be authorized for a period exceeding six (6) months. In unusual circumstances, and at the discretion of the Chief Human Resources Officer or designee, a full-time extra help position may be authorized for a period longer than six (6) months, provided such period shall not exceed one (1) year.
Extra Help Employee	An Extra Help Employee is an employee who is employed in an extra help position. An Extra Help Employee serves at the pleasure of the County in an extra help position.
Contract Employee	A Contract Employee is an employee who has a current employment contract approved by the Board of Supervisors and who is placed in an extra help position. A Contract Employee serves at the pleasure of the County in an extra help position regardless of the length or term of their contract.
Human Resource Services (HRS)	Human Resource Services or HRS shall mean both the Human Resource Services Department and non-centralized Human Resources teams.
Professional or Highly Technical Skilled Employees	Professional or Highly Technical Skilled Employees are those employees engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including, but not limited to, attorneys, physicians, registered nurses, engineers, architects, teachers and various types of physical, chemical and biological scientists.

G. Procedure

1. **Adding an Extra Help Position**
 - a. Requesting department completes and signs Part One of the Extra Help Extra Help Position Request Form (See Attachment A – Extra Help Position



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County Policy

Request Form), attaching a justification and the proposed duties for the position.

- b. Requesting department determines which Extra Help Affordable Care Act (ACA) designation applies and selects the appropriate pay class code (e.g. E60P, ESLP, EOOP) from the description below based on that determination.

Extra Help employees must be designated in one of three pay class codes immediately upon hire based on the anticipated number of hours they are expected to work. The proper pay class code is necessary to comply with coverage and reporting provisions of the ACA. Pay class code will dictate if and when the employee is offered Minimum Essential Benefits Coverage under the ACA requirements. The rules vary for each of these three groups. The Internal Revenue Service (IRS) will be evaluating the designations and actual hours worked for all employees on an annual basis to ensure compliance and identify employers using incorrect designations to avoid offering coverage.

The IRS indicates the following factors should be considered: 1) whether the employee is replacing an employee who is a full-time employee; and 2) the extent to which employees in the same or comparable positions are or are not full-time employees, and 3) whether the job was advertised or otherwise communicated to the new hire as requiring hours of service that average 30 hours per week.

E60P (FTE): Employees expected to work at least 30 hours per week. If the employee is reasonably expected at his or her start date to perform 30 or more hours of work per week, for the first three months or longer, the County must offer health plan coverage and this pay class code will direct the Benefits Center to offer coverage. If at a later date the position no longer requires 30 hours a week and the position will be scheduled as a seasonal or variable hour employee, the pay class code should be changed.

ESLP (Seasonal): Employees whose employment period typically begins at the same time of year each year and lasts no longer than six months. Department of Labor defines this as "[l]abor is performed on a seasonal basis where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and that, from its nature, may not be continuous or carried on throughout the year." These employees should not



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County Policy

be employed for longer than six months. If they transition from seasonal to another Extra Help category, the pay class code must be changed.

EOOP (Variable Hour): Employees who given the facts and circumstances on the start date, the employer cannot determine that this person is reasonably expected to be employed an average of at least 30 hours per week. They may work over 30 hours at times and less at other times. If they average at least 30 hours per week over the course of a year, they will be offered coverage annually as required by the ACA.

- c. Requesting department sends the Extra Help Position Request Form to their respective department HRS representative to complete Part Two of the Extra Help Position Request Form. The department HRS representative reviews the Extra Help Position Request Form to verify the request meets all applicable PSR provisions, MOUs, ACA designations and County policies and procedures.

2. Filling an Extra Help Position

- a. Prior to filling an extra help position, a department HRS representative will verify any previous County employment that the extra help employee filling the position has worked in order to determine eligibility for OCERS membership.
- b. Extra Help Employees who have worked 1040 hours or longer during one fiscal year must have a minimum break in employment from the County of at least sixty (60) calendar days before beginning employment in another extra help position during the next fiscal year.
- c. The County shall not utilize Extra Help (excluding Working Retirees) for sworn peace officer positions (notwithstanding Extra Help employees currently employed by the County at the time of this policy's adoption) except for working retirees that are placed in Extra Help positions.

3. Deleting/Extending an Extra Help Position

- a. Requesting department completes and signs Part One of the Extra Help Position Request Form. Electronic signatures on the Extra Help Position Request Form are acceptable.
- b. Requesting department sends Extra Help Position Request Form to their respective department HRS representative to fill out Part Two of the Extra Help Position Request Form.



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Note: Electronic signatures on Extra Help Position Request Forms are acceptable.

H. Eligibility for OCERS Membership

As outlined in the OCERS Membership Eligibility Requirements Policy, effective January 1, 2018, Extra Help Employees are subject to the criteria below in determining their eligibility for OCERS membership.

1. The following employees are *eligible* to participate and shall be enrolled in the system:
 - a. Those employees hired with the expectation of employment for more than one (1) year and at least 1,040 hours per year, or who are actually employed for more than one (1) year and at least 1,040 hours per year at least one of those years.
 - b. Not expressly excluded from membership.

2. The following employees are *ineligible* to participate and shall *not* be enrolled in the system:
 - a. A retired member who satisfies the requirements of Government Code section 7522.56.
 - b. An employee that has executed a lawful waiver of membership (e.g. Elected Official or employees entering employment after age 60)
 - c. An employee hired with the expectation of employment for less than 1,600 hours per year, is actually employed for less than 1,600 in every year, and is classified as "extra help" because he or she works in a position that:
 - i. Requires professional or highly technical skills for more than one year; or
 - ii. Is designated "intern" for more than one year; or
 - iii. Is designated "seasonal" for more than one year (works in less than seven calendar months per year); or
 - iv. Is designated "intermittent" for more than one year (works on an irregular, as-needed basis).

If an Extra Help Employee becomes eligible for OCERS membership based on the criteria outlined above, the department or the HRS Satellite Team must immediately notify the Central HRS Records Team. The Extra Help Employee will then be given a new subtitle code identifying them as being eligible for OCERS membership at the beginning of the next pay period and for any future employment with the County.



County of Orange

County Policy

I. References

#	Title/URL
1	OCERS Membership Eligibility Requirements Policy

J. Attachments

#	Title	Description
A	Extra Help Position Request Form	Form used to request and provide justification for an Extra Help Position

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM

REGULATIONS

SECTIONS 31525 - 31527

ARTICLE I. MEMBERSHIP

1. Eligible: Persons eligible for membership in the Retirement System shall become members as of the first day employed in this status. Individuals eligible for membership are:

a. All full-time employees, including limited term employees, whose normal scheduled working hours are eighty (80) hours or more per biweekly pay period or whose regular scheduled working hours are considered full-time by the employing agency or district.

b. All employees who are part-time, including limited term employees, whose scheduled hours are equal to twenty (20) hours or more per weekly period or who are scheduled to work at least 1/2 of a regular scheduled pay period will become members effective on the first day they are on pay status beginning on or after August 27, 1976.

c. All employees classified as part-time, who are scheduled to work less than the time prescribed in "b" above, or who are classified as extra-help regardless of number of hours worked, are hereby excluded from membership.

2. A person is no longer a member as defined in Government Code Section 31470 effective with termination of employment or transfer to a non-eligible position with the County or District except when deferred retirement is requested and is approved by the Board or its authorized representative. When a member terminates employment and is appointed to the same or another regular position in County or District service in the same or next succeeding payroll period, membership shall be deemed continuous unless accumulated contributions have been refunded. Accumulated contributions and interest cannot be refunded unless 15 days have passed following the date of termination.

3. Types of Membership: "Safety" are all eligible County or District employees whose principal duties consist of active law enforcement or active fire suppression as described in Government Code Sections 31470.2 and 31470.4. "General" are all eligible County or District employees not classified "Safety".

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
REGULATIONS

4. Membership Request: Every person who is or becomes a member of the OCERS shall, upon his/her entry into the System, fill out and properly execute a sworn statement as required.

5. Compensation Earnable: Pursuant to Government Code Section 31461, the "compensation earnable" of a member means the average compensation as determined by the Board of Retirement, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay. "Compensation earnable" does not include additional elements of compensation such as bonuses, differential pay, and the like, which are paid to an employee over and above his/her regular base salary and are not necessarily paid to all employees in the same grade or class of positions, or paid in the same amounts.

The Board of Retirement recognizes that compensation paid by an employer to an employee may take many different forms, some of which may not be known to this Board, and it is not feasible for this Board to compile a complete and comprehensive list of all elements of compensation which are to be included in, or excluded from, the definition of "compensation earnable". However, the following are examples of the types of items of compensation which are to be excluded from a member's "compensation earnable" under Government Code Sections 31460 and 31461:

- Overtime pay
- Bonuses
- Payoffs of unused sick leave, vacation, or compensatory time
- Shift differential pay
- Educational incentive pay (including POST pay)
- Uniform and automobile allowances
- Bilingual pay
- Flexible benefits paid under a cafeteria plan

The following items of compensation are to be included in a member's "compensation earnable":

- Amounts deducted from a member's salary for participation in a deferred compensation program under Section 457 of the Internal Revenue Code.
- The amount of any salary reduction, such as under a premium only plan (POP) or a dependent care plan designed, and qualified to reduce an employee's taxable gross income.

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-- Premium pay under the Federal Fair Labor Standards Act (FSLA) which is included in the compensation paid to firefighters (including fire apparatus engineers and fire captains) who work the regular duty schedule averaging 56 hours per week, will be included in such employees' "compensation earnable" for retirement purposes. However, premium pay for overtime hours worked over and above the regular duty schedule averaging 56 hours per week is not included in compensation earnable.

- Holiday pay for safety members if all or substantially all of the safety members in a particular job classification receive pay for a holiday, whether or not they actually work that holiday.

6. Determination of Compensation Earnable: As to any items of compensation not specifically referred to in Article III, Part 5 above, the Board of Retirement will determine, pursuant to Government Code Section 31461, what is to be included in, and what is to be excluded from, "compensation earnable".

7. Contributions: Shall be calculated on compensation earned and shall be deducted from each salary or wage warrant or check drawn in favor of each member for each pay period. The pay period shall be as determined by the Board of Supervisors or District's governing body.

All districts participating in the OCERS shall have the following responsibilities: To enroll new members as members of OCERS; to report members who terminate employment along with the date of termination; and to make appropriate payroll deductions and collect and remit to OCERS, on a timely basis, both employee and employer retirement contributions along with written or magnetic tape reports of such contributions. Such contributions (along with the required reports) shall be submitted to OCERS [within five (5) days of each payroll date] the date that paychecks are issued. If the contributions from any district are received after such [five-day period] pay date, the district must pay OCERS interest on the overdue contributions. Such interest shall be equal to the current daily treasury bill rate, for each day the contributions are delinquent.

In addition, all participating districts shall submit to OCERS a hard copy contribution report in the format specified by the retirement office, certified by the agency that the data is correct. The report is to indicate on the top of each page: The

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
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name of the employer submitting the report; the period of time covered by the report; and the titles of the data being reported on each employee. The data in the report is to contain at least the last name, no less than the first initial and middle initial, employee's social security number, retirement membership tier, salary being reported, the contributions rate of the employee, the contributions creditable to the employee's account, the hours worked for the period, and the tax status of the contributions being reported. The hard copy contribution report is also to contain totals for the following fields: hours worked for the period, salary reported, the employee contributions and the number of entries[.] and a breakdown of the employer contributions which includes a report of the normal contributions, UAAL, and employer pick-up of employee contributions by tier and general/safety category.

Annually the participating districts shall submit to OCERS a electronic data tape of W-2 wages in the same manner and form as submitted to the Internal Revenue Service.

If a participating district submits a report or magnetic tape which does not conform to the format provided, OCERS may charge the district a reasonable time and service charge to recover the costs of having the data keypunched, or to recover the amount of any investment interest lost during the time necessary to prepare a report or tape which conforms with the above format.

8. Additional Contributions: The Board of Retirement by administrative procedure shall establish regulations by which eligible employees may make additional contributions for the purpose of providing additional benefits subject to Government Code Section 31627.

9. Withdrawal of Contributions upon Termination: A withdrawal of contributions plus accrued interest is allowed following termination and written request by the former member. A minimum waiting period of fifteen (15) days following the date of termination shall be required before processing of the withdrawal request. The maximum waiting period for withdrawal, as established by Government Code Section 31628, shall be no longer than six (6) months following the member's separation date. An employee's membership in OCERS terminates as of his or her last day of employment, unless the member is eligible to, and elects to, leave his or her retirement contributions on deposit and elect a deferred retirement pursuant to Government Code Section 31700. In order to

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elect a deferred retirement pursuant to Section 31700, the member must have at least five years of service or transfer to a reciprocal system. If a member leaves his or her retirement contributions on deposit and does not elect a deferred retirement or is not eligible to do so, such contributions shall earn no additional interest after the last day of employment.

Former members who do not apply for a withdrawal of their contributions and interest shall be notified by the retirement office that their funds remain on deposit. Failure to claim the contributions and interest or failure to elect deferred status within the time specified by law shall result in the transfer of the contributions and interest of the former member to the current pension reserve fund with no further legal claim being allowed by the former member.

10. Misstatement of Age: If a member has misstated his or her age on the enrollment affidavit filed with OCERS, and if as a result of such misstatement the employee contributions made to OCERS are less than what would have been contributed if the member's age had been correctly stated in the first place, OCERS will correct such misstatement upon the request of the member and upon proper proof of age being shown, provided:

(a) Prior to retirement, the member must deposit in the retirement fund additional employee contributions equal to the difference between the contributions which were actually made and what would have been made if the member's age had been properly stated in the first place, plus simple interest of ten (10) percent per annum added thereto; or

(b) If such additional contributions and interest are not deposited by the member prior to retirement, the member's retirement allowance will be actuarial reduced in order to allow OCERS to recover the amount of such additional contributions and interest.

(c) If the member's misstatement of age results in an overstatement of the member's age, OCERS will, upon receipt of a certified copy of member's birth certificate, refund the amount of the difference between the employee contributions actually paid, and the contributions which should have been paid, plus interest at the rate credited member accounts.

11. Payment of Retirement Allowance: Retirement benefits are payable the first day of each month, for the preceding month. No payment of retirement allowances shall begin until final payroll

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
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compensation is received from the member's district and until the Board has approved the retirement effective date at a regular meeting as contained within the scheduled consent calendar items.

When making an application for retirement benefits, or upon request by OCERS staff, a member and/or beneficiary shall be required to submit a copy of his or her birth certificate in order to verify the date of birth of such member or beneficiary. In addition, members and/or their beneficiaries shall, upon request, submit copies of their marriage certificates or other suitable proof of marriage, in order to establish an individual's status as an eligible spouse of a member who may become entitled to survivor's benefits.

12. Definitions: The definitions of categories of employees shall be the same as the definitions contained in the Orange County Personnel and Salary Resolution.

13. Rollover of Member Contributions: Member Contributions and interest which have not been taxed are eligible for rollover in an IRA Account to the extent permitted by the Internal Revenue Code.

ARTICLE II. DEDUCTION OF PAST-DUE CONTRIBUTIONS

1. Where through clerical or administrative error a member's mandatory contributions are not deducted at the time and in the manner required by law or under the bylaws and regulations, and where the deduction of the total due would cause a difficulty and a hardship to the member, the Retirement Administrator, on behalf of the Board in his/her discretion, may approve the deduction thereof over a period not to exceed two (2) years, but in no event may the additional contribution be less than TWENTY dollars (\$20.00) per Pay Period.

ARTICLE III. REDEPOSIT OF CONTRIBUTIONS WITHDRAWN

1. Any member who elects, as authorized by law pursuant to Government Code Section 31652, to redeposit in the retirement fund within one (1) year the amount previously withdrawn, may make a written request to the Board for an extension of time to make such redeposit. The Retirement Administrator, in his/her discretion, may on behalf of the Board, approve such extension of time for making such redeposit, not to exceed two (2) additional years.

2. In the event the employee does not repay the contributions

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
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and interest within the time prescribed, all monies received for the time being purchased will be returned to the employee. The employee shall not be granted any additional time for the time being purchased other than that provided in Section 31652.

3. If the employee elects at a later time to repurchase the time in which the contributions were refunded to the employee, the employee must redeposit within the time prescribed in the applicable Government Code Section.

4. If a member encounters a temporary layoff from his or her employment and withdraws retirement contributions, and is then reinstated to his or her employment within one year and redeposits such previously-withdrawn retirement contributions, this will not constitute a break in the continuity of service, as provided in Government Code Section 31642, provided the member makes such redeposit within ninety (90) days of re-entrance into service. If such redeposit is not made within such 90-day period, the member may still redeposit previously-withdrawn contributions pursuant to Government Code Section 31652; however, the member's age at entry, for purposes of determining the member's contribution rate, will be the age upon his or her re-entrance into employment.

ARTICLE IV. PRIOR SERVICE

1. Prior service shall be defined as county service prior to January 1, 1945. Credit for prior service shall be allowed and entered in the records of the Retirement System at a rate of one month or fraction thereof for which compensation was received through the County Payroll System. The length of such prior service shall be established by any available official county or court record. Affidavits may be accepted at the discretion of the Board to establish prior service where no official records are available.

