

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

**GOVERNANCE COMMITTEE MEETING
May 23, 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	
<p>Join Using Zoom App (Video & Audio)</p> <p>https://ocers.zoom.us/j/84825524924</p> <p>Meeting ID: 848 2552 4924 Passcode: 323179</p> <p>Go to https://www.zoom.us/download to download Zoom app before meeting Go to https://zoom.us to connect online using any browser.</p>	<p>Join by Telephone (Audio Only)</p> <p>Dial by your location</p> <ul style="list-style-type: none"> +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) <p>Meeting ID: 848 2552 4924 Passcode: 323179</p>
<p>A Zoom Meeting Participant Guide is available on OCERS website Board & Committee meetings page</p>	

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

March 21, 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 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.

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.

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.

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.

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.

INFORMATION ITEMS

I-1 EMPLOYER DATA POLICY AND GUIDELINES - UPDATE

Presentation by Steve Delaney, Chief Executive Officer

COMMITTEE MEMBER COMMENTS

CHIEF EXECUTIVE OFFICER/STAFF COMMENTS

COUNSEL COMMENTS

ADJOURNMENT

NOTICE OF NEXT MEETINGS

INVESTMENT COMMITTEE MEETING

**May 29, 2024
9:00 A.M.**

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM

**2223 E. WELLINGTON AVENUE, SUITE 100
SANTA ANA, CA 92701**

AUDIT COMMITTEE MEETING

**June 6, 2024
9:30 A.M.**

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

**DISABILITY COMMITTEE MEETING
June 17, 2024
8:30 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.

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, March 21, 2024
9:30 a.m.**

MINUTES

The Chair called the meeting to order at 9:32 a.m.

Recording Secretary administered the roll call.

Attendance was as follows:

Present: Chris Prevatt, Chair; Arthur Hidalgo, Vice-Chair; Roger Hilton, Board Member; Richard Oates, Board Member.

Also present: Steve Delaney, CEO; Manuel Serpa, General Counsel; Brenda Shott, Assistant CEO, Internal Operations; Suzanne Jenike, Assistant CEO, External Operations; Jeff Lamberson, Director of Retirement Operations - Member Services; Silviu Ardeleanu, Director of Member & Employer Relations Section - Member Services; Tracy Bowman, Director of Finance; Bill Singleton, Paralegal; Amanda Evenson, Executive Secretary; Will Tsao, Director of Enterprise Project Management Office; Kwame Addo, Chief Compliance Officer; Mary-Joy Coburn, Director of Communications; Carolyn Nih, Executive Secretary; David Kim, Director of Internal Audit; Jenny Davey, Internal Auditor; Mike Persi, Member Services Manager; Mark Adviento, Senior Internal Auditor; Jenny Sadoski, Director of IT; Anthony Beltran, Audio Visual Technician; Rebeca Gonzalez-Verdugo, Recording Secretary.

CONSENT AGENDA

C-1 APPROVE GOVERNANCE COMMITTEE MEETING MINUTES

Governance Committee Meeting Minutes

November 16, 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.

A-2 TRIENNIAL REVIEW OF THE GENERAL COUNSEL CHARTER

Presentation by Manuel Serpa, General Counsel

Recommendation: Approve and recommend that the Board adopt revisions to the General Counsel Charter.

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 ASSISTANT CEO, FINANCE AND INTERNAL OPERATIONS CHARTER

Presentation by Brenda Shott, Assistant CEO, Finance and Internal Operations

Recommendation: Approve and recommend that the Board adopt revisions to the Assistant CEO, Finance and Internal Operations Charter.

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

The motion passed **unanimously**.

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.

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 final selection/approval process by including the duration of the contract and the criteria of the selection process.

The Committee recommended the following additional revisions to the Policy:

- 20. “With the approval of the CEO, the General Counsel will engage a pool of at least five and not more than 15 firms...”
- 20. “... and the General Counsel will notify the Board of Retirement simultaneously upon the issuing of any related solicitation and prior to any award...”
- 23. “OCERS cost will be covered by the firm if not approved by the firm.”

A-5 OFF-CYCLE REVIEW OF THE ACTUARIAL FUNDING POLICY

Presentation by Brenda Shott, Assistant CEO, Finance and Internal Operations

Recommendation: Approve and recommend that the Board approve revisions to the Actuarial Funding Policy as presented.

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

The motion passed **unanimously**.

A-6 OFF-CYCLE REVIEW OF THE TRAVEL POLICY

Presentation by Manuel Serpa, General Counsel

Recommendation: Approve and recommend that the Board approve revisions to the Travel Policy as presented.

After discussion, **MOTION** by Mr. Hilton, **seconded** by Mr. Oates, to adopt all of staff’s recommended revisions to the Policy, with the following additions/changes:

