

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

**GOVERNANCE COMMITTEE MEETING
October 11, 2018
9:30 a.m.**

Members of the Committee

Shawn Dewane, Chair
Roger Hilton, Vice Chair
Chris Prevatt
David Ball

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.

PUBLIC COMMENT

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.

When addressing the Committee, please state your name for the record prior to providing your comments. Speakers will be limited to three (3) minutes.

CONSENT AGENDA

C-1 [APPROVE GOVERNANCE COMMITTEE MEETING MINUTES](#)

Governance Committee Meeting Minutes

July 10, 2018

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 wishing to address items on the agenda should provide written notice to the Secretary of the Committee prior to the Committee's discussion on the item by signing in on the Public Comment Sign-In Sheet located at the back of the room.

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

A-2 PROPOSED RESCISSION OF THE ACCEPTANCE AND REPORTING OF GIFTS POLICY AND AMENDMENTS TO THE BOARD OF RETIREMENT CHARTER

Presented by Gina M. Ratto, General Counsel

Recommendation: That the Governance Committee recommend to the Board that the Board:

- (1) Rescind the Acceptance and Reporting of Gifts Policy; and
- (2) Amend the Board of Retirement Charter to add key provisions of the Acceptance and Reporting of Gifts Policy.

A-3 FIRST READING OF NEW POLICY: OVERPAID AND UNDERPAID PLAN CONTRIBUTIONS POLICY

Presented by Suzanne Jenike, Asst. CEO, External Operations

Recommendation: Take appropriate action.

A-4 FIRST READING OF NEW POLICY: WRITE OFF POLICY

Presented by Suzanne Jenike, Asst. CEO, External Operations

Recommendation: Take appropriate action.

COMMITTEE MEMBER COMMENTS

CHIEF EXECUTIVE OFFICER/STAFF COMMENTS

COUNSEL COMMENTS

ADJOURNMENT

NOTICE OF NEXT MEETINGS

REGULAR BOARD MEETING

October 15, 2018

9:00 a.m.

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM

2223 E. WELLINGTON AVENUE, SUITE 100

SANTA ANA, CA 92701

2018 BUDGET WORKSHOP

October 18, 2018

9:00 a.m.

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM

2223 E. WELLINGTON AVENUE, SUITE 100

SANTA ANA, CA 92701

INVESTMENT COMMITTEE MEETING

October 25, 2018

9:00 a.m.

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM

2223 E. WELLINGTON AVENUE, SUITE 100

SANTA ANA, CA 92701

All supporting documentation is available for public review in the retirement office during regular business hours, 8:00 a.m. – 5:00 p.m., Monday through Thursday and 8:00 a.m. – 4:30 p.m. on Friday.

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.

C-1

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

**GOVERNANCE COMMITTEE MEETING
July 10, 2018
9:00 a.m.**

MINUTES

The Chair called the meeting to order at 9:00 a.m. Attendance was as follows:

Present: Shawn Dewane, Chair; Roger Hilton, Vice Chair; David Ball; Chris Prevatt

Staff: Steve Delaney, Chief Executive Officer; Gina Ratto, General Counsel; Brenda Shott, Assistant CEO, Internal Operations; Suzanne Jenike, Assistant CEO, External Operations; Sonal Sharma, Recording Secretary; Anthony Beltran, Audio Visual Technician

CONSENT AGENDA

C-1 APPROVE GOVERNANCE COMMITTEE MEETING MINUTES

A **motion** was made by Mr. Ball, **seconded** by Mr. Hilton to approve the minutes. The motion passed unanimously.

ACTION AGENDA

A-2 PROPOSED AMENDMENTS TO THE TRAVEL POLICY

Presented by Gina M. Ratto, General Counsel

Recommendation: Staff proposed the following amendments to the Travel Policy (Policy) for the Governance Committee's consideration and for recommendation to the Board if the Committee so determines:

- Include a provision in the Policy to state that whenever feasible, Board and staff members will travel on the same day of one-day events, and on the first and last days of multiple-day events, rather than the day before or after.
- Specify that Board members will be reimbursed for transportation costs to attend Board and committee meetings.
- Expand the list of preapproved conferences in Paragraph 10.b. of the Policy to include all conferences sponsored by the National Conference on Public Employee Retirement Systems (NCPERS).

The Committee members discussed their concerns with the appropriateness of including specific times in the Policy due to odd working hours and commuting conditions. Following discussion, the Committee discussed the following changes:

- Revise paragraph 27 of the Travel Policy to encourage same day travel without specifying time of day or length of travel and leaving it up to the Trustees to determine what is reasonable.