ARTICLE V. PUBLIC SERVICE

1. A member who, prior to becoming a member of the Retirement System, was in public service pursuant to Government Code Sections 31478 and 31479, excluding service with the United States of America as provided by resolution of the Board of Supervisors adopted pursuant to Government Code Section 31641.95, may elect by written notice to purchase and receive credit for all allowed public service time.

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2. Public service credit shall not be considered for minimum qualifications for vesting or retirement.

3. A person who is eligible to repurchase credit in another retirement system (but has not yet done so) is eligible to purchase public service credit in OCERS, provided the member waives the right to purchase service credit in the other retirement system. If the member purchases public service credit in OCERS and subsequently receives service credit in the other agency's retirement system for the same period of service, the purchase of public service credit in OCERS will be canceled, and the member(s) will be refunded any unused monies deposited, plus interest thereon.

ARTICLE VI. MILITARY LEAVE

1. Any employee of the County of Orange or member district, who is a member of the OCERS, who was on military leave of absence pursuant to Government Code Section 31649, from County or District employment and who is entitled to and wishes to purchase and receive retirement service credit for the period of military leave, may do so pursuant to applicable statutes and in accordance with the Retirement System's administrative procedure.

ARTICLE VII. SERVICE CREDITS

1. Members shall receive credit for time in the Retirement System for periods of membership for which they contributed or were exempt from contributing.

2. One hour of service credit shall equal .00576923 months of service credit. Service credit is derived by dividing 12 months by 2080 hours (standard number of hours worked in a year) equalling .00576923.

3. Service credit calculation shall be calculated by multiplying the fraction 12/2080 times the hours of service reported calculated to the minimum of the fifth decimal point rounded to the fourth decimal point.

ARTICLE VIII. RETROACTIVE APPROVAL OF DEFERRED STATUS

Prepared 3/28/95

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ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
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1. A member who was not notified in writing as required by California Government Code Sections 31628 and 31629, regarding their contributions and interest left on deposit, and who did not elect deferred status within one hundred eighty (180) days subsequent to termination, may petition the Board through the Administrator for retroactive deferred status. The Board hereby delegates the authority to approve/disapprove retroactive deferred status to the Retirement Administrator.

ARTICLE IX . DISABILITY RETIREMENT
OF DEFERRED/RECIPROCAL MEMBERS

1. Definition: As used in this article, the term "deferred/reciprocal member" shall mean a member who terminates employment and leaves his or her retirement contributions on deposit with OCERS, and establishes reciprocity with another retirement system (PERS or other 1937 Act system). This article of the bylaws is intended to establish the procedure for calculating the retirement allowance payable by OCERS to a deferred/reciprocal member who is granted a disability retirement from the reciprocal system.

2. Disability Retirement from OCERS. In order to receive a disability retirement allowance from OCERS which will be concurrent with the disability retirement received from the reciprocal system, the deferred/reciprocal member must file an application with OCERS for disability retirement. A finding by the reciprocal system that the member is entitled to a disability retirement will be binding on OCERS.

3. Calculation of Non-Service Connected Disability Retirement. If the deferred /reciprocal member receives a non-service connected disability retirement from the reciprocal system, and is also granted a disability retirement from OCERS, the member's disability retirement allowance will be subject to the limitations of Government Code Section 31838.5, so that the total disability retirement allowance payable to the member by both retirement systems will not exceed the allowance which would have been paid if all of the member's service had been with one system. In applying this rule, OCERS will first ascertain the amount of the non-service connected disability retirement allowance which would have been paid to the member by the reciprocal system if all of the member's service had been under that system. OCERS will then pay the member a fraction of that amount, which said fraction will have as its numerator the total years of service credit the member has with OCERS and as its

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
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denominator the total years of service credit the member has with OCERS and the reciprocal system combined.

If the reciprocal system pays the member a disability retirement allowance which, when combined with the amounts payable by OCERS, exceeds the allowance which would have been paid if all of the member's service had been with the reciprocal system, OCERS will reduce the monthly allowance it pays to the member to insure that the total benefit received by the member does not exceed the limitations set forth in Section 31838.5.

4. Calculation of Service-Connected Disability Allowance.

If a deferred/reciprocal member is granted a service-connected disability retirement from the reciprocal system, and applies for and is granted a concurrent disability retirement from OCERS, the only benefit payable to the member from OCERS will be an annuity based on his or her retirement contributions, pursuant to Government Code Section 31837.

5. Waiver of Disability Benefits from OCERS. A

deferred/reciprocal member who is granted a disability retirement from the reciprocal system may waive disability retirement benefits from OCERS and elect instead a deferred retirement allowance from OCERS, if eligible. Doing so will break reciprocity, and the member's deferred retirement allowance from OCERS will be based on his or her final compensation as a member of OCERS. A member who has less than five years' credited service in OCERS is not eligible for a deferred retirement allowance from OCERS. All other members must meet the statutory eligibility requirements for a deferred retirement, pursuant to Government Code Section 31700. In accordance with Government Code Section 31838.5, if the member is retired from the reciprocal system on a non-service connected disability retirement, or if the member first became a member of the reciprocal system after January 1, 1984, and is retired from that system on a service-connected disability retirement, the total of the retirement allowances from the two systems (the deferred retirement allowance from OCERS and the disability retirement allowance from the reciprocal system) cannot exceed the disability retirement allowance the member would have received from the reciprocal system if all of the member's service had been with that system. In order to ensure that the member's total retirement allowance (from the two systems) does not exceed this limitation, OCERS will pro-rate the member's deferred retirement allowance from OCERS, and if necessary, reduce such retirement allowance, using the calculation set forth in Part 3

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
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of this Article.

ARTICLE X. RETROACTIVE RETIREMENT
FOR DEFERRED/RECIPROCAL MEMBER

1. Definition: As used in this Article, the term "deferred/reciprocal member" shall have the same meaning as set forth in Section 1 of Article XI of these Bylaws and Regulations.

2. Retroactive Retirement. If a deferred/reciprocal member retires from a reciprocal system on a service retirement, and fails to apply to OCERS for concurrent retirement pursuant to Government Code Section 31835, and if such failure to apply is due to oversight or excusable neglect and not due to willful misconduct, the member may later apply to OCERS for, and be granted, a deferred retirement allowance with an effective date which is retroactive to the effective date of the member's service retirement from the reciprocal system. The member will then qualify for reciprocal benefits from OCERS pursuant to Sections 31835 and 31836 of the Government Code.

ARTICLE XI. COMPENSATION EARNABLE

1. Final compensation as defined by Government Code Section 31462 shall mean the three years of compensation preceding the member's termination unless the member elects a different period of time during which the member has earned three full years of credit.

2. Final compensation as defined by Government Code Section 31462.1 shall mean the one year of compensation preceding the member's termination unless the member elects a different period of time during which the member has earned one full year of credit.

3. Final compensation as defined by Government Code Section 31462.2, for part-time employees, or a member who has both part-time and full time service, shall mean the equivalent of three years of compensation [prior to termination] for the 6,280 hours of service rendered prior to termination, unless the member elects a different period of time during which the member has earned the equivalent of three years of service.

ARTICLE XII. ANNUITY CERTIFICATES

Prepared 3/28/95

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ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
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1. Upon retirement, a member of the Retirement System shall be furnished with a letter signed by the Administrator, Assistant Administrator, or other person(s) designated by the Administrator, setting forth the member's name, address, date of retirement, the amount of contributions that were subject to taxes, and the amount of his/her allowance in lieu of an annuity certificate.

ARTICLE XIII. SUBPOENA

1. The Chairperson and Secretary of the Board are hereby authorized to issue and sign subpoenas for documents and/or attendance at [Board hearings on] disability retirement hearings/applications, upon request of the applicant or member, the applicant's or member's attorney, or designated retirement personnel.

2. The Board hereby delegates the subpoena power to each referee appointed to hear a disability retirement application.

3. Witnesses subpoenaed will be provided a witness fee plus reimbursement for necessary travel. The amount to be paid shall be established by Board policy.

ARTICLE XIV. APPEAL TO BOARD OF RETIREMENT

1. A member's application for disability retirement benefits, and any appeal from a denial of such benefits, shall be processed and heard in accordance with the procedures established for disability retirement adopted by this Board.

2. A member's request for any other right or benefit may be made to the Retirement Administrator. If denied by the Retirement Administrator, the member has the right to appeal the Administrator's decision to the Board.

3. An appeal must be filed at the retirement office in care of the Retirement Administrator.

4. The member's written request will be included in the next regular Board agenda in accordance with the date received.

ARTICLE XV. RE-EMPLOYMENT AFTER RETIREMENT

1. For purposes applying the provisions of Government Code

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
REGULATIONS

Sections 31641.04 and 31680.6 to individuals who are re-employed after retirement, the County fiscal year will be used as the 12-month period for determining the maximum number of hours or days such individuals may be employed without a loss of retirement benefits. For persons re-employed by the County after retirement, the Human Resources Department will be responsible for notifying OCERS if such individual's work period exceeds the maximum allowed by Section 31641.04 or 31680.6. For persons re-employed by a district, the personnel manager of the district will have such responsibility.

2. For purposes of applying Government Code Sections 31725.5 and 31725.6 to individuals who are re-employed after having been found to be disabled, the member's status as a general or safety member in the position for which the member has been re-employed will be determined based on the duties of that position.

3. If a member who has been retired for service is re-employed his or her retirement allowance will be discontinued unless the member is re-employed as an extra help or temporary employee, and does not work more than the maximum number of days or hours allowed by statute.

ARTICLE XVI. WAIVER OF BENEFITS

A retired member may voluntarily waive a benefit adjustment increase. The waiver must be in writing. Such a waiver does not prohibit the member from accepting future pension increases granted by the Board of Retirement.

ARTICLE XVII. AMENDMENTS

1. These regulations may be amended from time to time by two-thirds (2/3) vote of the Retirement Board and are subject to Board of Supervisors' approval.

ARTICLE XVIII. REPEALS

1. All former regulations and amendments are hereby repealed. The foregoing regulations become effective when approved by the Board of Supervisors in accordance with Section 31525 of the Government Code.

2. Date Approved: April 10, 1995 by the Board of Retirement.

Prepared 3/28/95

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Memorandum

DATE: August 15, 2024
TO: Members of the Governance Committee
FROM: Manuel Serpa, General Counsel; Joon Kim, Staff Attorney
SUBJECT: REVIEW OF OCERS ADMINISTRATIVE PROCEDURE REGARDING FELONY FORFEITURE

Recommendation

Review, approve, and recommend that the Board of Retirement adopt the revised OCERS Administrative Procedure (OAP) regarding Felony Forfeiture, as presented.

Background

OCERS Administrative Procedures (OAP) regarding Felony Forfeiture informs members and stakeholders of how the felony forfeiture statutes under the California Public Employees’ Pension Reform Act (PEPRA) are applied to a member’s retirement rights and benefits.

Staff’s initial revisions were presented to the Governance Committee at its May 23, 2024, meeting. The Committee agreed with the initial revisions and instructed staff to prepare further revisions. Staff has complied with this instruction. Specifically, when a member does not contest staff’s initial determination to apply the felony forfeiture, the OAP will require that the matter be presented to the Board of Retirement for approval through its consent agenda.

Attachment:

Revised OCERS Administrative Procedure (OAP) regarding Felony Forfeiture.

Submitted by:

 MDS-Approved

Manuel D. Serpa
General Counsel

 JK-Approved

Joon Kim
Staff Attorney



OCERS Administrative Procedure (OAP) Felony Forfeitures

Authority

1. This Administrative Procedure is established pursuant to the Chief Executive Officer (CEO) Charter, section 8.f., which directs the CEO to develop staff policies and procedures to ensure effective and efficient administration of member benefits. The OAP is in conformance with Board Policy, the County Employees Retirement Law (California Government Code section 31450, *et seq.*) (CERL), and the Public Employees' Pension Reform Act (Government Code, sections 7522 - 7522.74) (PEPRA).

Overview

2. PEPRA contains a felony forfeiture law at Government Code sections 7522.72 and 7522.74. Under this law, members of OCERS who are convicted of a felony based on certain enumerated conduct, on or after January 1, 2013, in a state or federal trial court, must forfeit all rights and benefits earned or accrued in any public retirement system from the first date the felony was committed through the date of conviction, and they cannot accrue further benefits. Rights and benefits related to service performed before the first date the felony was committed are not forfeited.
3. The forfeiture applies only when the felony conviction is based on criminal conduct that was:
 - Arising out of or in the performance of their official duties as a public employee;
 - In pursuit of the office or appointment;
 - In connection with obtaining salary, disability retirement, service retirement, or other benefits; or
 - Committed within the scope of official duties against or involving a child that the member had contact with as part of their duties.
4. Once a member is convicted of such a felony, the member and the prosecuting agency must notify the member's employer within 60 days of the conviction, and the employer must notify OCERS within 90 days of the conviction. Whether OCERS is notified by the employer or learns of the conviction through another source, OCERS must comply with the felony forfeiture law. Once notified of the conviction, OCERS' staff will place a hold on the member's account to prevent withdrawals pending a determination of the legal effect of the conviction.

Initial Determination by Staff

5. Once OCERS is notified of the conviction, staff will investigate and obtain information necessary to determine the extent to which the forfeiture may apply. This may include gathering court records, employment records, and any other relevant documents, and communicating with the prosecuting agency and the member's employer. OCERS may exercise its subpoena power to obtain the information.
6. Information gathered by staff will be used to:
 - a. Verify that the PEPRA felony forfeiture law applies to the member's conviction;
 - b. Determine the earliest date the felony was committed;
 - c. As applicable, calculate the amount of overpaid benefits, employee contributions made to the



OCERS Administrative Procedure (OAP) Felony Forfeitures

- system during the forfeiture period, adjustment to future benefits due the member, and any reimbursement owed to the system; and
- d. Confirm that any action taken by OCERS complies with the law.
7. For active or deferred members, the forfeiture will apply as follows:
- a. The member will be treated for all purposes as if they were a deferred member on the first date the felony was committed. OCERS will remove any service credit the member has earned dating back to the first date the felony was committed. This may affect the member's retirement eligibility.
 - b. The member's employee contributions made to the system on and after the first date the felony was committed will be refunded to the member without interest upon the occurrence of a distribution event, unless otherwise ordered by a court or determined by OCERS.
8. For retired members, the forfeiture will apply as follows:
- a. The member will be treated as if they were a deferred member on the first date the felony was committed for purposes of recalculating their service credit and final average salary ("FAS"). OCERS will remove any service credit the member earned as of the first date the felony was committed. In recalculating FAS, OCERS will exclude compensation that falls within the forfeiture period.
 - b. If after application of the forfeiture rules, the member no longer has sufficient service credit to retire as of the first date the felony was committed, OCERS will rescind the retirement and place the member into deferred status.
 - c. If the member did have sufficient service credit to retire as of the first date the felony was committed, OCERS will recalculate the member's retirement allowance by making appropriate changes to their service credits and final average salary. The effective date of retirement and age at retirement will not change.
 - d. OCERS will determine whether the recalculated retirement allowance results in an overpayment of retirement benefits, in which event OCERS will recoup the overpayment from the member pursuant to this Procedure.
 - e. OCERS will also determine the amount of employee contributions the member made to the system as of the first date the felony was committed. These contributions will be refunded to the member without interest. However, if there has been an overpayment of retirement benefits, OCERS will use the contributions, without interest, to offset the overpayment. Contributions will be refunded to the member to the extent they exceed the amount of overpaid benefits.
 - f. For purposes of this Procedure, "overpayment" of retirement benefits includes compounded interest on the principal amount of the overpayment at OCERS' actuarial assumed rate of interest effective from time to time during the forfeiture period.
9. Staff will send a Notice of Initial Determination to Apply PEPRA Felony Forfeiture ("Notice of Initial Determination" or "Notice"), to the member in writing. The Notice of Initial Determination will:
- a. Include a copy of this Procedure and all documents relied upon by staff to support the initial



OCERS Administrative Procedure (OAP) Felony Forfeitures

determination.

- b. Provide an explanation of the felony forfeiture law, the reason it applies to the member's felony conviction, and changes that will be made to the member's retirement status and benefits. This may include staff's calculation of overpayments, employee contributions, an adjusted retirement allowance, the manner and time in which OCERS will recoup any overpayment, and any other change staff determines should be made to the member's retirement status or benefits.
- c. Identify the "~~Effective Date~~" on or around which the forfeiture will be implemented. ~~The Effective Date will be no less than 45 days and no more than 90 days following the date of the Notice.~~
- d. Inform and instruct the member about their right to contest staff's initial determination by requesting the matter be heard and determined by the Board of Retirement (Board).

Request for Determination by Board of Retirement

10. The member has the right to contest staff's initial determination by requesting that the matter be heard and determined by the Board. The request must be in writing and provide a statement explaining the basis and extent to which the member disagrees with staff's initial determination. The member may include documents in support of the request. The Board's review and determination will be limited solely to questions of:
 - a. Whether the PEPRRA felony forfeiture law applies to the member's conviction;
 - b. Whether staff has correctly identified the first date on which the felony was committed; and
 - c. Whether staff has correctly calculated changes to the member's status and benefits.