- 3. “... unless a conference/seminar agenda contains ~~an average of five (5) hours of~~ substantive educational content per day...”
- 23. “The Board or staff member must provide ~~both~~ an itemized receipt, including evidence of payment charge receipt (when a payment card is used).”
- 24. “Board members and eligible OCERS staff members ~~who travel frequently in the course of their job responsibilities~~ may request a Corporate Credit Card. In accordance with the Corporate Credit Card Policy, the Corporate Credit Card may be used only for official OCERS’ business, including, but not limited to, travel costs such as parking, air travel, hotel accommodations, ground transportation and car rental, or meals in conjunction with official OCERS’ business. ~~All cardholders are required to sign an OCERS Corporate Credit Card Agreement acknowledging their agreement to the Corporate Credit Card Policy rules and guidelines. The Board Chair, in cooperation with the Chief Executive Officer, is responsible for all disciplinary action surrounding misuse of cards by a Trustee. The Vice Chair, in cooperation with the Chief Executive Officer, is responsible for all disciplinary action surrounding misuse of card by the Board Chair, and the Chief Executive Officer and the Assistant Chief Executive Officer of Finance and Internal Operations are responsible for all disciplinary action surrounding misuse of cards for OCERS employees.”~~
- 28. “~~Expense costs for extra days prior to or after a conference will be reimbursed only if such extension results in lower overall trip costs. For staff, cost comparisons for trip extensions shall include the cost of salary for any workdays lost by the extension.~~”
- 30. “... the GSA rate for each purchased meal, upon request.”
- 31. “... the GSA rate for each purchased meal, upon request.”
- 39. “Parking and tolls will be reimbursed ~~at current rates.~~”
- 40. “~~Public~~ Transportation”
- 41. “Use of taxis... will be reimbursed ~~at current rates.~~”

The Committee provided further direction to staff to create separate Travel Policy and Corporate Credit Card Policy for the Board and staff.

The motion passed **unanimously**.

A-7 TRIENNIAL REVIEW OF THE WRITE OFF POLICY

Presentation by Jeff Lamberson, Director of Retirement Operations – Member Services

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Recommendation: Approve, and recommend that the Board adopt, revisions to the Write Off Policy.

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

The motion passed **unanimously**.

INFORMATION ITEMS

I-1 GOVERNANCE COMMITTEE WORK PLAN AND MEETING SCHEDULE FOR 2024

Presentation by Manuel Serpa, General Counsel

I-2 REVIEW OF NEW PAY ITEMS PURSUANT TO THE PAY ITEM REVIEW POLICY

Presentation by Suzanne Jenike, Assistant CEO, External Operations

COMMITTEE MEMBER COMMENTS

The Committee thanked the staff for their hard work.

CHIEF EXECUTIVE OFFICER/STAFF COMMENTS

Mr. Delaney shared that the OCERS Annual Review began today.

COUNSEL COMMENTS

None

ADJOURNMENT

Chair adjourned meeting at 12:32 p.m.

Submitted by:

Approved by:

Manuel Serpa
General Counsel/Staff Liaison

Steve Delaney
Chief Executive Officer/Secretary

Chris Prevatt
Chair



Memorandum

DATE: May 23, 2024
TO: Members of the Governance Committee
FROM: Manuel D. Serpa, General Counsel
SUBJECT: TRIENNIAL REVIEW OF THE COST IMPACTING POLICY

Recommendation

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

Background/Discussion

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

The Cost Impacting Policy was adopted by the Board on May 17, 2011, and most recently amended on April 19, 2021. It is scheduled for review and approval by the Board after review by the Governance Committee in 2024.

Staff has no recommended changes to the policy at this time. The Cost Impacting Policy is attached for the Committee's review.

Attachments

Submitted by:



MDS-Approved

Manuel D. Serpa
General Counsel



OCERS Board Policy Cost Impacting Policy

Background

1. The Board of Retirement recognizes that some of its actions can materially impact employers' and members' financial interests. OCERS believes it prudent, when considering such impactful decisions, to provide appropriate notice and an opportunity for stakeholders to be heard on such matters before taking final action. The Board retains full authority to adopt, modify or repeal OCERS' policies.

Policy Guidelines

2. In the ordinary course of conducting its business, the Board intends to introduce actions, including without limitation, the adoption or modification of policies or regulations, that can materially impact employers' and members' financial interests, at an initial duly noticed, public meeting, followed by subsequent duly noticed, public meeting(s), as appropriate, to consider the proposal, alternative proposals and comments from stakeholders, the Board, OCERS staff and consultants.

Policy Review

3. Absent exigent circumstances, the Board will use the following procedure when taking action on cost-impacting decisions covered by this policy:
 - a. No action on any such proposal will be taken at the introductory meeting other than scheduling, direction to staff and consultants and other related matters;
 - b. Action to be taken on proposals relating to the subject of the proposed action will be taken at one or more subsequent duly-noticed public meetings;
 - c. At the meeting where the Board decides to take action (i.e., vote) on a cost-impacting decision, if only a single alternative is presented and discussed (not counting maintaining the *status quo* if that also is an alternative), the vote will constitute the Board's final determination on the matter;
 - d. However, at the meeting where the Board decides to take action (i.e., vote) on a cost-impacting decision, if more than a single alternative is presented and discussed (not counting maintaining the *status quo* if that also is an alternative), the Board's vote will be considered a tentative determination on the matter and will become the Board's final determination *only if* the Board votes to ratify the tentative determination at a subsequent duly-noticed public meeting without material changes; and
 - e. If material changes to the tentative determination are made at the meeting where the ratification vote is taken, that vote (with the changes) will become the Board's final determination on the matter *only if* the Board votes to ratify it at a subsequent duly-noticed public meeting without additional material changes.
4. Challenges to any Board action based on a claim that the procedures in this policy were not properly followed must be brought and fully resolved prior to the end of the next regularly-



OCERS Board Policy Cost Impacting Policy

scheduled Board meeting following the Board meeting where the final vote or final ratification vote on the challenged action takes place.