- Amend paragraph 32 to make it consistent with the changes to paragraph 27.
- Specify, in paragraph 27 that when Board or staff members travel outside of Orange County, they will be reimbursed daily travel expenses.
- Reimburse Board members actual mileage and shared ride services to attend Board and committee meetings.
- Expand the list of preapproved conferences in Paragraph 10.b. to include all conferences sponsored by NCPERS.

Russell Baldwin, acting in his capacity as a member of the public gave public comment and agreed that the Policy should be as general as possible.

A **motion** was made by Mr. Prevatt, **seconded** by Mr. Hilton to approve the Travel Policy with the changes as discussed. The motion passed unanimously.

A-3 TRIENNIAL REVIEW OF THE LEGISLATIVE POLICY

Presentation by Gina M. Ratto, General Counsel

Recommendation: Approve, and recommend that the Board approve, proposed revisions to the Legislative Policy as presented.

Staff reviewed the Policy recommended a clarifying revision to Section 5.c. of the Legislative Policy as follows:

5. The following legislative principles will guide the Board when considering its position on proposed legislation:

...

c. Support legislative proposals that clarify statutory interpretation of the '37 Act provisions unless inconsistent with OCERS' ~~legislative policy~~ legally sound interpretation and implementation of the provision;

A **motion** was made by Mr. Ball, **seconded** by Mr. Hilton to approve, and recommend that the Board approve, proposed revisions to the Legislative Policy as presented. The motion passed unanimously.

A-4 TRIENNIAL REVIEW OF THE EXTRAORDINARY EXPENSE RECOVERY POLICY

Presented by Gina M. Ratto, General Counsel

Recommendation: Approve, and recommend that the Board approve, proposed revisions to the Extraordinary Expense Recovery Policy as presented.

Staff reviewed the Policy and did not recommend any substantive changes.

Following discussion, a **motion** was made by Mr. Ball, **seconded** by Mr. Hilton to approve, and recommend that the Board approve, proposed revisions to the Extraordinary Expense Recovery Policy as presented. The motion passed unanimously.

A-5 TRIENNIAL REVIEW OF THE COST IMPACTING POLICY

Presented by Gina M. Ratto, General Counsel

Recommendation: Approve, and recommend that the Board approve, proposed revisions to the Cost Impacting Policy as presented.

Staff reviewed the Policy and did not recommend any substantive changes.

A **motion** was made by Mr. Ball, **seconded** by Mr. Hilton to approve, and recommend that the Board approve, proposed revisions to the Cost Impacting Policy as presented. The motion passed unanimously.

A-6 RESCIND THE ANNUAL DISCLOSURE POLICY

Presented by Gina M. Ratto, General Counsel

Recommendation: Recommend that the Board rescind the Annual Disclosure Policy.

Staff reviewed the Annual Disclosure Policy and determined that it is duplicative of existing requirements and therefore is not meaningful or necessary.

Acting as a member of the public, Russell Baldwin gave public comment and agreed with staff's recommendation.

A **motion** was made by Mr. Ball, **seconded** by Mr. Hilton to recommend that the Board rescind the Annual Disclosure Policy. The motion passed unanimously.

COMMITTEE MEMBER COMMENTS

Mr. Dewane asked Staff to perform further research about increasing the rate of per diem for Trustee attendance at Committee and Board Meetings.

CHIEF EXECUTIVE OFFICER/STAFF COMMENTS:

Mr. Delaney informed the Governance Committee that they will meet to review the new Personnel Policy Handbook in a future meeting. Mr. Prevatt suggested that the Handbook be reviewed in-depth by the Governance Committee so that it is streamlined for the Board.

Acting in his capacity as a member of the public, Russell Baldwin gave public comment and urged the Committee to thoroughly review the Handbook so the Board of Retirement does not have to perform a comprehensive review.

COUNSEL COMMENTS:

Counsel had no comments.

ADJOURNMENT:

The meeting adjourned at 9:44 a.m.

Submitted by:

Approved by:

Steve Delaney
Secretary to the Board

Shawn Dewane, Chair

A-2

Memorandum

DATE: October 11, 2018
TO: Members of the Governance Committee
FROM: Gina M. Ratto, General Counsel
SUBJECT: PROPOSED RESCISSION OF THE ACCEPTANCE AND REPORTING OF GIFTS POLICY AND AMENDMENTS TO THE BOARD OF RETIREMENT CHARTER

Recommendation

Staff proposes the Governance Committee recommend to the Board that the Board:

- (1) Rescind the Acceptance and Reporting of Gifts Policy; and
- (2) Amend the Board of Retirement Charter to add key provisions of the Acceptance and Reporting of Gifts Policy.