The request must be *received* by OCERS ~~at least seven (7)~~ within 45 days before of the Effective Date set forth in the Notice of Initial Determination. If the request is not timely received, the member waives their right to have the matter heard and determined by the Board. Staff will then notify the member in writing that they have waived their right, and staff's initial determination will be final and implemented as set forth in the Notice placed on the consent agenda of the Board's next regular open meeting that is at least 30 days after the date of the notice that the member has waived their right.

11. Upon timely receipt of a member's request, the matter will be placed on the Board's next regular open meeting agenda that is at least 45 days after the request is received by OCERS.
12. The member (or their attorney if they are represented) and OCERS staff may present to the Board written statements, argument, evidence, and sworn testimony. Any party wishing to do so must deliver to the Board and the other party a **Pre-Hearing Statement** at least fourteen (14) days before the date of the Board meeting. Late submissions will not be considered by the Board unless the Party shows good cause.

The Pre-Hearing Statement must be no more than 10 pages (excluding Exhibits) and include: a statement of the issues; contentions of the Party; a brief summary of the evidence in support of ~~the~~ Party's contentions; the name, physical and email address, and telephone number of any witness who will testify; and a brief description of the scope of a witness's testimony.



OCERS Administrative Procedure (OAP) Felony Forfeitures

All documents to be presented by a Party must be attached as Exhibits to the Pre-Hearing Statement and preceded by an appendix that lists the Exhibits in an organized manner.

13. After the matter has been heard, the Board may make a final determination on the issues presented, refer the matter to a Hearing Officer, or take other action it deems appropriate.

In the event the matter is referred to a Hearing Officer, the Board will provide a timeline for the hearing to commence, post-hearing briefing to be filed, and the Proposed Findings of Fact and Recommended Decision to be submitted by the Hearing Officer.

Staff will notify the member in writing of the Board's action within three (3) business days.

Implementing the Felony Forfeiture

14. Staff will exercise discretion to implement the forfeiture under this Procedure at the earliest practicable time, unless otherwise directed by the Board. Staff will not implement the forfeiture until the Board makes a final determination, whether in response to the member's request for review and determination, or through consent and approval of staff's initial determination during a regular open meeting. ~~When the member does not make a timely request for determination by the Board, staff will implement the forfeiture as identified in the Notice of Initial Determination. However, when the member has timely requested the Board to make a determination, staff will not implement the forfeiture until the Board makes a final determination.~~

15. OCERS will exercise discretion to recoup overpaid benefits from the member, their estate, or beneficiaries to the extent permitted by law, including by lump sum payment, installment payment, benefit deduction, or any combination thereof.

16. When a member is owed a refund of their employee contributions, disbursement of the refund will be made by electronic funds transfer to an account of the member in a manner that complies with Internal Revenue Service requirements. OCERS must notify the court and the district attorney (or other prosecuting agency) at least three (3) business days before the disbursement of funds.

The member has the right to challenge OCERS' administrative determination under the writ procedures set forth in the California Code of Civil Procedure. The filing of a writ petition in court will not prevent OCERS from implementing the forfeiture, unless a court orders otherwise.

17. If the member's conviction is reversed, and that decision is final, the employee may either: (a) recover the forfeited rights and benefits as adjusted for any refund of employee contributions; or (b) redeposit those employee contributions plus interest that would have accrued during the forfeiture period (as determined by OCERS actuary) and recover the full amount of the forfeited rights and benefits.

This Procedure is not subject to OCERS' Policy Regarding the Overpayment or Underpayment of Benefits or Contributions.

18. If this Procedure conflicts with any statutory or case law, the statutory or case law will govern.



OCERS Administrative Procedure (OAP) Felony Forfeitures

Authority

1. This Administrative Procedure is established pursuant to the Chief Executive Officer (CEO) Charter, section 8.f., which directs the CEO to develop staff policies and procedures to ensure effective and efficient administration of member benefits. The OAP is in conformance with Board Policy, the County Employees Retirement Law (California Government Code section 31450, *et seq.*) (CERL), and the Public Employees’ Pension Reform Act (Government Code, sections 7522 - 7522.74) (PEPRA).

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 - Arising out of or in the performance of their official duties as a public employee;
 - In pursuit of the office or appointment;
 - In connection with obtaining salary, disability retirement, service retirement, or other benefits; or
 - Committed within the scope of official duties against or involving a child that the member had contact with as part of their duties.
4. Once a member is convicted of such a felony, the member and the prosecuting agency must notify the member’s employer within 60 days of the conviction, and the employer must notify OCERS within 90 days of the conviction. Whether OCERS is notified by the employer or learns of the conviction through another source, OCERS must comply with the felony forfeiture law. Once notified of the conviction, OCERS’ staff will place a hold on the member’s account to prevent withdrawals pending a determination of the legal effect of the conviction.

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 - b. Determine the earliest date the felony was committed;
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OCERS Administrative Procedure (OAP) Felony Forfeitures

- system during the forfeiture period, adjustment to future benefits due the member, and any reimbursement owed to the system; and
- d. Confirm that any action taken by OCERS complies with the law.
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 - b. If after application of the forfeiture rules, the member no longer has sufficient service credit to retire as of the first date the felony was committed, OCERS will rescind the retirement and place the member into deferred status.
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 - d. OCERS will determine whether the recalculated retirement allowance results in an overpayment of retirement benefits, in which event OCERS will recoup the overpayment from the member pursuant to this Procedure.
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9. Staff will send a Notice of Initial Determination to Apply PEPRA Felony Forfeiture ("Notice of Initial Determination" or "Notice"), to the member in writing. The Notice of Initial Determination will:
- a. Include a copy of this Procedure and all documents relied upon by staff to support the initial



OCERS Administrative Procedure (OAP) Felony Forfeitures

determination.

- b. Provide an explanation of the felony forfeiture law, the reason it applies to the member’s felony conviction, and changes that will be made to the member’s retirement status and benefits. This may include staff’s calculation of overpayments, employee contributions, an adjusted retirement allowance, the manner and time in which OCERS will recoup any overpayment, and any other change staff determines should be made to the member’s retirement status or benefits.
- c. Identify the date on or around which the forfeiture will be implemented.
- d. Inform and instruct the member about their right to contest staff’s initial determination by requesting the matter be heard and determined by the Board of Retirement (Board).

Request for Determination by Board of Retirement

- 10. The member has the right to contest staff’s initial determination by requesting that the matter be heard and determined by the Board. The request must be in writing and provide a statement explaining the basis and extent to which the member disagrees with staff’s initial determination. The member may include documents in support of the request. The Board’s review and determination will be limited solely to questions of:
 - a. Whether the PEPRRA felony forfeiture law applies to the member’s conviction;
 - b. Whether staff has correctly identified the first date on which the felony was committed; and
 - c. Whether staff has correctly calculated changes to the member’s status and benefits.

The request must be received by OCERS within 45 days of the Notice of Initial Determination. If the request is not timely received, the member waives their right to have the matter heard and determined by the Board. Staff will then notify the member in writing that they have waived their right, and staff’s initial determination will be placed on the consent agenda of the Board’s next regular open meeting that is at least 30 days after the date of the notice that the member has waived their right.

- 11. Upon timely receipt of a member’s request, the matter will be placed on the Board’s next regular open meeting agenda that is at least 45 days after the request is received by OCERS.
- 12. The member (or their attorney if they are represented) and OCERS staff may present to the Board written statements, argument, evidence, and sworn testimony. Any party wishing to do so must deliver to the Board and the other party a **Pre-Hearing Statement** at least fourteen (14) days before the date of the Board meeting. Late submissions will not be considered by the Board unless the Party shows good cause.

The Pre-Hearing Statement must be no more than 10 pages (excluding Exhibits) and include: a statement of the issues; contentions of the Party; a brief summary of the evidence in support of the Party’s contentions; the name, physical and email address, and telephone number of any witness who will testify; and a brief description of the scope of a witness’s testimony.

All documents to be presented by a Party must be attached as Exhibits to the Pre-Hearing Statement and preceded by an appendix that lists the Exhibits in an organized manner.

- 13. After the matter has been heard, the Board may make a final determination on the issues presented,



OCERS Administrative Procedure (OAP) Felony Forfeitures

refer the matter to a Hearing Officer, or take other action it deems appropriate.

In the event the matter is referred to a Hearing Officer, the Board will provide a timeline for the hearing to commence, post-hearing briefing to be filed, and the Proposed Findings of Fact and Recommended Decision to be submitted by the Hearing Officer.

Staff will notify the member in writing of the Board’s action within three (3) business days.

Implementing the Felony Forfeiture

- 14. Staff will exercise discretion to implement the forfeiture under this Procedure at the earliest practicable time, unless otherwise directed by the Board. Staff will not implement the forfeiture until the Board makes a final determination, whether in response to the member’s request for review and determination, or through consent and approval of staff’s initial determination during a regular open meeting.
- 15. OCERS will exercise discretion to recoup overpaid benefits from the member, their estate, or beneficiaries to the extent permitted by law, including by lump sum payment, installment payment, benefit deduction, or any combination thereof.
- 16. When a member is owed a refund of their employee contributions, disbursement of the refund will be made by electronic funds transfer to an account of the member in a manner that complies with Internal Revenue Service requirements. OCERS must notify the court and the district attorney (or other prosecuting agency) at least three (3) business days before the disbursement of funds.

The member has the right to challenge OCERS’ administrative determination under the writ procedures set forth in the California Code of Civil Procedure. The filing of a writ petition in court will not prevent OCERS from implementing the forfeiture, unless a court orders otherwise.

- 17. If the member’s conviction is reversed, and that decision is final, the employee may either: (a) recover the forfeited rights and benefits as adjusted for any refund of employee contributions; or (b) redeposit those employee contributions plus interest that would have accrued during the forfeiture period (as determined by OCERS actuary) and recover the full amount of the forfeited rights and benefits.

This Procedure is not subject to OCERS’ Policy Regarding the Overpayment or Underpayment of Benefits or Contributions.

- 18. If this Procedure conflicts with any statutory or case law, the statutory or case law will govern.



Memorandum

DATE: August 15, 2024
TO: Members of the Governance Committee
FROM: Manuel D. Serpa, General Counsel
SUBJECT: OFF-CYCLE REVIEW OF THE SECURITIES LITIGATION POLICY

Recommendation

- (1) Approve and recommend that the Board adopt revisions to the Securities Litigation Policy.

Background/Discussion

The Board of Retirement (including the Investment Committee) has formally adopted over 60 charters and policies. It has established a review schedule that requires the review of every charter and policy every three years. At its February and June 2015 meetings, on the recommendation of the Governance Committee, the Board approved a streamlined procedure to manage the scheduled review of the charters and policies more efficiently. According to this process, the Governance Committee must review certain charters and policies before presentation to the Board for approval.

The Securities Litigation Policy was adopted by the Board on December 15, 2003, and last revised on August 24, 2022. Though not due for its regular review, the Board has requested a review to clarify the process for retaining firms that monitor securities litigation on behalf of OCERS.

Proposed Revisions

The proposed revision includes the following:

- Paragraph 20 is revised to state:

Every three years, or as otherwise directed by the Investment Committee, the General Counsel, with the approval of the CEO, will engage or refresh a pool of at least five firms with demonstrated expertise in securities class actions (the "Monitoring Firms") to advise or represent OCERS in monitoring securities class action filings and settlements that affect the OCERS investment portfolio. Demonstrated expertise shall include the firm's experience providing securities litigation monitoring services for other public pension systems and institutional investors; their experience, relationships, and affiliations with firms in foreign jurisdictions; and the quality of the team proposed to provide services to OCERS, including staffing depth, experience, turnover, and compensation. OCERS will also consider the value provided by diverse and up-and-coming firms in the selection process. The solicitation of Monitoring Firms will be accomplished via a "Request for Qualifications" (RFQ) or as otherwise specified by the Investment Committee. Review of the responses to the RFQs will be performed by a panel selected by the General Counsel that includes a Trustee designated by the Chair of the Investment Committee. The General Counsel will notify the Investment Committee simultaneously upon issuing any solicitation for Monitoring Firms and prior to any award. The initial term for Monitoring Firm agreements will not exceed three years. The General Counsel

may also retain one or more consultants or vendors to assist in monitoring securities litigation or in the filing of claims.

- Paragraph 22 is revised to state:

When the Investment Committee or the CEO approves OCERS taking an active role in litigation, they will direct the General Counsel to retain litigation counsel. **The Board of Retirement will have final approval of counsel selection. Alternatively, the Investment Committee may delegate to the General Counsel the authority to retain litigation counsel. The retention agreement with litigation counsel shall include a provision for OCERS to be reimbursed for its time and costs as an active participant in the litigation.**

In addition, the amount noted in paragraph 24 for the threshold of cases in which reports to the Investment Committee will include a brief analysis of the case's merits has been increased to 2 million dollars to match the active participation loss threshold for domestic cases.

The proposed revisions are set forth in underlined/strikeout text in the attached copy of the Securities Litigation Policy. An unmarked version of the Securities Litigation Policy is also attached for the Committee's ease of review.

Attachments

Submitted by:



MDS-Approved

Manuel D. Serpa
General Counsel



OCERS Board Policy Securities Litigation Policy

Purpose and Background

1. The Securities Litigation Policy is intended to establish procedures and guidelines for monitoring and participating in securities class actions in furtherance of the Board of Retirement's fiduciary duties. For purposes of this policy, a securities class action includes, ~~but is not limited to,~~ an action alleging claims under state or federal securities and antitrust laws, as well as similar claims arising under the laws of foreign jurisdictions. The responsibility for overseeing securities litigation is delegated to the Investment Committee.

Principles

2. As a large institutional shareholder, OCERS is frequently a class member in securities class actions that seek to recover damages resulting from corporate fraud and misconduct.
3. The Private Securities Litigation Reform Act, enacted in 1995, allows institutional investors to seek lead plaintiff status in securities class actions pending within the United States under U.S. federal securities laws. The lead plaintiff attains the right to supervise and control the prosecution of such cases. Participation as lead plaintiff by large, sophisticated shareholders such as OCERS has resulted in larger recoveries and lower attorneys' fees.
4. In 2010, the United States Supreme Court in *Morrison v. National Australia Bank* held that investors cannot bring or participate in a U.S. securities class action if their claims are based on securities purchased outside the U.S. As such, investors no longer have the protection of U.S. securities laws for securities purchased on a foreign exchange. In many foreign jurisdictions, however, investors are required to join as a named plaintiff or otherwise join as an active litigant at the commencement of the case as a condition to sharing in any damages awarded or recovered. Such direct participation may be costly and, depending on the jurisdiction, may subject OCERS to the risk of liability for defendant's fees and costs if the claim is unsuccessful. Therefore, OCERS must weigh the potential benefits of action in a foreign jurisdiction carefully.
5. In June 2017, the United States Supreme Court in *CalPERS v. ANZ Securities, Inc.* held that the filing of a securities class action does not "toll" or satisfy the three-year time period (called the statute of repose) for putative class members to assert individual claims for recovery under Sections 11 and 12 of the Securities Act of 1933. The Supreme Court's decision has been extended by lower federal courts to apply to claims brought under the Securities Exchange Act of 1934. As a result, investors can no longer rely on the filing of a securities class action case to preserve the timeliness of their individual claims for recovery of damages and must exercise heightened diligence to protect potentially valuable claims from expiring under the statute of repose.
6. OCERS' goals for participation in securities class actions include:
 - Fulfilling OCERS' fiduciary duties by protecting trust assets and effectively managing claims as assets of the trust fund.
 - Maximizing claim recovery and reducing fees paid to obtain recoveries.
 - Deterring future fraud and corporate malfeasance to better protect fund assets.



OCERS Board Policy

Securities Litigation Policy

- Maintaining access to the courts through securities litigation in the best interest of OCERS' members and beneficiaries.

Monitoring of Securities Litigation

- 7. Monitoring of Class Action Filings and Cases.** The Legal Division will monitor securities class actions filings, both domestic and foreign, to identify cases where OCERS is a potential class member. Cases in which the applicable loss threshold (as defined in Section 10 below) is met or where special circumstances exist that justify OCERS' interest in the case will be monitored.
- 8. Active Participation.** Active participation in a domestic case includes seeking lead plaintiff status, opting out of the class action and filing an individual action, or intervening in the class action. Active participation in a foreign case includes joining the case as a named plaintiff or take other affirmative action at the commencement of the case to participate in the litigation.
- 9. Recommendation of the Legal Division.** The Legal Division will recommend to the Investment Committee whether or not OCERS should take an active role in a securities class action. The Legal Division will recommend OCERS take an active role in an action when it has determined that the case is meritorious, the applicable Loss Threshold is met, and it is in OCERS' best interest to take such action. In addition, the Legal Division may also recommend active participation in a securities class action where the Loss Threshold is not met but OCERS will join the case with one or more other institutional investors, OCERS cannot recover without active participation in the case, or OCERS' active participation may otherwise serve the goals of this policy.
- 10. Loss Thresholds.** A case within the United States meets the Domestic Loss Threshold when OCERS' estimated loss is at least \$2 million. The Foreign Loss Threshold, for a case filed in a foreign jurisdiction, is met with an OCERS' estimated loss of at least \$250,000.
- 11. Losses Below Threshold.** If the Legal Division identifies a case where OCERS' losses during the alleged claims period is less than the Loss Threshold but OCERS suffered a loss in excess of the Loss Threshold during a period of time shortly before or after the claims period, the Legal Division will consider whether to seek an adjustment of the claims period. If warranted, the Legal Division will actively monitor the case and participate in a motion to adjust the claims period.
- 12.** The Legal Division's recommendation on whether to take an active role in a domestic or foreign securities litigation case will be presented to the Investment Committee at a regularly scheduled meeting or, where immediate approval is necessary, at a special meeting. In addition, the Chief Executive Officer ("CEO") is authorized to approve taking such action where, after consultation with the General Counsel, it is determined that immediate approval is required to preserve OCERS' rights and the matter cannot be timely presented to the Investment Committee. In the event the CEO exercises such authority, the CEO will simultaneously notify the Chair of the Investment Committee and then provide a full report of the action at the next regularly scheduled Investment Committee meeting, or meeting of the Board of Retirement, whichever is sooner.