Policy Review

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

Policy History

- 6. This policy was adopted by the OCERS' Board of Retirement on May 17, 2011. It was revised on December 19, 2011, 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 Cost Impacting Policy

Background

1. The Board of Retirement recognizes that some of its actions can materially impact employers' and members' financial interests. OCERS believes it prudent, when considering such impactful decisions, to provide appropriate notice and an opportunity for stakeholders to be heard on such matters before taking final action. The Board retains full authority to adopt, modify or repeal OCERS' policies.

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Policy Review

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 - a. No action on any such proposal will be taken at the introductory meeting other than scheduling, direction to staff and consultants and other related matters;
 - b. Action to be taken on proposals relating to the subject of the proposed action will be taken at one or more subsequent duly-noticed public meetings;
 - c. At the meeting where the Board decides to take action (i.e., vote) on a cost-impacting decision, if only a single alternative is presented and discussed (not counting maintaining the *status quo* if that also is an alternative), the vote will constitute the Board's final determination on the matter;
 - d. However, at the meeting where the Board decides to take action (i.e., vote) on a cost-impacting decision, if more than a single alternative is presented and discussed (not counting maintaining the *status quo* if that also is an alternative), the Board's vote will be considered a tentative determination on the matter and will become the Board's final determination *only if* the Board votes to ratify the tentative determination at a subsequent duly-noticed public meeting without material changes; and
 - e. If material changes to the tentative determination are made at the meeting where the ratification vote is taken, that vote (with the changes) will become the Board's final determination on the matter *only if* the Board votes to ratify it at a subsequent duly-noticed public meeting without additional material changes.
4. Challenges to any Board action based on a claim that the procedures in this policy were not properly followed must be brought and fully resolved prior to the end of the next regularly-



OCERS Board Policy Cost Impacting Policy

scheduled Board meeting following the Board meeting where the final vote or final ratification vote on the challenged action takes place.

Policy Review

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

Policy History

- 6. This policy was adopted by the OCERS' Board of Retirement on May 17, 2011. It was revised on December 19, 2011, 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: May 23, 2024
TO: Members of the Governance Committee
FROM: Manuel D. Serpa, General Counsel
SUBJECT: **TRIENNIAL REVIEW OF THE EXTRAORDINARY EXPENSE RECOVERY POLICY**

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.

Background/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 Extraordinary Expense Recovery Policy was adopted by the Board on May 26, 2009, and most recently amended on April 19, 2021. After being reviewed by the governance committee, it is scheduled for review and approval by the Board in 2024.

There are no recommended changes to the policy at this time. However, Staff questions the current need for this policy. There has been no recent policy application, and none is anticipated. The Committee may thus wish to recommend the Board repeal it.

A copy of the Extraordinary Expense Recovery Policy is attached for the Committee's review.

Attachments

Submitted by:



MDS-Approved

Manuel D. Serpa
General Counsel



OCERS Board Policy Extraordinary Expense Recovery Policy

Purpose and Background

1. The Extraordinary Expense Recovery Policy is intended to establish guidelines and codify existing practices by which OCERS' Board of Retirement and staff can identify expenses incurred as a result of requests by third parties, other than expenses related to public records requests and employer and stakeholder data requests, which are handled in accordance with OCERS' Public Records and Data Request Policy, that are outside of the ordinary course and scope of the business of the System ("Extraordinary Expenses"), and establish a mechanism for recovering such expenses from the responsible party(ies).

Policy Objectives

2. The objectives of the policy are to ensure that:
 - a. OCERS expends trust funds on authorized administrative expenses consistent with the law;
 - b. There are clear expectations when third parties cause OCERS to incur Extraordinary Expenses;
 - c. The identification of Extraordinary Expenses is clearly defined; and
 - d. The method for recovering Extraordinary Expenses is clearly defined.

Policy Guidelines

3. The following guidelines will be used to identify Extraordinary Expenses:
 - a. OCERS CEO, or his or her designee, will gather the following information:
 - i. The name of the person or organization responsible for the expense;
 - ii. The purpose of the expense;
 - iii. The amount of the expense;
 - iv. Whether the expense benefits OCERS' membership generally, or a significant number of employers, and to what extent; and
 - v. Whether the expense is necessary for the administration of the System.
 - b. Upon review of all of the above-listed information, the CEO or his or her designee will initially determine whether the expense is beneficial to the membership generally or to a significant number of employers, and whether it is necessary for the administration of the System. If, in the discretion of the CEO or his or her designee, the expense is not beneficial to the membership generally or to a significant number of employers nor necessary for the administration of the System, the CEO or his or her designee will determine the amount of the expense and make a recommendation to the Board for recovery of the full amount of the expense.



OCERS Board Policy Extraordinary Expense Recovery Policy

- c. If the CEO or his or her designee initially determines that the party responsible for the expense should reimburse OCERS, the issue will be placed on a Board agenda for consideration by the Board in a public meeting.
- d. The CEO or his or her designee will notify the responsible party of the date and time of the Board meeting at which the Board’s consideration will take place. The responsible party may be heard on the matter in open session.
- e. If the Board determines that OCERS should be reimbursed for the Extraordinary Expenses, the CEO or his or her designee will provide a written request to the responsible party for reimbursement, detailing the amount of reimbursement requested and a brief statement as to the reason why the Board determined that the party was responsible for the Extraordinary Expenses. The written request will specify that payment is to be received by OCERS within 90 days of the request.
- f. The Board, in its discretion, may allow the party to reimburse OCERS through an installment payment plan that is reasonably designed to allow OCERS to recoup the entire expense plus reasonable interest.
- g. If the responsible party fails to reimburse OCERS within 90 days from the date of the written request or fails to make payments under an installment payment plan, OCERS will take appropriate action under the law to recover the amount of the Extraordinary Expenses.