Background/Discussion

The Acceptance and Reporting of Gifts Policy (Policy) was adopted by the Board on May 16, 2005, and has been reviewed at least every three years since its adoption.

The Policy states that:

1. Board members and designated staff will observe the limitations and reporting requirements of the law with respect to gifts; and
2. The Board will maintain a list of Designated Filers (i.e., a Conflict of Interest Code) as required by the law.

The Policy also references the requirements of the Board's Annual Disclosure Policy, which was rescinded by the Board at its August 20, 2018 meeting. A copy of the Policy is attached for the Committee's ease in reference.

Staff recommends that the operative provisions of the Policy are more appropriately included in the Board of Retirement Charter, and that once the Charter has been amended to include these provisions, the Policy is no longer needed and should be rescinded.

Accordingly, staff recommends that the Board of Retirement Charter be amended to add:

- A provision to the "Board Members" subcategory under "Duties and Responsibilities" to state that Board members will observe the reporting requirements with respect to personal financial interests and income and the limitations and reporting requirements with respect to gifts, as required by the Political Reform Act and the regulations of the Fair Political Practices Commission (***new Paragraph 5.e.***); and
- A new subcategory under "Duties and Responsibilities" titled, "Conflicts of Interest," to provide that the Board will:
 - Adopt and maintain an OCERS Conflict of Interest Code and list of Designated Filers, and obtain the approval of both by the Board of Supervisors (***new Paragraph 9.a.***);
 - Review and update the OCERS Conflict of Interest Code every two years as required by the Political Reform Act (***new Paragraph 9.b.***); and

- Designate the CEO as the OCERS Filing Officer who is responsible for ensuring Board members and Designated Filers are aware of and comply with the requirement of an annual disclosure of financial interests (Form 700) (***new Paragraph 9.c.***). (Note that the CEO Charter already states that the CEO is the OCERS Filing Officer.)

The Board of Retirement Charter with the proposed revisions set forth in marked text is attached.

Staff further recommends that once the Board of Retirement Charter has been so amended, the Policy is no longer needed and can be rescinded.

Attachments

Submitted by:



Gina M. Ratto
General Counsel

Acceptance and Reporting of Gifts

Background

1. The Orange County Employees Retirement System is subject to the Political Reform Act of 1974 and the regulations promulgated by the California Fair Political Practices Commission (FPPC). In addition, on June 21, 2010, the Board adopted a Disclosure Policy that requires an annual disclosure by Board members and designated management staff of any and all financial and other interests they or their immediate family may have that may affect the Board's deliberations and votes, OCERS' operations and any other matter that may affect OCERS' interests. As fiduciaries, the Board of Retirement wishes to assure compliance with FPPC standards, state law and Board policies.

Guidelines

2. Members of the Board of Retirement and designated staff of OCERS will observe the limitations and reporting requirements with respect to gifts, as required by the Political Reform Act of 1974 and regulations of the FPPC.
3. The Board of Retirement will maintain a current list of Designated Filers, approved by the Orange County Board of Supervisors pursuant to its policy adopted December 17, 2002.
4. Members of the Board of Retirement and designated management staff will comply with the Disclosure Policy on an annual basis.
5. The Board of Retirement will maintain the annual disclosures of all Board members and designated staff in accordance with OCERS' Records Retention Policy.
6. The CEO will designate an OCERS Form 700 Filing Officer who is responsible for ensuring that the Form 700's are timely filed with the appropriate agency.
7. OCERS General Counsel or Chief Legal Officer is responsible for ensuring Board members and designated management staff comply with the Board Disclosure Policy annually.

Policy Review

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

Policy History

9. The Board of Retirement adopted this policy on May 16, 2005.
10. The policy was revised May 19, 2008, and May 17, 2011. The policy was reviewed on March 17, 2014, and April 17, 2017.

Acceptance and Reporting of Gifts

Secretary's Certificate

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



4/17/17

Steve Delaney
Secretary of the Board

Date

Introduction

1. The Board of Retirement of OCERS (Board) is committed to carrying out its policy and oversight role in accordance with the highest standards of fiduciary practice. The Board recognizes the need to clearly delineate the responsibilities of the various decision-making bodies involved in the governance and management of OCERS. Accordingly, the Board has established this charter, which sets out its duties and responsibilities in governing the System.