Active Participation: Domestic

- 13.** In deciding whether to pursue active participation in a domestic securities litigation cases, the Investment Committee will consider the following factors:



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- a. The size of OCERS' loss;
- b. The merits of the case;
- c. The identity of the lead plaintiff and other parties, if known;
- d. The identity of lead counsel, if known;
- e. The sources of recovery available to satisfy a judgment if plaintiffs prevail;
- f. The availability of internal OCERS' resources to participate in the litigation and the potential burdens of discovery;
- g. Whether OCERS' active participation will increase the likely recovery or otherwise add significant value to the resolution of the case;
- h. The potential impact on the OCERS portfolio from trading restrictions arising from the potential acquisition of inside information in litigation, if any; and
- i. Whether OCERS' active participation would be effective in deterring similar corporate misconduct in the future.

Active Participation: Foreign

14. Notwithstanding the Foreign Loss Threshold having been met, active participation in foreign securities actions will be examined on a case-by-case basis to determine whether the potential benefits of active participation outweigh the potential costs. In deciding whether to pursue active participation in a foreign securities litigation case, the Investment Committee will consider the following factors:

- a. The size of the potential recovery;
- b. OCERS' potential obligation to pay legal fees and costs;
- c. OCERS' potential liability for the legal fees and costs of the opposing party;
- d. The merits of the case in light of the law in that jurisdiction;
- e. How the action is being funded, and which law will apply to the relationship between OCERS and any funders;
- f. The identity of the foreign counsel and the method of their payment;
- g. The potential burdens of discovery; and
- h. The role OCERS will play in decision-making in the case.

Settlements

15. When a settlement is proposed in a case in which OCERS has taken an active role, the Legal Division will provide the Investment Committee with an analysis of the settlement terms. The Investment Committee may approve the settlement or delegate to the CEO or the General Counsel authority to enter into a settlement on terms it deems appropriate.



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Securities Litigation Policy

16. If the CEO determines that immediate approval of (i) a proffer of a settlement demand, (ii) a grant of settlement authority to litigation counsel, or (iii) a response (including a counteroffer) to a settlement offer is required to preserve OCERS' rights, and the matter cannot be timely presented for approval by the Investment Committee, the CEO is authorized, after consultation with the General Counsel, Chief Investment Officer, and Chair of the Investment Committee, to approve the proffer, grant, or response and notify the Investment Committee at its next regularly scheduled meeting.

Claims Filing and Audits

17. OCERS' custodial bank will be responsible for filing all claims necessary to recover assets in securities class action cases in which OCERS has suffered losses, and the statement of work in the custodial agreement will set forth the claims filing procedures for the custodial bank to follow. If OCERS' custodial bank is not able to file the claim, then the Legal Division, in consultation with the Investment Division, will designate the entity that will be responsible for filing.
18. The custodial bank will submit or make available to OCERS quarterly reports on the securities litigation proceeds recovered and those reports will be provided to the Investment Committee.
19. The Legal Division, in conjunction with the Investment Division, will, from time to time, audit the custodial bank's claims filing process to ensure that OCERS is maximizing recovery from securities litigation settlements and awards. The Legal Division, in conjunction with the Investment Division, may require that the custodial bank change its processes for claim filings.

Retention of Monitoring Firms and Litigation Counsel

20. ~~Every three years, or as otherwise directed by the Investment Committee, The General Counsel, with the approval of the CEO, With the approval of the CEO, the General Counsel, with the approval of the CEO, will engage or refresh a pool of at least five two to five firms with demonstrated expertise in securities class actions (the "Monitoring Firms") to advise or represent OCERS in monitoring securities class action filings and settlements that affect the OCERS investment portfolio. Demonstrated expertise shall include the firm's experience providing securities litigation monitoring services for other public pension systems and institutional investors; their experience, relationships, and affiliations with firms in foreign jurisdictions; and the quality of the team proposed to provide services to OCERS, including staffing depth, experience, turnover, and compensation. OCERS will also consider the value provided by diverse and up-and-coming firms in the selection process. The solicitation of Monitoring Firms will be accomplished via a "Request for Qualifications" (RFQ) or as otherwise specified by the Investment Committee. Review of the responses to the RFQs will be performed by a panel selected by the General Counsel that includes a Trustee designated by the Chair of the Investment Committee. The General Counsel will notify the Investment Committee simultaneously upon issuing any solicitation for Monitoring Firms and prior to any award. The initial term for Monitoring Firm agreements will not exceed three years. The General Counsel may also retain one or more consultants or vendors to assist in monitoring securities litigation or in the filing of claims. The General Counsel may also retain one or more consultants or vendors to assist in monitoring securities litigation or in the filing of claims.~~

21. The Monitoring Firms will:



OCERS Board Policy Securities Litigation Policy

- a. Obtain OCERS' securities trading and holdings information directly from OCERS' custodial bank;
- b. Identify and monitor domestic securities class actions and analyze OCERS' estimated losses in the affected securities;
- c. Provide timely notice and analysis of securities class actions filed in the U.S. where OCERS has suffered losses that meet its Loss Threshold and active participation may be warranted; or where other factors exist that justify OCERS' consideration of the case;
- d. Provide reports of newly-filed domestic securities class actions and OCERS' estimated losses on at least a quarterly basis;
- e. Identify and monitor securities actions in foreign jurisdictions, and provide an analysis of OCERS' estimated losses in the affected securities;
- f. Provide timely notice and analysis of those foreign securities actions where OCERS has suffered losses that meet its Foreign Loss Threshold or where other factors exist that justify OCERS' consideration of the case;
- g. Assist OCERS in joining and filing claims in foreign securities actions in which the Investment Committee approves active participation; and
- h. Assist OCERS in identifying meritorious U.S. securities class actions in which OCERS has substantial losses or significant holdings, determining the relevant statutes of repose, monitoring the progress of the litigation, and evaluating whether to file a protective claim or motion before a significant repose period expires.

~~22. Retainer Agreements with Monitoring Firms will be for terms not exceeding six years. Prior to the expiration of the six-year term, the General Counsel or their designee will conduct a Request for Proposals.~~

~~23.~~22. When the Investment Committee or the CEO approves OCERS taking an active role in litigation, they will direct the General Counsel to retain litigation counsel. The Board of Retirement will have final approval of counsel selection. Alternatively, the Investment Committee may ~~or~~ delegate to the General Counsel the authority to retain litigation counsel ~~for the matter.~~ The retention agreement with litigation counsel shall include a provision for OCERS to be reimbursed for its time and costs as an active participant in the litigation.

~~24.~~23. The General Counsel may rely on Monitoring Firms for preparation of in-depth damages analyses and representation in litigation. However, the General Counsel may, with the approval of the Chief Executive Officer, retain outside counsel on behalf of OCERS to undertake these matters or to assist the Legal Division in carrying out this policy.

Reporting

~~25.~~24. The Legal Division will keep the Investment Committee apprised of major developments on cases in which OCERS is actively participating and will provide reports on its policy-related activities on at least a quarterly basis. The reports will include listings of new securities litigation case filings and new settlements or awards in which OCERS has identified losses. For matters where OCERS'



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estimated losses exceed \$~~24~~ million, the report will include a brief analysis of the merits of the case.

Policy History

The Board adopted this policy on December 15, 2003. The Board amended this policy on December 20, 2004; reviewed this policy with no changes on March 24, 2008; and amended this policy on August 24, 2009, May 20, 2013, March 20, 2017, November 13, 2017, ~~and~~ August 17, 2020, August 24, 2022, and.

Secretary's Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.

Steve Delaney
Secretary of the Board

08/24/2022

Date



OCERS Board Policy Securities Litigation Policy

Purpose and Background

1. The Securities Litigation Policy is intended to establish procedures and guidelines for monitoring and participating in securities class actions in furtherance of the Board of Retirement's fiduciary duties. For purposes of this policy, a securities class action includes an action alleging claims under state or federal securities and antitrust laws, as well as similar claims arising under the laws of foreign jurisdictions. The responsibility for overseeing securities litigation is delegated to the Investment Committee.

Principles

2. As a large institutional shareholder, OCERS is frequently a class member in securities class actions that seek to recover damages resulting from corporate fraud and misconduct.
3. The Private Securities Litigation Reform Act, enacted in 1995, allows institutional investors to seek lead plaintiff status in securities class actions pending within the United States under U.S. federal securities laws. The lead plaintiff attains the right to supervise and control the prosecution of such cases. Participation as lead plaintiff by large, sophisticated shareholders such as OCERS has resulted in larger recoveries and lower attorneys' fees.
4. In 2010, the United States Supreme Court in *Morrison v. National Australia Bank* held that investors cannot bring or participate in a U.S. securities class action if their claims are based on securities purchased outside the U.S. As such, investors no longer have the protection of U.S. securities laws for securities purchased on a foreign exchange. In many foreign jurisdictions, however, investors are required to join as a named plaintiff or otherwise join as an active litigant at the commencement of the case as a condition to sharing in any damages awarded or recovered. Such direct participation may be costly and, depending on the jurisdiction, may subject OCERS to the risk of liability for defendant's fees and costs if the claim is unsuccessful. Therefore, OCERS must weigh the potential benefits of action in a foreign jurisdiction carefully.
5. In June 2017, the United States Supreme Court in *CalPERS v. ANZ Securities, Inc.* held that the filing of a securities class action does not "toll" or satisfy the three-year time period (called the statute of repose) for putative class members to assert individual claims for recovery under Sections 11 and 12 of the Securities Act of 1933. The Supreme Court's decision has been extended by lower federal courts to apply to claims brought under the Securities Exchange Act of 1934. As a result, investors can no longer rely on the filing of a securities class action case to preserve the timeliness of their individual claims for recovery of damages and must exercise heightened diligence to protect potentially valuable claims from expiring under the statute of repose.
6. OCERS' goals for participation in securities class actions include:
 - Fulfilling OCERS' fiduciary duties by protecting trust assets and effectively managing claims as assets of the trust fund.
 - Maximizing claim recovery and reducing fees paid to obtain recoveries.
 - Deterring future fraud and corporate malfeasance to better protect fund assets.



OCERS Board Policy Securities Litigation Policy

- Maintaining access to the courts through securities litigation in the best interest of OCERS' members and beneficiaries.

Monitoring of Securities Litigation

- 7. Monitoring of Class Action Filings and Cases.** The Legal Division will monitor securities class actions filings, both domestic and foreign, to identify cases where OCERS is a potential class member. Cases in which the applicable loss threshold (as defined in Section 10 below) is met or where special circumstances exist that justify OCERS' interest in the case will be monitored.
- 8. Active Participation.** Active participation in a domestic case includes seeking lead plaintiff status, opting out of the class action and filing an individual action, or intervening in the class action. Active participation in a foreign case includes joining the case as a named plaintiff or take other affirmative action at the commencement of the case to participate in the litigation.
- 9. Recommendation of the Legal Division.** The Legal Division will recommend to the Investment Committee whether or not OCERS should take an active role in a securities class action. The Legal Division will recommend OCERS take an active role in an action when it has determined that the case is meritorious, the applicable Loss Threshold is met, and it is in OCERS' best interest to take such action. In addition, the Legal Division may also recommend active participation in a securities class action where the Loss Threshold is not met but OCERS will join the case with one or more other institutional investors, OCERS cannot recover without active participation in the case, or OCERS' active participation may otherwise serve the goals of this policy.
- 10. Loss Thresholds.** A case within the United States meets the Domestic Loss Threshold when OCERS' estimated loss is at least \$2 million. The Foreign Loss Threshold, for a case filed in a foreign jurisdiction, is met with an OCERS' estimated loss of at least \$250,000.
- 11. Losses Below Threshold.** If the Legal Division identifies a case where OCERS' losses during the alleged claims period is less than the Loss Threshold but OCERS suffered a loss in excess of the Loss Threshold during a period of time shortly before or after the claims period, the Legal Division will consider whether to seek an adjustment of the claims period. If warranted, the Legal Division will actively monitor the case and participate in a motion to adjust the claims period.
- 12.** The Legal Division's recommendation on whether to take an active role in a domestic or foreign securities litigation case will be presented to the Investment Committee at a regularly scheduled meeting or, where immediate approval is necessary, at a special meeting. In addition, the Chief Executive Officer ("CEO") is authorized to approve taking such action where, after consultation with the General Counsel, it is determined that immediate approval is required to preserve OCERS' rights and the matter cannot be timely presented to the Investment Committee. In the event the CEO exercises such authority, the CEO will simultaneously notify the Chair of the Investment Committee and then provide a full report of the action at the next regularly scheduled Investment Committee meeting, or meeting of the Board of Retirement, whichever is sooner.

Active Participation: Domestic

- 13.** In deciding whether to pursue active participation in a domestic securities litigation cases, the Investment Committee will consider the following factors:



OCERS Board Policy Securities Litigation Policy

- a. The size of OCERS' loss;
- b. The merits of the case;
- c. The identity of the lead plaintiff and other parties, if known;
- d. The identity of lead counsel, if known;
- e. The sources of recovery available to satisfy a judgment if plaintiffs prevail;
- f. The availability of internal OCERS' resources to participate in the litigation and the potential burdens of discovery;
- g. Whether OCERS' active participation will increase the likely recovery or otherwise add significant value to the resolution of the case;
- h. The potential impact on the OCERS portfolio from trading restrictions arising from the potential acquisition of inside information in litigation, if any; and
- i. Whether OCERS' active participation would be effective in deterring similar corporate misconduct in the future.

Active Participation: Foreign

14. Notwithstanding the Foreign Loss Threshold having been met, active participation in foreign securities actions will be examined on a case-by-case basis to determine whether the potential benefits of active participation outweigh the potential costs. In deciding whether to pursue active participation in a foreign securities litigation case, the Investment Committee will consider the following factors:

- a. The size of the potential recovery;
- b. OCERS' potential obligation to pay legal fees and costs;
- c. OCERS' potential liability for the legal fees and costs of the opposing party;
- d. The merits of the case in light of the law in that jurisdiction;
- e. How the action is being funded, and which law will apply to the relationship between OCERS and any funders;
- f. The identity of the foreign counsel and the method of their payment;
- g. The potential burdens of discovery; and
- h. The role OCERS will play in decision-making in the case.

Settlements

15. When a settlement is proposed in a case in which OCERS has taken an active role, the Legal Division will provide the Investment Committee with an analysis of the settlement terms. The Investment Committee may approve the settlement or delegate to the CEO or the General Counsel authority to enter into a settlement on terms it deems appropriate.



OCERS Board Policy Securities Litigation Policy

16. If the CEO determines that immediate approval of (i) a proffer of a settlement demand, (ii) a grant of settlement authority to litigation counsel, or (iii) a response (including a counteroffer) to a settlement offer is required to preserve OCERS' rights, and the matter cannot be timely presented for approval by the Investment Committee, the CEO is authorized, after consultation with the General Counsel, Chief Investment Officer, and Chair of the Investment Committee, to approve the proffer, grant, or response and notify the Investment Committee at its next regularly scheduled meeting.

Claims Filing and Audits

17. OCERS' custodial bank will be responsible for filing all claims necessary to recover assets in securities class action cases in which OCERS has suffered losses, and the statement of work in the custodial agreement will set forth the claims filing procedures for the custodial bank to follow. If OCERS' custodial bank is not able to file the claim, then the Legal Division, in consultation with the Investment Division, will designate the entity that will be responsible for filing.
18. The custodial bank will submit or make available to OCERS quarterly reports on the securities litigation proceeds recovered and those reports will be provided to the Investment Committee.
19. The Legal Division, in conjunction with the Investment Division, will, from time to time, audit the custodial bank's claims filing process to ensure that OCERS is maximizing recovery from securities litigation settlements and awards. The Legal Division, in conjunction with the Investment Division, may require that the custodial bank change its processes for claim filings.