Policy Review

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

Policy History

- 5. The OCERS Board of Retirement adopted this policy on May 26, 2009. The Board revised this policy on 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 Extraordinary Expense Recovery Policy

Purpose and Background

1. The Extraordinary Expense Recovery Policy is intended to establish guidelines and codify existing practices by which OCERS' Board of Retirement and staff can identify expenses incurred as a result of requests by third parties, other than expenses related to public records requests and employer and stakeholder data requests, which are handled in accordance with OCERS' Public Records and Data Request Policy, that are outside of the ordinary course and scope of the business of the System ("Extraordinary Expenses"), and establish a mechanism for recovering such expenses from the responsible party(ies).

Policy Objectives

2. The objectives of the policy are to ensure that:
 - a. OCERS expends trust funds on authorized administrative expenses consistent with the law;
 - b. There are clear expectations when third parties cause OCERS to incur Extraordinary Expenses;
 - c. The identification of Extraordinary Expenses is clearly defined; and
 - d. The method for recovering Extraordinary Expenses is clearly defined.

Policy Guidelines

3. The following guidelines will be used to identify Extraordinary Expenses:
 - a. OCERS CEO, or his or her designee, will gather the following information:
 - i. The name of the person or organization responsible for the expense;
 - ii. The purpose of the expense;
 - iii. The amount of the expense;
 - iv. Whether the expense benefits OCERS' membership generally, or a significant number of employers, and to what extent; and
 - v. Whether the expense is necessary for the administration of the System.
 - b. Upon review of all of the above-listed information, the CEO or his or her designee will initially determine whether the expense is beneficial to the membership generally or to a significant number of employers, and whether it is necessary for the administration of the System. If, in the discretion of the CEO or his or her designee, the expense is not beneficial to the membership generally or to a significant number of employers nor necessary for the administration of the System, the CEO or his or her designee will determine the amount of the expense and make a recommendation to the Board for recovery of the full amount of the expense.



OCERS Board Policy

Extraordinary Expense Recovery Policy

- c. If the CEO or his or her designee initially determines that the party responsible for the expense should reimburse OCERS, the issue will be placed on a Board agenda for consideration by the Board in a public meeting.
- d. The CEO or his or her designee will notify the responsible party of the date and time of the Board meeting at which the Board’s consideration will take place. The responsible party may be heard on the matter in open session.
- e. If the Board determines that OCERS should be reimbursed for the Extraordinary Expenses, the CEO or his or her designee will provide a written request to the responsible party for reimbursement, detailing the amount of reimbursement requested and a brief statement as to the reason why the Board determined that the party was responsible for the Extraordinary Expenses. The written request will specify that payment is to be received by OCERS within 90 days of the request.
- f. The Board, in its discretion, may allow the party to reimburse OCERS through an installment payment plan that is reasonably designed to allow OCERS to recoup the entire expense plus reasonable interest.
- g. If the responsible party fails to reimburse OCERS within 90 days from the date of the written request or fails to make payments under an installment payment plan, OCERS will take appropriate action under the law to recover the amount of the Extraordinary Expenses.

Policy Review

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

Policy History

- 5. The OCERS Board of Retirement adopted this policy on May 26, 2009. The Board revised this policy on 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: May 23, 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) Approve and recommend that the Board adopt revisions to the Membership Eligibility Requirements Policy.

Background/Discussion

The Board of Retirement 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 Membership Eligibility Requirements Policy was adopted by the Board on March 20, 2017, and last revised 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.

The proposed revision, which has been provided to the Participating Employers for their review, includes the following:

- The following sentence was 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 4) and for timely notifying OCERS of any change necessitating membership.”*
- The following sentence was added to the end of paragraph 4: ***“Each Participating Employer is responsible for monitoring the number of hours worked by such employees and notifying OCERS should the applicable number be exceeded.”***
- The power of the Board, per paragraph 5, to make exceptions to the requirements of paragraphs 3 and 4 is delegated to the CEO by the addition of this sentence: *“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 following factor was added to those that the Board or the CEO will consider in granting an exception under paragraph 5: *“The urgency of the employer’s need to fill the position on a temporary basis.”*
- Paragraph 7 was rephrased for clarity as follows: *“For purposes of Paragraphs 3 and 4 (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 Membership Eligibility Requirements Policy is also attached for the Committee's ease of review.

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

- ~~2. 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. 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 ~~Employer~~ Responsibilities

- ~~3.2.~~ Each Participating Employer is responsible for determining, in accordance with this Policy, which of ~~it the Participating Employer's~~ 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 4) and for timely notifying OCERS of any change necessitating membership.

Policy Guidelines

- ~~4.3.~~ **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.

- ~~5.4.~~ **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



OCERS Board Policy

Membership Eligibility Requirements

- b. Has executed a lawful waiver of membership (e.g., elected officials and members entering employment after age 60); or
- c. 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" by the Participating Employer because ~~he or she~~ they works in a position that:
- i. Requires professional or highly technical skills for more than one year;
 - ii. Is designated "intern" for more than one year (entry-level ~~and consistent with~~ as per the Participating Employer's salary resolution or comparable classification scheme);
 - iii. Is designated "seasonal" for more than one year (i.e., works in less than seven calendar months per year); **or**
 - iv. Is designated "intermittent" for more than one year (i.e., works ~~on an irregular, as-needed basis~~ irregularly, as needed).