Duties and Responsibilities

Board Members

2. Under the California Constitution and the County Employees' Retirement Law of 1937, members of the Board have plenary authority and fiduciary responsibility for investment of moneys and administration of the retirement system, and must discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, members of the system and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the System. Members function together as a nine-member Board (with one alternate), exercising their collective judgment.
3. In carrying out their duties, Board Members must act "with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims."
4. In order to prudently discharge their responsibilities, each Board Member is expected to participate in the activities of the Board and its committees, and to commit the time and effort necessary to knowledgably, effectively and efficiently administer the affairs of the System.
5. Each Board Member shall:
 - a. Be familiar and comply with OCERS' governing laws, rules, regulations, charters and policies.
 - b. Endeavour to attend all regular meetings of the Board and committees on which the Board Member serves. The Board and Investment Committee meet regularly once each month, subject to adjustment from time to time. Regular meetings are expected to last most of the day. Other committee meetings generally are less frequent, and last between two and four hours.
 - c. Be prepared in advance for informed discussion at each meeting. Preparation for regular Board and Investment Committee meetings can require between one and eight hours.
 - d. Comply with the OCERS Trustee Education Policy and state law, which require that Board Members complete a minimum of 24 hours of Board Member education

OCERS Board Charter Board of Retirement

within the first two years of assuming office and for every subsequent two-year period in which the Board Member serves on the Board (Gov. Code §31522.8); two hours of ethics training every two years (Gov. Code §53235); and two hours of harassment prevention training every two years (Gov. Code §12950.1); and take advantage of educational opportunities in areas necessary for OCERS' prudent administration, including but not limited to investments, benefit administration, fiduciary duties, ethics and conflicts of interest, open meetings and sound governance. In-house programs and outside conferences and seminars are available for this purpose. The time commitment for Board Member education is usually five days per year. Some travel may be required.

e. Observe the reporting requirements with respect to personal financial interests and income and the limitations and reporting requirements with respect to gifts, as required by the Political Reform Act and the regulations of the Fair Political Practices Commission.

6. Unless expressly waived by the Board, no Board member shall solicit or accept employment as a member of OCERS direct staff while he or she is a member of the Board and for a period of three years following the termination of his or her service as a member of the Board.
7. If a Board Member is unwilling or incapable of committing to and discharging the foregoing duties and responsibilities, he or she should consider resigning from the Board for the benefit of the System and the Board.

Governance

8. The Board will:
 - a. Approve, and amend as necessary, the mission statement of OCERS;
 - b. Adopt regulations or By-Laws, consistent with the County Employees Retirement Law of 1937, Government Code, Title 3, Division 4, Part 3, Chapter 3 and 3.9, Government Code Sections 31450 - 31899.10 as amended, and other applicable law;
 - c. Adopt and amend as necessary policies to ensure appropriate governance practices and review each on a triennial basis.
 - d. Adopt and amend as necessary charters describing the roles and responsibilities of the Board, the committees of the Board, the Chief Executive Officer, the Board Chair, the Board Vice Chair, and the Committee Chairs;
 - e. In cooperation with and upon the recommendation of the Chief Executive Officer, adopt and amend as necessary the charter describing the roles and responsibilities of the Chief Investment Officer;
 - f. During the last regularly scheduled meeting of the Board for each calendar year elect a Vice Chair for a term beginning on the first day of the following calendar year, and fill vacancies as necessary. The person holding the office of Vice Chair as of the last day of the calendar year shall automatically succeed to the office of Chair effective the first day of the following calendar year;

- g. Establish committees of the Board as provided for in OCERS By-Laws;
- h. Initiate, support, oppose or take a neutral position regarding legislative proposals affecting OCERS; and
- i. Authorize and approve any actions concerning claims, disputes, demands or legal proceedings that may affect the functions, investments, benefits or funding of OCERS and the Board.