Retention of Monitoring Firms and Litigation Counsel

20. Every three years, or as otherwise directed by the Investment Committee, the General Counsel, with the approval of the CEO, will engage or refresh a pool of at least five firms with demonstrated expertise in securities class actions (the "Monitoring Firms") to advise or represent OCERS in monitoring securities class action filings and settlements that affect the OCERS investment portfolio. Demonstrated expertise shall include the firm's experience providing securities litigation monitoring services for other public pension systems and institutional investors; their experience, relationships, and affiliations with firms in foreign jurisdictions; and the quality of the team proposed to provide services to OCERS, including staffing depth, experience, turnover, and compensation. OCERS will also consider the value provided by diverse and up-and-coming firms in the selection process. The solicitation of Monitoring Firms will be accomplished via a "Request for Qualifications" (RFQ) or as otherwise specified by the Investment Committee. Review of the responses to the RFQs will be performed by a panel selected by the General Counsel that includes a Trustee designated by the Chair of the Investment Committee. The General Counsel will notify the Investment Committee simultaneously upon issuing any solicitation for Monitoring Firms and prior to any award. The initial term for Monitoring Firm agreements will not exceed three years. The General Counsel may also retain one or more consultants or vendors to assist in monitoring securities litigation or in the filing of claims.
21. The Monitoring Firms will:



OCERS Board Policy Securities Litigation Policy

- a. Obtain OCERS' securities trading and holdings information directly from OCERS' custodial bank;
 - b. Identify and monitor domestic securities class actions and analyze OCERS' estimated losses in the affected securities;
 - c. Provide timely notice and analysis of securities class actions filed in the U.S. where OCERS has suffered losses that meet its Loss Threshold and active participation may be warranted; or where other factors exist that justify OCERS' consideration of the case;
 - d. Provide reports of newly-filed domestic securities class actions and OCERS' estimated losses on at least a quarterly basis;
 - e. Identify and monitor securities actions in foreign jurisdictions, and provide an analysis of OCERS' estimated losses in the affected securities;
 - f. Provide timely notice and analysis of those foreign securities actions where OCERS has suffered losses that meet its Foreign Loss Threshold or where other factors exist that justify OCERS' consideration of the case;
 - g. Assist OCERS in joining and filing claims in foreign securities actions in which the Investment Committee approves active participation; and
 - h. Assist OCERS in identifying meritorious U.S. securities class actions in which OCERS has substantial losses or significant holdings, determining the relevant statutes of repose, monitoring the progress of the litigation, and evaluating whether to file a protective claim or motion before a significant repose period expires.
- 22.** When the Investment Committee or the CEO approves OCERS taking an active role in litigation, they will direct the General Counsel to retain litigation counsel. The Board of Retirement will have final approval of counsel selection. Alternatively, the Investment Committee may delegate to the General Counsel the authority to retain litigation counsel. The retention agreement with litigation counsel shall include a provision for OCERS to be reimbursed for its time and costs as an active participant in the litigation.
- 23.** The General Counsel may rely on Monitoring Firms for preparation of in-depth damages analyses and representation in litigation. However, the General Counsel may, with the approval of the Chief Executive Officer, retain outside counsel on behalf of OCERS to undertake these matters or to assist the Legal Division in carrying out this policy.

Reporting

- 24.** The Legal Division will keep the Investment Committee apprised of major developments on cases in which OCERS is actively participating and will provide reports on its policy-related activities on at least a quarterly basis. The reports will include listings of new securities litigation case filings and new settlements or awards in which OCERS has identified losses. For matters where OCERS' estimated losses exceed \$2 million, the report will include a brief analysis of the merits of the case.



OCERS Board Policy Securities Litigation Policy

Policy History

The Board adopted this policy on December 15, 2003. The Board amended this policy on December 20, 2004; reviewed this policy with no changes on March 24, 2008; and amended this policy on August 24, 2009, May 20, 2013, March 20, 2017, November 13, 2017, August 17, 2020, August 24, 2022, and .

Secretary's Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.

A handwritten signature in blue ink that reads "Steve Delaney".

Steve Delaney
Secretary of the Board

_____ Date



Memorandum

DATE: August 15, 2024
TO: Members of the Governance Committee
FROM: Steve Delaney, Chief Executive Officer (CEO)
SUBJECT: TRIENNIAL REVIEW OF THE SUCCESSION POLICY

Recommendation

Approve and recommend that the Board adopt revisions to the Succession Policy.

Discussion

The Board of Retirement has established a review schedule that requires the review of every charter and policy every three years. Pursuant to the board-approved review process, the Governance Committee will first review certain charters and policies before presentation to the Board for approval. The Board adopted the Succession Policy on January 19, 2016. It is scheduled for review and approval by the Board after review by the Governance Committee in 2024.

Proposed Revisions

The proposed revisions to the Succession Policy strive to expand its scope to address leadership agency-wide rather than solely the succession of the CEO.

A talent management philosophy statement was added to paragraph 2 as follows:

OCERS prioritizes leadership development to ensure internal candidates are strong contenders for key senior vacancies.

In addition, the policy now references the participation of the Personnel Committee rather than a transition committee in paragraph 8.

A vacancy in one of the Assistant CEO positions was addressed by the addition of paragraph 12:

12. In the event that an Assistant CEO position should become vacant, the CEO shall promptly inform the Board and, working with the Personnel Committee, will initiate a process to identify a replacement for the Assistant CEO as soon as practicable.

The existing policy (in paragraph 13) states the CEO will annually present to the Board an executive staff development plan. This provision has been expanded as follows:

13. The CEO will establish and maintain a talent management program designed to effectively manage the transition of senior leaders into executive roles, front-line leaders into senior leadership roles, and staff into leadership roles. The program will aim to source, spot, engage, develop, and retain the best talent. It will include a quarterly review and assessment of the risk of vacancy in senior leadership and the potential of current OCERS staff to become future leaders. The CEO will provide an annual report to the Board on the status of the talent management program.

The proposed revisions are set forth in underlined/strikeout text in the attached copy of the Succession Policy. An unmarked version of the Policy is also attached for the Committee's ease of review.

Attachments

Submitted by:



SD - Approved

Steve Delaney
Chief Executive Officer



OCERS Board Policy Succession Policy

Purpose and Background

1. The ~~Orange County Employees Retirement System (“OCERS Board of Retirement (“Board”)~~ established ~~this a~~ Succession Policy to provide continuity in leadership and avoid extended and costly vacancies in key positions. ~~While t~~ This policy provides specific steps designed to identify candidates for the Chief Executive Officer (“CEO”) position that may become vacant ~~due to retirement, resignation, death or a new business opportunity, it also requires the establishment and maintenance of a talent and succession management program applicable to all levels of leadership. Succession planning~~ This policy ensures that there are qualified and motivated employees (or a means of recruiting them) who are able to take over when the CEO exits the agency. It also ~~will~~ demonstrates to plan sponsors ~~employers~~ and members that OCERS is committed to ~~the consistent and able to provide excellent service at all times~~ delivery of excellent service, including during times of transition.

Policy Statement

2. ~~As part of good governance, OCERS must plan for a change – either planned or unplanned – in Executive leadership, which is inevitable for all organizations. Succession planning is a risk mitigation strategy focused on developing and supporting a large, competent, and effective talent pool. The policy goal is to ensure the stability and accountability of the organization agency and sustain uninterrupted service levels to plan sponsors and members until a new permanent leader is identified during periods of leadership transition. OCERS prioritizes leadership development to ensure internal candidates are strong contenders for key senior vacancies.~~
2. ~~The Board of Retirement (“Board”) shall be responsible for implementing this policy and its related procedures.~~

Scope and Coverage

3. ~~This policy should be used in case of an Executive transition that involves the CEO. In such an instance, the Board may also consider temporarily subcontracting of the organizational functions to a trained consultant or other organization(s).~~

Policy Guidelines

Appointment of Interim CEO

- 4.3. In the event of a leave of absence (temporary or permanent) of the CEO, the Board will appoint an Interim CEO. The Interim CEO shall ensure that the organization continues to operate without disruption and that all OCERS’ obligations and commitments, as defined in the CEO’s charter, are addressed.
- 5.4. Within five (5) business days of a leave of absence, the Board shall appoint an Interim CEO from the recommended list of incumbent positions below or such other candidates as the Board may choose:
 - a. Assistant CEO of Finance and Internal Operations



OCERS Board Policy Succession Policy

- b. Assistant CEO of External Operations
- c. Chief Investment Officer ("CIO")
- d. ~~Chief Legal Officer~~ [General Counsel](#)
- e. External consultant (with experience as a CEO)

Authority and Compensation of the Interim CEO

~~6.5.~~ The person appointed as Interim CEO shall have the full authority for ~~decision~~ [decision](#)-making and independent action as the CEO. The Board shall determine if the Interim CEO is to be given a temporary salary increase while performing the duties of the CEO position.

Board Oversight

~~7.6.~~ The Board Chair is responsible for monitoring the work of the Interim CEO.

Communication Plan

~~8.7.~~ Immediately upon transferring the responsibilities to the Interim CEO, the Board Chair will notify staff members of the delegation of authority. ~~As soon as possible~~ after the Interim CEO has assumed the role, Board members and the Interim CEO shall communicate the temporary leadership structure to key external stakeholders [as soon as practicable](#).

Leadership Transition

~~9.8.~~ In the event that a permanent change in CEO leadership is required, ~~the Board Chair shall appoint an Executive Transition committee within fifteen (15) business days of notification. The~~ [the Personnel eCommittee](#) shall:

- a. Consider the need for consulting assistance (i.e., transition management or executive search consultant) based on the circumstances of the transition.
- b. Review OCERS' Business Plan and conduct a brief assessment of organizational strengths, weaknesses, opportunities, and threats to identify priority issues that may need to be addressed during the transition process and to identify attributes and characteristics that are important to consider in the selection of the next CEO.
- c. Establish a time frame and plan for the recruitment and selection process.
- d. Refer to the CEO's Charter for a sample job description and qualifications.

~~10.9.~~ It is the policy of the Board to develop a diverse pool of candidates and consider at least three final candidates for its permanent CEO position. OCERS shall implement a recruitment and selection process to include all qualified candidates.

~~11.10.~~ The Board Chair/Vice-Chair shall communicate with key stakeholders regarding the actions taken by the Board in naming an interim successor, ~~the Board Chair's appointment of the Executive Transition Committee,~~ and the committee's implementation of the Succession Policy provisions. OCERS shall maintain a current list of key stakeholders who must be contacted, such as plan sponsors and other entities or government agencies that should be made aware of the change in leadership.



OCERS Board Policy Succession Policy

Delegation of Authority – Other Executive Positions

- 11. The CEO may use this ~~policy~~ as guidance for the succession of other key ~~e~~Executives.
- 12. In the event that an Assistant CEO position should become vacant, the CEO shall promptly inform the Board and, working with the Personnel Committee, will initiate a process to identify a replacement for the Assistant CEO as soon as practicable.

Talent Management

- ~~12.~~
- 13. The CEO will establish and maintain a talent management program designed to effectively manage the transition of senior leaders into executive roles, front-line leaders into senior leadership roles, and staff into leadership roles. The program will aim to source, spot, engage, develop, and retain the best talent. It will include a quarterly review and assessment of the risk of vacancy in senior leadership and the potential of current OCERS staff to become future leaders. The CEO will provide an annual report annually present to the Board an executive staff development plan on the status of the talent management program.

Policy Review

- 14. ~~This policy shall be reviewed every three years by the Governance Committee and may be amended by the Board of Retirement~~ Governance Committee shall review this policy every three years, and the Board may amend it at any time.

Policy History

- 15. The ~~Retirement~~ Board adopted this policy on January 19, 2016. The policy was last revised on...
- ~~15.~~

Secretary’s Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.

Steve Delaney
Secretary of the Board

1/19/16

Date



OCERS Board Policy Succession Policy

Purpose

1. The OCERS Board of Retirement ("Board") established this Succession Policy to provide continuity in leadership and avoid extended and costly vacancies in key positions. While this policy provides specific steps designed to identify candidates for the Chief Executive Officer ("CEO") position that may become vacant, it also requires the establishment and maintenance of a talent and succession management program applicable to all levels of leadership. Succession planning will demonstrate to plan employers and members that OCERS is committed to the consistent delivery of excellent service.

Policy Statement

2. As part of good governance, OCERS must plan for a change – either planned or unplanned – in leadership, which is inevitable for all organizations. Succession planning is a risk mitigation strategy focused on developing and supporting a large, competent, and effective talent pool. The goal is to ensure the stability and accountability of the agency and sustain uninterrupted service levels to plan sponsors and members during periods of leadership transition. OCERS prioritizes leadership development to ensure internal candidates are strong contenders for key senior vacancies.

Policy Guidelines

Appointment of Interim CEO

3. In the event of a leave of absence (temporary or permanent) of the CEO, the Board will appoint an Interim CEO. The Interim CEO shall ensure that the organization continues to operate without disruption and that all OCERS' obligations and commitments, as defined in the CEO's charter, are addressed.
4. Within five (5) business days of a leave of absence, the Board shall appoint an Interim CEO from the recommended list of incumbent positions below or such other candidates as the Board may choose:
 - a. Assistant CEO of Finance and Internal Operations
 - b. Assistant CEO of External Operations
 - c. Chief Investment Officer ("CIO")
 - d. General Counsel
 - e. External consultant (with experience as a CEO)
5. The person appointed as Interim CEO shall have the full authority for decision-making and independent action as the CEO. The Board shall determine if the Interim CEO is to be given a temporary salary increase while performing the duties of the CEO position.
6. The Board Chair is responsible for monitoring the work of the Interim CEO.
7. Immediately upon transferring the responsibilities to the Interim CEO, the Board Chair will notify staff members of the delegation of authority. After the Interim CEO has assumed the role, Board



OCERS Board Policy Succession Policy

members and the Interim CEO shall communicate the temporary leadership structure to key external stakeholders as soon as practicable.

Leadership Transition

8. In the event that a permanent change in CEO leadership is required, the Personnel Committee shall:
 - a. Consider the need for consulting assistance (i.e., transition management or executive search consultant) based on the circumstances of the transition.
 - b. Review OCERS' Business Plan and conduct a brief assessment of organizational strengths, weaknesses, opportunities, and threats to identify priority issues that may need to be addressed during the transition process and to identify attributes and characteristics that are important to consider in the selection of the next CEO.
 - c. Establish a time frame and plan for the recruitment and selection process.
 - d. Refer to the CEO's Charter for a sample job description and qualifications.
9. It is the policy of the Board to develop a diverse pool of candidates and consider at least three final candidates for its permanent CEO position. OCERS shall implement a recruitment and selection process to include all qualified candidates.
10. The Board Chair/Vice-Chair shall communicate with key stakeholders regarding the actions taken by the Board in naming an interim successor and the committee's implementation of the Succession Policy provisions. OCERS shall maintain a current list of key stakeholders who must be contacted, such as plan sponsors and other entities or government agencies that should be made aware of the change in leadership.
11. The CEO may use this process as guidance for the succession of other key executives.
12. In the event that an Assistant CEO position should become vacant, the CEO shall promptly inform the Board and, working with the Personnel Committee, will initiate a process to identify a replacement for the Assistant CEO as soon as practicable.

Talent Management

13. The CEO will establish and maintain a talent management program designed to effectively manage the transition of senior leaders into executive roles, front-line leaders into senior leadership roles, and staff into leadership roles. The program will aim to source, spot, engage, develop, and retain the best talent. It will include a quarterly review and assessment of the risk of vacancy in senior leadership and the potential of current OCERS staff to become future leaders. The CEO will provide an annual report to the Board on the status of the talent management program.

Policy Review

14. The Governance Committee shall review this policy every three years, and the Board may amend it at any time.



OCERS Board Policy Succession Policy

Policy History

15. The Board adopted this policy on January 19, 2016. The policy was last revised on...

Secretary's Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.

A handwritten signature in blue ink that reads "Steve Delaney".

Steve Delaney
Secretary of the Board

Date



Memorandum

DATE: August 15, 2024
TO: Members of the Governance Committee
FROM: Manuel D. Serpa, General Counsel; Ivan Cao, Staff Attorney
SUBJECT: REVIEW OF OCERS ADMINISTRATIVE PROCEDURE REGARDING REQUIRED MINIMUM DISTRIBUTIONS

Recommendation

Review, approve, and recommend the Board of Retirement adopt the revised OCERS Administrative Procedure (OAP) regarding Required Minimum Distributions, as presented.

Background/Discussion

OCERS Administrative Procedures (OAP) regarding Required Minimum Distributions informs members and stakeholders of how the retirement system applies the rules governing the mandatory distributions of required minimum distributions (RMDs) of benefits from a Member's retirement plan under (i) Internal Revenue Code Section 401(a)(9), (ii) Section 107(c) of Secure 2.0 Act of 2022 (Secure 2.0 Act), and (iii) the County Employees Retirement Law of 1937 (CERL).

Secure 2.0 Act increased the RMD age to 73 for an individual who attains age 73 before January 1, 2033, and 75 for an individual who attains age 74 after December 31, 2032. Staff has updated the existing OAP to reflect such changes and clarify the RMDs process for the benefit of members, stakeholders, and the retirement system.