Note: ~~Per section 4(a), 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. After that initial year, if a non-"extra help" employee works more than 1,040 hours per year or an "extra help" employee works more than 1,600 hours per year, they should be enrolled in OCERS membership. 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 applicable number be exceeded.

5. The Board may grant exceptions to the requirements of Paragraphs 34 and 45 if the Board determines that doing so is consistent with the intent of this Policy and is fair to all parties. 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). Factors to consider in granting an exception will include:

~~6. For example:-~~

a. ~~The Board may consider~~ 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.

a.b. ~~The urgency of the employer's need to fill the position on a temporary basis,; and~~

b.c. ~~The Board may consider w~~ Whether an employee's work hours exceeded the relevant maximum due to administrative oversight.

~~7.6.~~ When a Participating Employer fails to comply with the requirements of Paragraphs 34 and 45, and ~~the Board does not grant~~ an exception under Paragraph 5 ~~is not granted~~6, the Board will



OCERS Board Policy Membership Eligibility Requirements

exercise its discretion to determine an appropriate correction procedure based on the facts of each case.

~~8.7.~~ For purposes of Paragraphs ~~34~~ and ~~45~~, (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~~ the Participating Employer designates for employment purposes uniform application to all its employees.

~~9.8.~~ 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. 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

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

Policy History

12. 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 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 4) and for timely notifying OCERS of any change necessitating membership.

Policy Guidelines

3. **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.

4. **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
- b. Has executed a lawful waiver of membership (e.g., elected officials and members entering employment after age 60); or
- c. 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 "extra help" by the Participating Employer because they work in a position that:
 - i. Requires professional or highly technical skills for more than one year;



OCERS Board Policy Membership Eligibility Requirements

- ii. Is designated "intern" for more than one year (entry-level as per the Participating Employer's salary resolution or comparable classification scheme);
- iii. Is designated "seasonal" for more than one year (i.e., works in less than seven calendar months per year); **or**
- iv. Is designated "intermittent" for more than one year (i.e., works irregularly, as needed).

Note: 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. After that initial year, if a non-"extra help" employee works more than 1,040 hours per year or an "extra help" employee works more than 1,600 hours per year, they should be enrolled in OCERS membership. **Each Participating Employer is responsible for monitoring the number of hours worked by such employees and notifying OCERS should the applicable number be exceeded.**

- 5. The Board may grant exceptions to the requirements of Paragraphs 3 and 4 if the Board determines that doing so is consistent with the intent of this Policy and is fair to all parties. 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). 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.
 - c. Whether an employee's work hours exceeded the relevant maximum due to administrative oversight.
- 6. When a Participating Employer fails to comply with the requirements of Paragraphs 3 and 4, and an exception under Paragraph 5 is not granted, the Board will exercise its discretion to determine an appropriate correction procedure based on the facts of each case.
- 7. For purposes of Paragraphs 3 and 4 (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.
- 8. 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.



OCERS Board Policy Membership Eligibility Requirements

- 10. 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

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

Policy History

- 12. 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.

Steve Delaney
Secretary of the Board

_____ Date



Memorandum

DATE: May 23, 2024
TO: Members of the Governance Committee
FROM: Manuel D. Serpa, General Counsel; Joon Kim, Staff Attorney
SUBJECT: REVIEW OF OCERS ADMINISTRATIVE PROCEDURE REGARDING FELONY FORFEITURE

Recommendation

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

Background/Discussion

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 has updated the existing OAP in order to improve clarity and efficiency of process for the benefit of members, stakeholders, and the retirement system.

The OAP explains in plain language:

- What type of felony conviction triggers application of the felony forfeiture;
- The duties of a member and employer to notify OCERS of the conviction;
- The information and evidence to be gathered by OCERS and provided to the member;
- How the forfeiture will affect a member's retirement status, rights, and benefits;
- The member's right and the procedure to request determination by the Board of Retirement; and
- The time and manner in which the forfeiture will be implemented upon a final determination by staff or the Board.

Attachments:

1. Existing OCERS Administrative Procedure (OAP) regarding Felony Forfeiture (adopted April 18, 2016).
2. Revised OCERS Administrative Procedure (OAP) regarding Felony Forfeiture.



MDS-Approved

Manuel D. Serpa
General Counsel

Submitted by:



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. ~~OCERS is required to administer the retirement system in accordance with the Public Employees' Pension Reform Act of 2013 ("PEPRA"). PEPRA contains a felony forfeiture law found in at California 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 will not be 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 ~~OCERS is~~ notified of the conviction, OCERS' staff will place a hold on the member's account to prevent withdrawals pending a determination of the ~~impact~~ legal effect of the conviction.

~~Gov. Code § 7522.72 provides as follows¹:~~

~~(a) This section shall apply to a public employee first employed by a public employer or first elected or appointed to an office before January 1, 2013, and, on and after that date, Section 7522.70 shall not apply.~~

~~(b)~~

~~(1) If a public employee is convicted by a state or federal trial court of any felony under state or federal law for conduct arising out of or in the performance of his or her official duties, in pursuit of the office or appointment, or in connection with obtaining salary, disability retirement, service retirement, or other benefits, he or she shall forfeit all accrued rights and benefits in any public retirement system in which he or she is a member to the extent provided in subdivision (c) and~~



OCERS Administrative Procedure (OAP) Felony Forfeitures

~~shall not accrue further benefits in that public retirement system, effective on the date of the conviction. (2) If a public employee who has contact with children as part of his or her official duties is convicted of a felony that was committed within the scope of his or her official duties against or involving a child who he or she has contact with as part of his or her official duties, he or she shall forfeit all accrued rights and benefits in any public retirement system in which he or she is a member to the extent provided in subdivision (c) and shall not accrue further benefits in that public retirement system, effective on the date of the conviction.~~