Conflicts of Interest

9. The Board will:

- a. Adopt and maintain an OCERS Conflict of Interest Code and list of Designated Filers, and obtain the approval of both by the County Board of Supervisors;**
- b. Review and update the OCERS Conflict of Interest Code every two years as required by the Political Reform Act; and**
- c. Designate the CEO as the OCERS Filing Officer who is responsible for ensuring Board members and Designated Filers are aware of and comply with the requirement of an annual disclosure of financial interests (Form 700).**

Investments and Funding

- 10. The Board has exclusive control of the investments of the Fund. The assets of OCERS are trust funds and, as such, the Board will manage the Fund (Gov. Code §31595):
 - a. Solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering OCERS;
 - b. With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims; and
 - c. By diversifying the investments of OCERS so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly not prudent to do so.
- 11. The Board will conduct a study of the relationship between the assets and liabilities of OCERS not less than every three years.
- 12. The Board will approve an Investment Policy Statement including investment objectives, and will review and confirm or amend such policy at least every three years and following the completion of any asset/liability study of OCERS.
- 13. The Board will approve broad investment strategies for achieving the investment objectives of OCERS.

Benefits Administration

14. The Board will, from time to time as determined to be in the best interest of OCERS:
- a. Adopt Board policies necessary to promote effective administration of member benefits;
 - b. Approve all qualified members who apply for service retirement (Gov. Code §31670);
 - c. Determine the merits of applications for disability benefits, making necessary determinations of service connection and permanency of injury (Gov. Code §31720);
 - d. Act on member appeals of decisions made by OCERS staff;
 - e. Annually approve cost-of-living adjustments (Gov. Code §31870);
 - f. Determine eligibility of safety members when in doubt; and
 - g. Periodically review approved disabilities as appropriate.

Operations

15. The Board will:
- a. Adopt a business and strategic plan and any updates thereto;
 - b. Adopt an annual Operating Budget within the statutory limit and approve any changes thereto;
 - c. Ensure that all required contributions to the Fund are collected in a timely manner;
 - d. Ensure that all required distributions from the Fund are made in a timely manner;
 - e. Establish OCERS principal business offices;
 - f. Approve leasehold and purchase agreements in connection with OCERS principal business offices; and
 - g. Approve operational control policies to ensure efficient delivery of member benefits and services.

Financial, Actuarial and Accounting

16. The Board will:
- a. Ensure that appropriate accounting, actuarial and internal financial control policies are established;
 - b. Approve the annual actuarial valuation and the actuarial assumptions contained therein, upon the advice of the actuary and other experts as required, and transmit to the Orange County Board of Supervisors a recommendation to implement such changes in the contribution rates of the county and districts, and members, as are necessary (Gov. Code §§31453 - 31454.6);

- c. Approve the annual financial statements;
- d. Ensure a financial audit is conducted at least annually (Gov. Code § 31593);
- e. Ensure an actuarial experience study is conducted at least every three years; and
- f. Ensure an actuarial audit is conducted at least every five years.

Human Resources

17. The Board will from time to time as determined to be in the best interests of OCERS:
- a. Approve a human resources and compensation policy; and
 - b. Ensure that appropriate succession plans are in place to provide continuity in OCERS management.

Communications

18. The Board will:
- a. Ensure effective communications with all significant interest groups;
 - b. Ensure that an Annual Financial Report is issued to members;
 - c. Ensure that Member Statements are available on OCERS' website and that OCERS makes paper copies available upon request; and
 - d. Conduct internal and external communications in accordance with the Board Member Communications Policy.

Key Appointments

19. The Board will, from time to time, appoint staff and service providers to assist the Board in carrying out its responsibilities, including:
- a. The CEO (Gov. Code § 31522.5);
 - b. The actuary;
 - c. The actuarial auditor upon recommendation of the Audit Committee;
 - d. The financial auditor upon recommendation of the Audit Committee;
 - e. The custodian;
 - f. Legal counsel retained to represent and advise the Board (Gov. Code § 31529.5);
 - g. Investment consultants retained to advise the Board;
 - h. Investment managers;
 - i. Human resource consultants retained to assist the Board with issues pertaining to the CEO; and
 - j. Other service providers the Board may choose to retain.

Monitoring and Reporting

20. The Board will ensure that appropriate monitoring and reporting practices are established within OCERS.
21. As a general rule, the Board will comply with all Board policies. If the Board takes an action contrary to one of its policies, it will state in the Board minutes the reasons for doing so. At such time, the Board will also request that a review of the policy be undertaken.
22. The Board will annually:
 - a. Review the CEO's job performance;
 - b. Review the funded status of OCERS;
 - c. Review OCERS's internal financial and operating controls;
 - d. Review the investment performance of the Fund and the performance of the investment managers of the Fund;
 - e. Review the quality of-services delivered to OCERS members; and
 - f. Review the performance of the Board.
23. The Board will review the actuarial experience of OCERS not less than every three years.
24. The Board will review the results of an actuarial audit of OCERS at least every five years.
25. The Board will review progress toward the implementation of OCERS business plan on a semi-annual basis.
26. The Board will review Board policies every three years or as set out in each policy.
27. The Board will review the OCERS Operating Budget on a quarterly basis.
28. With the assistance of the CEO, the Board (or a committee of the Board) will review, at least biennially, the performance of its advisors including the actuary, the financial auditor, the investment consultants, and fiduciary counsel.
29. The Board will provide for appropriate monitoring of compliance with applicable laws and regulations.