The OAP explains in plain language:

- The age at which RMDs will start applying a member and when a member must begin receiving RMDs from their retirement plans (Required Beginning Date);
- The time and manner in which the retirement system will notify a member of the applicable RMD age and Required Beginning Date;
- The time and manner in which a member must submit a proper retirement application;
- The treatment of a member's accumulated contributions and interests when a member could not be located by the retirement system (Unlocatable Member); and
- An Unlocatable Member's right and the procedure to petition the Board of Retirement to reclaim such member's accumulated contributions and interests.

Attachments:

1. Existing OCERS Administrative Procedure (OAP) regarding Required Minimum Distributions (adopted April 18, 2016).
2. Revised OCERS Administrative Procedure (OAP) regarding Required Minimum Distributions.

Submitted by:



MDS-Approved

Manuel D. Serpa
General Counsel



IC-Approved

Ivan Cao
Staff Attorney



OCERS Administrative Procedure (OAP) Required Minimum Distributions

I. Purpose

The purpose of this OCERS administrative procedure (OAP) is to describe how OCERS apply the rules governing the mandatory distributions of required minimum distributions (RMDs) of benefits from a Member's retirement plan under Internal Revenue Code Section 401(a)(9), Section 107(c) of Secure 2.0 Act of 2022, and Government Code section 31706.

II. Authority

This OAP is established pursuant to the Chief Executive Officer (CEO) Charter, section 8.f., which directs the CEO to develop staff policies and procedures to ensure effective and efficient administration of member benefits. The OAP is in conformance with Board Policy, the County Employees Retirement Law (California Government Code section 31450, et seq.) (CERL), and the Public Employees' Pension Reform Act (Government Code, sections 7522 - 7522.74) (PEPRA).

III. RMD Age

Under Internal Revenue Code Section 401(a)(9) and Section 107(c) of Secure 2.0 Act of 2022, the applicable age at which RMD applies (RMD Age) is (x) 73 for an individual who attains age 73 before January 1, 2033, and (y) 75 for an individual who attains age 74 after December 31, 2032.¹

IV. Required Minimum Distributions

RMDs and Required Beginning Date

Internal Revenue Code Section 401(a) (9) requires individuals who are no longer working but have not yet retired to begin receiving required minimum distributions (RMDs) from their retirement plans by April 1 of the calendar year after they reach the RMD Age; however, Members who have reached RMD Age and continue to be actively employed by a covered employer of OCERS or a reciprocal retirement system are not subject to RMDs until April 1 of the calendar year following their employment termination (Required Beginning Date).

RMDs are mandatory at the Required Beginning Date and cannot be opt out by a Member.

RMD Notice

Upon attaining 70 years of age, a deferred Member will be notified by OCERS that such Member ~~Gov. Code § 31706:~~

~~— Any member who has left county service and has elected to leave accumulated contributions in the retirement fund or who is deemed to have elected a deferred retirement pursuant to subdivision (b) of Section 31700 and has attained age 70 but has not yet applied for a deferred retirement allowance and who is not a reciprocal member of a retirement system established pursuant to this chapter or the~~

¹ Federal legislation determines the RMD Age threshold, which is subject to change.



OCERS Administrative Procedure (OAP) Required Minimum Distributions

~~Public Employees' Retirement Law shall be notified in writing by the treasurer, or other entity authorized by the board, that the member is eligible to apply for and shall begin receiving a deferred retirement allowance by April 1 of the year following the year in which the member attains age 70. The notification shall be made at the time the deferred member attains age 70 and shall be sent by certified mail to the member's last known address, or to the member's last known employer, as shown by the records of the retirement system. If the member can be located but does not make proper application for a deferred retirement allowance with retirement to be effective by April 1 of the year in which the member attains age 70, the retirement system shall commence paying an unmodified allowance to the member. If the member cannot be located by April 1 of the year following the year in which the member attains age 70, all of the member's accumulated contributions and interest thereon shall be deposited in, and become a part of, the current pension reserve fund of the retirement system. The board may at any time after transfer of proceeds to the reserve fund upon receipt of proper information satisfactory to it, redeposit the proceeds to the credit of the claimant, to be administered in the manner provided under this law. This section shall not apply to a member while the member is actively employed past mandatory retirement age in a retirement system established under the provisions of this chapter or the Public Employees' Retirement Law.~~

~~See also IRC § 401(a)(9) and OCERS Regulation for IRC § 401(a)(9) — Minimum Distributions Rules~~

Procedure

- ~~1. When a deferred member who is not an active member of a reciprocal system as stated in section 31706 has reached age 70, OCERS will notify that member in writing that the member is eligible to apply for retirement and will begin receiving either (x) a retirement allowance on the Required Beginning Date or (y) a one-time April 1 of the year following the calendar year in which the member attains the age of 70.~~
- ~~2. For purposes of this procedure a deferred member of OCERS is a member who has left employment of an OCERS covered employer and elected to leave his or her member contributions on deposit with OCERS.~~
- ~~3. This procedure does not pertain to active members who have reached the age of 70 and are still employed by an OCERS covered employer. Members who continue to be actively employed by an OCERS covered employer are exempt from minimum distributions rules pertaining to OCERS. Minimum distribution of all accumulated contributions and interest. The rules pertaining to other retirement systems may still apply.~~
- ~~4. This procedure does not apply to a deferred member who has reached the age of 70 and is still an active member of a reciprocal county employees retirement system or CalPERS where reciprocity has been established.~~
5. The notice will be sent via certified mail to the Member's~~member's~~ last known address or last known employer.

Retirement and Withdrawal Application Due Date

If OCERS does not receive a proper retirement application or withdrawal application by the February 1st immediately preceding the Required Beginning Date (Application Due Date), OCERS will file for retirement for eligible Members and start paying an unmodified monthly allowance by the Required Beginning Date;



OCERS Administrative Procedure (OAP) Required Minimum Distributions

however, if a Member is otherwise ineligible for a deferred retirement allowance, then OCERS will make a one-time distribution of all accumulated contributions and interest to such Member by the Required Beginning Date. A member will not be able to change the retirement option past the Application Due Date.

~~6. **Member** If the member can be located but does not make an application for retirement that will be effective by April 1 of the year following the calendar year in which the member attains the age of 70, OCERS will set up the retirement benefit and begin paying the member an unmodified allowance (Gov. Code § 31760.1).~~

If the member cannot be located

~~7. If the Member could not be located by April 1 of the year following the Required Beginning Date calendar year in which the member attains the age of 70, all of the Member's accumulated member contributions and interest on such those member contributions will be deposited in the OCERS pension reserve fund.~~

~~8. **The Member or such Member's** After deposit of member contributions and interest into the pension reserve fund, the member or a beneficiary ("Claimant") may petition the Board of Retirement to redeposit the Member's accumulated member contributions and interest into the system to the credit of the Claimant. Any such claimant. The claimant must provide information and documentation satisfactory to the Board showing that that claimant is entitled to the credit.~~

~~9. A petition to the Board should be sent to OCERS Member Services Director to be included in. The matter will then be placed on a regular Board meeting agenda.~~

~~10.1. If the Board determines the information provided is satisfactory, the Member's member contributions and interest will be credited back to the Member's member's account and benefits will be administered according to the CERL County Employees Retirement Law.~~

~~11.2. If the Board determines the information provided is not satisfactory, the Claimant claimant shall be given the opportunity to provide additional information. If after having had the opportunity to provide additional information, the totality of the information is still not satisfactory to the Board, the Claimant claimant may request an administrative hearing of the matter. Administrative hearings will be conducted in accordance with OCERS' Administrative Hearing Procedures.~~

Maintaining Current Contact Information

~~12. **OCERS' ability to contact a Member may affect the Member's retirement benefits. Members should ensure that their contact information is current with OCERS.** If OCERS is unable to determine the age or amount of service of a member, the Board may estimate the member's age and length of service in order to administer benefits under the County Employees Retirement Law (Gov. Code § 31531).~~

~~13. In the event that this procedure conflicts with statutory or case law, that statutory or case law will prevail.~~



OCERS Administrative Procedure (OAP) Required Minimum Distributions

I. Purpose

The purpose of this OCERS administrative procedure (OAP) is to describe how OCERS apply the rules governing the mandatory distributions of required minimum distributions (RMDs) of benefits from a Member's retirement plan under Internal Revenue Code Section 401(a)(9), Section 107(c) of Secure 2.0 Act of 2022, and Government Code section 31706.

II. Authority

This OAP is established pursuant to the Chief Executive Officer (CEO) Charter, section 8.f., which directs the CEO to develop staff policies and procedures to ensure effective and efficient administration of member benefits. The OAP is in conformance with Board Policy, the County Employees Retirement Law (California Government Code section 31450, et seq.) (CERL), and the Public Employees' Pension Reform Act (Government Code, sections 7522 - 7522.74) (PEPRA).

III. RMD Age

Under Internal Revenue Code Section 401(a)(9) and Section 107(c) of Secure 2.0 Act of 2022, the applicable age at which RMD applies (RMD Age) is (x) 73 for an individual who attains age 73 before January 1, 2033, and (y) 75 for an individual who attains age 74 after December 31, 2032.¹

IV. Required Minimum Distributions

RMDs and Required Beginning Date

Internal Revenue Code Section 401(a) (9) requires individuals who are no longer working but have not yet retired to begin receiving required minimum distributions (RMDs) from their retirement plans by April 1 of the calendar year after they reach the RMD Age; however, Members who have reached RMD Age and continue to be actively employed by a covered employer of OCERS or a reciprocal retirement system are not subject to RMDs until April 1 of the calendar year following their employment termination (Required Beginning Date).

RMDs are mandatory at the Required Beginning Date and cannot be opt out by a Member.

RMD Notice

Upon attaining 70 years of age, a deferred Member will be notified by OCERS that such Member is eligible to apply for retirement and will begin receiving either (x) a retirement allowance on the Required Beginning Date or (y) a one-time distribution of all accumulated contributions and interest. The notice will be sent via certified mail to the Member's last known address or last known employer.

¹ Federal legislation determines the RMD Age threshold, which is subject to change.



OCERS Administrative Procedure (OAP) Required Minimum Distributions

Retirement and Withdrawal Application Due Date

If OCERS does not receive a proper retirement application or withdrawal application by the February 1st immediately preceding the Required Beginning Date (Application Due Date), OCERS will file for retirement for eligible Members and start paying an unmodified monthly allowance by the Required Beginning Date; however, if a Member is otherwise ineligible for a deferred retirement allowance, then OCERS will make a one-time distribution of all accumulated contributions and interest to such Member by the Required Beginning Date. A member will not be able to change the retirement option past the Application Due Date.

Member cannot be located

If the Member could not be located by the Required Beginning Date, all of the Member's accumulated contributions and interest on such contributions will be deposited in the OCERS pension reserve fund.

The Member or such Member's beneficiary ("Claimant") may petition the Board of Retirement to redeposit the Member's accumulated contributions and interest into the system to the credit of the Claimant. Any such petition to the Board should be sent to OCERS Member Services Director to be included in a regular Board meeting agenda.

- If the Board determines the information provided is satisfactory, the Member's contributions and interest will be credited back to the Member's account and benefits will be administered according to the CERL.
- If the Board determines the information provided is not satisfactory, the Claimant shall be given the opportunity to provide additional information. If after having had the opportunity to provide additional information, the totality of the information is still not satisfactory to the Board, the Claimant may request an administrative hearing of the matter. Administrative hearings will be conducted in accordance with OCERS' Administrative Hearing Procedures.

Maintaining Current Contact Information

OCERS' ability to contact a Member may affect the Member's retirement benefits. Members should ensure that their contact information is current with OCERS.



Memorandum

DATE: August 15, 2024
TO: Members of the Governance Committee
FROM: Silviu Ardeleanu, Director of Member & Employer Relations Section - Member Services
SUBJECT: OFF-CYCLE REVIEW OF THE MEMBER SERVICES CUSTOMER SERVICE POLICY

Recommendation

Approve and recommend the Board adopt the proposed revisions to the Member Services Customer Service Policy.

Background/Discussion

The Member Services Customer Service Policy was adopted on November 16, 2015, revised October 15, 2018, and October 17, 2022. The team has reviewed the policy and we have adopted the following changes to make the Policy more current and effective, and also to remove items that have been already established.

The revised policy also adopts more measurable goals, to track customer service and ensure OCERS offers a very high level of service to our members.

Attachments

Submitted by:



SA-Approved

Silviu Ardeleanu
Director of Member & Employer Relations Section - Member Services



OCERS Board Policy

Member Services Customer Service Policy

Background

1. The Board's mission is to provide the highest quality of customer service to OCERS members, Retirees, and beneficiaries, in a cost effective and prudent manner.

Policy Objectives

2. Establish measurable goals to manage the customer service levels provided by Member Services staff to plan participants.

Policy Guidelines

3. The following are quantifiable goals used for measuring customer service levels:
 - ~~3. Develop quantifiable goals for measuring customer service levels:~~
 - a. Member satisfaction – In-person interaction surveys. Goal is 95% positive responses.
 - ~~a. Customer interactions – positive responses to surveys – goal is 95% positive;~~
 - b. Timeliness – In-person member interactions for walk-in members, seen within 15 minutes. Goal is 95%.
 - ~~b.c. Benefit Recalculations – unplanned benefit recalculations should be less than 5% of the total number of calculations completed per month. the total;~~
 - d. Payroll initiations within 45-60 days of the retirement date (with all documentation submitted the month prior to payroll processing). Goal is 95%.
 - ~~c. Payroll initiations within one full month of separation;~~
 - e. Cost Notifications provided for all Service Credit Purchases within 45 business days of OCERS receipt of all data needed to determination eligibility and perform calculation. Goal is 95%.
 - ~~d. Benefit estimates are available real time 24/7 via member self-service portal;~~
 - ~~e. Retirement can be initiated electronically via member self-service portal;~~
 - ~~f. Member Statements are available real time 24/7 via member self-service portal; and~~
 - ~~g. Member communications (calls and emails) are returned the same business day or within 24 hours. Staff will also update their voicemail and email automatic reply messages to indicate approximate turnaround time in situations when it is known that greater than 24 hours is needed to return calls and emails.~~
 - f. Member communications (voice mails and emails) will be returned within one business day. Goal is 90%.
 - Staff will update their voicemail and utilize the out-of-office notification on their e-mail to indicate approximate turnaround time in situations when it is known that additional time is needed to return calls and emails.
 - g. Respond to all calls received during business hours in the Member Services phone queues within 60 seconds. Goal is 90%.
 4. ~~Regularly monitor goals to ensure ongoing achievement of customer service levels.~~
 5. ~~Annually evaluate goals and make adjustments as needed.~~
4. Provide a Quality Assurance report to the Audit Committee two times a year.

OCERS Board Policy

Member Services Customer Service Policy

- 5. Provide staff with regular training opportunities for continued development in customer service and technical skills. All OCERS staff must complete a minimum of 12 hours of training per year. Goal is 95%

Policy Review

- 6. The Board shall review this policy at least every 3 years to ensure that it remains relevant and appropriate.

Policy History

- 7. This policy was adopted by the Board of Retirement on November 16, 2015 and revised October 15, 2018, ~~and~~ October 17, 2022, and.



OCERS Board Policy

Member Services Customer Service Policy

Secretary's Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.

A handwritten signature in black ink that reads "Steve Delaney".

Steve Delaney
Secretary of the Board

Date



OCERS Board Policy Member Services Customer Service Policy

Background

1. The Board’s mission is to provide the highest quality of customer service to OCERS members, retirees, and beneficiaries in a cost-effective and prudent manner.

Policy Objectives

2. Establish measurable goals to manage the customer service levels provided by Member Services staff to plan participants.

Policy Guidelines

3. The following are quantifiable goals used for measuring customer service levels:
 - a. Member satisfaction – In-person interaction surveys. Goal is 95% positive responses.
 - b. Timeliness – In-person member interactions for walk-in members, seen within 15 minutes. Goal is 95%.
 - c. Benefit Recalculations – unplanned benefit recalculations should be less than 5% of the total number of calculations completed per month.
 - d. Payroll initiations within 45-60 days of the retirement date (with all documentation submitted the month prior to payroll processing). Goal is 95%.
 - e. Cost Notifications provided for all Service Credit Purchases within 45 business days of OCERS receipt of all data needed to determination eligibility and perform calculation. Goal is 95%.
 - f. Member communications (voice mails and emails) will be returned within one business day. Goal is 90%.
 - i. Staff will update their voicemail and utilize the out-of-office notification on their e-mail to indicate approximate turnaround time in situations when it is known that additional time is needed to return calls and emails.
 - g. Respond to all calls received during business hours in the Member Services phone queues within 60 seconds. Goal is 90%.
 - h. Provide a Quality Assurance report to the Audit Committee two times a year.
 - i. Provide staff with regular training opportunities for continued development in customer service and technical skills. All OCERS staff must complete a minimum of 12 hours of training per year. Goal is 95.



OCERS Board Policy Member Services Customer Service Policy

Policy Review

- 4. The Board shall review this policy at least every 3 years to ensure that it remains relevant and appropriate.

Policy History

- 5. This policy was adopted by the Board of Retirement on November 16, 2015, and revised October 15, 2018, October 17, 2022, and .

Secretary’s Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.