~~(c)~~

~~(1) A member shall forfeit all the rights and benefits earned or accrued from the earliest date of the commission of any felony described in subdivision (b) to the forfeiture date, inclusive. The rights and benefits shall remain forfeited notwithstanding any reduction in sentence or expungement of the conviction following the date of the member's conviction. Rights and benefits attributable to service performed prior to the date of the first commission of the felony for which the member was convicted shall not be forfeited as a result of this section.~~

~~(2) Paragraph (1) shall apply to the extent permissible by law.~~

~~(3) For purposes of this subdivision, "forfeiture date" means the date of the conviction.~~

~~(d)~~

~~(1) Any contributions to the public retirement system made by the public employee described in subdivision (b) on or after the earliest date of the commission of any felony described in subdivision (b) shall be returned, without interest, to the public employee upon the occurrence of a distribution event unless otherwise ordered by a court or determined by the pension administrator.~~

⁴—The same provisions appear in Govt. Code § 7522.74 for public employees first employed, elected or appointed on or after January 1, 2013. Accordingly, these Procedures shall apply to all OCERS members.



OCERS Administrative Procedure (OAP) Felony Forfeitures

~~(2) Any funds returned to the public employee pursuant to subdivision (d) shall be disbursed by electronic funds transfer to an account of the public employee, in a manner conforming with the requirements of the Internal Revenue Code, and the public retirement system shall notify the court and the district attorney at least three business days before that disbursement of funds.~~

~~(3) For the purposes of this subdivision, a "distribution event" means any of the following:~~

~~(A) Separation from employment.~~

~~(B) Death of the member.~~

~~(C) Retirement of the member.~~

~~(e)~~

~~(1) Upon conviction, a public employee as described in subdivision (b) and the prosecuting agency shall notify the public employer who employed the public employee at the time of the commission of the felony within 60 days of the felony conviction of all of the following information:~~

~~(A) The date of conviction.~~

~~(B) The date of the first known commission of the felony.~~

~~(2) The operation of this section is not dependent upon the performance of the notification obligations specified in this subdivision.~~

~~(f) The public employer that employs or employed a public employee described in subdivision (b) and that public employee shall each notify the public retirement system in which the public employee is a member of that public employee's conviction within 90 days of the conviction. The operation of this section is not dependent upon the performance of the notification obligations specified in this subdivision.~~

~~(g) A public retirement system may assess a public employer a reasonable amount to reimburse the cost of audit, adjustment, or correction, if it determines that the public employer failed to comply with this section.~~

~~(h) If a public employee's conviction is reversed and that decision is final, the employee shall be entitled to do either of the following:~~

~~(1) Recover the forfeited rights and benefits as adjusted for the contributions received pursuant to subdivision (d).~~

~~(2) Redeposit those contributions and interest that would have accrued during the forfeiture period, as determined by the system actuary, and then recover the full amount of the forfeited rights and benefits.~~

~~(i) The forfeiture of rights and benefits provided in this section, with respect to judges, are in addition to and supplement the forfeitures and other requirements provided in Section 75033.2, 75062, 75526, or 75563. If there is a conflict between this section and Section 75033.2, 75062, 75526, or 75563, the provisions that result in the greatest forfeiture or provide the most stringent procedural requirements to the claim of a judge shall apply.~~



OCERS Administrative Procedure (OAP) Felony Forfeitures

~~(j) A public employee first employed by a public employer or first elected or appointed to an office on or after January 1, 2013, shall be subject to Section 7522.74.~~

Procedure Initial Determination by Staff

- ~~1.5. Once OCERS is notified of the conviction, staff will investigate and obtain all information necessary ~~needed~~ to determine the extent to which the forfeiture ~~will~~ 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. From time to time OCERS may learn that a member has been convicted of one or more felonies. Regardless of how OCERS learns about a member's felony conviction, OCERS staff will investigate the matter to determine the extent of any retirement benefit forfeiture required by law.~~
- ~~2. Among the information that OCERS staff will obtain will be the criminal court record, evidence of the commission of the criminal acts, the judgment of conviction, and any other information OCERS staff believes is appropriate in order to assist the Board of Retirement in discharging its obligation to make the determinations required by Govt. Code sections 7522.72 and 7522.74. OCERS may exercise its subpoena power (see Govt. Code sec. 31535) for this purpose. Staff is not limited to the criminal record in gathering the information it believes appropriate for the Board's determination.~~
- ~~3.6. The purpose of staff's investigation is to assist the Board in the following: Information gathered by staff will be used to:~~
- ~~a. Verify that the PEPRA felony forfeiture law under PEPRA applies to the member's conviction; Establishing the earliest date of the commission of the felony;~~
 - ~~b. Determine the earliest date the felony was committed; Establishing whether the felony arose out of or in the performance of the member's official duties, in pursuit of the office or appointment; in connection with obtaining salary, disability retirement, service retirement, or other benefits; or was committed within the scope of the member's official duties against or involving a child who he or she has contact with as part of his or her official duties; and~~
 - ~~c. As applicable, cCalculate the amount of overpaid benefits, employee contributions made to the system during the forfeiture period, adjustment to future benefits due to the member, and any reimbursement owed to the system; and Calculating the amount of overpaid benefits, employee contributions to be credited to the member, the appropriate adjustment to future benefits due to the member, and the method and timing of any recovery of overpayments due from the member.~~
 - ~~e.d. Confirm that any action taken by OCERS complies with the law.~~
- ~~4.7. If For the member is active or deferred members, the forfeiture will apply as follows:~~
- ~~a.e. 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 determine the amount of service credit earned from the date of first commission of the subject felony to the date of conviction. OCERS will then remove from the member's account any service credit the member earned has earned between dating back to the the first date of first commission and the date of conviction the felony was~~