Charter Review

30. The Governance Committee will review this Charter at least once every three (3) years and recommend any amendments to the Board for approval as necessary to ensure that the Charter remains relevant and appropriate.

Charter History

31. This Charter was adopted by the Board of Retirement on November 18, 2002 and amended on August 22, 2011, January 21, 2014, January 20, 2015, July 20, 2015, May 15, 2017 and October 15, 2018.

Secretary's Certificate

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



10/15/18

Steve Delaney
Secretary of the Board

Date

A-3

Memorandum

DATE: October 11, 2018
TO: Members of the Governance Committee
FROM: Suzanne Jenike, Assistant CEO, External Operations
SUBJECT: OVERPAID AND UNDERPAID PLAN CONTRIBUTIONS POLICY – First Reading

Recommendation

Take appropriate action.

Background/Discussion

The attached is a proposed *Overpaid and Underpaid Plan Contributions Policy* (“Policy”) designed to provide a “correction process” for OCERS to follow to (i) distribute any amounts of contributions that were overpaid by the member and/or employers and (ii) recoup underpaid contributions from members and/or employers. An “overpayment” occurs when, due to an error/issue, OCERS receives more in contributions than the actuarially determined required amount and an “underpayment” occurs when OCERS receives less than required. Incorrect contribution amounts can occur over a period of several years for a multitude of reasons, many of which are in fact not errors per se but due to normal business processes, i.e. the establishment of reciprocity.

The proposed Policy outlines the staff procedures upon discovery of overpayment/underpayment of contributions by either an employer or member, the corrective action staff makes going forward as well as the collection process. We included information on compromising claims and the appeal process in the attached draft policy for the Committees review.

Submitted by:



Suzann Jenike
Assistant CEO, External Operations

OCERS Board Policy

Overpaid and Underpaid Plan Contributions Policy

Purpose and Background

1. The purpose of the Orange County Employees Retirement System (“OCERS,” “System,” or “Plan”) *Overpaid and Underpaid Plan Contributions Policy* (“policy”) is to provide a framework for resolving erroneous collection of plan contributions from OCERS members and employers. The OCERS Board of Retirement (“Board”) is charged with the responsibility of administering the System in a manner that assures appropriate and prompt delivery of benefits and related services to members and their beneficiaries and of managing the assets of the System in a prudent manner.

Policy Objectives

2. The Board determines, in consultation with its actuary and in accordance with the law, the amount of required member and employer contributions to the Plan. Subject to all applicable laws and consistent with this policy and the procedures established by the Board, it is OCERS’ policy to make every reasonable effort to recover from a member or employer the amount of any underpaid contributions to the Plan, and remit or credit to a member or employer the amount of any overpaid contributions to the Plan, to the extent applicable in accordance with applicable Internal Revenue Service guidance.

Policy Guidelines

3. As soon as practicable after discovery of overpaid or underpaid contributions and after written notification to the affected member and employer, OCERS will (i) correct the contribution amount for active members and employers prospectively; and (ii) pay or credit to, or collect from, the member and credit to or collect from the employer, the amounts to which the member, employer or the Plan is entitled in accordance with this policy and applicable law.
4. This policy is designed for use when calculation and other errors affect an individual member’s plan contributions. In the event of a system-wide error that affects multiple members’ contributions, the Board may implement a system-wide correction process that it determines is appropriate under the circumstances.
5. In the event of any inconsistency between applicable law (including IRS rules) and these policies and procedures, the law shall govern.

Procedures for Underpaid Contributions

Employers

6. When an employer has underpaid plan contributions, the employer will be required to:
 - a. Pay to the Plan the underpaid contributions associated with member compensation earned in prior fiscal years as soon as reasonably practicable, and
 - b. Pay to the Plan the underpaid contributions associated with member compensation earned in the current fiscal year no later than the end of the current fiscal year.