Steve Delaney, Secretary of the Board

Date



Memorandum

DATE: August 15, 2024
TO: Members of the Governance Committee
FROM: Manuel D. Serpa, General Counsel
SUBJECT: TRIENNIAL REVIEW OF THE LEGISLATIVE POLICY

Recommendation

Approve and recommend that the Board adopt revisions to the Legislative Policy.

Discussion

The Board of Retirement has established a review schedule that requires the review of every charter and policy every three years. Pursuant to the board-approved review process, the Governance Committee will first review certain charters and policies before presentation to the Board for approval.

The Board adopted the Legislative Policy on November 17, 2003, and most recently amended it on April 19, 2021. It is scheduled for review and approval by the Board after review by the Governance Committee in 2024.

Proposed Revisions

The proposed revisions to the Legislative Policy strive to remove unnecessary verbiage, correct grammar and typos, and re-word and re-organize the material to enhance clarity and readability. Also, a qualifying statement was added to Section 5.d. as follows:

- d. Support legislative proposals that strengthen the financial condition of the System and promote administrative efficiency **unless inconsistent with the Board's fiduciary duties;**

The proposed revisions are set forth in underlined/strikeout text in the attached copy of the Legislative Policy. An unmarked version of the Legislative Policy is also attached for the Committee's ease of review.

Attachments

Submitted by:



MDS-Approved

Manuel D. Serpa
General Counsel



OCERS Board Policy Legislative Policy

Purpose and Background

1. The purpose of this Legislative Policy is to provide OCERS with a broad framework that OCERS can utilize as a basis for action on legislative matters. The OCERS Board of Retirement (Board) is ~~charged with the responsibility of~~ responsible for administering the System ~~in a manner to assure~~ ensure prompt delivery of benefits and related services to members and their beneficiaries and ~~managing the assets of the System in a prudent manner~~ prudently managing the System's assets. Legislation affecting the System must be closely monitored to determine the potential impact on the System and whether action is necessary.

Policy Objectives

2. The objectives of the Legislative Policy are to:
 - a. Establish a procedure by which the ~~OCERS~~ Board can adopt an official position on proposed legislation;
 - b. Identify future legislative action in light of the System's needs;
 - c. Facilitate the timely communication of proposed and enacted legislative changes to the Board and staff;
 - d. Provide guidance in communicating OCERS' official legislative positions to third parties; and
 - e. Identify the optimal sources to promote OCERS' official legislative positions.

Roles and Responsibilities

3. The Board will be responsible for:
 - a. Adopting an official OCERS' position for ~~pertinent~~ legislative proposals affecting the System;
 - b. Identifying the ~~ongoing~~ needs of OCERS for future legislative proposals; and
 - c. Analyzing legislative proposals suggested by ~~OCERS'~~ Board members, staff, or interested third parties, and determining appropriate action.
4. Staff will be responsible for:
 - a. Analyzing and reporting on proposed legislation affecting OCERS, (and other public pension funds if relevant), at the beginning of each legislative session;
 - b. Monitoring proposed legislation throughout the legislative session and reporting material modifications and their potential impact on OCERS to the Board;
 - c. Monitoring all chaptered legislation and determining the impact on OCERS;
 - d. Reporting the impact of and, as required, suggesting procedures to implement all chaptered legislation to the Board and staff;
 - e. Communicating with organizations, active and retired OCERS' members, and/or employers, as applicable, to inform them of legislative changes affecting OCERS;



OCERS Board Policy Legislative Policy

- f. Drafting proposed legislation based upon proposals received from OCERS Board members, staff, and interested parties, in coordination with SACRS' Legislative Committee, or other appropriate entities, and presenting the draft legislation to the OCERS Board for consideration; and
- g. Identifying and communicating with elected representatives to serve as authors of OCERS-proposed legislation, when appropriate.

Policy Guidelines

Legislative Principles

5. The following legislative principles will guide the Board when considering its position on proposed legislation:
 - a. Promote OCERS' legislative position primarily through organizations in which OCERS participates unless proposed legislation has a specific and unique effect on OCERS;
 - b. Support legislative proposals that strengthen the confidentiality protections for member records;
 - c. Support legislative proposals that clarify statutory interpretation of '37 Act provisions unless inconsistent with OCERS' legally sound interpretation and implementation of the provision;
 - d. Support legislative proposals that strengthen the financial condition of the System and promote administrative efficiency unless inconsistent with the Board's fiduciary duties;
 - e. Oppose legislative proposals that create the potential for increased unfunded actuarial liability without appropriate funding provisions; and-
 - f. Oppose legislative proposals that compromise or interfere with OCERS' duty to deliver benefits to participants and beneficiaries.

SACRS' Legislative Committee

6. OCERS will attempt to maintain a representative on the SACRS' Legislative Committee. The representative, or any other Board or staff member that participates in the Committee as a guest, will adhere to the following standards:
 - a. Represent the official position, if any, taken by the ~~OCERS Board~~ on all legislation considered by the Committee;
 - b. Provide information to the CEO and Board on the ~~activities of the Committee as needed so that the CEO and Board~~ Committee's activities as needed so that they are ~~well~~ well-informed regarding legislation ~~that is~~ relevant to OCERS.

Policy Review

7. The Board will review this policy at least every three years to ensure that it remains relevant and appropriate.



OCERS Board Policy Legislative Policy

Policy History

- 8. The OCERS Board adopted this policy on November 17, 2003. The policy was revised on April 16, 2007, June 21, 2010, February 19, 2013, July 20, 2015, August 20, 2018, ~~and~~ April 19, 2021, and.

Secretary's Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.

Steve Delaney
Secretary of the Board

04/19/2021

Date



OCERS Board Policy Legislative Policy

Purpose and Background

1. The purpose of this Legislative Policy is to provide OCERS with a broad framework that OCERS can utilize as a basis for action on legislative matters. The OCERS Board of Retirement (Board) is responsible for administering the System to ensure prompt delivery of benefits and related services to members and their beneficiaries and prudently managing the System's assets. Legislation affecting the System must be closely monitored to determine the potential impact on the System and whether action is necessary.

Policy Objectives

2. The objectives of the Legislative Policy are to:
 - a. Establish a procedure by which the Board can adopt an official position on proposed legislation;
 - b. Identify future legislative action in light of the System's needs;
 - c. Facilitate the timely communication of proposed and enacted legislative changes to the Board and staff;
 - d. Provide guidance in communicating OCERS' official legislative positions to third parties; and
 - e. Identify the optimal sources to promote OCERS' official legislative positions.

Roles and Responsibilities

3. The Board will be responsible for:
 - a. Adopting an official OCERS position for legislative proposals affecting the System;
 - b. Identifying the needs of OCERS for future legislative proposals; and
 - c. Analyzing legislative proposals suggested by Board members, staff, or interested third parties and determining appropriate action.
4. Staff will be responsible for:
 - a. Analyzing and reporting on proposed legislation affecting OCERS (and other public pension funds if relevant)-at the beginning of each legislative session;
 - b. Monitoring proposed legislation throughout the legislative session and reporting material modifications and their potential impact on OCERS to the Board;
 - c. Monitoring all chaptered legislation and determining the impact on OCERS;
 - d. Reporting the impact of-and, as required, suggesting procedures to implement-all chaptered legislation to the Board and staff;
 - e. Communicating with organizations, active and retired OCERS members, or employers, as applicable, to inform them of legislative changes affecting OCERS;



OCERS Board Policy Legislative Policy

- f. Drafting proposed legislation based upon proposals received from OCERS Board members, staff, and interested parties, in coordination with SACRS' Legislative Committee or other appropriate entities, and presenting the draft legislation to the OCERS Board for consideration; and
- g. Identifying and communicating with elected representatives to serve as authors of OCERS-proposed legislation, when appropriate.

Policy Guidelines

Legislative Principles

- 5. The following legislative principles will guide the Board when considering its position on proposed legislation:
 - a. Promote OCERS' legislative position primarily through organizations in which OCERS participates unless proposed legislation has a specific and unique effect on OCERS;
 - b. Support legislative proposals that strengthen the confidentiality protections for member records;
 - c. Support legislative proposals that clarify statutory interpretation of '37 Act provisions unless inconsistent with OCERS' legally sound interpretation and implementation of the provision;
 - d. Support legislative proposals that strengthen the financial condition of the System and promote administrative efficiency unless inconsistent with the Board's fiduciary duties;
 - e. Oppose legislative proposals that create the potential for increased unfunded actuarial liability without appropriate funding provisions; and-
 - f. Oppose legislative proposals that compromise or interfere with OCERS' duty to deliver benefits to participants and beneficiaries.

SACRS' Legislative Committee

- 6. OCERS will attempt to maintain a representative on the SACRS' Legislative Committee. The representative, or any other Board or staff member that participates in the Committee as a guest, will adhere to the following standards:
 - a. Represent the official position, if any, taken by the Board-on all legislation considered by the Committee;
 - b. Provide information to the CEO and Board on the Committee's activities as needed so that they are well-informed regarding legislation relevant to OCERS.

Policy Review

- 7. The Board will review this policy at least every three years to ensure that it remains relevant and appropriate.



OCERS Board Policy Legislative Policy

Policy History

8. The OCERS Board adopted this policy on November 17, 2003. The policy was revised on April 16, 2007, June 21, 2010, February 19, 2013, July 20, 2015, August 20, 2018, April 19, 2021, and .

Secretary's Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.

Steve Delaney
Secretary of the Board

_____ Date



Memorandum

DATE: August 15, 2024
TO: Members of the Governance Committee
FROM: Steve Delaney, Chief Executive Officer, Manuel D. Serpa, General Counsel, OCERS
SUBJECT: **ADOPTION OF THE EMPLOYER DATA POLICY**

Recommendation

Approve and recommend that the Board adopt the Employer Data Policy.

Background

At the direction of the Board, OCERS staff has had quarterly informational meetings with representatives from our Employer groups regarding the data reported to OCERS and the need for all components of Final Average Salary to be reported on the biweekly transmittal file in an accurate and timely fashion. To date, the OCERS team has met with several employer groups at their headquarters buildings to review the process from their perspective. In addition, the team is in the process of finalizing a detailed procedure document reflecting the required steps the Employer, as well as OCERS, must take to process transmittal files. A copy of that document will be shared with the Employers upon finalization.

Summary

The goal of the new Employer Data Policy is to clarify the roles and responsibilities of OCERS and its Employers to facilitate the accurate exchange of the data elements required for OCERS to perform its function of administering the retirement system. The policy also outlines the actions OCERS will take, as authorized by the CERL, in response to insufficient, inaccurate, or untimely data from Employers.

Most importantly, the policy states that Participating Employers are required to timely certify and transmit complete and accurate Employer Data to OCERS on a pay period basis in accordance with the CERL, PEPPRA, the OCERS Compensation Earnable Pensionable Compensation Policies, and the Employer Data Policy. Historically, the difficulties Employers have had in transmitting complete and accurate data to OCERS have necessitated that OCERS expend significant resources to manage and troubleshoot data issues, including obtaining required data elements itself.

The policy states that Employers must submit Employer Data to OCERS bi-weekly in accordance with the schedule outlined in the OCERS Employer Handbook. They must also notify OCERS of changes to any elements that could affect members or pension calculation, as well as any payroll system change.

The potential for OCERS to charge Employers for the costs it incurs due to their failure to submit timely, complete, and accurate data is set forth in Paragraphs 14-18 of the policy. The potential administrative fees in the event of significant and continued preventable errors related to transmittals and contribution payments are described in Paragraph 14 and are authorized by Gov. Code, § 31580.1, which states:

Contribution from districts; costs of administering retirement system; penalty assessments for delinquencies

The board may include each year in the contribution required of a district a reasonable amount, which may differ from district to district, to cover the costs of administering its retirement system as such costs affect the active and retired employees of that district. The board may also assess a district a reasonable amount to cover costs incurred because of the district's failure to submit reports and forward contributions on a timely basis.

Paragraph 15 addresses that OCERS may assess an amount to cover costs when an Employer fails to submit data timely or when OCERS is required to audit or correct information when an Employer knowingly fails to report compensation by pay period, as authorized by Gov. Code, §31542.5:

§31542.5. Pay period for compensation reported to board; failure of county or district to report compensation

(a) When a county or district reports compensation to the board, it shall identify the pay period in which the compensation was earned regardless of when it was reported or paid. Compensation shall be reported in accordance with Section 31461 and shall not exceed compensation earnable, as defined in Section 31461.

(b) The board may assess a county or district a reasonable amount to cover the cost of audit, adjustment, or correction, if it determines that a county or district knowingly failed to comply with subdivision (a). A county or district shall be found to have knowingly failed to comply with subdivision (a) if the board determines that either of the following applies:

(1) The county or district knew or should have known that the compensation reported was not compensation earnable, as defined in Section 31461.

(2) The county or district failed to identify the pay period in which compensation earnable was earned, as required by this section.

(c) A county or district shall not pass on to an employee any costs assessed pursuant to subdivision (b).

OCERS will calculate these costs by measuring the cost of labor for OCERS staff to analyze, resolve, and communicate outcomes with the Employer regarding the applicable issue.

Paragraphs 16 and 17 address Transmittal File errors and payment discrepancies. Paragraph 18 addresses interest penalties on late contribution payments. This provision includes an option for the Employer to request that the Board reduce or remove an interest penalty.

Please also note that we received the following feedback on the draft policy from Mr. Paul Bartlett, the Executive Director of the Association of Orange County Deputy Sheriffs (AOCDS):

The document lists the following under definitions: "Grade or Classification: Groups of similarly situated employees with the same OCERS' benefit structure in the same grade or classification."

This definition seems circular in nature. It defines a grade or classification as a grade or classification. AOCDS suggests the following revised definition for your review and consideration:

"Grade or Class: A number of employees considered together because they share similarities in job duties, schedules, unit recruitment requirements, work location, collective bargaining unit, or other logical work-related group or class."

This is a similar definition to how CalPERS defines "group or class of employment." (See Government Code section 20636(e)(2).) In addition, CERL does not use the term "classification." CERL uses the term "class." (See Government Code section 31461(a).)

Staff recommends deferring consideration of this definition until the ultimate status of AB 2284 is confirmed, as it is the same definition of grade or class as that contained in AB 2284, currently under legislative review.

An additional clarifying statement has been added to the definition for legal consistency:

Grade or Classification: Groups of similarly situated employees with the same OCERS' benefit structure in the same grade or classification **as set by the Participating Employer.**

The proposed draft of the Employer Data Policy is attached.

Submitted by:



SD - Approved

Steve Delaney
Chief Executive Officer

Submitted by:



MS-Approved

Manuel D. Serpa
General Counsel



OCERS Board Policy Employer Data Policy

Purpose and Objective

1. The Orange County Employees Retirement System (OCERS) requires the timely submission of detailed information from its Participating Employers to fulfill its responsibilities in administering the retirement system. This policy states the information and data that OCERS requires from its Participating Employers to help them fulfill their responsibilities under the County Employees Retirement Law (CERL), as amended by the Public Employees' Pension Reform Act (PEPRA). These laws establish the fundamental obligations of Participating Employers and employee members. The policy's objective is to clarify the roles and responsibilities of OCERS and its Employers to facilitate the accurate exchange of the data elements required for OCERS to perform its function, including benefit calculation and payment. The policy also outlines the actions OCERS will take in response to insufficient, inaccurate, or untimely data from Employers.

Policy Guidelines

2. *Definitions*

Bargaining Unit~~Grade or Classification~~: Groups of similarly situated employees with the same OCERS' benefit structure in the same grade or classification.

Benefit: A payment to a participant (Member or Beneficiary) for retirement or death from OCERS.

Earnable Pay Items: Items of pay paid from Employer funds that will be considered in calculating final average salary.

Earnable Salary: The amount of ~~an employee's~~ a member's salary associated with their regularly scheduled work ~~period~~ rendered during the member's grade or classification's normal working hours, which is used in calculating the final average salary.

Employee Contributions: Contributions towards retirement that are deducted by the employer from each member's compensation based on the employee's contribution rate and forwarded to OCERS to fund the normal cost associated with the member's retirement benefits from OCERS, as defined under the CERL and PEPRA.

Employer Contributions: Contributions by the Participating Employers paid to fund the ~~employer's~~ employer's portion of normal costs associated with their employees' retirement benefits from OCERS, as defined under the CERL and PEPRA.

Employer Data: Gross base salary, approved pay codes for pay items determined as compensation earnable, ~~pensionable pay items,~~ as approved by the OCERS Board of Retirement (Board), hours worked, expected hours, and employer/employee contributions based upon the rates set by the ~~OCERS Board of Retirement (Board)~~ for pensionable pay items and salary, any additional negotiated contributions between the Employer and ~~employee groups~~ employees, and any other required data elements as designated in the Employer Handbook.

Employer Handbook: Employer Self Service (ESS) Portal User Guide located on the ESS Portal.



OCERS Board Policy Employer Data Policy

Participating Employer or Employer: ~~Orange County or any contracting agency or district employing or representing an employee who is a member of OCERS. Participating Employer is synonymous with "Plan Sponsor."~~

Member: An employee who is a member of the OCERS Plan and is eligible to accrue a benefit in OCERS.

Employment Status: The employment status of a OCERS member as reported by the Employer. This includes Active or Active on Leave and separated with a separation date.