OCERS Administrative Procedure (OAP) Felony Forfeitures

~~committed. This may affect the member's retirement eligibility. OCERS will determine the amount of member contributions attributable to the removed service credit. No interest will be credited on the contributions.~~

~~b. The member will be treated as if he or she had become a deferred member on the date of first commission of the subject felony for all purposes, including but not limited to retirement eligibility.~~

~~e.f. The member's employee contributions made to the system on and after the first date the felony was committed due to the member 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, through a credit to the member's employer in order to avoid violation of Internal Revenue Service early distribution rules. Such refunds to the employer will be made to the employer through an electronic funds transfer.~~



OCERS Administrative Procedure (OAP) Felony Forfeitures

5.8. ~~If for the member is~~ retired members, the forfeiture will apply as follows:

- a.g. 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. ~~OCERS will review the member's account to determine the member's service credits and final average salary ("FAS") as if the member deferred as of the date of the first commission of the subject felony.~~
- b.h. If after application of the forfeiture rules, the member did not have no longer has sufficient service credit to retire as of the first date the felony was committed, OCERS will then determine whether the member had sufficient service credit to retire as of the date of first commission of the subject felony. If not, OCERS will rescind the retirement and place the member into deferred status until the member has sufficient eligible service to qualify for retirement.
- e.i. If the member did have sufficient eligible service credit to retire as of the first date of first commission of the felony was committed, OCERS will recalculate the member's retirement allowance based on the deferral date 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.i. OCERS will determine whether if the recalculated retirement allowance results in an overpayment of retirement benefits by OCERS, in which event OCERS will seek to recoup the overpayment from the member pursuant to this Procedure.
- e.k. OCERS will also determine the amount of employee contributions made by the member made to the system from as of the first date of first commission of the felony was committed to the date of conviction. These These member contributions will be refunded to the member without interest; provided, hHowever, that whereif there has been an overpayment of retirement benefits, by OCERS, OCERS will use the the contributions refund, without interest, as an to offset to the overpayment. Contributions will be refunded to the member and only refund the amount by which the contributions to the extent they exceed the amount of the overpaid benefits. yment (see Govt. Code section 7522.72(d)(1).)
- f.l. For purposes of this Procedure, "overpayment" of retirement benefits includes compounded interest on the principal amount of any such the overpayment at OCERS' actuarial assumed rate of interest effective from time to time during the forfeiture period.

9. ~~Following OCERS staff determination of the foregoing information, s~~Staff ~~shall will~~ notify send a Notice of Initial Determination to Apply PEPRA Felony Forfeiture ("Notice of Initial Determination" or "Notice"), to the member in writing. Prior to sending, staff may seek direction from the Board. The Notice of Initial Determination will:

m. Include a copy of this Procedure and all documents relied upon by staff to support the initial



OCERS Administrative Procedure (OAP) Felony Forfeitures

determination.

- n. 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.
- ~~o. that OCERS has been advised of the conviction, has determined the first date of commission, has determined that it was or was not job related, and, if applicable, has calculated the overpayments, the contributions and the monthly adjustment going forward and the manner and time in which it will recover any overpaid benefits due from the member, and will make those~~Identify the "Effective Date" on which the forfeiture changes will be implemented. The Effective Date will be no less than 45 days and no more than 90 days effective on a date not less than 45 days nor more than 90 days (the "Effective Date") following the date of the Notice. The Notice will include a copy of this Procedure. OCERS Staff may seek Board determination or direction on any matter referred to in Sections 3, 4 and 5 of this Procedure before sending the Notice to the member.
- p. 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

~~6.—~~

- ~~10. Notwithstanding Par. 6, t~~10. The member shall havehas the right to request that the matter be heard and determined by the Board. ~~If the member makes t~~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 PEPRA 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.

~~— received by OCERS at least seven (7) days before the Effective Date set forth in the Notice, The request must be mailed or delivered in person and addressed to the attention of the Director of Retirement Operations, Member Services. Mailed requests must be sent to: OCERS, PO Box 1229, Santa Ana, California 92702. Delivery in person must be made at: OCERS, 2223 E Wellington Ave #100, Santa Ana, CA 92701.~~

The request must be received by OCERS at least seven (7) days before 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, and staff's initial determination will be final and implemented as set forth in the Notice.