OCERS Board Policy
Overpaid and Underpaid
Plan Contributions Policy

Interest on the underpaid contributions shall be charged to and paid by the employer at the System's actuarially assumed rate of return.

Members

7. **Active Members.** When an active member has underpaid contributions to the Plan, OCERS will (i) make a prospective correction to (increase in) the member's contribution rate to the Plan; and (ii) take all reasonable steps to recover the full amount of all underpaid contributions, going back to the inception of the error, and charge interest to the member using the rate of interest credited by OCERS to member contributions, compounded annually during the period in which the contributions were underpaid and during any repayment period (*i.e.*, applied to the outstanding amount due until fully repaid).

The amount of the member's underpaid contributions for active members will be collected in accordance with section 9 below.

If the active member retires or becomes a deferred member of the Plan prior to repayment in full of the underpaid contributions, the remaining amount owing to the Plan will be collected in accordance with section 8 below.

8. **Retired and Deferred Members.** When a retired or deferred member has underpaid contributions to the Plan, OCERS will collect the full amount of all underpaid contributions, going back to the inception of the error, and charge interest to the member using the rate of interest credited by OCERS to member contributions, compounded annually during the period in which the contributions were underpaid.

The amount of the member's underpaid contributions for retired and deferred members will be collected in accordance with section 9 below.

9. The Board adopts the following procedures to recover underpaid contributions by members to the Plan:
- a. **For Active Members.** Upon discovery of the underpaid contributions, OCERS will notify the member of the prospective adjustment to (increase in) the member's contribution rate to the Plan (to reflect the correct amount of member contributions to the Plan) and provide the member with the following two options:
- *Option 1* – Equal pre-tax installment payments deducted from the member's biweekly salary over the same length of time that the underpaid contributions occurred, with interest as set forth in section 7 above applied during the underpayment period and during the repayment period; or
 - *Option 2* – Lump sum payment to the Plan for the full amount underpaid, with interest as set forth in section 7 above applied during the underpayment period.
- b. **For Retired and Deferred Members.** Inform the member of the underpayment and provide the member with the following two options:.

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- *Option 1* – Equal installments deducted from the member’s monthly pension amount over a period established in the discretion of the Director of Member Services not to exceed five years; or
 - *Option 2* – Lump sum payment to the Plan for the full amount underpaid, with interest as set forth in section 8 above applied during the underpayment period.
- c. In cases of extreme hardship, the member may request, and the CEO may grant, a longer period of repayment of the underpaid contributions
- d. OCERS may pursue all legal remedies to collect such underpaid member contributions to the Plan, including making a claim against the member’s estate or trust. In addition, if the member dies before the full amount of principal and interest is paid, OCERS may recover the remaining principal and interest from any lump sum amount OCERS is obligated to pay to the member’s estate or named beneficiaries of the member; provided, however, OCERS shall not seek to recover any such remaining amounts from any continuation payments made to a surviving spouse or an optional beneficiary of the member, unless an erroneous payment is made to the surviving spouse or optional beneficiary.
10. Compromising Claims.
- a. When the total amount of the Plan’s claim against the member, not including interest, is \$1,000 or less, the CEO, on the advice of legal counsel, shall have the authority to compromise the claim.
- b. Only the Board may compromise claims in which the total amount of such underpaid contributions, not including interest, is greater than \$1,000.
- c. The amount of the Plan’s claim for underpaid contributions is the difference between the amounts actually paid by the member for the recovery period and the amounts that should have been paid, together with “appropriate interest” from the dates of the actual payments to the date(s) the correction is effective. The likelihood of collection, the cost of collection, the amount of possible recovery and extreme hardship to the member will be considered by the CEO and/or the Board when determining whether to compromise a claim. Compromising a claim may include a different method of repayment than is otherwise provided by this policy and/or forgiveness or partial forgiveness of principal and/or interest.

Procedures for Overpaid Contributions

Employers

11. When an employer has overpaid contributions to the Plan, the employer shall be entitled to a credit to its actuarial accrued liability in the amount necessary to correct the error, plus interest at System’s actuarial assumed rate of return.