Pay Period: Monthly or biweekly payroll period.

Pensionable Pay Items: Items of pay that are pensionable and that will be considered in calculating ~~contributions.~~ normal cost contributions owed by the member and Participating Employer, and for which the Participating Employer will report contributions.

Pensionable Salary: The amount of an employee's salary on which expected normal cost contributions will be calculated and for which the Participating Employer will report contributions.

Transmittal: A Participating Employer's regular payroll report of ~~contributions, salary, reported hours, and premium pay items~~ Employer Data.

Unfunded Actuarial Accrued Liability (UAAL): The difference between the actuarial accrued liability (AAL) and the actuarial value of assets (AVA). It's also the amount of past service liability that exceeds the value of the plan's assets.

Roles and Responsibilities

OCERS

3. OCERS uses information received from Participating Employers to, among other things, update its information on members in its pension administration system, compute benefit estimates, perform benefit calculations, establish official termination dates, process refunds of contributions, and update member account balances. OCERS must accurately account for all Employer Data it receives, transmit that data to its actuary, and timely communicate with Employers regarding plan liabilities.
4. OCERS must maintain records of all contributions deposited by all Participating Employers and members and all benefits paid to members.¹

Participating Employers

5. Each Participating Employer must designate one or more reporting officials and their backup, who serve as the organization's OCERS contact. The reporting official is authorized to sign OCERS documents and is responsible for timely and accurately managing, transmitting, and reporting the

¹ Gov. Code, § 31599



OCERS Board Policy Employer Data Policy

Transmittal File and Employer Data to OCERS. The Participating Employer must notify OCERS if its reporting official changes.

- ~~5-6.~~ Participating Employers are required to timely certify and transmit complete and accurate Employer ~~data~~Data to OCERS on a pay period basis in accordance with the CERL, PEPR, the OCERS Compensation Earnable Pensionable Compensation Policies, and this Employer Data Policy. The ~~data~~Employer Data must be transferred using the protocol and schedule specified in **the Employer Handbook**, which is located on the OCERS website.
- ~~6-7.~~ Participating Employers are responsible for providing OCERS with its list of Pensionable Pay Items.

Any new pay item must be submitted to OCERS in accordance with OCERS Pay Item Review Policy and the Pay Item Request & Approval Procedures For Employers.

- ~~7-8.~~ Participating Employers must submit Employer Data to OCERS bi-weekly in accordance with the designated payroll cycle and the schedule outlined in the Employer Handbook. The Participating Employer must immediately notify OCERS if it cannot meet this schedule or if ~~there is a change to~~ the payroll schedule changes (i.e., twenty-seven (27) pay periods).
- ~~8-9.~~ Participating Employers must promptly notify OCERS of changes to any labor/collective bargaining agreements affecting OCERS members, Employer Plans, Bargaining Units plans, County grade or classifications, and Pensionable Pay Items. Participating Employers are also required to promptly notify OCERS of any anticipated changes to its payroll system or system provider. Failure to ~~de~~ notify as specified in this Paragraph could result in errors in ~~employer data~~Employer Data transmission and processing, which could significantly impact the delivery of benefits, crediting of members' accounts, accurate reporting, and appropriate reserve funds.

- ~~9.—~~ **Employer Annual Compliance Certification**—: All Employers will submit an annual compliance certification by the end of each calendar year, confirming ongoing compliance with this Policy.
10. ~~OCERS requires that Employers complete an annual~~ This certification ~~to~~will also confirm that the current list of users with approved ESS access on the ESS Portal Authorization Form is up to date.

Employer Payroll Reporting and Data Transmission

11. Employer Data transmission is the process by which Employers submit information such as Employer and employee contributions, salary, and hours worked to OCERS for OCERS to process and post to members' accounts or the appropriate reserve fund. Employer Data and transaction details for amounts related to individual employees are submitted through OCERS' Employer Self-Service



OCERS Board Policy Employer Data Policy

~~portal or through secure file transfer protocol (FTP). Participating Employers must transmit Employer Data to OCERS via the methods described in the Employer Handbook.~~

- a. The payroll record is the most common record type. It contains information about an employee’s earnings, contributions, and other pertinent information. Required fields on the payroll record are detailed in the "Transmittal Layout" included in **the Employer Handbook**.
- 12. All documentation for each payment is due on the payment date for that contribution. OCERS retains the right to determine the accuracy and completeness of all data submissions supporting contribution payments. OCERS will exercise its authority to audit the Employer’s records to determine the accuracy of benefits, reportable compensation, enrollment, and reinstatement.²
- 13. Participating Employers must adjust previously submitted transmittal data that is incorrect using an adjustment file by the next pay period following submission.

Administrative Fees and Costs

14. OCERS charges Participating Employers administrative fees in the event of significant and continued preventable errors related to transmittals and contribution payments. In addition, OCERS is authorized to assess a Participating Employer for the costs of administering the retirement system unique to that Employer; for example, costs directly relating to each Employer’s plan design

~~14.~~ characteristics and employment practices (e.g., work schedules) that impact the transmittal of payroll data to OCERS.³

~~15.~~ OCERS may assess a reasonable amount to cover costs incurred because a Participating Employer failed to submit requisite Employer Data and contributions or failed to do so timely.⁴ OCERS may also assess an Employer a reasonable amount to cover the audit, adjustment, or correction cost if it determines the Employer knowingly failed to report compensation by pay period.⁵ OCERS will

15. calculate these costs by measuring the cost of labor for OCERS staff to analyze, resolve, and communicate outcomes with the Employer regarding the applicable issue.

16. **Employer Transmittal Files:** Transmittal files must be formatted correctly and contain correct and accurate employee information, as set forth in the Employer Handbook. ~~In addition, the pensionable salary for each employee must be stated accurately, and contributions must be accurately calculated based on that salary, and Employer Data as specified in this Policy.~~ If a transmittal file contains errors that prohibit the import of the file into the OCERS pension administration system,

² Gov. Code, § 31543
³ Gov. Code, § 31580.1
⁴ Id.
⁵ Gov. Code, §31542.5



OCERS Board Policy Employer Data Policy

~~the Employer must create a new file. If an Employer cannot provide a new or corrected file, and~~
OCERS must correct the errors in the existing file, fees may be assessed based on a median hourly rate per hour of work required by OCERS.

- 17. **Payment Discrepancies:** Employer and employee contributions stated on electronic or hardcopy reports from the Employer, including transmittal files, spreadsheets, and other reporting formats, should generally match actual payment amounts. Any discrepancy between these amounts requires communication from the Employer upon payment remittance. This communication must explain the discrepancy and the necessary action to resolve it. OCERS staff will send a notice to the Employer via e-mail if an explanation of the discrepancy does not accompany the contribution payment. This notice will alert the Employer of a potential fee assessment. If the discrepancy continues for three consecutive pay periods, fees will be incurred on the fourth pay period. The fees will be based on the ~~labor costs incurred~~ median hourly rate per hour of work required by ~~OCERS~~ OCERS' staff ~~for analyzing~~ to analyze and ~~resolving~~ resolve issues and ~~communicating~~ communicate outcomes with the ~~employer~~ Employer.
- 18. **Interest on Late Contribution Payment and Administrative Charges:** Any payment or partial payments received after the pay date of each pay period are considered late payments. A Participating Employer will be assessed an interest penalty for late payments.⁶ OCERS will ordinarily apply interest to the underpaid amount at OCERS' semi-annual interest crediting rate,⁷ but reserves the right to assess additional interest (e.g., OCERS' assumed rate of investment return) and add penalties to the underpaid amount in cases of intentional late payments or delays in remedying late payments. OCERS will invoice an Employer for any additional interest payment related to late contribution payments, supported by the interest calculation. An Employer should ensure that OCERS receives payment within ten days of the invoice date. Interest will continue to accrue if the payment is not received within ten days of the invoice date. An Employer may appeal in writing to the Board for abatement of interest.

Policy Review

The Board shall review this policy at least every three years to ensure it remains relevant and appropriate.

Policy History

The Board adopted this policy on...

⁶ Gov. Code, § 31580.1

⁷ Gov. Code, § 31472.1



OCERS Board Policy Employer Data Policy

Secretary's Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.



OCERS Board Policy Employer Data Policy

Purpose and Objective

1. The Orange County Employees Retirement System (OCERS) requires the timely submission of detailed information from its Participating Employers to fulfill its responsibilities in administering the retirement system. This policy states the information and data that OCERS requires from its Participating Employers to help them fulfill their responsibilities under the County Employees Retirement Law (CERL), as amended by the Public Employees' Pension Reform Act (PEPRA). These laws establish the fundamental obligations of Participating Employers and employee members. The policy's objective is to clarify the roles and responsibilities of OCERS and its Employers to facilitate the accurate exchange of the data elements required for OCERS to perform its function, including benefit calculation and payment. The policy also outlines the actions OCERS will take in response to insufficient, inaccurate, or untimely data from Employers.

Policy Guidelines

2. *Definitions*

Grade or Classification: Groups of similarly situated employees with the same OCERS' benefit structure in the same grade or classification as set by the Participating Employer.

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Employee Contributions: Contributions towards retirement that are deducted by the employer from each member's compensation based on the employee's contribution rate and forwarded to OCERS to fund the normal cost associated with the member's retirement benefits from OCERS, as defined under the CERL and PEPRA.

Employer Contributions: Contributions by the Participating Employers paid to fund the employer's portion of normal costs associated with their employees' retirement benefits from OCERS, as defined under the CERL and PEPRA.

Employer Data: Gross base salary, approved pay codes for pay items determined as compensation earnable as approved by the OCERS Board of Retirement (Board), hours worked, expected hours, and employer/employee contributions based upon the rates set by the Board for pensionable pay items and salary, any additional negotiated contributions between the Employer and employees, and any other required data elements as designated in the Employer Handbook.

Employer Handbook: Employer Self Service (ESS) Portal User Guide located on the ESS Portal.

Participating Employer or Employer: Orange County or any contracting agency or district employing or representing an employee who is a member of OCERS. Participating Employer is synonymous with "Plan Sponsor."

Member: An employee who is a member of the OCERS Plan and is eligible to accrue a benefit in OCERS.



OCERS Board Policy Employer Data Policy

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Pensionable Salary: The amount of an employee's salary on which expected normal cost contributions will be calculated and for which the Participating Employer will report contributions.

Transmittal: A Participating Employer's regular payroll report of Employer Data.

Unfunded Actuarial Accrued Liability (UAAL): The difference between the actuarial accrued liability (AAL) and the actuarial value of assets (AVA). It's also the amount of past service liability that exceeds the value of the plan's assets.

Roles and Responsibilities

OCERS

3. OCERS uses information received from Participating Employers to, among other things, update its information on members in its pension administration system, compute benefit estimates, perform benefit calculations, establish official termination dates, process refunds of contributions, and update member account balances. OCERS must accurately account for all Employer Data it receives, transmit that data to its actuary, and timely communicate with Employers regarding plan liabilities.
4. OCERS must maintain records of all contributions deposited by all Participating Employers and members and all benefits paid to members.¹

Participating Employers

5. Each Participating Employer must designate one or more reporting officials and their backup, who serve as the organization's OCERS contact. The reporting official is authorized to sign OCERS documents and is responsible for timely and accurately managing, transmitting, and reporting the Transmittal File and Employer Data to OCERS. The Participating Employer must notify OCERS if its reporting official changes.
6. Participating Employers are required to timely certify and transmit complete and accurate Employer Data to OCERS on a pay period basis in accordance with the CERL, PEPR, the OCERS Compensation Earnable Pensionable Compensation Policies, and this Employer Data Policy. The Employer Data must be transferred using the protocol and schedule specified in **the Employer Handbook**, which is located on the OCERS website.
7. Participating Employers are responsible for providing OCERS with its list of Pensionable Pay Items.

Any new pay item must be submitted to OCERS in accordance with OCERS Pay Item Review Policy and the Pay Item Request & Approval Procedures For Employers.

¹ Gov. Code, § 31599



OCERS Board Policy Employer Data Policy

8. Participating Employers must submit Employer Data to OCERS bi-weekly in accordance with the designated payroll cycle and the schedule outlined in the Employer Handbook. The Participating Employer must immediately notify OCERS if it cannot meet this schedule or if the payroll schedule changes (i.e., twenty-seven (27) pay periods).
9. Participating Employers must promptly notify OCERS of changes to any labor/collective bargaining agreements affecting OCERS members, Employer plans, County grade or classifications, and Pensionable Pay Items. Participating Employers are also required to promptly notify OCERS of any anticipated changes to its payroll system or system provider. Failure to notify as specified in this Paragraph could result in errors in Employer Data transmission and processing, which could significantly impact the delivery of benefits, crediting of members' accounts, accurate reporting, and appropriate reserve funds.
10. **Employer Annual Compliance Certification:** All Employers will submit an annual compliance certification by the end of each calendar year, confirming ongoing compliance with this Policy. This certification will also confirm that the current list of users with approved ESS access on the ESS Portal Authorization Form is up to date.

Employer Payroll Reporting and Data Transmission

11. Employer Data transmission is the process by which Employers submit information such as Employer and employee contributions, salary, and hours worked to OCERS for OCERS to process and post to members' accounts or the appropriate reserve fund. Employer Data and transaction details for amounts related to individual employees are submitted through OCERS' Employer Self-Service portal or through secure file transfer protocol (FTP). Participating Employers must transmit Employer Data to OCERS via the methods described in the Employer Handbook.
 - a. The payroll record is the most common record type. It contains information about an employee's earnings, contributions, and other pertinent information. Required fields on the payroll record are detailed in the "Transmittal Layout" included in **the Employer Handbook**.
12. All documentation for each payment is due on the payment date for that contribution. OCERS retains the right to determine the accuracy and completeness of all data submissions supporting contribution payments. OCERS will exercise its authority to audit the Employer's records to determine the accuracy of benefits, reportable compensation, enrollment, and reinstatement.²
13. Participating Employers must adjust previously submitted transmittal data that is incorrect using an adjustment file by the next pay period following submission.

Administrative Fees and Costs

14. OCERS charges Participating Employers administrative fees in the event of significant and continued preventable errors related to transmittals and contribution payments. In addition, OCERS is authorized to assess a Participating Employer for the costs of administering the retirement system unique to that Employer; for example, costs directly relating to each Employer's plan design

² Gov. Code, § 31543



OCERS Board Policy Employer Data Policy

characteristics and employment practices (e.g., work schedules) that impact the transmittal of payroll data to OCERS.³

15. OCERS may assess a reasonable amount to cover costs incurred because a Participating Employer failed to submit requisite Employer Data and contributions or failed to do so timely.⁴ OCERS may also assess an Employer a reasonable amount to cover the audit, adjustment, or correction cost if it determines the Employer knowingly failed to report compensation by pay period.⁵ OCERS will calculate these costs by measuring the cost of labor for OCERS staff to analyze, resolve, and communicate outcomes with the Employer regarding the applicable issue.
16. **Employer Transmittal Files:** Transmittal files must be formatted correctly and contain correct and accurate employee information, as set forth in the Employer Handbook, and Employer Data as specified in this Policy. If a transmittal file contains errors that prohibit the import of the file into the OCERS pension administration system, the Employer must create a new file. If an Employer cannot provide a new or corrected file, and OCERS must correct the errors in the existing file, fees may be assessed based on a median hourly rate per hour of work required by OCERS.
17. **Payment Discrepancies:** Employer and employee contributions stated on electronic or hardcopy reports from the Employer, including transmittal files, spreadsheets, and other reporting formats, should generally match actual payment amounts. Any discrepancy between these amounts requires communication from the Employer upon payment remittance. This communication must explain the discrepancy and the necessary action to resolve it. OCERS staff will send a notice to the Employer via e-mail if an explanation of the discrepancy does not accompany the contribution payment. This notice will alert the Employer of a potential fee assessment. If the discrepancy continues for three consecutive pay periods, fees will be incurred on the fourth pay period. The fees will be based on the median hourly rate per hour of work required by OCERS' staff to analyze and resolve issues and communicate outcomes with the Employer.
18. **Interest on Late Contribution Payment and Administrative Charges:** Any payment or partial payments received after the pay date of each pay period are considered late payments. A Participating Employer will be assessed an interest penalty for late payments.⁶ OCERS will ordinarily apply interest to the underpaid amount at OCERS' semi-annual interest crediting rate,⁷ but reserves the right to assess additional interest (e.g., OCERS' assumed rate of investment return) and add penalties to the underpaid amount in cases of intentional late payments or delays in remedying late payments. OCERS will invoice an Employer for any additional interest payment related to late contribution payments, supported by the interest calculation. An Employer should ensure that OCERS receives payment within ten days of the invoice date. Interest will continue to accrue if the payment is not received within ten days of the invoice date. An Employer may appeal in writing to the Board for abatement of interest.

³ Gov. Code, § 31580.1

⁴ Id.

⁵ Gov. Code, §31542.5

⁶ Gov. Code, § 31580.1

⁷ Gov. Code, § 31472.1



OCERS Board Policy Employer Data Policy

Policy Review

The Board shall review this policy at least every three years to ensure it remains relevant and appropriate.

Policy History

The Board adopted this policy on...

Secretary's Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.