- ~~7.—~~Upon timely receipt of a member's request, the matter will be placed on the Board's next regular



OCERS Administrative Procedure (OAP) Felony Forfeitures

open meeting agenda that is at least 45 days after the ~~member's~~ request is received by OCERS. ~~If a request is not received by OCERS at least seven (7) days before the Effective Date set forth in the Notice, the~~



OCERS Administrative Procedure (OAP) Felony Forfeitures

~~11. member waives his or her right to request that the matter be heard and determined by the Board.~~

12. ~~Both~~ The member (or their attorney ~~counsel~~ if they are represented) and OCERS staff ~~shall~~ may ~~present~~ have the opportunity to submit to the Board written statements, argument, evidence, and sworn testimony ~~and argument relevant to the matters under consideration. All written submissions shall be~~ Any party wishing to do so must delivered 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 a Party's contentions; the name, physical and email address, and telephone number of any witness who will testify; and a 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. At the time of the Board meeting, the member and OCERS staff may present written evidence, sworn testimony and argument and may be represented by counsel. At the conclusion of the presentations~~ After the matter has been heard, the Board will take action as it determines appropriate. ~~may make a final determination on the issues presented, refer the matter to a Hearing Officer, or take other action it deems appropriate. OCERS shall notify the member in writing of the Board's determination within three (3) business days following the determination.~~

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. 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 ~~Pending the finality of (a) OCERS' staff determination if the member does not request to be heard by the Board, or (b) the Board's determination if the member timely requests a Board determination, OCERS will not implement any changes, seek to recover any overpayments, refund any contributions or adjust any future monthly benefits of the member.~~

~~15. Such changes, recovery of overpayments, refunds and adjustments shall be made at the earliest practicable time, as determined by OCERS' staff, unless otherwise directed by the Board. In the exercise of its discretion, OCERS will exercise discretion to may recover~~ recoup overpaid benefits amounts due from the member, their estate, or beneficiaries ~~and the member's estate~~ by lump sum payment, installment payment, benefit deduction, or any combination thereof ~~of these, or in any other manner satisfactory to OCERS.~~

~~8-16.~~ When a member is owed a refund of their employee contributions, disbursement of the



OCERS Administrative Procedure (OAP) Felony Forfeitures

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.

~~9. At least three(3) business days prior to payment of any refund of member contributions, OCERS will notify the court and the District Attorney's Office or other prosecuting authority of any contribution refund payments OCERS will be making to the member, either directly or through the member's employer.~~

~~10. In making any determinations under this Procedure, the Board may appoint one of its members or a referee to make findings and recommendations (see Govt. Code section 31533.) In this instance, the Board shall then proceed as described in Govt. Code section 31534.~~

~~11. The member has the right to challenge OCERS' administrative determination under the writ procedures set forth in the California Code of Civil Procedure. A member's~~The filing of a writ ~~challenging petition in court~~ OCERS' final administrative determination shall~~will~~ not prevent OCERS from implementing ~~its determination~~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.

~~12. 12~~ This Procedure ~~shall is~~ not be subject to OCERS' Policy Regarding the Overpayment or Underpayment of Benefits or Contributions.

~~13. This Procedure shall apply to any member convicted of a felony after January 1, 2013.~~

~~14.~~18. If this Procedure conflicts with any statutory or case law, the statutory or case law ~~shall~~ 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).

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

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- 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 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 request 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 PEPRFA 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) days before 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, and staff's initial determination will be final and implemented as set forth in the Notice.

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 a Party's contentions; the name, physical and email address, and telephone number of any witness who will testify; and a 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, refer the matter to a Hearing Officer, or take other action it deems appropriate.



OCERS Administrative Procedure (OAP) Felony Forfeitures

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. 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 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: May 23, 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:

With the approval of the CEO, the General Counsel will engage 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. 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 retention of such Monitoring Firms, consultants, or vendors will be done in accordance with the Procurement and Contracting Policy, and the General Counsel will notify the Board of Retirement simultaneously upon issuing any related solicitation and prior to any award. The initial term for Monitoring Firm contracts will not exceed three years.

- 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:



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. ~~The General Counsel, with the approval of the CEO,~~ With the approval of the CEO, the General Counsel will engage 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. 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 retention of such Monitoring Firms, consultants, or vendors will be done in accordance with the Procurement and Contracting Policy, and the General Counsel will notify the Board of Retirement simultaneously upon the issuing of any related solicitation and prior to any award. The initial term for Monitoring Firm contracts will not exceed three years.
21. The Monitoring Firms will:
- 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;



OCERS Board Policy Securities Litigation Policy

- 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' estimated losses exceed ~~\$21~~ 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, ~~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.

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

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.



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- 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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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. With the approval of the CEO, the General Counsel will engage 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. 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 retention of such Monitoring Firms, consultants, or vendors will be done in accordance with the Procurement and Contracting Policy, and the General Counsel will notify the Board of Retirement simultaneously upon issuing any related solicitation and prior to any award. The initial term for Monitoring Firm contracts will not exceed three years.
21. The Monitoring Firms will:
 - 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;



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- 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.

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 .



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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: May 23, 2024
TO: Members of the Governance Committee
FROM: Steve Delaney, Chief Executive Officer, OCERS
SUBJECT: **EMPLOYER DATA POLICY AND GUIDELINES - UPDATE**

Background/Summary

At the direction of the Board, OCERS staff has had two 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. We reviewed with the Employers the manual process OCERS undertakes today to calculate benefits and explained the Board’s directive of fully automating retirement calculations.

At the Employer meeting held on May 14, 2024, we informed the Employers that we were in the process of drafting a policy outlining our expectations regarding data and that the policy would include an assessment of fees in the event the Employer does not report accurate and complete data. The draft Policy will be shared with the Employers, and we will encourage them to provide initial feedback either to the staff or directly to the Governance Committee at its next meeting.

We expect this initiative to continue to evolve as we get additional feedback from the Employers, and we will work together to develop an implementation plan. A future meeting of the Governance Committee meeting may be requested so that we can report on the progress we have made as well as to communicate the needs and/or challenges the Employers may have in complying with our guidelines and policy.

Submitted by:



SD-Approved

Steve Delaney
CEO