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Members

12. When a member has overpaid contributions to the Plan, (i) an active member shall be entitled to a prospective adjustment to his or her contribution rate to reflect the correct amount, and OCERS will inform the employer of the amount of the overpayment and the employer will offset the amount against the member's future contributions via the employer's payroll system; and (ii) retired and deferred members will be entitled to a lump sum payment within 45 days of discovery of the overpayment and receipt of all information needed to make the correction for all past overpaid amounts, with interest compounded annually using the rate of interest credited by OCERS to member contributions.
13. If a member who overpaid contributions to the Plan dies prior to payment of the lump sum amount due, the payment will be made according to OCERS' standard procedures for paying residual amounts following the death of the member (e.g., to the designated beneficiary, estate, personal representative, trustee of the member trust, etc.).
 - a. If, after following its standard procedures, Plan staff is not able locate a person entitled to payment, the Plan shall hold the funds on behalf of that person for five years. If the funds are not claimed within five years, the funds may be transferred into the System's pension reserve fund. If someone later appears to claim the funds, the Board or the CEO will consider such claims on a case-by-case basis.
 - b. The Plan will maintain a permanent record of all amounts of outstanding refunds of overpaid contributions and any amounts that have been transferred into the pension reserve fund.

Member Appeal Rights

14. A member shall have the right to appeal any decision regarding corrective actions that the Plan takes with respect to recovering and/or returning over and underpayments of Plan contributions.
15. The appeal process will generally follow the same pattern as benefit appeals as set forth in the Adjudication and Administrative Hearing Rules (Disability and Non-Disability Benefits) Policy. Offsets and other collection efforts will be stayed during the pendency of the appeals process; provided, however, that the Board shall have the discretion to suspend implementing its recovery from the member in whole or in part during any ensuing court action. Interest will continue to accrue on all amounts owed to OCERS during the appeals process and litigation.

Policy Review

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

Policy History

17. This policy was adopted by the Board of Retirement on MONTH, DATE, 2018.



OCERS Board Policy
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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.



Steve Delaney
Secretary of the Board

_____ Date

A-4

Memorandum

DATE: October 11, 2018
TO: Members of the Governance Committee
FROM: Suzanne Jenike, Assistant CEO, External Operations
SUBJECT: **WRITE OFF POLICY – First Reading**

Recommendation

Take appropriate action.

Background/Discussion

The attached is a proposed *Write Off Policy* ("Policy") designed to provide guidelines regarding when OCERS is permitted to forgo collection of amounts overpaid by or owing to OCERS, and when OCERS will not be required to make corrective distributions to OCERS members and/or their beneficiaries.

Cost effective administration of the system is a key goal OCERS strives to achieve on a daily basis. There are situations where it is neither cost effective or a prudent use of OCERS resources to process relatively small overpaid amounts or to take collection actions for underpaid amounts. The situations vary from underpaid member or employer retirement contributions to incorrect service credit purchase payments. When the amounts are insignificant, and require expenditure of staff resources to process, staff would like the ability to forgo corrective action.

Submitted by:



Suzann Jenike
Assistant CEO, External Operations

Purpose

1. The Orange County Employees Retirement System (OCERS or System) Board of Retirement (Board) is charged with the responsibility of administering the System in a manner that assures appropriate and prompt delivery of benefits and related services to members and their beneficiaries and of managing the assets of the System in a prudent manner. The purpose of this Write Off Policy is to provide guidelines regarding when OCERS is permitted to forgo collection of amounts overpaid by or owing to OCERS, and when OCERS will not be required to make corrective distributions to OCERS members or their beneficiaries.

Principles

2. Considerations of cost effectiveness make it prudent and reasonable to establish a threshold under which (a) OCERS will not be required to seek to recover amounts overpaid by or owed to OCERS; and (b) OCERS will not be required to make corrective distributions to OCERS members and their beneficiaries.

Roles

3. The Chief Executive Officer (CEO) shall be responsible for implementing and monitoring compliance with this Policy and shall annually report to the Board the write offs that have been made pursuant to this Policy.

Policy Guidelines

4. Whenever the total amount overpaid by OCERS to an OCERS member or beneficiary is less than \$100 including interest, or the total amount owed by any party to OCERS is less than \$100 including interest, OCERS is authorized to forgo recovery of such amount.
5. Whenever the total amount underpaid by OCERS to a member or beneficiary, including interest, is \$75 or less, OCERS is not required to make the corrective distribution provided that, in the judgment of the CEO in consultation with legal counsel, the reasonable direct costs of processing and delivering the distribution to the member or beneficiary would exceed the amount of the distribution.

Policy Review

6. The Board of Retirement will review this Policy at least once every three years to ensure that it remains relevant and appropriate.

Policy History

7. The Board of Retirement adopted this policy on _____, 2018.

OCERS Board Policy **Write Off Policy**

Secretary's Certificate

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



Steve Delaney
Secretary of the Board

_____ Date